

**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-085/2015

**Prishtinë/Priština,
14 December 2016**

In the proceedings of

N. V.

Appellant

vs

Č. Š.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/228/2014 (case file registered at the Kosovo Property Agency under No KPA17863), dated 13 March 2014, after deliberation held on 14 December 2016, issues the following:

JUDGMENT

1. **The appeal of N. V. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 of 13 March 2014 as far as it regards to the claim registered at the KPA under No KPA17863 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 of 13 March 2014 as far as it regards to the claim registered at the KPA under No KPA17863, is confirmed.**

Procedural and factual background

1. On 23 January 2007 Č. Š, acting as a member of the family household of his mother I. Š. (hereinafter: the Appellee), filed a claim at the Kosovo Property Agency (hereinafter: KPA), seeking repossession initially over the cadastral parcel no 35, 239, 269 and 21 with total surface of 09.01.70 ha, located in village Petroviq/Petrović, Municipality of Shtëmle/Štimlje. Subsequently the original claim has been separated because the parcels were not located next to each other. After the separation the original claim KPA17863 contains only cadastral parcel No 35 (hereinafter: the claimed property).
2. The Appellee stated that his mother I. Š, who passed away in 1978, was the owner of the claimed property and the possession over the last had been lost as a result of the armed conflict that occurred in Kosovo in 1998-1999, indicating 12 June 1999 as the date of loss.
3. To support his claim, the Appellee provided the KPA with the following documents:
 - A Lawsuit No 36/90 dated 9 July 1990 filed with the Municipal Court of Ferizaj/Uroševac by the Public Prosecutor of Ferizaj/Uroševac, against PIK “Milan Zećar”, the Appellee and his brothers L. and V. Š, with the purpose of annulling the Contract on Sale No 872/64 dated 29 September 1964 and the Contract on Sale no 494/63 dated 11 June 1963. These Contracts were concluded for the purchase of the claimed property by PIK “Milan Zećar” from the property right holder- Appellee’s mother I. Š.
 - The written statements of the Appellee dated on 31 March 2008 and 6 August 2009. The Appellee declared that the claimed property was in possession of the Cooperative of Shtëmle /Štimlje, however, until 1990, the cooperative had already sold it. Even though he possess the Judgment where it was decided to return back the claimed property to him and his brothers after the death of his mother, the same Judgment was never implemented because of the transfer of the property right to the third parties.

- Birth certificate No 60 issued on 4 March 2009 by Civil Registration Office of the Municipality of Nikšić, Montenegro, proving that Ilnka Čupić was the mother of the Appellee.
 - Other various documents which are not related to the claimed property or are not relevant for taking the Decision.
4. The Initial Notification of the claimed property was performed on 9 December 2008 by founding the property not occupied. The initial notification of the claimed property deemed to be incorrect; hence, the second notification was done on 1 July 2010. The Notification was done by publishing it in the Notification Gazette No 3. 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 Peja/Peč Municipality. The same publications were also left at the Municipality-Public Lawyer, Cadastral Office, Municipal Court, KPA regional office of Peja/Peč, as well as to DRC, OSCE, UNHCR, Kosovo Privatization Agency, EULEX and Ombudsperson.
 5. On 9 October 2012 N. V (hereinafter: the Appellant) approached the Executive Secretariat of KPA by submitting the written statement through which he declared that he had bought the claimed property from V. I. S. during the year 1964. At the same year the transaction price was received by the seller and since then he is using the property continuously and on uninterrupted manner. The Appellee stated that he do not possess any evidence proving his statement because all the documents that he possessed were burned during the conflict but he proposed the names of the witnesses that may testify if the KPA decide to held a hearing session.
 6. The Executive Secretariat of the KPA obtained ex officio a partial Judgment C.no.438/90 issued by Municipal Court of Ferizaj/Uroševac on 18 February 1991 by which the abovementioned Purchase Contracts were declared null and void whilst the Decision for the Restitution of the claimed property remained for a subsequent Judgment as the claimed property was transferred to the third parties after the Purchase Contracts were concluded. The claimed property is registered on the name of the Agricultural Cooperative.
 7. The KPCC, with its Decision KPCC/D/A/228/2014 dated 13 March 2014, dismissed the claim due to the lack of Jurisdiction. The KPCC established that the case is not related to the armed conflict of 1998/1999.
 8. The Appellant received the Decision on 1 September 2014. He failed the Appeal on 13 October 2014.
 9. The Decision was served on the Appellee on 13 November 2014 but he refused to accept it.

Allegations of the Appellant

10. The Appellant alleges that the KPCC has erroneously and incompletely established the facts and has made an erroneous application of substantial law.
11. He alleges that the Appellee had sold the claimed property to his father on 1964. According to the Appellant the transfer of the property right on the name of his father was not performed because the property was on the name of the Appellants mother, first he had to transfer it on his name in order to again transfer it on the name of the Appellant's father and due to his taxes that had be paid for transfer of the real estate.

Legal reasoning

Admissibility of the appeal

12. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No. 03/L-006 (henceforth: LCP), and after evaluating the appeal statements found that the Appeal is admissible because it was filed within the legal time limit pursuant to the Law No 03/L-079, which stipulates that a party may file an appeal against a Commission decision within thirty (30) days from the day parties were informed about the decision.

Merits of the appeal

13. The Supreme Court of Kosovo reviewed the appeal pursuant to provisions of article 194 of LCP, and after the assessment of allegations in the appeal it found that the appeal is unfounded.
14. The KPCC based its Decision on the fact that Claimant has failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
15. 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.
16. The established facts bring in the conclusion that the dispute regarding the property in question is not related to the armed conflict of 1998/99. It refers back to 1963, when the property of the Appellee's family was expropriated and taken by PIK "Milan Zečar". This fact is confirmed by the Apeellee in his claims and his appeals. The Appellee's family lost the possession of the land long time before the armed conflict. From the findings of the Commission as well as the Supreme Court the Restitution of the

claimed property to the Appellee or his family members was not performed due to the sale of the claimed property to the third parties. Currently, the claimed property is registered on the name of the Agricultural Cooperative.

17. On the other hand, the Appellant could not prove the ownership right over the claimed property. Beside the written statement he failed to submit any evidence proving his allegations.
18. Therefore, on the basis of the reasoning and according to the provision of section 13.3 under (c) of the Law No. 03/L-079, it has been decided as in the enacting clause of this Judgment.

Legal Advice

19. Pursuant to Section 13.6 of Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar