

**UPREME 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-97/2014

**Prishtinë/Priština,
19 February 2016**

In the proceedings of:

Z. D.

Appellant

vs.

G. E.

H.E.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/204/2013 (case file registered at the KPA under No. KPA33769), dated 11 June 2013, after deliberation held on 19 February 2016, issues the following

JUDGMENT

1. **The Appeal of Z. S. D. against the Decisions of the Kosovo Property Claims Commission KPCC/D/A/204/2013, dated 11 June 2013 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/204/2013, dated 11 June 2013 is confirmed as far as it regards the Claim registered with the KPA under No. KPA33769.**

Procedural and factual background:

1. On 22 May 2007, Z. S. D. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), registered under case number KPA33769 seeking the repossession of the cadastral parcels numbers 474 and 475 of the total surface 00.43.44 m², located in Millosheve/Miloševo Obiliq/Obilić Vise Sela, evidenced in Possession list number 75 (hereinafter: the claimed property).
2. The Appellant stated that he is the co-owner of 1/7 ideal part of the claimed property. The ownership rights he obtained through the inheritance. The loss of possession according to the Appellant took place on 19 June 1999.
3. Together with the Claim he submitted *inter alia* to the KPA:
 - Copy of Partial Possession List No. 75, issued by the Department for Cadastre, Geodesy and property, Municipality of Oliliq/Obilić on 26 January 2004 listing i.a. the Appellant as a property right holder (PRH) of 1/7 ideal part of the claimed property;
 - Copy of plan of 26 January 2004 listing the Appellant as a PRH of the claimed property;
 - Decision of the Municipal Court in Prishtinë/Priština rendered in the case No. O.br 88/81 on 20 April 1981 declaring inter alia the Appellant as one of the heirs after late J. D.;
 - Decision of the Municipal Court in Prishtinë/Priština rendered in the case No. O.br 89/81 on 20 April 1981 declaring inter alia the Appellant as one of the heirs after late S. D.;
 - Statement of the Appellant dated 08.09.2011 according to which, neither the Appellant himself, nor his brothers M., U., M., A., his mother A. and sister D. V., had sold the claimed property registered in the Possession List 75.
4. On 26 October 2007 the KPA notified the Claim: cultivated land in Obliq/Obilić. It was found being occupied by G. E., who was present at the property, declared to claim a legal right to it and signed a notice of participation. G. E. declared however that he did not want to submit a Claim with the KPA.
5. On 5 March 2010 the KPA located the property based on GPS Coordinates and Ortophoto.
6. On 21 June 2011 A. E. submitted Response to the Claim, in which he stated that the land parcels were bought by him on 30 November 1995 from M. D. He added that on that occasion he had given to the seller the full amount of the sales price.

7. Together with the Response the Appellee submitted *inter alia* to the KPA:
 - Copy of the Contract on Sale of immovable property, concluded on 30 November 1995 between the M. D. who stated to be the exclusive owner of the cadastral parcel 475, registered in the Possession List 110 CM Milloseve/Miloševo, who had inherited it after his late brother S.J. D., as the seller and A.E. as the buyer;
 - Copy of Possession List No. 110 dated 3 November 1994 listing S. J. D. as the PRH of the land parcel No. 475;
 - Copy of Possession list No. 75 dated 3 November 1994 listing S. T. D. as the PRH of the land parcel No. 474.
8. The Appellant filed a Reply to the Appellee's Response claiming that the Contract on Sale submitted by the Appellee was a result of criminal offence. He further stated that his brother M. D. had never concluded a sales contract with A. E., especially since he could not have been recognised as an exclusive owner of the whole parcel. He added also that his brother's ID card had been stolen. The one that was mentioned in the contract had been issued after the contract allegedly was signed. Additionally according to him Sister D.V. has been using the property until 1999, when she was forced to leave Kosovo.
9. On 11 June 2013, the KPCC with the Decision KPCC/D/A/204/2013 (para. 21-23) dismissed the Claim due to lack of jurisdiction. In the reasoning the Commission noted that it was undisputed between the parties that the Appellee's family had been in the possession of both claimed properties since 1995. The Commission further noted that the Appellee occupied the parcel 475 based on informal agreement concluded with the Appellant's brother as a co-owner, and that he occupied the parcel 474 without any legal basis. However, according to the Commission, since the Appellant had lost the possession of the claimed properties already in 1995 and the alleged loss of possession does not involve circumstances directly related to or resulting from the 1998-1999 conflict, the Claim fell outside the mandate of the Commission and stood to be dismissed.
10. On 23 January 2014, the KPCC's Decision was served upon the Appellant. The Decision was served to A. E. on 5 November 2013 - the receipt bears illegible signature of the recipient.
11. On 20 February 2014 Ž. D. filed an Appeal against the Decision.

Allegation of the parties

12. The Appellant Ž. D. requests the Supreme Court to grant the Appeal and to confirm that he is authorised to repossess the property. The Appellant alleged that the Commission incompletely established facts and erroneously applied the substantive law. He stated that according to him the facts indicated in the Decision were not true. The Appellant denied to have said that the Appellee's family was using undisturbed the claimed property since 1995. This circumstance was confirmed by the members of his family: D. D. and Ž. D., as well as by his neighbours. Considering that the signatures of M. D. was forged he requests to appoint an expert to verify that question.

13. The Appeal of the Appellant was served on G. E. and I. E. on 10 December 2015. On 11 December 2015, replying to the Supreme Court's order of 12 November 2015, I. E. submitted a death certificate of A. E. stating that the latter person died on 23 April 2013, as well as the copy of the Decision on Inheritance after the late Appellee, issued by the Notary Public N. R. on 30 June 2014.

Legal Reasoning

14. The Supreme Court, after having reviewed the documents gathered in the case file and having assessed the appealed Decision and the submissions of both parties, found that the Appeal is unfounded. In the opinion of the Supreme Court of Kosovo the appealed KPCC's 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.
15. The dispute between the parties has its origins in the allegedly entered into in the year 1995 Contract on Sales of the parcel number 474. The Appellant argued that the facts presented in the reasoning of the Decision were not correct. He disagreed with the statement that the circumstance related to the possession of the claimed property since 1995. The Supreme Court observes that the Appellant has changed several times his statement regarding who was in the possession of the claimed property during the 1998/99 conflict in Kosovo. Finally, in the conversation with the representative of the KPA on 4 April 2013 the Appellant admitted that his brother had sold the parcel number 475 to A. E. in the year 1995, but he had done so without his permission. As for the parcel 474, he explained that it had not been used by his brothers until 1999 as his brother U. D. lived in Nish (Republic of Serbia) and the other brother A. D. had died long time ago. Additionally he explained that that his sister has been living in Kosovo until 1999, but she was not using the parcel. The Appellant himself, according to the conversation of 25 March 2013 has not been living in Kosovo for long time and as such had never used the two parcels himself. After having received the Decision the Appellant once again changed the statement and declared that the parcels were in fact used by D. family. In the opinion of the Supreme Court statements are not coherent one to another, but contradictory one to another. In the opinion of the Court the statement delivered during the conversation with the representatives of the Executive Secretariat and trustworthy and should be taken into consideration while deciding on the Appeal. Moreover that statement is coherent with the position of the responding party. Therefore the Supreme Court infers that, as the Commission established correctly, the dispute refers to the potential loss of possession of the claimed property already in the year 1995.
16. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict related ownership claims and property right claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999." That means that the scope of the examination of the KPA is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. If the Commission verifies that the possession of the claimed property was lost

- before or after the dates indicated above, or that the loss of the possession was not related to the conflict, it shall dismiss the Claim on the basis of the Section 11.4(b) of the Law No. 03/L-079.
17. Having reached the conclusion that neither the Appellant, nor his brothers or sister had been using the claimed property after 1995, the Supreme Court considers that the Claim falls outside the jurisdiction on the KPCC. The question whether the Sales Contract concluded by the Appellant's brother in 1995 could have any legal effect remains meaningless for the outcome of the proceedings before the Court, as the allegations submitted by the parties belong to the categories of disputes which should be decided upon by the competent civil court. The examination of the other elements that refer to the acquisition of the property right falls outside the competence of the KPCC.
 18. Consequently, as the Appellant has not proved to have had the possession of the claimed property during the period between 27 February 1998 and 20 June 1999, that he had lost its possession during that period due to the conflict, the Supreme Court considers that the Appeal stands to be rejected as unfounded.
 19. Additionally, it is worth mentioning that according to Section 12.11 of Law No. 03/L-079 the new facts and material evidence presented by any party to the Appeal shall not be accepted and considered by the Supreme Court, unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned. The evidence though presented in the Appeal by the Appellant could not be taken into consideration as belated.
 20. Based on the aforementioned and in pursuant to Section 13.3.(a) of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 195, paragraph 1e), of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal Advice

21. 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.

Sylejman Nuredini, Presiding Judge,

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar