

**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-097/15

Priština/ Prishtinë,

22 February 2017

In the proceedings of:

M. A. C.

Appellant

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 KPCC/D/A/228/2014 (case file registered at the KPA under No KPA11728), dated 13 March 2013, after deliberation held on 22 February 2017, issues the following

JUDGMENT

1. **The Appeal of M. A. C. is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case file registered at the KPA under no KPA11728), dated 13 March 2014, is confirmed.**

Procedural and factual background:

1. On 11 July 2007, M.A. C. (hereinafter: Appellant) filed a claim at the Kosovo Property Agency (hereinafter: the KPA), seeking repossession over the cadastral parcel no 6746 (hereinafter: the claimed property)
2. The Appellant did not indicate the date when the loss of the possession over the claimed property had occurred, nor had he given any information related to the claimed property except the cadastral parcel number. He just stated that B.K. has bought from him the surface 15 ar of the claimed property but is using 16 ar, thus, he seeks for repossession over 1 ar that was not sold to him.
3. To support his claim, the Appellant provided the KPA with the following documents:
 - The Contract on Sale conducted on 5 February 1990 between the Appellant in a capacity of the seller and B. K. in a capacity of the buyer. The subject of the sale was the surface of 00.15.80 ha from the cadastral parcel no 6746, located at the place called “Pashalti”, registered at the Possession List no 8468.
 - The Possession List no 8468 issued by Department for Cadastre Geodesy and Property of the Municipality of Prizren on 14 December 1998 listing the cadastral parcel no 6746, (a 2th class cultivated land with the total surface of 00.48.27 ha, located at the place called “Pashalti”) on the name of the Appellant.
 - Certificate No 36/1554 issued by Municipality of Prizren on 13 November 2008 through which it is confirmed that M.A.C. and M. G. is the same person.

- Certificate for Immovable Property Rights P-71813068-06746 issued by Municipal Cadastral Office of Prizren dated on 18 November 2008. Cadastral Parcel no 6746 with the surface from 00.48.27 ha, located at the place called “Pashalli” is listed on the name of the Appellant.
- 4. On 29 August 2008, the Executive Secretariat of KPA notified the claimed property and found it occupied by B. K. (hereinafter: the Appellee) who claimed legal right. On 30 March 2010 the Executive Secretariat of KPA confirmed that the notification of the claimed property was accurate.
- 5. The claimed property was found to be registered on the name of the Appellant according to the verification report of the Executive Secretariat dated on 21 April 2009.
- 6. The KPCC with its Decision KPCC/D/A/228/2014 dated 13 March 2014, dismissed the claim due to jurisdiction. The KPCC acknowledged that the case is not related to the armed conflict of 1998-1999.
- 7. The Decision was served on the Appellant on 9 October 2014 while to the Appellee on 22 August 2014. The Appellant filed an appeal on 16 October 2014 while the Appellee did not react.

Allegations of the Appellant:

- 8. The Appellant alleged that the appealed Decision involves erroneous determination of factual situation.
- 9. The Appellant stated that instated of receiving the reasoned Ruling, he received the Certified Decision. According to him the Decision was amateur, as there was no reasoning why his claim was dismissed as well as he was not provided with the documents submitted by the Appellee so that he could make a comment.
- 10. Finally, the Appellant seeks Supreme Court to annul the KPCC’s Decision and return the claim for reconsideration because his claim was complete; the Appellee occupied the property since 27 February 1998.
- 11. The Appeal was served on Appellee on 17 July 2015. He did not response to the Appeal.

Legal reasoning

12. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of LCP, and after evaluating the appeal statements found that
13. The Appeal is admissible. It has been filed within the period of 30 days prescribed in section 12.1 of UNMIK Regulation 2006/50, as amended by the Law no.03/L-079.
14. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the Appellant filed with the KPA.
15. Regarding the allegation of the Appellant that the KPCC Decision was amateur, the Supreme Court considers that the Decision was unclear to Appellant. The KPCC has issued a Certified Decision on 13 March 2014. The Decision made a special reference to the paragraph 18. The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have the jurisdiction at the case.
16. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Claimant is entitled a Commission order on repossession of property if the Claimant not only proves the ownership over that property but also that he is not able to exercise the rights over such property due to circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. The KPCC dismissed the claim on the bases it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
18. First of all, the Supreme Court established that the Appellant did not indicate the date of loss of the possession over the claimed property before the first instance.
19. Only at the Appellate stage he mentioned that that he loss possession over the claimed property on 27 February 1998.
20. Pursuant to Article 12.11 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 “*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned....*” The Supreme Court

concludes that there is no reason the Appellant to not indicate the date of loss over the possession before the KPA.

21. Secondly, the Appellant himself asserted that he had sold to the Appellee the surface of 00.15.00 ha from the claimed property on 1990. Moreover, he had submitted at the Executive Secretariat of KPA the Contract on Sale showing that he has entered to the sale transaction with the Appellee on 1990, meaning quite some time before the conflict.
22. Nevertheless, whether the Appellant's allegation that the Appellee is using 1 ar of the Appellant that was not subject of the Contract on Sale is not relevant in these proceedings. The allegations of the Appellant cannot be examined by KPCC or the Supreme Court herein. The alleged Contract on Sale, bearing the year 1990 indicates that the dispute at hand between parties is not directly related to or resulting from the armed conflict that occurred in Kosovo in 1998/99. This is the relevant fact to take into account now as to the jurisdiction of the KPCC.
23. Thirdly, as it comes to the allegation of the Appellant that he was not provided with the documents submitted by the Appellee so that he could make a comment, the Supreme Court confirms that the Appellee stayed passive during the first and second instance, this is why the Appellant was not provided with any document submitted by the Appellee.
24. Considering the above, the challenged Decision of KPCC was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied.
25. Therefore, the Supreme Court concludes that KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct decision. Consequently, the appeal has to be rejected as unfounded.
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.
27. This Judgment is without prejudice of the right of the Appellant to pursue its alleged right before the competent court, if he considers it necessary.

Legal advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the 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