

**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-168/14

**Prishtinë/Priština,
21 September 2016**

In the proceedings of:

I.Sh.

Bec Village

Gjakova/Đjakovica Municipality

Appellant

vs.

M.O.

Str. “Juliane Ćatić”, no 29

Kragujevac

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding 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 number KPA19195) dated 27 November 2013 after the deliberation held on 21 September 2016, issues the following:

JUDGMENT

1. The Appeal filed by I.Sh. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 dated 27 November 2013, with regard to the Claim registered with KPA under No KPA19195 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 dated 27 November 2013, with regard to the Claim registered with KPA under No KPA19195 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 a Claim with the Kosovo Property Agency (henceforth: KPA), registered under case No KPA19195, seeking the confirmation of the ownership right and the repossession over the parcel No 1197 located in the place called Ravnica/Bec, Municipality of Gjakova/Đjakovica (henceforth: the claimed property). Moreover, the Appellee seeks the compensation due to use of his properties without his permission.
2. In the Claim, it is stated that the claimed property was lost due to the circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss.
3. To support the Claim, he 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 Gjakova/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 Judgment on Acknowledgment rendered by the Municipal Court in Pejë/Peč in the case No P 388/93 on 23 July 1994 on the basis of which the latter Court declared the Purchase Contract No 236/63 concluded on 17 June 1963 between Appellee's mother in the capacity of the seller and the PIK "Ereniku"

OUR “ Poljoprivredno dobro” as a legal predecessor of the PIK “Ereniku”, “PKB Primarna Proizvodnja DOO” in the capacity of the buyer, null and void and the PIK “Ereniku” OUR “ Poljoprivredno dobro” was obliged to handover in peaceful and free possession to the Appellee’s mother the following cadastral parcels : 90/30, 90/60, 13/1, 13/2, 306/13 and 306/47.

- The copy of the Birth Certificate of the Appellee No 200-3852/04-VII issued by the Civil Registration Office of the Municipality of Gjakova/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 was performed on 3 December 2007 showing the property as not being in use.
 5. Since nobody filed a Reply within the deadline, the Claim was considered as uncontested. The Executive Secretariat of the KPA verified positively Possession List No 206 which lists the claimed property under the name of the Appellee’s mother, as well as the Appellee’s Birth Certificate.
 6. On 22 February 2008 the Kosovo Property Claims Commission (henceforth: the KPCC) with its Decision No KPCC/D/A/8/2008 granted the Claim by establishing the Applee’s mother’s ownership right over the claimed property.
 7. With its Resolution No KPCC/RES/19/2010 dated on 12 May 2010, the Executive Secretariat of the KPA informed the Kosovo Property Claims Commission that the Claim was not properly processed, namely, the claimed property has not been physically identified and the Claim properly notified, thus, the case was referred back to the Executive Secretariat for proper notification.

8. Subsequently, the Claim was re-notified on 3 November 2010. The land parcel was found to be uncultivated land, occupied by K.Sh. , who was present at the property and claimed a legal right over the claimed property and signed a notice of participation.
9. On 11 June 2013 the relative of K.Sh. , I.Sh. (henceforth: the Appellant) filed a Response to the Claim. The Appellant alleged that from year 1930, the owner of the claimed property was his grandfather Q.Sh., but in 1962 the “Combine Ereniku” has taken the land parcel from his family by force and without the reimbursement. In the meantime he and his family had been forced to lease the property as there was no other manner to gain the possession of it. The family Sh., according to the Appellant has been using the claimed property until it was given to O. family.
10. In support of his allegations the Appellant submitted the copy of the “History” certificate No 952-06-30/13 issued by the Department of Cadastre, Geodesy and Property of the Municipality of Gjakova/Đjakovica on 6 June 2013 explaining that in 1994 on the basis of the Judgment No 388/93 and Court Settlement No 15/94, the Appellee’s mother cadastral entered in possession of the land parcel No 1197.
11. On 27 November 2013, the KPCC with its Decision No KPCC/D/A/219/2013 granted the Claim and established that the Apellee’s mother was the owner of the claimed property and declared she was entitled to possession of it. The KPCC considered that the Appellants failed to provide any documents that relate to the claimed property in support of his assertions that their family had been using the parcel and that it had been taken away by the SOE “Ereniku”.
12. The KPCC’s Decision was served on the Appellee on 24 March 2014. K.Sh. received the Decision on 25 April 2014, while he appealed the Decision to the KPA Appeals Panel of the Supreme Court on 7 May 2014.
13. The Appeal was served on Appellee on 2 September 2014. He responded to the Appeal.

Allegations of the parties

14. The Appellant requests the Supreme Court of Kosovo to dismiss the Claim of the Appellee due to lack of jurisdiction or to modify the Decision of the KPCC and to reject the Claim as unfounded. The Appellant states that the Decision of the KPCC involves a fundamental error or serious violation of substantive and procedural law, as well as it rests on an erroneous or incomplete determination of the facts.
15. According to the Appellant not all presented facts were equally evaluated, because during the procedure he has declared that the claimed property had been used by his predecessor and himself since 1975. Moreover, he had a Contract on Use of the same property. The Appellee mentioned that the O. family never had in possession the claimed property. For that reason the Appellee never lost the possession due to the conflict in Kosovo, but because he never possessed the claimed property. The Appellant hasn't attached any documents to the Appeal.
16. The Appellee filed a Reply to the Appeal in which he denied the allegations of the Appellant, attaching at the same time the following documents:
 - The copy of the Decision rendered by the Municipal Court in Gjakovë/Đjakovica on 14 April 1998, on the basis of which the claim of K.Sh. filed against Z.O. for the repossession of the land parcel No 1194/1 was refused as ungrounded.
 - 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 will be exchanged with the land parcel No 1194/1, 1197 and part of land parcel No 1218/1, all listed under the name of the debtor and should 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

17. The Supreme Court, after the review and 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 ungrounded.
18. 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, the claiming party 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.
19. The Appellee declared having lost the possession over the claimed property on 12 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.
20. On the other hand, the Appellant alleged that he and his family had the possession of the claimed property and that the KPCC does not have the Jurisdiction to decide on the Claim as the Appellee has not possessed the property before the conflict.
21. 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..
22. It should be noted also that the evidence submitted by the Appellant does not relate to the claimed property. 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.
23. The Supreme Court considers that the Claim is directly related to the armed conflict. This is because the Appellee confirmed the loss of the claimed property took place due to the armed conflict, while the Appellant did not prove the contrary. Moreover, the same Appellee admitted that he and his family haven't possessed the claimed property, but the other land parcels.

24. 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.

25. 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.

26. 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

27. 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.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar