

**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-154/2015

Prishtinë/Priština,
20 shtator 2017

In the proceedings of:

E. B.

Appellant

vs

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (case file registered at the KPA under the number KPA30066) dated 27 November 2013, after deliberation held on 20 September 2017 issues the following:

JUDGMENT

1. The appeal of E. B. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 dated 27 November 2013 regarding the case file registered with KPA under number KPA30066 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013, dated 27 November 2013 as far as it concerns the claim number KPA30066 is confirmed.

Procedural and factual background

1. On 7 May 2007, E. B. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession of a house with the surface of 48m², located at place called "Vitimirica", Municipality of Peja/Peć (henceforth: the claimed property). The number of the cadastral parcel on which the claimed property is located was not specified by Appellant. The Appellant declared that the owner of the claimed property is his late father R. B. and that the right over the claimed property was lost on 12 June 1999 due to the armed conflict that occurred in Kosovo between 27 February and 20 June 1999.
2. Except the Death Certificate No 200-3/98 issued on 5 February 1998 by Civil Registration office of Vitimiricë/Vitimirica, which shows that the Appellant's father R.B. passed away on 1 February 1998 and Confirmation Letter No 9/98 issued by Municipal Assembly of Peja/Peć on 5 February 1998 related to the funeral costs, the Appellant submits no other documents regarding the claimed property.
3. The notification of the claim was carried out on 25 January 2008. The claimed property allegedly was found to be not occupied house. Since there is no cadastral parcel specified by the Appellant or any other information related to the land on which the claimed house is located, there is a doubt about the Notification's Report reliability.
The Claim is considered as uncontested by Executive Secretariat of KPA because no party filed a response within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079.
4. The Executive Secretariat of KPA has found ex officio two Possession Lists (Possession List no 242 and Possession List no 631) under the name of Appellant's father. Both

Possession Lists were issued on 16 February 2010 by Municipality of Peja/Peć, Department for Cadastre Geodesy and Property.

5. The Appellant has been contacted by the Executive Secretariat of KPA in order to provide the detailed information about the claimed property, like the number of the cadastral parcel on which the house is located. The Appellant shows No interest to cooperate with the Officer of the KPA- Executive Secretariat.
6. On 27 November 2013, the KPCC with its decision KPCC/D/R/223/2013 refused the Appellant's claim with the reasoning that he has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
7. The Decision was served on the Appellant on 24 December 2014, while she filed an appeal 21 January 2015.

Allegations of the Appellant

8. The Appellant challenged the KPCC's Decision by stating that the Decision contains the fundamental error and serious violation of the procedural or material law also erroneously or incompletely determination of facts.
9. According to the Appellant the surface from 48 m² (the surface of the house) is a part of the cadastral parcel no 1031/1 and it belongs to him and his brother based on the Inheritance Decision.
10. The Appellant attached to the appeal
 - Inheritance Decision No 187/12 issued by Municipal Court of Peja/Peć showing that the Appellant and his brother E.B. inherited the property from their deceased father.

Legal reasoning

Admissibility of the appeal

11. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

12. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
13. The Supreme Court finds that the KPCC has rendered a correct Decision when refused the claim.
14. Pursuant to Section 3.1 of the Law 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. According to this legal provision, the Appellant had to submit evidence in support of the claim to prove the ownership right to, or the right to use the immovable property.
16. Except the surface of the claimed property the Appellant did not give any other information, for instance, the number of the cadastral parcel at which the claimed property was located, nor he has submitted any evidence supporting his claim even though he was advised by Executive Secretariat of KPA to do so.
17. Only at the appellate stage, the Appellant declare the number of the cadastral parcel on which the claimed property is located is 1031/1 and supporting Inheritance Decision showing that he became co –owner over the cadastral parcel no 1031/1 on the name of third parties.
18. However, the new submitted evidences are not considered by the Court. Based on the Section 12.11 of the 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.
19. The Appellant was contacted by Executive Secretariat of KPA and he was advised to give more information’s related the property that he is claiming for as well as to submit the evidences in support of his claim but he has failed to do so. This fact bears the Court to conclusion that the Appellant could have used this evidence already in the proceedings of the KPCC as there was no obstacle to do so.

20. Considering the above, the Supreme Court finds that the KPCC has taken a correct and grounded Decision in the course of a proper procedure. Consequently, the Court finds that there were no violations of material rights or incomplete determination of factual situation.

21. In the light of the foregoing, pursuant to Article 13.3 sub-para (c) of Law No. 03/L-079 is decided as in the enacting clause of this judgment.

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 cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, EULEX Registrar