

**SUPREME COURT OF KOSOVO**  
**GJYKATA SUPREME E KOSOVËS**  
**VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL**  
**KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së**  
**ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI**

**GSK-KPA-A-161/15**

**Prishtinë/Pristina**

**8 November 2017**

In the proceedings of:

**N. D.**

**Appellant**

vs.

**I. A.**

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/244/2014 (case files registered at the KPA under the number KPA14238) dated 18 June 2014, after the deliberation held on 8 November 2017, issues the following:

## JUDGMENT

1. **The Appeal of N. D., filed against the Decision No. KPCC/D/A/244/2014 (case files registered at the KPA under the number KPA14238), dated 18 June 2014, is rejected as unfounded.**
2. **Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014, with regards to the Claim KPA14238 is annulled.**
3. **The Claim No. KPA14238 of N. D. filed with the KPA is dismissed due to the lack of jurisdiction.**

### **Procedural and factual background:**

1. On 27 September 2006, N. D. (hereinafter: "Appellant") filed a Claim before the Kosovo Property Agency seeking confirmation of ownership rights and repossession of the cadastral parcel No. 383, cultivated land with surface of 0.27.99 ha, at the place called "Jezava", cadastral zone of Viti/Vitina, municipality of Viti/Vitina (hereinafter: "claimed property"). He alleges that he inherited the land from his father S. A. and that he lost it in July 1999.
2. To support his Claim, the Appellant submitted the following documents to the KPA:
  - Possession list No. 1708 issued by the Geodesy Authority of the Republic of Serbia, Municipality of Gjilan/Gnjilane – Branch in Viti/Vitina, on 21 February 2000, which indicates the claimed properties registered under the name of the Claimant.
  - Copy of the tax card and proof of payment of the property tax.
  - ID card issued by the parallel authorities of the Municipality of Viti/Vitina on 11 August 1999.
3. Notification of the claimed properties was done on 24 September 2010 and 26 September 2013. The cadastral parcel No. 383 was found to be occupied by I. A. who claimed the property right over the property based on purchase. He completed the notification form for participation in the proceedings on 7 October 2013, and in support of his statement submitted the following:
  - Minutes of the cadastral adjustment of the Land Consolidation Authority on the factual situation on 4 November 1985 by which the 4-member land consolidation commission confirmed the descriptive factual situation that parcel No. 383 was purchased by A.A., the Appellee's father, and this is also confirmed by the signature of N. S. D.
  - Birth certificate dated 9 October 2013, indicating that the Appellee is the son of A. A..

- Death certificate dated 9 October 2013, indicating that A. A. passed away on 4 August 2010.
4. Verification report dated 22 May 2014 shows that the possession list was found in the name of the 4 co-owners, one of them being the Appellant as a co-owner of the 2/6 of the claimed property.
  5. By its Decision KPCC/D/A/244/2014 dated 18 June 2014, the Kosovo Property Claims Commission (hereinafter: “KPCC”) rejected the Claim. In its reasoning, in paragraphs 80 and 81, the KPCC stated that the Claimant did not lose the possession over the claimed properties as a result of the conflict in 1998-1999, but as a result of the sale in 1985.

**Allegations of the parties:**

**Appellant:**

6. Appellant alleges that the KPCC Decision contains fundamental errors and serious violations of the substantive law and that the decision is based on erroneous and incomplete determination of the facts.
7. The Appellant alleges that the claimed properties belonged to him even though he had no possession prior or after the conflict and as such should not have been rejected on the grounds of not losing possession as a result of the armed conflict. The cadastral records which the Appellee referred to were taken from the descriptive cadaster of 1983, while the changes that have been done were taken in Krusevac in the displaced cadaster after the conflict.
8. In conclusion, the Appellant requested the KPA Appeals Panel of the Supreme Court of Kosovo to modify the KPCC Decision and recognize the Appellant’s ownership and reconstitute possession.

**Appellee:**

9. The Appellee stated that the claimed property was purchased by his father deceased in 1978 and for this he has evidence from the land consolidation commission where the multi-member commission confirmed that the claimed property was purchased by the Appellant and that this is confirmed by the personal signature.

**Admissibility of the appeal:**

10. The Appeal is admissible as it was filed within the time limit of 30 days as prescribed by Section 12.1 of UNMIK Regulation, as amended by the Law No. 03/L-079 on resolution of claims relating to private immovable property, including agricultural and commercial property.

11. The Appeal was reviewed pursuant to article 194 of the Law No. 03 / L-006 on contested procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter: "LCP"), the Court upon review of the judgment *ex officio* and based on allegations of the appeal found that the ***Appeal is unfounded.***

**Legal reasoning:**

**Jurisdiction:**

12. Pursuant to article 3.1 of the Law No. 03/L-079, the KPCC shall have the competence to resolve conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. Therefore, the Claimant should prove not only his property right over the private property, but also should prove that he/she is not able to exercise such rights due to the circumstances directly related to the armed conflict.
13. The KPCC decided that this case does not fall within its jurisdiction as the loss of possession is not related to the circumstances of the armed conflict, but as a result of voluntary sale before the conflict.
14. The Supreme Court also finds that the property right and possession over the claimed properties were not lost due to the armed conflict which occurred in Kosovo in 1998-1999. This finding is based on the confirmation of the cadastral officials of the land consolidation commission, which confirmed that the Appellee has purchased the property from the Appellant.
15. The Supreme Court considers that the abovementioned facts lead to the conclusion that the loss of possession over the claimed property does not derive from the armed conflict which occurred during 1998/99. The Appellant's allegation regarding the validity of the alienation of the claimed property cannot be assessed in this proceeding by the KPA Appeals Panel of the Supreme Court due to the lack of jurisdiction.
16. The challenged Decision of the KPCC was rendered in full and correct determination of the factual situation.
17. The Supreme Court finds that the KPCC should have dismissed the Claim instead of rejecting (refusing) because it falls outside its jurisdiction. Consequently, the Appeal should be rejected as unfounded, but the KPCC decision be annulled and the claim be dismissed *ex officio*.
18. The present judgment does not prejudice any property right of the parties nor is it an obstacle to initiating proceedings before the competent body or competent court.
19. Based on the abovementioned reasons, pursuant to article 13.3 (c) of the Law no. 03/L-079, it is decided as in the enacting clause of the present judgment.

**Legal Advice:**

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

**Beshir Islami, Presiding Judge**

**Krassimir Mazgalov, EULEX Judge**

**Erdogan Haxhibeqiri, Judge**

**Bjorn Olof Brautigam, Acting EULEX Registrar**