

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-163/2015

Prishtinë/Priština,
7 December 2017

In the proceedings of:

V.J.

Appellant

The 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/A/244/2014 dated 18 June 2014 (case files registered at the KPA under number KPA06720), after deliberation held on 7 December 2017, issues the following

JUDGMENT

1. The appeal of V. J. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 regarding case file registered at the KPA under the number KPA06720, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission, KPCC/D/A/244/2014 regarding the case file registered at the KPA under the number KPA06720 is confirmed.

Procedural and factual background

1. On 27 February 2007, V. J.(hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), initially, seeking confirmation of the ownership right over Cadastral Parcel No 1324, cultivated land of the 4th class with the surface of 06.50.8 ha, located at the place called “Kod pet duba” Municipality of Lipjan/Lipljan. Later on the Appellant confirmed that she seeks confirmation of the ownership right over Cadastral Parcel no 1479, 4th class cultivated land with the surface 01.22.77 ha (page no 069).
2. The Appellant declared that together with her sisters she is the owner of the claimed property which they acquired as an exchange of the property that was previously confiscated from her late father. The Appellant alleges that the loss of the possession over the claimed property happened as a result of the circumstances of 1998/1999 that occurred in Kosovo.
3. To support her Claim, the Appellant provided the KPA with the following documents:
 - Administrative Decision No 464-656, issued on 21 April 1992, by Municipal Assembly of Lipjan/Lipljan, Commission of the Claims for Restitution of the Land. Based on the Decision, the Commission confirmed that, the late D. S. (Appellant’s father) was expropriated the land, hence, the restitution of the property was approved for the heirs of D. S., thus, among other properties, to the Appellant belonged 1/15 ideal part of the claimed property,
 - Written Statement of the Appellant submitted to KPA on 6 November 2013, whereby, the Appellant declared that since the year 1992 when the Administrative Decision No 464-656 was rendered neither she nor her family members did not made the request to the Cadaster for transfer the property on their name. According to the Statement, on 2013, the Appellant filed the request for transfer the property to Municipality of Graçanicë/Gračanica, Department for Urban Planning and Cadaster,

- Letter Information, issued by Municipality of Gračanica/Gračanica on 16 October 2013 by which the Appellant was informed that her request for registration of the property according to the Decision 464-656 has to do with the Socially Owned Property. Pursuant to Article 2 of the Law on Privatization Agency of Kosovo (No 03/L-034), Socially Owned Properties are administrated by Kosovo Privatization Agency
4. The notification of the claim was carried out on 28 January 2014. The claimed property was found to be occupied by unknown person, but, since no party filed a response within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079, the Claim was considered to be uncontested.
 5. The Executive Secretariat of KPA has found the Administrative Decision No 464-656. However, the officer of the Municipality of Lipjan/Lipljan, confirmed that the Decision never became final and as such it was never executed. The claimed property was found as Socially Owned Property registered on the name of “Kooperaitva Buqjqësore” (Agricultural Cooperative).
 6. The Appellant has been contacted by the Executive Secretariat of KPA and she has been advised to submit additional documents to prove the right she is seeking for. As an additional effort, the Executive Secretariat of KPA provided the Appellant with an information letter asking her to submit additional documents and informing that if she fails to submit the request documents the claim may be refused by the Commission. The letter was received by the Appellant on 01 November 2013 (page no 142 of the case file). The Appellant did not response to the Executive Secretariat of KPA.
 7. On 18 June 2014, the KPCC with its decision KPCC/D/A/244/2014 refused the Appellant’s claim with the reasoning that she has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
 8. The Decision was served on the Appellant on 28 October 2014, while he filed an appeal on 19 November 2014.

Allegations of the Appellant

9. The Appellant alleged that the KPCC Decision relies on incompletely established facts and erroneous application of the material law.
10. According to the Appellant, the KPA has stated that the Executive Secretariat could not verify the Administrative Decision No 464-656, pursuant to which she acquired the ownership right over the claimed property. This matter is not clear to her because according to her the Municipality of

Lipjan/Lipljan has confirmed the authenticity of the document on 2011. She states that the statement made by the KPCC is unacceptable.

11. In the appeal, the Appellant gives a detailed presentation of the documents that she has submitted in order to confirm her ownership right.

Legal reasoning

Admissibility of the appeal

12. 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

13. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of 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.
14. The Supreme Court finds that the KPCC has rendered a correct Decision when refused the claim.
15. 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/she 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.
16. According to this legal provision, the Appellant had to submit evidence to prove the ownership right to, or the right to use the immovable property.
17. The KPCC bases its Decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, that she as property right holder enjoys any ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.
18. Administrative Decision No 464-656, issued on 21 April 1992, by Municipal Assembly of Lipjan/Lipljan, Commission of the Claims for Restitution of the Land based on which the Appellant gained co-ownership right over the claimed property never became final and as such it was never executed.

19. The Appellant herself through her written statement declared that that since the year 1992 when the Administrative Decision No 464-656 was rendered neither she nor her family members did not made the request to the Cadaster for transfer the property on their name.
20. Moreover, Municipality of Gračanica/Gračanica on 16 October 2013 officially informed the Appellant that her request to register the claimed property on her name was refused due to the fact that the request has to do with the Socially Owned Property and pursuant to the Article 2 of the Law on Privatization Agency of Kosovo (No 03/L-034), the Socially Owned Properties are administrated by Kosovo Privatization Agency
21. The appeal of the Appellant recalls the same allegations as she stated before the KPCC. No new evidence was provided with the appeal.
22. 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.
23. 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 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

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar