

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-167/13

Pristina/Priština 20 July 2015

In the proceedings of:

S R K

Str. Dj S 81/13

Nis

Appellant

vs.

F I

Str.S P , no.4

I T

Str.R B , no.357

Q O

Str.V G , no.11

F

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case files registered at the KPA under number KPA16240) dated 5 September 2012, after deliberation held on 20 July 2015, issues the following:

JUDGMENT:

1. **The appeal of the appellant S R K lodged against the Decision of the Kosovo Property Claims Commission KPPC/D/A/164/2012 (as far as it regards the case registered in KPA under no. KPA16240) dated 5 September 2012 is grounded.**
2. **The Decision of the Kosovo Property Claims Commission KPPC/D/A/164/2012 (as far as it regards the case registered in KPA under no. KPA16240) dated 5 September 2012 is annulled.**
3. **The claim of S R K registered in KPA under no. KPA16240 is dismissed as inadmissible due to the lack of jurisdiction**

Procedural and factual background:

1. On 12 October 2006 S R K , filed a claim before the KPA, on behalf of his father, seeking repossession and confirmation of the ownership right over the parcel no.137 with a surface 3ha 59 ar, located in a place called Paunovo Polje, Uroševac/Ferizaj Cadastral Zone, Municipality of Uroševac/Ferizaj (hereafter referred as: the property). He stated that the possession over the property is lost due to the armed conflict in 1998/99, indicating 15 June 1999 as the date of loss. He claims that the property is now illegally usurped by unknown persons. The claim was registered with the KPA under case no KPA16240
2. To support his claim the claimant submitted the following documents:
 - The possession list no.4465, date 16 June 1997 issued by Cadastral Office for immovable property in Municipality of Uroševac/Ferizaj, which lists the claimant's father and his uncle as co-owners of the claimed property;
 - Judgment no.P.br.653/96 date 30 January 1997 of Municipal Court of Uroševac, which establish that the claimant's father is the owner of the ½ part of the claimed property, which is positively verified by KPA verification team;
 - Decision no. 452-01/97-68 date 24 April 1997 issued by Republic Geodesy Office-Cadastral Office in Uroševac for the registration of the claimed property in the name of the father and

uncle of the claimant according the decision no.P.br.653/96 date 30 January 1997 of Municipal Court of Uroševac(negatively verified);

- Decision no.P.br.89/58 date 20 October 1958 of District Court in Uroševac, by which the claimant's father is declared dead.

According verification report dated 27 September 2011, KPA verification team verified ex-officio the Certificate for the immovable property rights no.P-72217092-00137-0, date 11 February 2011, issued by Department of the Cadastre in Municipality of Uroševac/Ferizaj and found that the registration of the claimed property is done according the Judgment no.P.br.653/96 date 30 January 1997 of Municipal Court of Uroševac/Ferizaj in the name of the claimant's father and his uncle.

3. On 5 September 2007 the KPA notification team notified the property by putting a sign where it was allegedly located. At the time of the visit the property was found a not occupied meadow.
4. On 9 May 2007, I T , F I and Q O (hereinafter all together referred to as: the appellee) approached KPA as a responding parties. They signed the Notice of Participation and claimed a legal right over the claimed property. They also stated that they purchased the claimed property through an informal agreement from a third party, M N and they alleged to have been in possession of the claimed property since the nineteen sixties. To support their allegations they submitted as evidence a purchase contract concluded between an agricultural cooperative and H N . In this contract there is no parcel number mentioned, nor is the contract certified by the court. In addition they submitted some witness statements, which are not verified by the court.
5. On 23 July 2012 KPCC decided to conduct a hearing in order to provide some additional information regarding the claim. During the hearing the claimant confirmed that up to the 90's the co-owners of the claimed property were not aware that the mentioned property belongs to them. He stated that the transfer of the property in the name of his father and his uncle was done according the decision no.P.br.653/96 date 30 January 1997 of Municipal Court of Uroševac and even after this decision that none of his family members took the possession over the claimed property. He also admitted that after the finishing of the inheritance procedure when his father and uncle came into possession of the property, they found that the claimed property was used by

one of the respondents, I T . On the other side the respondent, I T stated that he purchased the property in 1969 from a third party and since then has been in uninterrupted possession of it.

6. After the hearing, the KPCC on 5 September 2012, with decision KPCC/D/A/164/2012 decided to refuse the claim with the reasoning that the claimant failed to show ownership right or any other property right over the claimed property immediately prior to or during the 1998-99 conflict.
7. The decision was served on the claimant on 20 May 2013 and to all the respondents on 8 May 2013.
8. On 30 May 2013, S R K (hereinafter: the appellant) submitted an appeal to the Supreme Court, challenging the KPCC decision.

Allegations of the appellant

9. The Appellant invokes a violation of the rights and incorrect assessment of the facts by KPCC. In his appeal he stated that KPCC's decision was based in verbal statements of the respondents and in some documents which can be forgery, because they are not issued according the law. Therefore, he asks from the Supreme Court to quash the KPCC's decision and recognize his property right.

Legal reasoning

Admissibility of the appeal

10. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

11. The Supreme Court has jurisdiction to examine the appeal.
12. According to Section 3.1 of the Law No. 03/L-079 the Commission has the competence to resolve claims related to the armed conflict of 1998/1999, claims related to rights that cannot be

exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

13. Based on established facts and declarations of the parties, it should be concluded that the dispute is not within the jurisdiction of KPCC. Although the appellant in his claim declared that the possession over the claimed property was lost due to the armed conflict 1998-99, this does not derive from the evidence submitted or from his declarations.
14. The appellant when asked by the Executive Secretariat stated that he and his brother were not aware of their property rights because their father was dead, and they were raised by their uncle. Until their ownership rights were granted with the judgment no.P.br.653/96 date 30 January 1997 of Municipal Court of Uroševac they did not exercise the possession over the claimed property. After the confirmation of their ownership right over the claimed property they tried to enter in possession, but they found that their property was used by one of the appellees. In the hearing conducted by KPCC on 23 July 2012 the appellant himself repeated this he gave to the Executive Secretariat.
15. The Supreme Court after assessing the established facts and the declarations of the parties concludes that it is obvious that there is a dispute over the claimed property, but this dispute is not related to the armed conflict 1998-99. In fact the Appellant never got the possession before the armed conflict started and obviously could not lose it during that conflict.
16. In case the appellant would have some legitimate claims regarding the ownership right over the claimed property, these should be treated as regular obligation claims, and they should be decided upon by the regular courts.
17. On the basis of the above and according to the provision of section 12.2 of the Law No. 03/L-079 and art. 198, paragraph 1 of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice

18. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar