

**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-113/14

Prishtinë/Priština, 19 February 2016

In the proceedings of:

Z. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/A/164/2012 (case files registered at the Kosovo Property Agency (KPA) under number KPA33138) dated 5 September 2012, after deliberation held on 19 February 2016, issues the following:

JUDGMENT:

- 1. The appeal of Z. J. is rejected as unfounded.**
- 2. The decision of the Kosovo Property Claims Commission no. KPCC/D/A/164/2012 dated 5 September 2012 is confirmed as far as it concerns claim no. KPA33138.**

Procedural and factual background:

1. On 19 March 2007 Z. (S.) J.(hereinafter: the Appellant), filed a claim before the Kosovo Property Agency (KPA), seeking repossession over the parcel no.224, Cadastral Zone Qarakoc/Carakovce, Municipality Kamenicë/Kamenica, located in Qarakoc/Carakovce, with a surface of 5Ar 21 m² (hereafter referred as: the property). He stated that he lost possession over the property due to the armed conflict in 1998/99, indicating 7 November 2000 as the date of loss. He claims it is now illegally usurped.
2. To support his claim the appellant submitted *inter alia* the following documents:
 - The Possession List no. 231, dated 19 February 2007, issued by the Department for Cadastre Geodesy and Property in Municipality of Kamenicë/Kamenica.
3. The claim was registered with the KPA under case no KPA33138.
4. The claim for the property was notified on 13 November 2007 and 31 August 2010.
5. No interested person approached KPA as a responding party.
6. On 5 September 2012, with decision KPCC/D/A/164/2012, KPCC decided to dismiss the claim with the reasoning (n paragraphs 12 and 90) that the claim has previously been considered and decided in a final administrative or judicial decision.
7. The decision was served on the appellant on Friday 31 January 2014.
8. On Monday 3 March 2014 the appellant submitted an appeal to the Supreme Court, challenging the KPCC decision.
9. According to the case file KPCC referred in its decision to the decision on claim KPA33482. On request of the Supreme Court KPA sent to the Supreme Court a copy of the KPCC Cover decision KPCC/D/A/972010, dated 7 December 2010, and the Certified decision extracted from the Cover decision as far as it concerns claim KPA33482.
10. On 23 December 2014 is served on appellant a court order, dated 9 December 2014. This court order reads:

'1. The appealed KPCC decision refers to another 'administrative or judicial decision'. Meant is the decision of KPCC no. KPCC/D/A/97/2010 dated 7 December 2010 about claim no. KPA33482 regarding to parcel Qarakoc/Carakovce no. 224, with surface 5Ar, 21m². In this decision is the claim granted to the claimant, Z. S. J., as the owner of the claimed property. KPA provided copy of the said decision to the Supreme Court. Copy of that decision can be found enclosed to this order. According to information on the website of KPA the decision is implemented on 20 June 2012.

The Appellant is asked to declare if this information is reason to change the grounds of the appeal in the sense

that it can be a reason for the withdrawal of the appeal.

2. If Appellant stands to the appeal he is asked to substantiate, provided with evidence, why, taken this information on KPCC decision no. KPCC/D/A/97/2010 as far as it relates to claim nr. KPA33482 into account, the appealed decision KPCC/D/A/164/2012 as far as it relates to KPA33138 cannot stand.

The appellant is advised to respond within three weeks from the receipt of this order. In case of the failure to respond to this order this may lead to a judgment from the Supreme Court, based on the information and evidence available, without inquiring the party any further.

11. Appellant did not answer to this court order.

Allegations of the appellant

12. The Appellant invokes an incomplete establishment of the facts and a serious misapplication of the substantive law. In his letter of appeal he stated that he is the owner of the claimed property as registered in the Possession List no. 231 and that there is no administrative or court decision regarding to his claim about parcel no. 224. He asked to submit a copy of the meant KPCC decision. Therefore, he required from the Supreme Court to accept his appeal and reach another decision by establishing his ownership right over the claimed property.

Legal reasoning

Admissibility of the appeal

13. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079. Although the 30th day after serving the KPCC decision on the appellant on Friday 31 January 2014 is Sunday 2 March 2014, the period to file an appeal is extended to Monday 3 March 2014 (see Section 7.2 of UNMIK Administrative Directive implementing UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 into Annex 1 by that law which reads: “*If the end of a period would fall on a Saturday, Sunday or on an official holiday, the period in question shall be extended until the end of the first following working day*”, and the Law on Contested Procedure, article 126, paragraph 5 which foresees: “*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 a court does not work, the prescribed period of time shall expire on the first working day after the official holiday).

Merits

14. After review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, the Supreme Court concludes that the appeal has to be rejected.
15. The appealed KPCC decision refers to another ‘administrative or judicial decision’. The mentioned decision is no. KPCC/D/A/97/2010 dated 7 December 2010 about claim no. KPA33482 regarding the same property. In that other decision the claim is granted to the (same) claimant, Z. S. J., as the owner of the property.
16. Appellant did not respond to the Court Order meant in paragraph 10, here for, and did not contest the existence of this other KPCC decision.
17. The principle of “*Res judicata*” is foreseen in Section 11, paragraph 4.c of of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50). This article reads as far as is relevant: “*The Commission shall dismiss the claim where the claim has previously been considered and decided in a final administrative or judicial decision*”. The Supreme Court concludes that the appealed decision of KPCC was correct in dismissing the claim as “*Res Judicata*”. This is the matter in the present case, because the same claim was filed before KPA, and the participating party was the same in both proceedings. Also, the facts, the legal grounds as well as the evidentiary issues are exactly the same in both claims filed before KPCC.
18. Based on the aforementioned and pursuant to Section 13.3.(b) of the UNMIK Regulation 2006/50 and Article 166, paragraph 2, of the Law on Contested Procedure, the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

19. Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar