

**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-80/2015

Prishtinë/Priština, 6 September 2017

In the proceedings of:

N. D.

Appellant

Respondent

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov EULEX Judge and Isa Kelmendi, members, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 (case file registered at the KPA under the number KPA13560), dated 30 April 2014, after deliberation held on 6 September 2017 issues the following:

JUDGMENT

1. The appeal of N. D. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/236/2014, dated 30 April 2014, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/236/2014, dated 30 April 2014, with regard to case KPA13560 is confirmed.

Procedural and factual background

1. On 27 September 2006, N. D.(henceforth: the Appellant), filed a claim with the Kosovo Property Agency (KPA), seeking repossession over the parcel no. 969/5 with a surface of 1.39.68 ha, located at the place called Gomilica, Cadastral Municipality of Viti/Vitina (henceforth: the claimed property). The claim was registered with the KPA under the number KPA13560.
2. In order to support his claim, the Appellant submitted the following documents:
 - Excerpt of possession list no.1989 issued by the Cadastral Service of Gjilan/Gnjilane – Branch in Viti/Vitina, dislocated in Krusevac, Republic of Serbia, where cadastral parcel 969/5 is evidenced under co-ownership of the Appellant and M. S. R. each with ½;
 - Copy of plan issued by the Municipality Geodesy Department of Viti/Vitina on 10 October 1994, where the cadastral parcel – the claimed property, is evidenced in the name of the Agricultural Socially-Owned Enterprise “Agromorava” from Viti/Vitina;
 - Judgment P.Nr.210/94, dated 20 October 1994, issued by the Municipal Court of Viti/Vitina by which the allocation of the claimed property to the state was annulled and the Socially- Owned Enterprise “Agromorava” was obliged to recognise the Appellant’s ownership over the same property;
 - ID card, issued on 11 August 1999, by the parallel authorities of Serbia.
3. On 22 July 2010, the KPA made the notification of the claim by placing a notification poster on the claimed property. The notification and confirmation of the claim was done through publication in the KPA’s Notification Gazette no.2 and in the UNHCR Property Office. Both publications were placed by the entrance door of the Municipality of Viti/Vitina and the District of Gjilan/Gnjilane. No respondent approached the KPA Executive Secretariat

within the timeframe of 30 days as provided under Article 10.2 of the UNMIK Regulation no. 2006/50, as amended by Law no. 03/L-079 on Resolution of Claims related to Private Immovable Property including Agricultural and Commercial Property.

4. Based on a summarised verification report, dated 21 February 2014, the KPA established that the documents submitted in support of the claim were not found and the verification for judgment was negative and that the possession list was found only in the archives dislocated in Serbia.
5. On 21 August 2013, the Kosovo Property Claims Commission (henceforth: KPCC) in its certified Decision KPCC/D/A/212/2013, rejected the claim. In the reasoning of the stated Decision (paragraphs 77-78), the KPCC found that the Judgment is not final and that cadastral data in Viti/Vitina show that the claimed property is evidenced in the name of other parties. Therefore, the KPCC established that the property right has not been proven.
6. On 13 October 2014, the KPCC Decision was served on the Appellant. The Appellant filed an appeal against the KPCC's Decision on 30 October 2014.

Allegations of the Appellant

7. The Appellant alleges that the KPCC's Decision is unlawful and incorrect because it contains serious violation of proceedings, misapplication of the material right, and that his repossession claim has not been fully established. The Appellant moves the Supreme Court to grant the appeal and render a judgment in which it recognises the Appellant's use right over the claimed property. The Appellant alleges that it has provided sufficient evidence from the archives dislocated to Serbia and that the cadastral data in Kosovo have been illegally altered. Therefore he considers that he has proven the ownership over the claimed property.

Legal reasoning:

8. Following the review of the case file documents and allegations of the Appellant, pursuant to Article 12 and 13 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, and Article 194 of the Law no. 03/L-006 on Contested Procedure, the Court found that the

Appeal is admissible. It has been filed within a period of 30 days as provided under Article 12.1 of the UNMIK Regulation 2006/50, amended by Law no. 03/L-079

9. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the Appellant has a right to an order for repossession of the property if the Appellant establishes his ownership or use right over the claimed property, and that he was unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999
10. The Appellant bases his property right on the documents which were not found within the respective services in Kosovo but only with the dislocated archives in Serbia. The cadastral data show that part of the claimed property is evidenced as socially-owned property whereas the other part is in the name of other parties.
11. Therefore, the Supreme Court considers that part of the claimed property has not been established that it was under ownership of the Appellant just before the conflict and there is no evidence to have been under the possession of the Appellant or to have been lost as a result of the conflict, and it cannot be subject of an order to acquire the property right and return possession over it because the Appellant did not prove that the property belonged to him and that it was under his possession before or during the conflict or that he has lost it as a result of the conflict.
12. The Supreme Court considers as correct the KPCC's conclusion that the Appellant has failed to establish his property right over the claimed property and the loss of this right immediately before or during the conflict of 1998-1999 and therefore his claim was rejected.
13. Finally, the Supreme Court of Kosovo established that the challenged KPCC Decision was issued after a complete and correct determination of the factual situation and on that basis the material and procedural rights were correctly applied. Therefore, the Appeal is rejected as unfounded.
14. The present Judgment does not prejudice the right of Appellant to claim his right (or legal remedies) before the competent court, if he deems it necessary
15. In light of the above and pursuant to Section 13.3 subparagraph (c) of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Isa Kelmendi, Judge

Timo Eljas Torkko, EULEX Registrar