

**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-04/14

Prishtina/Priština 16 December 2015

In the proceedings of:

A. K.

Appellant

vs.

M.A.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Ana Bednarek, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission no. KPCC/D/A/140/2012 (case file registered under KPA14805), dated 29 February 2012, after deliberation held on 16 December 2015, issues this:

JUDGMENT

1. **The Appeal of A. K. against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/140/2012 is rejected as unfounded;**
2. **The Decision of the Kosovo Property Claims Commission No. KPCC/D/A/140/2012, dated 29 February 2012, is confirmed as far as it concerns Claim No. KPA14805.**

Procedural and factual background:

1. On 04 December 2006, M. A. (hereinafter: the Appellee) filed a Claim at the Kosovo Property Agency (KPA) seeking the repossession of the parcels No. 302, 303 and 304, with the total surface of 0.28.62 ha, located in the cadastral zone Nekodim/Nekodim, Municipality of Ferizaj/Uroševac (henceforth: the claimed property). He explained that the claimed property was his and that it was occupied by unknown persons. That property was lost as a result of the circumstances in 1998/1999 and he indicated that the date of loss was 13 June 1999.
2. To support his Claim, the Appellee provided the KPA with the copy of the Ruling on Inheritance of the Municipal Court in Ferizaj/Uroševac O. No. 77/96 dated 08 July 1997. Through this Ruling the Appellant was declared the inheritor of the claimed property following the death of his mother S. A., from Ferizaj/Uroševac.
3. The Claim was initially notified on 11 October 2007. A second notification of the Claim was on 31 August 2010 done through the publication in the KPA Notification Gazette No. 8 and the UNHCR's Property Office Bulletin. The Gazette was delivered to municipal offices and a copy of it was left in a shop. No respondent appeared to express the legal interest in the claimed property.
4. According to the Consolidated Verification Report the document submitted by the Appellee as the evidence was positively verified.
5. The Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/A/140/2012, dated 29 February 2012, recognized the Appellee as the owner of the claimed property.
6. The Decision was served on the Appellee on 24 May 2012.

7. On 16 September 2013, A. K. (henceforth: the Appellant) filed an Appeal against the KPCC's Decision KPCC/D/A/140/2011 of 29 February 2012.
8. In his Appeal, he stated that the appealed Decision was taken under erroneous and incomplete determination of the factual situation, as well as contained wrongful application of the substantive law. He requested the amendment of the KPCC's Decision and the confirmation that he had purchased the claimed property.
9. To the Appeal he attached the statement of H. and S. Q. dated 16 September 2013 given before the Notary Public G. H.. The witnesses declared that the Appellant purchased the immovable properties from S. A. in 1985 for the amount of 6.000 DM and that the written contract was burnt during the war in Kosovo. In addition, the Appellant filed the lawsuit in March 2013 in the name of A.F. who alleges that the claimed properties were purchased by him.
10. The Appeal was served to the Appellee on 13 January 2014. The Appellee did not file any Response to the Appeal.

Legal reasoning:

Admissibility of the Appeal

11. The Appeal is admissible. The Appellant has not been notified of the proceedings pending before the KPCC as foreseen by Section 10.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter Law No. 03/L-079). The notification of the claim was done through the publication in the KPA Notification Gazette No. 8 and the UNHCR's Property Office Bulletin. The Supreme Court in its jurisdiction used to consider such a notification by the publication as insufficient, because it does not constitute "reasonable efforts" to notify any other person who may have a legal interest in the property (argument after Section 10.1 of Law No. 03/L-079). For that reason the notification done in the case at hand has to be assessed as an incorrect one and as such may not have any negative impact on the rights of the Appellant.

12. Therefore the Supreme Court is of the opinion that the Appellant has to be admitted as a party in the proceedings at the current stage (according to Section 10.3 of the Law No. 03/L-079) and his Appeal has to be considered as admissible.

Merits of the Appeal

13. The Court ascertains that the Appellant did not prove any right over the claimed property, through the submitted documents. He failed to prove in any way any property right over the claimed property or to successfully challenge the ascertainment of the KPCC given in its Decision KPCC/D/A/140/2012, dated 29 February 2012, that the Appellee is the owner of 1/1 of the claimed property. It is important to underline that the burden of proof of the circumstance of the acquisition of the property rights over the claimed property was on the Appellant. According to Article 7 of the Law No. 03/L-006 on Contested Procedure “parties shall present all the facts on which they base their claim and proposed evidence which establishes such facts. As the Appellant drew a conclusion of gaining of the property rights over the claimed property on the basis of the contract concluded in 1985, he should have proven that circumstance during the proceedings. The evidence though submitted by him together with the Appeal cannot be assessed as proving that circumstance.
14. Consequently the Supreme Court finds that KPCC based its Decision on the correct and complete determination of the factual situation, as well as on proper application of the material law. Therefore, the Supreme Court concludes that the Appeal is unfounded.
15. Based on the above and pursuant to Article 13.3 sub-item (c) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

Legal advice

16. Therefore, the Appeal has to be rejected as unfounded Section 13.3 (c) of the Law No. 03/L-079 and by Article 195, paragraph 1, subparagraph (a) of the Law on Contested Procedure.
17. Pursuant to Section 13.6 of the Law no. 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge, EULEX

Anna Bednarek, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar