

**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-010/2014

**Prishtinë/Priština,
18 November 2015**

In the proceedings of

B.N.

IV Crnogorska 26/8
36103 Ribnica
Kraljevo
Serbia

Appellant

vs.

S.R.

Udhëkryqi Janjeve-Lipjan Autoservisi Gari
Lipjan/Lipljan

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case file registered at the KPA under No. KPA40919), dated 5 September 2012, after deliberation held on 18 November 2015 issues the following

JUDGMENT

- 1. The appeal of B.N. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012, dated 5 September 2012, is rejected as unfounded.**

2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012, dated 5 September 2012, is confirmed as far as it regards the claim registered with KPA under No. KPA40919.**

Procedural and factual background:

1. On 13 July 2007, the claimant B.N. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his ownership right over the parcel no.1501 with surface 24Ar 8m2 located in a village named Dobratin/Dobrotin in municipality of Lipjan/Lipljan (hereinafter referred to as claimed property)
2. Together with the claim, he provided:
 - Possession list no. 367, dated 8 March 2002 issued by the Centre for Immovable Property and Cadastre in Municipality of Lipjan/Lipljan, in which the Appellant is listed as the sole owner of the claimed parcel;
 - Lawsuit submitted on 4 June 2006 by the Appellant before the Municipal Court of Lipjan/Lipljan.
3. The Appellant stated that he abandoned the claimed property for security reasons on 14 July 1999. The case was registered under the number KPA40919
4. According to Consolidated Verification Report dated 20 June 2012 the documents submitted by the Appellant were positively verified by the KPA.

Initially the claimed property was notified on 30 October 2007 and found occupied by S.R.

On 30 March 2010, the KPA verification team located the claimed property based on the coordinates taken from the KPA web map. From the notification it resulted that the property was uncultivated land and not occupied.

5. On 5 November 2011 S.R. approached the KPA as a Respondent by signing the notice of participation. He claimed a legal right over the claimed property, because he bought it from a third party. To support his allegations he submitted the following documents:
 - Purchase contract Vr.no.647/2001, dated 5 May 2001 concluded between J.N. as seller and S.R. as buyer. The contract which was verified by the Municipal Court in Lipjan/Lipljan shows that the Respondent purchased the parcel no.1698;

- Possession list no. 494, dated 20 February 2004 issued by the Department for Cadastre Geodesy and Property in Municipality of Lipjan/Lipljan, which indicates the Respondent as the owner of the parcel no. 1697 and 1698.
6. From the proceedings it resulted that the Respondent was not claiming legal rights over the claimed property, but the right over another parcel.
 7. On 5 September 2012, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/A/164/2012 (hereafter to be referred to as: the KPCC Decision) dismissed the claim due to the lack of jurisdiction. Justifying its decision, the KPCC underlined that the Appellant had filed prior to 16 October 2006 a lawsuit before the competent court seeking the repossession of the claimed property. The KPCC decision refers to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 (hereafter, Law 03/L079) as the legal basis by which “(...) *the Commission’s jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force (...)*”.
 8. The KPCC Decision was served upon the Appellant on 26 September 2013. On 24 October the Appellant, B.N. (hereinafter: the appellant) filed an appeal against the KPCC decision.

Allegation of the parties

The Appellant:

9. The Appellant requests the Supreme Court of Kosovo to nullify the KPCC decision and to issue a decision by confirming his ownership right over the claimed property. In his appeal he alleges that the KPCC decision is illegal and unfair, because it is based on wrongfully and incomplete determined factual situation. To support his appeal, the Appellant refers to the arguments presented in front of the KPA.
10. The Appellee, in his response to the Appeal requires from the Supreme Court to confirm the KPCC Decision as lawful. He stated that he had acquired the ownership right over the parcel no. 1698 on the basis of legal transactions. In his response to the Appeal he added other explanations which are not relevant for the concrete case.

Legal Reasoning

Admissibility of the appeal

11. The Appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 of the Law No. 03/L-079. This is because the Decision was served on the Appellant on 2 July 2013 and he filed an Appeal on 18 July 2013.
12. The Supreme Court of Kosovo found that the appealed KPCC decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied; therefore, the appeal is rejected as unfounded.
13. Regarding the claimed property the appellant himself when contacted by the Executive Secretariat admitted that it was taken from him in 1964 by the Agricultural Cooperative of Kosovo in Lipjan/Lipljan and in return parcel no. 1697 was allocated to him. However, he failed to prove his allegation regarding the exchange of the properties. This statement indicates that the loss of the property is not a result of the armed conflict of 1998-99'.
14. He also added that he filed a lawsuit for repossession of the claimed property before the Municipal Court of Lipjan/Lipljan, which was positively verified by Executive Secretariat of the KPA. According to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC's jurisdiction is excluded if the court proceedings in relation to the claim had been initiated before 16 October 2006, when this Regulation entered into force. Given that the court proceedings regarding the claimed property were initiated by the Respondent filing a claim before the Municipal Court of Lipjan/Lipljan on 04 April 2006, according to the assessment of this Court, the appealed KPCC Decision is correct and finds it based in law, when it concludes that the claim has to be dismissed because of the lack of jurisdiction of the Commission.
15. This leads the Supreme Court to the conclusion that the KPCC has taken a correct decision giving proper reasoning while dismissing the claim of the Appellant and applying Section 18 of Law No. 03/L-079.
16. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC Decision is confirmed as correct and lawful pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

17. Considering what was mentioned above and pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge, EULEX

Krassimir Mazgalov, EULEX Judge

Anna Bednarek, EULEX Judge

Urs Nufer, EULEX Registrar