

**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-179/2015

**Prishtinë/Priština,
7 December 2017**

In the proceedings of:

A.D.

Nagip Cacaj n.n
Deçan

Appellant

vs.

D.M. J.

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 (case file registered under KPA under KPA27909), dated 25 August 2014, after deliberation held on 7 December 2017, issues this

JUDGMENT

- 1. The appeal filed by A. D. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/R/253/2014, concerning the case registered in KPA under KPA27909, dated 25 August 2014, is rejected as ungrounded.**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014, concerning the case registered in KPA under KPA27909, dated 25 August 2014, is upheld.**

Procedural and factual background:

1. On 21 February 2007, D. J. (hereinafter: the appellee) filed a Claim with Kosovo Property Agency (KPA), seeking confirmation of property right and re-possession of property, located in Deçan, cadastral parcel 497, Deçan Municipality, which includes a house with a surface area of 80 square metres, a yard with a surface of 5 ar and an orchard with a surface of 130 square metres (hereinafter: the claimed property). On 3 November 2011, he filed a submission notifying the KPA that the claimed property is now listed in the cadastral parcel 1131, cadastral zone Deçan. He explained that he had lost possession over the claimed property in June of 1999 due to circumstances that occurred in 1998/1999 in Kosovo. According to the appellant, the claimed property was usurped by unknown persons.
2. Together with the Claim, the appellant *inter alia* provided the KPA with the following:
 - Copy of Inheritance Ruling O.262/2001, dated 30 March 2001, which pronounced as owners to ½ of the claimed property of M. J., his nephews D. J.(hereinafter: appellee) and his brother S. J..
 - Death certificate showing that claimant's father M. J. had died on 28 April 2000 in Šabac, Serbia.
 - Copy of possession list no. 20 issued by the UN Administration–UNMIK cadastral office in Deçan on 29 November 2007, showing that parcel 1131, with a total surface of 0.08.01 h, is listed in the name of M. J, appellee's grandfather.
 - Protocol on handover of keys to the appellee's brother according to the final decision HPCC DS003629 dated 14 June 2006, which shows that the HPCC Decision was implemented by the handover of keys.
 - Decision of HPCC/D/144/2006/C, dated 27 August 2004, that was challenged by a request for reconsideration, but which was upheld by the decision HPCC/REC/D/58/2006 dated 18 February 2006.
 - Ownership certificate dated 6 June 2011 showing that parcel with number 1131 was updated and was in the name of S. and D. M.
3. Case file was registered under KPA50654.
4. The claimed property was visited by the KPA on 3 May 2011, where the parcel 497/0 was marked as claimed property. It was found that it is a recently built house and yard occupied by A. D. On June 9 2013, the property was identified and a sign was placed on parcel 1131. On 5 July 2013, it was ascertained that the property was identified on the basis of the GPS coordinates and that A. D. had responded to the claim on 9 July 2013 by filling in the form and stating that he claims property rights over this property. To support the allegation, he submitted a notification to the KPA disputing the ownership of the appellee and stating that the property was purchased from M. J., now deceased, in 1963 by his predecessor I. D. He had not submitted evidence for this transaction.

5. According to Verification Reports dated 13 May 2013, the documents submitted by the appellee were found in the respective public records.
6. On 25 August 2014, the Kosovo Property Claims Commission (KPCC) with the Decision KPCC / D / R / 253/2014 approved the Claim and ascertained that the appellee fulfils the requirements to be issued with the order for return of possession. In its reasoning, the KPCC found that the appellee had proven the ownership whereas the appellant, even though he stated that the property was purchased in 1963, did not present any document other than a notification-statement.
7. The KPCC decision was served on the appellant on 3 December 2014. On 14 January 2015 (according to KPA cover letter), the appellant filed an appeal against the KPCC decision.

Allegations of the appellant:

8. The appellant requests that the Supreme Court of Kosovo approve his appeal and amend the KPCC decision by recognizing his rights over the claimed property. In the appeal, he stated that the KPCC's decision is based on erroneous and incomplete determination of facts, as well as misapplication of the substantive law and essential violation of the procedural law.
9. The appellant objects to the finding of the KPCC that the Sale and Purchase Contract at that time was made by mistake and that this issue should be addressed to the regular courts, for which he also states that he has initiated proceedings for the recognition of ownership in the regular court, but there is no evidence of it in the case file
10. In the end, he requested from the Court to annul the KPCC Decision and to issue a Judgment recognizing the appellant's ownership or returning the case for reconsideration.
11. The appeal was served on the appellee on 15 February 2016 and he responded to the appeal on 28 February 2016 challenging the appeal and motioning the Court to dismiss it as unmeritorious.

Legal reasoning

Admissibility of the appeal

12. Although in the cover letter of the KPA to the Supreme Court it is stated that the appellant received the decision on 3 December 2014 and submitted the appeal on 14 January 2015, in the case file (page 223) is the delivery envelope in the post office in Deçan on 5 January 2015. The appellant received the decision of the KPCC on 3 December 2014 and commencing on the following day on 4 December 2014, the thirty-day deadline ended on 2 January 2015. According to Article 126.5 of Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38 / 2008) (hereinafter: LCP) regarding the calculation of deadlines states that "*If the last day of the prescribed period of time falls on an official holiday, on Saturday or Sunday or on any other day when the competent body does not work, the prescribed period of time shall expire at the end of the next working day.*" Referring to Law no. 03/L-064 On Official Holidays in the Republic of Kosovo Section 2.1 a) January 2 is the Official Holiday, whereas the other two days are Saturday and Sunday, which are of course non-working days for the court.

13. If the appeal was filed on 5 January 2015, then it is a timely appeal pursuant to Article 127.2 of Law no. 03 / L-006 on Contested Procedure where it is foreseen that "*When a submission (in this case the appeal) is sent by post, registered mail or telegram, the date of mailing or sending it shall be considered as the date of the service on the court to which it has been sent*".
14. Therefore, the Supreme Court accepted the appeal as timely, examined the challenged decision in accordance with the provisions of Article 194 of the LCP Law, and after evaluating the appellant's allegations found that: The appeal is admissible because it was submitted within the legal deadline pursuant to Article 12.1 of Law no. 03 / L-079 on amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property (hereinafter Law No. 03/ L-079) which provides that "*The party may file an appeal against the Commission's decision within thirty (30) days from the notification of the parties about the decision*".

Merits of the appeal

15. After examining and evaluating the case file submissions and the appellant's allegations, the Supreme Court ascertains that the appeal is ungrounded.
16. The KPCC decision is correct. The Court could not find an incomplete determination of the factual situation or the erroneous application of substantive and procedural law.
17. According to Article 3.1 of Law no. 03/L-079, the claimant is entitled to an order of the KPCC for the repossession of the property if the claimant not only proves his / her property right over the private property but also that he / she is currently unable to exercise such property rights over the property in question due to the circumstances directly related to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 or the circumstances resulting thereof.
18. The Supreme Court notes that the appellant, even though he has claimed legal right to the property, has not presented any documents to support his right.
19. The fact of informal purchase in 1963 according to allegations of the party cannot be subject of examination by the KPCC or the Supreme Court due to lack of jurisdiction. Under Law no. 03 / L-079, there are no available legal remedies available to the parties for this period due to statutory and substantial limit described in Article 3.1.1 of Law no. 03 / L-079.
20. The allegations of the appellant contradict the provisions of Article 33 of the Law on Basic Property Relations (SFRY Official Gazette No 6/80, 36/90 applicable before the entry into force of the new law, provides that "*On the basis of the legal work the property right over a real estate shall be acquired by registration into the public books or in some other appropriate way that is prescribed by law*". The current Law as well No. 03 / 1-154 On Property and Other Real Rights in Article 36 provides that "*The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register*".
21. The KPA Executive Secretariat did not find ex officio any evidence that would contest the appellee's right in the present case because both the pre-and post-conflict cadastral possession list prove that the property is registered in the name of appellee's grandfather. Now the property certificate issued by the competent cadastral authority in Deçan / Deçane

proves that the claimed property is registered in the name of the appellee as co-ownership of ½ of the ideal part.

22. From the abovementioned facts, it follows that the factual situation in relation to this legal issue has been established correctly and completely and that the KPCC decision was not challenged by any valid evidence that would dispute the ownership of the appellee.
23. This judgment does not prejudice any property right for the current possessor nor is it an obstacle for the parties to initiate proceedings before the competent body or competent court if they find it in a legal interest.
24. Based on the above and in accordance with Article 13.3 (c) of Law no. 03 / L-079, the Court decided as in the enacting clause of this judgment

Legal advice

Pursuant to Article 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar