

**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-152/14

Prishtinë/Priština,
7 December 2016

In the proceedings of:

D. S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/169/2013 (the case file registered at the KPA under the number KPA50205), dated 18 April 2013, after the deliberation held on 7 December 2016, issues the following

JUDGMENT

1. The Appeal of D. S. against the Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/196/2013 of 18 April 2013 is accepted as grounded.
2. The Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/196/2013, dated 18 April 2013, as far as it concerns to the Claim KPA50205 is modified as follows:
 - a. The Appellant D. S. has established that the he is the owner of the cadastral parcel with the number 113/2, with the surface of 00.77.70 ha, located at the place called Gllaviçicë/Glavičica, in the Municipality of Pejë/Peč;
 - b. The Appellant D. S. is entitled to repossession of the cadastral parcel number 113/2 with the surface of 00.77.70 ha, located at the place called Gllaviçicë/Glavičica, in the Municipality of Pejë/Peč;

- c. Any other person occupying the cadastral parcel number 113/2 has to vacate it within 30 (thirty) days of delivery of this Judgment;
- d. Should any other person occupying the cadastral parcel number 113/2 fail to comply with this Judgment to vacate the parcel within the time period stated, he or she shall be evicted from the parcel.

Procedural and factual background

1. On 23 October 2007, D. S. (hereinafter “the Appellant”), filed a Claim to the Kosovo Property Agency (hereinafter “the KPA”) seeking the repossession of the cadastral parcel No 113/2, meadow with the surface 00.77.70 ha, located at Gllaviçicë/Glaviçica in Pejë/Peç Municipality (hereinafter “the claimed property”). The Appellant states that he is unable to exercise his property right due to the circumstances related to the armed conflict that occurred in Kosovo in the period between 1998/99, and indicated 16 June 1999 as the date of loss of the possession.
2. To support his Claim, the Appellant provided the KPA with the copy of the Possession List No 127, issued by the Department for Cadastre, Geodesy and Property of the Municipality of Pejë/Peç on 20 March 2005, listing the Appellant as the owner of the claimed property.
3. The initial notification of the Claim was performed on 29 July 2008. The claimed property was found to be a not occupied meadow.
4. From the Consolidated Verification Report of 6 October 2010 it appears that the Possession List No 127 submitted by the Appellant was positively verified.
5. The Kosovo Property Claim Commission (hereinafter “the KPCC”), through its Decision KPCC/D/A/29/2008, dated on 19 December 2008 granted the Claim by establishing the ownership right over the claimed property of the Appellant.
6. With the Resolution No KPCC/RES/17/2010 dated on 8 March 2010, the KPCC rescinded the Decision with regard to the Claim at hand and referred it back to the Executive Secretariat for further processing, including proper notification.
7. Following the instructions of the KPCC, on 30 August 2010 the Executive Secretariat notified the Claim by the publication in the Notification Gazette No 7. The Gazette and the List were left with the village leader, who accepted to make them available to the interested parties, as well as, at the entrance and exit of the Pejë/Peç Municipality. The same publications were also left at the Municipality-Public Lawyer, the Cadastral Office, the Municipal Court, the KPA regional office of Pejë/Peç, and DRC, OSCE, UNHCR, the Privatization Agency of Kosovo, EULEX and Ombudsperson.
8. As no party filed a Response to the Claim within the deadline of 30 days, as provided for in Article 10.2 of UNMIK Regulation 2006/50 amended by the Law No 03/L-079, the Claim was considered as uncontested.
9. As it appears from the case file, on 11 December 2010 the Appellant was contacted by the telephone by the Executive Secretariat of the KPA and confirmed that he had sold the claimed property after the submission of the Claim to the KPA.
10. On 18 April 2013 with its Decision KPCC/D/R/196/2013, the KPCC dismissed the Claim with the reasoning that the Appellant had not lost the possession over the claimed property as a result of the 1998-1999 conflict, but as a result of the voluntary

disposal after the conflict, consequently, the Claim fell outside of the Commissions jurisdiction.

11. The Appellant received the KPCC's Decision on 13 March 2014. He filed an Appeal to the Supreme Court on 24 March 2014.
12. On 2 February 2016, the Supreme Court issued the Court Order requesting the Appellant to indicate the date of entrance into a Contract and the precise description of the land parcel sold, as well as to submit the copy of the mentioned Contract within two weeks from receiving the Order.
13. The Appellant responded to the Court Order and explained that he had sold the land parcels with the numbers 223/1, 223/2 and 224/2, which are physically separated and had nothing in common with the claimed property. The Appellant stressed that he had never sold the claimed property instead. According to him, the claimed property is being usurped by Q. B. The following documents were attached to the submission:
 - The Purchase Contract No 5232/09 concluded on 30 July 2009 between the Appellant in the capacity of the Seller and V. S. as a Buyer. The subjects of the sale were: the cadastral parcel No 223/1, the cadastral parcel No 223/2 and the cadastral parcel No 224/2 – all registered under his name.
 - The Certificate for the Immovable Property Rights UI-71611018-00127 issued on 14 April 2010 by the Municipal Cadastral Office of Pejë/Peč, listing the claimed property to be registered under the name of the Appellant.
14. On 16 June 2016, another Court Order was sent to the KPA. The Supreme Court requested to be provided with the information regarding the address of Q. B., who - according to the Appellant's submission – was a usurper of the claimed property.
15. On 22 July 2016, the Executive Secretariat of KPA responded to the Order as follows: "During the visit in Gllaviçicë/Gllaviçica Village on 14 July 2016, the KPA officers met A. B. (the son of Q. B.), who provided with his phone numbers and informed the officers that his father is living in Czech Republic and rarely visits Kosovo. He refused to provide any contact information's of Q. B., but declared to do it himself.
16. Until the date of the deliberation in the case at hand, no contact details were submitted to the Supreme Court of Kosovo.
17. Upon the request of the Supreme Court dated on 26 October 2016, the Executive Secretariat of the KPA verified the Certificate for Immovable Property Rights which was submitted by the Appellant together with his Response to the Court Order.

Appellant's allegations

18. The Appellant alleges that the KPCC's Decision is based on an erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. He states that he sold other cadastral parcels indicated in the Possession List No 127, but the cadastral parcel No 113/2 with the surface of 00.77.70 ha was not the subject of the sale. The Appellant declares that he has never given any statement to anyone or submitted any document regarding the confirmation that he has sold the claimed property.

Legal reasoning

19. The Appellant challenges the Decision claiming that he lost the possession of the claimed property was due to the circumstances related to the conflict and denies the fact established by the Commission that the claimed property has been sold, thus the loss of possession is due to the Sales Contract.
20. After the review and the assessment of the documents and submissions contained in the case file, the appealed Decision and the allegations of the Appellant, the Supreme Court found that the Appeal is grounded, as the factual situation was not established correctly by the KPCC. That conclusion had to lead to the amendment of the Decision and to granting the Claim.
21. The KPCC based its Decision on the phone conversation, which was reflected in the note in the case file, according to which he apparently had told to have sold the claimed property after the conflict. The Appellant however, denied that circumstance stating that, indeed sold the land parcels, but not the claimed property. In order to establish properly the factual situation, and namely who was the owner of the claimed property before and during the conflict and who appears in the cadastral data as the owner at the moment, the Supreme Court requested historical cadastral data. The Executive Secretariat of the KPA submitted to this Court the records, from which it clearly appears that the claimed property has been registered under the name of the Appellant since 1992 until now.
22. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.
23. The Supreme Court considers that it was possible to establish beyond doubt that the Appellant was the owner of the claimed property before and during the conflict that occurred in Kosovo between 1998 – 1999 and that the loss of possession of it was directly related to the armed conflict.
24. The Supreme Court requested the KPA to contact a person, who allegedly occupy the claimed property, but the family of that person (leaving apparently in Check Republic) refused to make available any contact details. No one contacted the KPA with regard to the Claim at hand and the case was considered to be uncontested. The Court is of the view that the Commission took all the necessary steps in order to identify and notify all potential interested persons about the proceedings in order to give the possibility to defend their rights.
25. For all the above mentioned reasons it is decided as in the enacting clause of this Judgment on the basis of Section 13.3 (a) of the UNMIK Regulation 2006/50 as amended by Law No 03/L-079, as well as Articles: 195 § 1 (e) and 201 (c) of the Law on Contested Procedure.

Legal advice

26. Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Anna Bendarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar