

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-098/14

Prishtinë/Priština, 30 March 2016

In the proceedings of:

B. V.

Prishtinë/Priština

Appellant

vs.

V. (B.) M.

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/A/219/2013 (case file registered at the KPA under the number KPA25058) dated 27 November 2013, after deliberation held 30 March 2016, issues the following:

JUDGMENT

1. The appeal of **B. V.** against the decision of the **Kosovo Property Claims Commission no. KPCC/D/A/219/2013**, dated 27 November 2013, is rejected as unfounded.
2. The decision of the **Kosovo Property Claims no. KPCC/D/A/219/2013** dated 27 November 2013 is confirmed as far as it concerns claim **KPA25058**.

Procedural and factual background:

1. On 12 February 2007, V. (B.) M. (hereinafter, “the Appellee”) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right and repossession of parcel No. 424/2 with the surface of 00.02.75 ha, located in the area called “Seliste Susnjak”, in the village of Prugoc/Prugovac, Municipality of Prishtinë/Priština (hereinafter, “the claimed property”). The claim was registered at the KPA under KPA25058.
2. The Appellee alleges that he lost possession of the claimed property on 19 June 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999.
3. To support his claim, the Appellee submitted the following documents:
 - Copy of the Possession List No. 227 dated 18 June 1996 in which it is stated that the Appellee is the owner of the claimed property;
 - Decision of Cadaster of Immovable Property Service in Prishtinë/Priština No. 952-01-1/96-190-c dated 25 April 1996 (hereinafter, “the Decision of 25 April 1996”). The Cadaster allowed – as far as relevant - changing the name of the user of the property Cadastral Parcel No. 424/2, until then registered in the possession list no. 12 in the name of ZZ Nëntë Jugoviq/Devet Jugovica to the name of the Appellee.
4. On 11 September 2007 and 14 May 2013, the KPA notified the claim by putting a poster on the claimed property. During the first notification, it was noted that the claimed property was found partly cultivated by unknown person(s), and during the second notification that the claimed property was not occupied. On 18 February 2010, and on 15 May 2013, the KPA confirmed the accuracy of the previous notifications of the claimed property.

5. On 19 September 2007, B. V. claimed to have legal rights to the claimed property. However, on 5 June 2010, he indicated that he did not claim any legal rights to the claimed property. On 20 March 2014, the KPA attempted to serve the KPCC decision, which is mentioned hereinafter in paragraph 8, to B. V., however, he did not accept the KPCC decision and confirmed that he had nothing to do with the claimed property. For this reason the Supreme Court no longer identifies B.V. as party in these proceedings.
6. On 18 June 2013, B. V. (hereinafter: “the Appellant”) signed a Notice of Participation alleging legal rights to the claimed property. Before that he had also responded to a claim by the Appellee on another, closely situated property under the claim no. KPA25056. The Appellant stated that the claimed property belongs to his cousin E. V. who currently lives abroad. The Appellant further claimed that the claimed property and the property claimed in the claim no. KPA25056 belonged to the V. family until the expropriation in around 1945-50s. He submitted with his response in both cases - among others - the following documents:
 - Confiscation decision KFC No. 91/45;
 - Confiscation decision nr 15744 dated 13.12.1943;
 - Scheme on manuscript;
 - Decision on division of parcels confiscated by the agricultural cooperative Devet Jugovic.

The KPA added these documents to the case file in case no. KPA25056.

7. On 19 October 2007, the KPA positively verified Possession List No. 227 submitted by the Appellee. The document was verified in the Department of the Cadastre on 18 October 2007; a copy of the Possession List no. 227, dated 18 October 2007, was attached to the Verification Report. On 16 July 2013, the KPA confirmed that parcel No 424/2 is registered in the cadastral records under the name of the Appellee, and added *ex officio* to the file a Certificate no. 011-095-112236, dated 15 July 2013 from Kosovo Cadastral Agency, that confirms this registration. The KPA also positively verified the Decision of 25 April 1996. The KPA did not verify the documents submitted by the Appellant, as the KPA concluded that none of these documents relates to the claimed property.
8. On 27 November 2013, the Kosovo Property Claims Commission (hereinafter “KPCC”) in its Cover Decision KPCC/D/A/219/2013 granted the claim. In the reasoning of the decision (paragraphs 11, and 29 to 31), the KPCC indicated that the Appellee submitted a

possession list from 1996 identifying him as the owner of the claimed property. The KPCC further noted the Appellant's statement that the claimed property belongs to his cousin E. V. The KPCC noted that the Appellant submitted several documents from the 1940s to support the allegation that the claimed property belonged to his family but none of these documents listed the claimed property. The KPCC granted the claim based on the evidence presented by the Appellee and in the absence of any valid defence by the Appellant.

9. On 20 March 2014, the KPCC decision was served to the Appellant. The Appellant filed the appeal against the KPCC decision on 2 April 2014. In his appeal, the Appellant refers to the documents submitted by him to the KPA and enumerated here for in paragraph 6.
10. On 14 April 2014, the KPCC decision was served to the Appellee. On 27 May 2014, the KPA sent the appeal by mail to the Appellee. The Appellee did not respond to the appeal.
11. On 5 February 2016, the Supreme Court sent a Court Order to the KPA. The Supreme Court requested the KPA to submit the documents referred to by the Appellant in his letter of appeal as they were submitted by the Appellant in the first instance, and assessed by the KPCC. On 23 February 2016, in response to the Court Order, the KPA submitted the requested documents.

Allegations of the Appellant:

12. The Appellant alleges that the KPCC decision is based on an erroneously and incompletely established factual situation and an erroneous implementation of substantive law. To support his statement, the Appellant purports that the following documents support his appeal:
 - Confiscation decision KFC. No. 91/45;
 - Confiscation decision nr 15744 dated 13.12.1943;
 - Scheme on manuscript submitted to KPA on 01.12.09;
 - Decision on division of parcels confiscated by the agricultural cooperative, Devet Jugovic.

Legal reasoning:

Admissibility of the appeal

13. The appeal was filed within 30 days as foreseen by Section 12.1 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”). The appeal is admissible.

Merits of the Appeal

14. As the Appellant in his appeal disputes the KPCC’s decision establishing the Appellee’s ownership of the claimed property, the Supreme Court shall address two main issues: whether the KPCC’s assessment on allegations of the Appellee about his ownership is correct, and whether the appeal of the Appellant against the KPCC decision has valid grounds.
15. To this end, the Supreme Court firstly ascertains that the KPCC rightfully concluded that the positively verified Possession List no. 227, submitted by the Appellee, and the *ex officio* to the case file added Certificate from the Kosovo Cadastral Agency are sufficient to prove the ownership of the Appellee of the claimed property.
16. The Supreme Court further notes that in the first instance, the Appellant stated that he had permission from his cousin E. V. to use the property. He added that he was not aware if his cousin had any property documents. The Appellant submitted two confiscation decisions dated 14 December 1945 and 13 December 1943, indicating that a property of I.B. was confiscated; and a decision dated 28 April 1954 allocating a property in Nëntë to Jugoviq/Devet Jugović cooperative.
17. The submitted documents relate to the confiscation of a property and relocation to other owners. Specifically, the Confiscation Decision of 14 December 1945 renders a decision to confiscate “*a field in border and measured from the north of the stream of Lebanksi in 50 m and from the south to property of R. H. 95 meters, from the east to A. I. 60 m and from the west to Jusuf Bajrami property 164 meter*” which belongs to I.B.. Further, the Confiscation Decision of 13 December 1943 indicates that the property of I.B. is confiscated without any further detail. Finally, the

Decision dated 28 April 1954 allocating property in Nëntë Jugoviq/Devet Jugovica cooperative lists 33 parcels and indicates the person to whom the property is relocated.

18. The Supreme Court notes that none of the submitted documents mentions a property which could correspond to the claimed property. The Appellant did not provide any further evidence which would help to identify the property mentioned in the confiscation decisions and to determine whether the claimed property was mentioned in the confiscation decisions. In light of this, the Supreme Court is unable to determine whether the documents submitted by the Appellant are related to the claimed property. For this reason, the evidence submitted by the Appellant cannot support his allegation that the Appellee is not the owner of the claimed property.
19. Consequently, the KPCC decided rightfully that the Appellee is owner of the claimed property, and the appeal is rejected as unfounded and the decision of the KPCC is confirmed according to Section 13.3 (c) of UNMIK Regulation 2006/50.

Legal Advice:

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

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar