

**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-103/14

Prishtinë/Priština, 27 January 2016

In the proceedings of:

A.P.

Rruga Petra Bojovića I
18430 Kuršumlija
Republic of Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Sylejman Nuredini and Rolandus Bruin, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/A/212/2013 (case files registered at the KPA under KPA06758) dated 21 August 2013, after the deliberation held on 27 January 2016, issues the following:

JUDGMENT

- 1. The appeal of A.P. against the Decision of the Kosovo Property Claims Commissions no. KPCC/D/A/212/2013 dated 21 August 2013 as far as it concerns the case registered under KPA06758, is rejected as unfounded;**
- 2. The decision of the Kosovo Property Claims Commissions no. KPCC/D/C/212/2013 dated 21 August 2013 is confirmed as far as it concerns the case registered under KPA06758.**

Procedural and factual background

1. On 5 March 2007, A.P. (the Appellant) filed a claim at the Kosovo Property Agency, alleging he is the property right holder of and seeking the repossession of the immovable property located in Podujevë/Podujevo, at the place called Livadičko Polje (Livadicë/Livadica), cadastral parcels no. 238/2 and 239/2 with a surface of 00.66.32 ha, culture field and meadow in the Cadastral Zone Livadicë/Livadica (henceforth: the claimed property). He stated that he lost possession over the claimed property because of the circumstances related to the armed conflict of 1998/99 that occurred in Kosovo.

2. To support his claim, the Appellant provided the Kosovo Property Agency (hereinafter the KPA) with the following documents:
 - An Identification card dated 3 September 1992 issued by the internal affairs authority in Podujevë/ Podujevo.
 - Two versions of Possession List no.31, one dated 2 November 2006 and one 20 February 2008, issued by the Cadastrefor Podujevë/ Podujevo Municipality relocated in Serbia, which indicate that the Appellant is listed as the owner of the claimed property.
 - A Copy of plan, issued by the Podujevë/ Podujevo Cadastral Office dated 20 November 1995.
 - The Judgment on the basis of admission of the Municipal Court of Kuršumlia P.br.21/94 dated 13 June 1994 which shows that the Contract concluded between the Agricultural Cooperative “Sloga” in Podujevë/Podujevo as buyer and the Appellant as seller, concluded on 28 December 1970. Subject of that contract is - among other parcels - the claimed property. The contract is declared null and void and the Agricultural Cooperative “Sloga” in Podujeva is obliged to recognize the ownership of the Appellant over the claimed property.

3. The KPA found *ex-officio* in the cadastral records of the Cadastral Agency of Podujevë/Podujevo Municipality the possession list no. 47, dated 25 October 2007. According to this list the parcels nos. 238 and 239/2 in Livadicë/Livadica are listed as socially-owned property belonging to the Agricultural Cooperative in Podujevë/Podujevo. In the cadastral records it is stated that part of the parcel 239/2 was allocated to the football

club “Besiana” by the Podujevë/Podujevo Municipality, whereas parcel 238 was found undivided and is listed as socially-owned property.

4. The documents submitted by the Appellant, such as the possession list issued by the relocated Cadastre and the Judgment of the Municipal Court in Kuršumlija, were positively verified by KPA.
5. On 14 September 2007, KPA performed the identification of the claimed property which was found to be a cultivated land, and KPA notified the claim by putting a poster on the claimed property but nobody responded to the claim. KPA confirmed the notification on 12 May 2010 and ascertained that the property was accurately identified. On 1 July 2010, the claim was published in the Agency Gazette, UNHCR office, and was submitted to the village leader Xh.S.. In addition, the notification was sent also to Podujevë/Podujevo Municipality, Municipal Court in Podujevë/Podujevo and the Regional Agency Office in Prishtinë/Priština.
6. By the KPCC’s decision no. KPCC/D/C/212/2013 dated 21 August 2013, the Appellant’s claim was dismissed. The KPCC reasons that no evidence was provided to prove that the Appellant was restored in possession of the claimed property after the annulment of the contract concluded between the Agricultural Cooperative and the Appellant. Although the Appellant was requested to provide more proof as well, no evidence was found except for the relocated cadastral records in which it is listed that the claimed property is registered in the name of the Appellant. The secretariat requested from the party the pieces of evidence for the subsequent steps of implementation of the judgment but the party failed to obtain evidence. Since no evidence was provided by the Appellant that he was restored in possession, the KPCC reached the conclusion that the Appellant did not lose possession as a result of the conflict (KPCC/D/C/212/2013 dated 21 August 2013, paragraphs 26-28)
7. The KPCC decision was served on the Appellant on 8 April 2014. He filed an appeal on 8 May 2014. On 16 May 2014 he added to his appeal the same documents as he had sent to the KPA to substantiate his claim.

8. No other party participated in the first instance proceedings before the KPCC or before the Supreme Court.

Allegations of the appellant

9. The appellant requests that the KPCC Decision be quashed stating that he presented before the KPCC sufficient evidence that he is the owner of the claimed property. Therefore, he requests from the Supreme Court to approve the appeal and amend the KPCC decision in his favour, and restore him in possession over the property.

Legal reasoning

10. The appeal is admissible. It was filed within the period of 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property, as amended by the Law no. 03/L-079.
11. Pursuant to Section 3.1 of that UNMIK Regulation 2006/50 the KPCC 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.” Thus, the Appellant should not only provide the ownership title over the private immovable property but should also prove that he or she is now unable to exercise such property rights due to the circumstances directly related to or resulting from the armed conflict.
12. Following the examination of the casefile and the appeal allegations pursuant to Article 194 of the Law no. 03/L-006 on the Contested Procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter LCP), in relation to the ex officio examination of the judgment and for the stated reasons in the appeal, the Court, based on these facts, found that the appeal is ungrounded.
13. In the specific case, the Appellant did not prove before the KPCC that he implemented the Judgment of the Municipal Court of Kuršumlia and that the loss of possession happened

due to the circumstances directly related to or resulting from the armed conflict. In appeal he did not submit any information that could lead to another decision.

14. The Appellant, by not implementing the Judgment by which his ownership right over the claimed property was recognized, failed to prove that he restored possession over the property before the conflict and lost it later as a consequence of the armed conflict of 1998/99 that occurred in Kosovo.
15. Finally, the Court found that the KPCC's decision is right and that the merits of the claim cannot be examined in this proceeding because they are outside the jurisdiction of KPCC.
16. This judgement does not preclude that the Appellant pursues any alleged rights on the claimed property at the competent authority of competent court.
17. In light of the aforementioned, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, it has been decided as in the enacting clause of this judgment.

Legal advice

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

Beshir Islami, Presiding Judge,

Sylejman Nuredini, Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar