

**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-179/14

**Prishtinë/Priština,
26 October 2016**

In the proceedings of:

D.P.

Represented by

O.L.

21000 Stevana Hristica 27, Apartment 23

Novi Sad

Republic of Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek (Reporting) 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 KPA13298), dated 27 November 2013, after the deliberation held on 26 October 2016, issues the following:

JUDGMENT

1. The Appeal of D.P. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013, is rejected as ungrounded.
2. The Decision of Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013 as far as it regards the Claim registered at the KPA under the number KPA13298, is confirmed.

Procedural and factual background

1. On 22 August 2006, D.P. acting as a legal representative of O.L. (henceforth “the Appellant”) filed a Claim seeking the repossession of the following land parcels: No 172/2, 173/2, 174/2, all located in the Municipality of Istog/Istok, cadastral zone Gurrakoc/Đurakovac (henceforth “the claimed properties”). It is also mentioned in the Claim that on the land parcel No 175/2 there used to be situated a house, but it was destroyed and does not exist anymore. D.P. declared that the loss of possession of the immovable properties took place as a result of the circumstances related to the armed conflict that occurred in Kosovo between 1998/99 and indicated 20 June 1999 as the date of loss.
2. To support the Claim, he submitted the following documents:
 - The copy of the Special Power of Attorney granted by O.L. to D.P. to take all the necessary steps with regard to the sale of the following land parcels: 172/2, 173/2, 174/2, 175/2 and 175/3. The signature below the Power of Attorney was legalised by the Parallel Municipal Court of Pristinë/Priština on 11 April 2002 under the No 96/2002;
 - The copy of the Possession List No 123 issued on 29 January 2002, by the Centre for Immovable Property Cadastre of Prishtinë/Priština, Cadastre Office of Istog/Istok, which indicates that the claimed properties are registered under the name of O.L. ;
 - The copy of the Special Power of Attorney granted by O.L. to D.P. to take all the necessary steps with regard to the sale of the following land parcels: 172/2, 173/2, 174/2, 175/2 and 175/3. The signature below the Power of Attorney was legalised by the Parallel Municipal Court of Pristinë/Priština on 24 March 2008;
 - The copy of the Inheritance Decision issued in the case 3 O.br. 2755/11 by the Basic Court of Niš on 29 February 2012, according to which J.M. inherited the claimed property after her deceased mother O.L. . The Decision became final on 11 September 2012.
 - The copy of the Special Power of Attorney granted by J.M. to D.P. to conclude on her behalf a contract on sale of the claimed properties and to hand them over to the buyer. According to the PoA the representative was also authorised to undertake all legal actions with regard to the claimed properties. The signature

below the Power of Attorney was legalised by the Parallel Municipal Court in Niš on 5 March 2012 under the No 5000/2012.

3. The Notification of the Claim was carried out on 8 March 2011. The Notification Report described the properties as a not - occupied shrubbery, pasture and forest.
4. Given that no party filed a Response within the period of 30 days as foreseen under Article 10.2 of the Law No 03/L-079, the Claim was considered as uncontested.
5. According to the Verification Reports the Power of Attorney legalised under the No 857/2008 by the Municipal Court of Niš on 24 March 2008 and the Inheritance Decision rendered in the case 2755/11 by the Basic Court of Niš on 29 February 2012 were positively verified.
6. Regarding the Possession List the Verification Unit of the KPA came with the following results: on 16 October 2007, the Possession List No 123 contained the information that the claimed property was registered under the name of O.L. . On 23 September 2013 the situation of the claimed properties changed, namely, the properties were initially found to be registered under the name of J.O. M. who inherited them after O.L. on the basis of the Inheritance Decision T. No 2755/2011, while in 2012, the claimed properties were transferred from the Possession List No 123 into the Certificate for the Immovable Property Rights No 93 and registered under the name of V.Q.Sh., on the basis of the Purchase Contract No 2006/2012 of 7 November 2012.
7. Considering the content of the documents gathered in the case file, the Executive Secretariat contacted the Appellant and advised him to submit a PofA through which he was authorized to represent the alleged Property Right Holder before the KPA as the submitted PofA was a specific one.
8. On 27 November 2013, the Kosovo Property Claims Commission (henceforth “the KPCC”) with the Decision KPCC/D/A/220/2013 dismissed the Claim because the Claimant or the alleged Property Right Holder did not lose the possession as a result of the 1998-99 conflict, but rather as a result of the voluntary disposal after the conflict.
9. The Decision of the KPCC was served on the Appellant on 5 May 2014. He filed an Appeal on 8 May 2014.

Allegations of the Appellant

10. The Appellant challenged the KPCC’s Decision by declaring that the latter was not understandable and that his Claim was not mentioned at all at the KPCC Decision. He alleged that he did not know even the reason for dismissal of the Claim. He added that he was a damaged party and he had clearly mentioned the kind of the damage, but that fact was not considered by the KPCC.

Legal reasoning

11. Following the review of the documents gathered in the case file and the Appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the Appeal is ungrounded.
12. Within the reasoning part of certified Decision of 27 November 2013, the KPCC made a reference to "relevant paragraphs" in the Cover Decision and in particular to the paragraphs 27 and 28, where it stated that..... *Claimant initially claimed that the alleged Property Right Holder lost the claimed properties as a result of the 1998-1999 conflict. However, the claimant advised the Executive Secretariat of KPA that the claimed properties were sold or voluntarily disposed to the third party after the conflict based on the Contract on Sale. In these circumstances, the Commission finds that the Claimant or alleged Property Right Holder did not lose possession as a result of the 98-99 conflict, but rather as a result of the voluntary disposal after the conflict, consequently, the claim fall outside of the Commission's jurisdiction and stands to be dismissed.*
13. According to Article 3.1 of the UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 Amending UNMIK Regulation 2006/50 on the Resolution of the Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property (henceforth "the Law No 03/L-079") "The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:
 - (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and
 - (b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,
 - (c) Where the claimant is not now able to exercise such property rights".
14. As it appears from the Article quoted above the KPA is competent to examine the cases if the loss of possession took place due to the conflict. The documents gathered in the case file however prove that, already after the conflict the property right holder sold the claimed property to a third party. The ex officio activity of the Executive Secretariat of the KPA shows that in the Cadastre there can be found the Certificate for Immovable Property Rights No 93 which indicates that the claimed property is registered under the name of the V.Sh. as the property right holder of it. The last updates were made in 2012 based on the Purchase Contract legalised under the number Vr. 2006/2012 on 7 November 2012. Before that the claimed property was registered under the name of the daughter of O.L. – J.M.. That is why the KPCC dismissed the Claim.
15. For those reasons the Supreme Court observes that disposing of the property rights through the Contract signed in the year 2012 would mean that even though the previous property right holder might have lost the possession of the claimed property during and due to the conflict, after the conflict she had disposed of it. Consequently, the Supreme Court concludes that the Decision of the KPCC was

correct and finds its legal basis in the law in force. The Appeal thus is unfounded and has to be rejected.

16. On the basis of the above and in accordance with Section 13.3 (c) of the Law 03/L-079 and Article 196 as read in conjunction with the Article 186.3 of the Law on Contested Procedure, the Supreme Court decided as in the enacting clause.

Legal Advice

17. Pursuant to Section 13.6 of 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

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar