

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-169/14

**Prishtinë/Priština,
20 July 2016**

In the proceedings of:

K.Sh.

Bec Village

Gjakovë/Đjakovica Municipality

Appellant

Vs.

Z.O. as representative of M.O.

Str. "Juliane Ćatić", No 29

Kragujevac

Republic of Serbia

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/219/2013 (case files registered at the KPA under the numbers: KPA19193 and KPA19194) dated 27 November 2013, after the deliberation held on 20 July 2016, issues the following:

JUDGMENT

1. The Appeals filed by K.Sh. , registered under the numbers GSK-KPA-A-169/2014 and GSK-KPA-A-170/2014, are joined in a single case under the number GSK-KPA-A-169/2014.
2. The Appeals filed by K.Sh. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/219/2013 rendered on 27 November 2013, with regard to the claims registered with KPA under the numbers KPA19193 and KPA19194 are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 rendered on 27 November 2013, with regard to the Claims registered with the KPA under the numbers KPA19193 and KPA19194 is confirmed.

Procedural and factual background

1. On 24 November 2006, M.O. (henceforth “the Appellee”), acting on behalf of his mother Z.O. , filed two separate claims with the Kosovo Property Agency (henceforth “the KPA”), registered under No KPA19193 and KPA19194, seeking the confirmation of the ownership right and the repossession over the parcel No 1218/3 (KPA19193) and parcel No 1194/1 (KPA19194), both located in the place called Ravnica/Bec, Municipality of Gjakovë/Đjakovica (henceforth “the claimed properties”). Moreover, the Appellee seeks the compensation for the use of his properties without his permission.
2. The Appellee stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss. According to M.O. , the claimed properties are now being occupied by Sh. family.
3. To support his Claim, the Appellee provided the KPA with the following documents:
 - The copy of the Excerpt of the Possession List, issued by the Center for Cadaster, Geodesy and Property of the Municipality of Gjakovë/Đjakovica on 5 October

1994, indicating that the Appellee's mother possessed the land parcels with the No 1218/3, 1194/1 and 1197.

- The copy of the Birth Certificate of the Appellee No 200-3852/04-VII issued by the Civil Registration Office of the Municipality of Gjakovë/Đjakovica on 6 July 2004.
 - The copy of the Power of Attorney granted by Z. (Z.) O. to her son to represent her in the proceedings before the Kosovo Property Agency. The signature of Z.O. was legalized by the Municipal Court of Kragujevac on 6 September 2007 (Ov.10929/07).
4. The Initial Notification of the Claim was performed on 3 December 2007 showing the properties as meadow, not occupied.
 5. The Executive Secretariat of the KPA verified positively the Appellee's birth certificate, as well as the Possession List No 206, which lists the claimed properties under the name of the Appellee's mother.
 6. On 22 February 2008 the KPCC with its Decision KPCC/D/A/8/2008 granted the Claims by establishing the Appellee's mother ownership right over the claimed properties.
 7. With its Resolution KPCC/RES/19/2010 taken on 12 May 2010, the Executive Secretariat of the KPA informed the Kosovo Property Claims Commission that the Claims were not properly processed, namely, the claimed properties have not been properly physically identified and Claims notified, thus the Claims were referred back to the Executive Secretariat for proper notification of the Claims.
 8. Subsequently, the notification of the Claims was performed on 22 November 2010 and found the claimed properties be occupied by K.Sh. (hereinafter "the Appellant"), who was present at the property. He signed a notice of participation claiming the legal right over the properties.
 9. On 11 June 2013 K.Sh. (hereinafter "the Appellant") filed a Response to the Claim. The Appellant alleged that from the year 1930, the owner of the claimed property was his grandfather Q. Sh., but during the communist time (1962) the "Combine Ereniku" has

taken the land parcel from his family by force and without the reimbursement. During the interim measures (1989 – 1990) his family was obliged to pay lease for using the claimed properties and the situation lasted until 1998, when the war started. After the war his family continued to use the land. However, the family Sh., according to the Appellant has been using the claimed property until it was given to O. family, as M.O. was a mayor at that time.

10. In support of his allegations the Appellant submitted *inter alia*:

- The copy of the “History” Certificate No 952-06-30/13 issued by the Department of Cadastre, Geodesy and Property of the Municipality of Gjakovë/Đjakovica on 6 June 2013 explaining that in 1994 on the basis of the Judgment No 388/93 and the Court Settlement No 15/94, the Appellee’s mother entered into possession of the land parcel No 1218/3. According to the Certificate the land parcel No 1198 was divided and the land parcel No 1218/3 was established with the surface of 0.12.49 ha.
- The copies of the Lease Contracts concluded on 13 February 1995 between the PKB Primarna Proizvodnja” LLC in Gjakovë/Đjakovica as a lessee and K.SH. as a lessor. On the basis of the Contract the land parcel No 1218 with the surface of 2.20.03 ha was subject of lease until the end of the harvest in the year 1995.
- The copy of the Receipt No 6 confirming the payment of the lease fee in the amount of 484,06 dinars by K.Sh. .
- The copy of the Lease Contract concluded on 8 March 1993 between the PKB Primarna Proizvodnja” LLC in Gjakovë/Đjakovica as a lessee and K.SH. as a lessor. On the basis of the Contract the land parcel No 1218 with the surface of 2.20.03 ha was subject of lease until the end of the harvest in the year 1993.
- The copy of the Receipt No 23 confirming the payment of the lease fee in the amount of 484,060 dinars by K.Sh. .
- The copy of the Lease Contract concluded on 13 April 1994 between the PKB Primarna Proizvodnja” LLC in Gjakovë/Đjakovica as a lessee and K.SH. as a lessor. On the basis of the Contract the land parcel No 1218 with the surface of 2.20.03 ha was subject of lease until the end of the harvest in the year 1994.
- The copy of the Receipt No 65 confirming the payment of the lease fee in the amount of 330,05 dinars by K.Sh. .

- The copy of the Lease Contract concluded on 11 March 1996 between the PKB Primarna Proizvodnja” LLC in Gjakovë/Đjakovica as a lessee and K.SH. as a lessor. On the basis of the Contract the land parcel No 1218 with the surface of 2.20.03 ha was subject of lease until the end of the harvest in the year 1996.
 - The copy of the Receipt No 19 confirming the payment of the lease fee in the amount of 880,12 Dinars by K.Sh. on 11.03.1996.
 - The copy of the Receipt No 41 confirming the payment of the lease fee in the amount of 1.100,15 Dinars by K.Sh. on 31.03.1997.
11. On 27 November 2013, the KPCC with its Decision KPCC/D/A/219/2013 established that the Appellee’s mother was the owner of the claimed properties and ordered that she was entitled to possession of it.
12. The KPCC’s Decision was served on Appellant on 25 April 2014, while he filed the Appeal on 7 May 2014.
13. The Appeal was served on Appellee on 24 March 2014. He responded on the Appeal on 29 September 2014.

Allegations of the parties

The Appellant

14. The Appellant states that the Decision of the KPCC involves a fundamental error, serious misapplication of substantive law and it rests upon an erroneous determination of factual situation. According to the Appellant not all presented facts were “equally evaluated”, as during the proceedings he has declared that the claimed properties had been used by his predecessor and him since 1976, the use was preceded by an agreement on use and as such he possessed them. The Appellee has not provided the evidence to prove that he or his family entered in a factual possession of the claimed properties. Thus, the Appellant requested to reject the Claim as ungrounded or to dismiss it, due to lack of jurisdiction.
15. Together with the Appeal he submitted:

- The copy of the Request addressed to the Municipal Assembly of Gjakovë/Đjakovica, Directorate for Property and Legal Matters on 8 April 1994 by the KBI "Ereniku" for the consent regarding the exchange of the property. According to the Request, Sh. Q. Sh., as the owner of the parcels with the numbers 4173/1, 4173/3 and 4175 requested the exchange of the mentioned parcels with the parcel No 1187 and the part of parcel No 1194/1, the owner of which was the KBI "Ereniku". As the Request was approved by the KBI "Ereniku", the Directorate for Property and Legal Matters of the Municipal Assembly of Gjakovë/Đjakovica was requested to grant its consent and approval of the same Request.
- The copy of the Minutes on the main trial in the case No 910/03 for the confirmation of the ownership right, filed by the Appellant, compiled on 15 September 2010 by the Municipal Court of Gjakovë/Đjakovica from which it appears that the proceedings were suspended until the final decision is taken by the Kosovo Property Agency.

The Appellee

16. The Appellee denied the Appellant's allegations and requested to reject the Appeal as ungrounded. He submitted the documents, which in his opinion confirm that his mother was the owner of the claimed properties.
17. Together with the Response the Appellee filed *inter alia*:
 - The copy of the Ruling issued by the Municipal Court in Gjakovë/Đjakovica on 14 April 1998, in which the Court rejected the claim of K.Sh. filed against Z.O. for the restoration of the possession of the land parcel No 1194/1 of the surface 1.70 ha.
 - The copy of the Minutes taken during the session of the Municipal Court of Gjakovë/Đjakovica on 4 October 1994 in the case I.Br. 15/94 during which the parties: the debtor "PKB Primarna Proizvodnja DOO" and Z.O. have entered into an agreement and decided that the land parcels No 306/13 and 306/47, which were mentioned in the Judgment rendered in the case P.Br.388/93 on 26 June 1994 should be exchanged with the land parcel No 1194/1, 1197 and part of land parcel No 1218/1, all listed in the name of the debtor and will be handed over in the possession and ownership of the creditor (the Appellee's mother).

- The copy of the Minutes taken by the Municipal Court of Gjakovë/Đjakovica on 15 May 1997 regarding the execution of the ruling on execution I 436/97 in the case of the creditor (Appellee's mother) against the debtor "PKB Primarna Proizvodnja DOO".

Legal reasoning

Joining of the Appeals

18. According to Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a). This Section allows the Commission to take into consideration the joining or the merger of the claims in order to review and render decisions, when there are common legal and evidentiary issues.
19. The provisions of the Law on Contested Procedure (Law No. 03/L006) - directly applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 - in the Article 408.1 as read in conjunction with the Article 193, provide for the possibility of joining of all claims through a ruling if that would ensure the court's effectiveness and the efficiency of the case.
20. As it appears from the texts of the Appeals filed by the Appellant, apart from a different case number for which the respective Appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in two cases. Only the land parcels, subject of the property right which is alleged in each Claim, are different. The Appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Claims is the same one.
21. Hence, the Supreme Court decides that the Appeals registered under the number GSK-KPA-A-169/14 and GSK-KPA-A-170/14, are joined in a single case and shall be processed under the number GSK-KPA-A-169/14.

Merits

22. The Supreme Court, after the review and the assessment of the submissions of the parties, of the evidence gathered in the case file, the appealed Decision and the allegations of the Appellant, considers that the Appeal is unfounded.

23. According to Article 3.1 of the Law No. 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a Claimant is not only to provide an ownership title over a private immovable property but also to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.

24. The Appellee declared to have lost the possession over the claimed properties on 12 June 1999, as a result of the circumstances in 1998/1999 in Kosovo. On the other hand, the Appellant alleged that he and his family possessed the claimed properties before the conflict and that the KPCC did not have the jurisdiction to decide on the Claims, as the Appellee had not possessed the property before the conflict.

25. The evidence submitted before the KPCC, shows that the Appellee's mother acquired the ownership rights and the possession of the claimed property on the basis of the court settlement I.Br. 15/94 and the execution procedure. The claimed property was moreover registered under the name of Z.O. . A thorough analysis of the attachments submitted to their statements leads to a conclusion that the allegations of the Appellant that the Appellee and his mother never entered into possession of the claimed property are contrary to the content of the documents gathered in the case file. The Decision taken by the Municipal Court in Gjakovë/Đjakovica on 14 April 1998, in which the Court rejected the claim of K.Sh. filed against Z.O. for the restoration of the possession of the land parcel No 1194/1 of the surface 1.70 ha confirms the circumstance that the Appellee's mother entered into possession of the claimed property, as the Appellant filed a claim to the court requesting to be restored with the possession of the land. Moreover, the reasoning of the ruling mentions directly in which way the Appellee's mother entered into possession of the claimed property and also that the court agreement was subsequently executed and the settlement

implemented to 15 May 1997. Those elements clearly indicate that indeed Z.O. entered in possession of the claimed property and the Appellant was well aware of that fact.

26. Moreover, it should be underlined that the Appellee's mother has been registered as property right holder over the claimed properties.
27. On the other hand, it should be noted that the evidence submitted by the Appellant does not relate to circumstances indicated by the Appellee. As a consequence, the circumstance that the Appellant allegedly was the owner and in possession of the claimed property during the conflict was not proven, as the documents he submitted relate to the period long before the conflict and the documents submitted by the Appellee cover the period just before the conflict of 1998/1999.
28. The Supreme Court considers that the Claim is directly conflict related. This is because the Appellee stated the loss of the claimed property took place due to the armed conflict, while the Appellant did not prove the contrary. The Appellant was however not successful in proving his possession directly before the conflict.
29. Regarding the Appellee's request for the compensation for the use of the property without his consent, under the Law No 03/L-079 neither the Commission, nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such request.
30. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the Appeal unfounded and thus the appealed Decision has to be confirmed.
31. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, Judge

Sandra Gudaityte, EULEX Registrar