

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-245/15

Prishtinë/Priština,
16 May 2018

In the legal proceedings of:

N. T.

Appellant

vs.

V. K.

Appellee No. 1

B.K.

Appellee No. 2

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani members, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case file registered at the KPA under the number KPA08034), dated 13 March 2014, after the deliberation held on 16 May 2018, issued the following:

JUDGMENT

- 1. The Appeal of T. N. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014, dated 13 March 2014, regarding the Claim**

- registered at the Kosovo Property Agency under the number KPA08034, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014, dated 13 March 2014, regarding the Claim registered under the number KPA08034 is confirmed.

Factual and Procedural Background

1. On 14 December 2006, S. B. T.(hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (hereinafter: KPA) requesting the repossession of cadastral parcels No. 943/1, with culture vineyard of class II, with a surface of 0.09.96 ha, cadastral parcel No. 943/2, with culture vineyard of class II, with a surface of 0.00.70 ha, and cadastral parcel No. 943/3, with culture vineyard of class II, with a surface of 0.00.70 ha, located at the place called "Kocasija" (hereinafter: the claimed property).
2. The Claimant alleges that his wife, N. T., born A, is the owner of the aforementioned immovable property, and that she lost possession as a result of the circumstances related to the armed conflict, and that now the property is usurped.
3. He also clarified that his wife's property right was acquired on the basis of the Decision on Inheritance from her late father, J. A, who according to the possession list, is evidenced as the owner of the claimed property.
4. With the Claim, he submitted to the KPA *inter alia* the following documents;
 - Copy of the Certificate from the Matrix Book of Marriages with Ref. No. 119, dated 28 April 1963, confirming that the Claimant is the husband of N.T, the inheritor;
 - Copy of Possession List no. 2374, issued by the Republican Geodesy Institute Belgrade – Center for Immovable Property Cadaster of Pristina, on 22 June 2004, proving that A. G. J, was the owner of the claimed property;
 - Ruling on Inheritance O.br.3828/04, dated 06 December 2004, issued by the Second Municipal Court in Belgrade, based on which N. T., daughter of the late J. A, is declared as a successor to immovable properties from possession list no. 2374;
 - Death Certificate no. 00309, issued by the City Administration of Belgrade – Cukarica, on 26 October 2007, proving that the Claimant S. T. died on 20 October 2007 in Zarkovo-Cukarica;
 - Certificate from the Matrix Book of Births no. 200-13904/37804 in the name of N. T, dated 24 September 2009, issued in Niš for the Municipality of Prishtinë/Priština.
 - The Inheritance Ruling LPR.no.9436/13, Ref.O.br.1105/13 with the same content regarding the inheritance of the claimed property by the daughter of the late J. A., N. T., born A. issued also from Notary I. A. in Prishtinë/Priština on 20 June 2013;

- The Power of Attorney Ov.nr. 51340/2 212, dated 31 December 2012, by which N. T. authorizes the lawyer V. D. to represent her regarding the claims filed with the KPA;
 - The Certificate from the Matrix Book of Births no. 200-13904/37804 in the name of N. T, dated 24 September 2009, issued in Niš for the Municipality of Prishtinë/Priština.
5. On 28 December 2010, the Claim was published in the KPA Gazette No. 10, in the UNHCR Official Bulletin, Municipality of Prishtinë/Priština, Municipal Court, Ombudsperson, KCA, DRC and the UNMIK Office in Graçanicë/Gračanica. The notification was confirmed through maps and cadaster, orthophotos and GPS Coordinates. The KPA Executive Secretariat visited the claimed property on 15 January 2013, to find houses, yards and roads built on it, which were being used by the family of B. K., and family of G. K. (Appellees).
 6. On 15 January 2013, the Appellee No. 1 approached the KPA and claimed a legal right over the property, stating that his father G. K. had purchased the claimed property in 1989.
 7. In support of his claim he submitted with the KPA the following documents;
 - The Sales Contract dated 20 June 1989, which shows that G.K. purchased a part of the claimed property with a surface of 400 m² from R. U. in 1989, which is confirmed by signatures of seller, buyer and witnesses.
 - Property Tax Bill, dated 27 July 2009.
 - The KEK's Record No. 2949, dated 26 December 1991, in the name of G.K. regarding the possession of the Electric Meter.
 8. On 15 January 2013, Appellee No. 2 approached the Agency and claimed a legal right over the property, stating that the claimed property was purchased by his late father in the 1970s and that he was born on that property. He emphasizes that he possesses regular documentation about the claimed property and this is proven also by all elderly residents of the neighborhood with whom they have lived together for over 40 years. In support of his allegations he submitted the following documents at the KPA;
 - The Registration List No.860 of the Cadastral District of Prishtinë/Priština, Cadastral Municipality Prishtinë/Priština, on the basis of which it is proven that the house in Avalla Street No. 113, with a surface of 0.00.61 ha, and a yard of 0.05.00 ha is in the name of K.N. M. (the factual condition of terrain based on the measurements from 1983 by the Geodetic and Photogrammetric Agency in Prishtinë/Priština, corresponds partly to cadastral parcel No.943, according to the official Cadaster);
 - Property Tax Bills, dated 04 March 2013;
 - Copy of Plan of Cadastral Zone of Prishtinë/Priština, dated 24 January 2013;
 - Statement by witnesses R. K. and H. H., who testify that the late M.K. (father of the Appellee B. K.) bought the property from the late S.K. back in 1975.
 9. According to the Verification reports, the main documents on which the Appellant supports her claim are verified positively. From the regular verification process by the KPA

Executive Secretariat it has been established that three houses were constructed on the claimed property, a part of it is a road used by the Appellees who claim that these properties were purchased earlier by sellers (third party) in 1989, respectively in 1970s. They, the Appellees, in the absence of documentation, propose to hear their neighbors and persons who are aware of this issue as witnesses.

10. Following the summary of allegations and testimonies of parties in procedure (the Claimant and Appellees), and their corresponding statements which were contradictory; the Claimant supports her right on the Possession List and on positively verified Inheritance Ruling, on the other hand is the factual situation in the field and the allegations of the Appellees who have no valid documentation to prove their right but propose witnesses regarding the alleged factual situation, and given that the Claimant has failed to provide a witness regarding her allegation that the property was usurped and lost in 1998-99 as a result of the conflict, in order to prove the factual situation, the KPCC held a hearing session with the parties in procedure and witnesses pursuant to Section 11 paragraph 6 of the UNMIK Regulation 2006/50, as amended and supplemented by Law No. 03/L-079 & Law 04/L-115.
11. On 13 March 2014, with its Decision KPCC/D/A/228/2014, after holding a final hearing on 21 January 2014, the KPCC dismissed the Claim, due to the fact that the Claim fell outside the jurisdiction of the Commission since the possession of the claimed property was not lost as a result of the armed conflict that occurred in Kosovo during 1998-1999. In paragraph 30 of the KPCC's Cover Decision it is stated that "The Commission finds that the statements of the Appellees and witnesses that they used the claimed properties many years before the conflict are reliable. From these circumstances the KPCC's concluded that the loss of the ability to exercise the property right over the claimed property by the alleged property right holder was not as a result of the circumstances directly related to or resulting from the conflict. Therefore the Commission considers that the Claim did not meet the requirements provided under Section 3.1 paragraph 3 of the UNMIK Regulation 2006/50 adopted by Law No. 03/L-079.
12. The KPCC Decision was served on the Appellant on 25 February 2015. The same (N.T.) filed an Appeal on 25 February 2015.

Allegations of the Appellant

13. The Appellant challenged in its entirety the KPCC's Decision on the grounds of substantial violation of procedural provisions and erroneous and incomplete determination of the factual situation.
14. According to the Appellant, her late father was the owner of the claimed property which she inherited after his death, as confirmed by the Ruling issued by the Notary I. Ademi no. 9436/13, ref.08 br.1105/13 on 20 June 2013. She added that until the time of the conflict she lived in Prishtinë/Priština and was in possession of the claimed property until she was

forced to leave, and that now after being offered with the opportunity, she seeks the return of the property which has not been alienated neither by her nor by her late father. Additionally, she states that the usurpers of the property have no evidence that they have purchased the claimed property and do not poses construction permits for the constructed houses, which could have been constructed in that manner only in the circumstances of the 1998-99 conflict, and that the issue was decided on the basis of testimonies from witnesses proposed only by one party, whereas she was not given the opportunity to propose witnesses.

15. Finally, she proposes that the Supreme Court quashes the KPCC's Decision, grants her Claim, and returns the unlawfully usurped property under the possession of the Appellant.

Legal Reasoning

16. After reviewing the case file submissions, appellate allegations and acting *ex officio* pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure, the Court find that the Appeal is admissible and timely based on Article 186 par. 1 in conjunction with Article 196 of the LCP.
17. After reviewing the allegations in the Appeal and the content of the case file, the Supreme Court found that the KPCC Decision is not involved in any substantive error or misapplication of the applicable substantive law nor is it based on erroneous and incomplete determination of the factual situation. Therefore the Appeal cannot be granted.
18. According to Article 3.1 of Law no. 03/L-079, the KPCC has competence to resolve conflict related property claims and property right claims "directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999, or resulting from it". Therefore, the Claimant must present not only the title of ownership over the private immovable property but also prove that he or she is unable to exercise such property rights because of circumstances directly related to or resulting from the armed conflict.
19. From the evidence in the case file administered by the KPCC, it is undoubtedly confirmed that the claimed property was not lost as a result of the conflict in Kosovo during 1998-99, as alleged by the Appellant, because except for the fact that she possesses a possession list from 2004, and an Inheritance Ruling from 2013, which prove that she is the owner of the claimed property, with no other evidence and during none of the stages of reviewing this issue by the KPA, did she provide facts or witnesses to prove that she was in possession of or was using the claimed property in 1998-99. Furthermore, during this time period and even earlier the claimed property was not under her ownership because the inheritance procedure was yet to be initiated or regulated.
20. From the submissions in the case file and the KPCC Cover Decision, it is undoubtedly confirmed that the Appellees as well as witnesses heard during the verbal hearing held by the Commission, pursuant to Section 11.6 of the UNMIK Regulation, have proven that the property claimed by the Appellant was purchased by the Appellees and that they have been using the same many years prior to the conflict. They provided to the KPA the evidence mentioned in paragraphs 6 to 9 of the reasoning of this Judgment, which confirm that even

though they did not provide a property title still they presented evidence which prove possession of the immovable property, while the Appellant failed to propose any witnesses regarding her allegations that she has visited and has been using the claimed property until 1999 when she lost the possession over it as a result of the conflict.

21. From the abovementioned facts it results that the allegations of the Appellant mentioned in paragraphs 14-16 of this Judgment and in the Appeal that she was not given the opportunity to propose a witness regarding her allegations, and that the Decision is based solely on the statements of the Respondents (Appellees), are rejected by the Supreme Court as unsubstantiated, because it is confirmed that the KPA at the claim processing stage, and the KPCC at its 37th hearing, offered the property right holder/Appellant the opportunity but she failed to propose any witnesses and even failed to provide any evidence at any stage of processing of her claim, to support her allegations that she has been using the property before the conflict and lost it as a result of the 1998-99 conflict, but rather based her right solely on the abovementioned property documents which are uncontested.
22. The Supreme Court considers that the Appellant failed to prove that the loss of possession over the claimed property is related to the conflict. It is therefore indisputably established that the KPCC, as in its Decision, has rightly and lawfully taken a correct Decision when it found that the Claim is not substantive as provided for in Section 3.1, paragraph 3 of the UNMIK Regulation 2006/50, adopted by Law no. 03/L-079. Therefore the Claim, as such, has been dismissed because the Appellant failed to prove the loss of the property right over the claimed property, immediately before or during the 1998/99 conflict. Therefore the Appeal is ungrounded and the same is rejected.
23. In light of the above, pursuant to Section 13.3 (c) of the UNMIK Regulation 2006/50, as amended by Law 03/L-079, it was decided as in the enacting clause of this Judgment.
24. This judgment does not prejudice the Appellant's or interested party's right regarding the property right, nor does it present an obstacle for initiation of proceedings, filing of a Claim before the competent organ or Court, if it is deemed of legitimate interest.

Legal Advice

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, as amended by 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

Ragip Namani, Judge

Bjorn Olof Brautigam , EULEX Registrar