

**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-111/14

**Prishtinë/Priština,
21 January 2016**

In the proceedings of:

E.V.

Appellant/In the name of the claimant

Vs.

Nobody

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (case file registered at the KPA under the number KPA00854) dated 27 November 2013, after deliberation held on 21 January 2016, issued this

JUDGMENT

1. **The appeal of E. V. filed on behalf of her deceased husband M. V. is rejected as unfounded.**
2. **The Kosovo Property Claims Commission Decision KPCC/D/C/220/2013 (concerning the casefile registered in KPA under KPA00854) dated 27 November 2013, is confirmed**

Procedural and factual background:

1. On 30 May 2007, the claimant M. V. filed a claim seeking repossession of the immovable property listed in the cadastral parcel no.334/1, cadastral zone Kovragë, with a surface of 0 Hectares, 20 Ar and 5 square metres, with culture forest, alleging that he lost the possession over the property due to the armed conflict of 1998/9, without indicating a specific date of the loss.
2. To support his claim, the party submitted the following documents:
 - Identification card dated 3 January 1987, issued by the Secretariat of Internal Affairs in Mitrovica (then Tito's Mitrovica) with residential address in Anke Spajić, Mitrovica;
 - Possession list no. 155 dated 19 August 1978, issued by the Geodesy Directorate in Istog;
 - Copy of plan for the parcel 334/1 issued by the Geodesy Directorate in Istog;
3. Later, the wife of the claimant E.V. (appellant) submitted;
 - Claimant's death certificate dated 24 June 2009 issued by the parallel civil registration authorities which proves that the claimant M. V. had passed away on 29 May 2009 and that E. V. was his widowed wife;
 - Possession List no.209 issued by the relocated cadastre which proves that the property was registered in the name of the claimant M. V. ;
 - Statement in writing given by the appellant E. V. at the Kosovo Property Agency on 16 September 2009 in which she asserted that from the entire immovable property described in the possession list 209 in the ownership of the deceased, her husband, except for the parcels 530/3, 530/4 and 530/5, all the others were sold in 1970, but were not transferred in the names of new owners and she requests from the Commission to

- issue a decision confirming the ownership in order to initiate the inheritance proceeding which would declare as owners those who purchased the property from her deceased husband.
- Act of Death dated 24 June 2009 issued by the parallel civil registration authority in Mitrovica where in the property column are listed only the apartment and the garage in Mitrovica but not the claimed property.
4. Physical identification of the property was carried out on 20 February 2008. Agency officials found that the property is a forest and at the time of visit it was not being used by anyone.
 5. Nobody appeared to challenge the claim or to participate in the proceedings
 6. In the consolidated verification report dated 6 May 2008, the possession list no. 209 was positively verified by the cadastral records in Istog, duly verified and compared.
 7. The Kosovo Property Claims Commission (KPCC), based on the evidence submitted by the parties, property notification with the Decision KPCC/D/A/19/2008, dated 20 June 2008, decided to approve the claim of M.V. and to establish that the claimant has proven that he is the owner of the entire claimed property and ordered the respondent, if there is one, to vacate the property within 30 days of receiving the decision.
 8. This decision was served on the claimant on 3 April 2009.
 9. On 19 February 2010, by the Resolution no. KPCC/RES/15/2010 the Commission ascertained that a number of adjudicated claims had omissions in the notification process and that they were not physically identified and notified respectively. The Commission decision on this claim was annulled and the claim was returned to the Secretariat for reprocessing after carrying out the physical notification once more.
 10. On 3 August 2010, the claim was published in the Agency Gazette, UNHCR Office and was placed at the entry of the claimed property. In addition, the notification was also sent to Istog Municipality, Municipal Court in Peja and the Regional Office of the Agency. KPA confirmed the notification on 31 August 2010 and it was ascertained that the property was accurately identified.
 11. The Kosovo Property Claims Commission (KPCC), based on the evidence submitted by the parties, property notification with the Decision KPCC/D/A/147/2012, dated 19 April 2008, decided to approve the claim of M.V. and to establish that the claimant has proven that he is the owner of the entire claimed property and ordered the respondent, if there is one, to vacate the property within 30 days of receiving the decision.

12. The wife of the claimant, now deceased, received the Commission decision on 26 September 2012.
13. On 21 August 2013, by the Resolution KPCC/RES/33/2013, the Commission annulled the previous decision by the request of the Secretariat because the party in the case KPA00855 had declared that her deceased husband sold the claimed property, including the parcel 334/1.
14. By the submission dated 9 October 2013, the Secretariat informed the claimant of annulment of the previous Decision.
15. The Kosovo Property Claims Commission (KPCC), based on the pieces of evidence submitted by the parties, property notification by the Decision KPCC/D/A/220/2013, dated 27 November 2013, decided to reject the claim of M. V.
16. In the cover decision and the specific reasoning for the claim in question in paragraphs 169 and 170, the Commission ascertained that initially the claimant had alleged the loss of property as a result of the conflict but later had informed that Executive Secretariat of the Agency that the property was sold beforehand.
17. Under these circumstances, the Commission had ascertained that the loss of property was not a result of circumstances related to the armed conflict but that the claimant did not have property right over the property as a result of voluntary disposal of the property in the 1970-ies.
18. The party received the challenged decision on 26 March 2014 and had filed an appeal in the Supreme Court on 22 April 2014.

Allegations of the appellant:

19. The appellant in his appeal alleges that the factual situation was not fully determined and that conditions for KPCC to render a decision concerning the property were not fulfilled. She now asserts that the claimed property in the parcel 334/1 was not sold and that Commission did not provide evidence based on which it came to this conclusion. She alleges that it is legally impossible for the Commission to render two decisions one after another in her favour, while the last decision dismisses her claim.
20. Therefore, she motioned the Court to approve the appeal and quash the Commission decision, and issue a Judgment that returns the possession over the claimed property.

Legal reasoning:**Admissibility of the appeal:**

21. The appeal is admissible. It was filed within the time limit of 30 days as required by the Article 12.1 of the Law no. 03/L-079.

Jurisdiction:

22. According to Section 3.1 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, the Commission has the competence to resolve property claims and property right claims “that are directly related to or result from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.”
23. The Supreme Court has jurisdiction to decide on the appeals against the Commission decisions pursuant to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079.

Merits of the appeal:

24. After reviewing the casefile submission, appeal decision and allegations pursuant to Article 194 of LCP, the Supreme Court found that the appeal is ungrounded because the appealed decision was taken outside the scope of KPCC and consequently the decision had to be annulled and the claim of M. V. had to be dismissed as impermissible for the following reasons.
25. During the KPA proceedings, the appellant alleged in the submission dated 16 September 2009 that the aim of claiming the property was to enable the inheritance proceedings after the deceased, the claimant, and registration of the property in the names of new owners who had purchased the property from the claimant’s husband in 1970 and that except parcels 530/3, 530/4 and 530/5 all the others were sold in 1970 but were not transferred in the names of new owners.
26. In the Act of Death dated 24 June 2009 which indicates the document of initiating the inheritance proceeding, issued by the parallel civil registration authority in Mitrovica, in the column of the immovable property – inheritance property, left after the deceased M. V, are listed only the apartment and the garage in Mitrovica and not the claimed property.

27. From the verifications carried out by the KPA verification team, in the consolidated verification report dated 6 May 2008, it results that the possession list no. 209 was found in the Cadastre Department in Istog and the property is registered in the name of the claimant.
28. The Supreme Court notes that KPCC rendered a decision outside its scope foreseen by Section 3.1 of UNMIK Regulation 2006/50 on resolution of claims related to private immovable property, including agricultural and commercial property, as amended by the Law no. 03/L-079. The Supreme Court ascertains that the appeal is ungrounded.
29. KPCC has competence to receive claims as in item 21 of this Judgment and it is clear that the loss of property right is not directly related nor results from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, but as a voluntary relinquishment of the property through sale years ago.
30. Regarding the appellant's allegation that it is unlawful for the Commission to render two decisions with contradictory conclusions, the Court examined the appeal allegations and found that in the first Resolution the Commission had nullified its own decision because of inadequate procedural actions, whereas in the second resolution it had also annulled its own decision because by the claimant's own statement that the property was sold in the 70-ies, this put the claim outside the prescribed period of times and scope of the Commission. The Court found that the decision had to be quashed and the claim of M. V. had to be dismissed due to lack of KPCC's jurisdiction.
31. Based on the reasons presented above and in accordance with Section 13.3 (a) of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, it has been decided as in the enacting clause of this judgment.

Legal remedy:

Pursuant to Article 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

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar