

**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-001-15

Prishtinë/Priština,

4 May 2016

In the proceedings of:

B. S.

Appellant/Claimant

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/R/237/2014 (case file registered under number KPA50325), dated 30 April 2014, after deliberation held on 4 May 2016, issued the following:

JUDGMENT

1. The appeal of B. S. filed against the Decision of the Kosovo Property Claims Commission No. KPCC/D/R/237/2014, dated 30 April 2014, with regard to the case KPA50325 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission No. KPCC/D/R/237/2014, dated 30 April 2014, with regard to the case file KPA50325 is confirmed.

Procedural and factual background:

1. On 7 November 2007, B. S. (hereinafter: “the Claimant”) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of ownership right of his (deceased) father and repossession of the house with a yard located at the place called Bolnica, “Kninska” Street, Cadastral Parcel 4406/4, Cadastral Zone Prishtinë/Priština, with a surface of 3 are and 34 square meters.
2. In the same claim he also claimed another 83 square meters of urban construction land which was registered in cadastral parcel 4406/5. He alleged that his father acquired this land after the allocation of this socially-owner land to him. He further states that by a decision of the cadastral authorities this part of land was joined to parcel 4406/04.
3. In order to facilitate the processing of the claims, the Executive Secretariat of the Agency divided the claim and kept the claim KPA50325 to the claim on parcel 4406/4 and put the claim on parcel 4406/5 into a separate claim and registered it under number KPA91584 (see the submission of the KPA on the partition of claims on the parcels dated 5 October 2010).
4. In support of his claim he submitted the following documents:
 - The Possession List no. 4212 issued by the Cadastral Office of the Municipality of Prishtinë/Priština, proving that parcel 4406/4 has been evidenced under the name of the property right holder/possessor, Claimant’s father, D. S.;
 - The Possession List no.10316 issued by the Cadastral Office of the Municipality of Prishtina, proving that parcel 4406/5 with a surface of 83 square meters his registered as socially-owned property used by the Clinical Hospital Center of Prishtinë/Priština.
 - Copy of the plan regarding parcel 4406/4, dated 29.05.1975.

- Decision nr.436-1/19574 on determination of the property tax for the year 1997, issued by the Public Revenues Administration;
 - Decision no. 07-360—420-96-03 on the allocation for use of the socially-owned land registered in parcel 4406/05 with a surface of 83 square meters, dated 24.07.1996.
 - Submission no. 07-172/88-02 dated 25 July 1988 by which the Executive Council of the Prishtinë/Priština Municipality was obliged to shelter a family in order to vacate the property that was to be allocated for use to the Claimant.
 - Construction permit no. 05-3242, undated;
 - Decision no. 04-11192 of the People's Council of the Municipality of Prishtinë/Priština, dated 20 September 1961;
 - Death certificate of the property right holder D. S., dated 30.05.2001;
 - Claimant's ID card issued by the authorities of Serbia on 31.08.2001.
5. On 29 January 2008 and 12 January 2011, the KPA visited the both claimed properties and placed on it a notification by which the interested parties were notified that the properties are subject of a claim. On 14 January 2011 it was concluded that the notification was done correctly. The properties were found occupied by N. S. who did not claim any property right over the properties except that he stated that he is under negotiations with the Claimant for making an agreement on the purchase of the property. The actual occupant did not sign a notification on participation in the proceedings.
 6. In the consolidated verification report, dated 2 February 2011, the KPA found that the verification of the documents for parcel 4406/04 is positive and that based on the ownership certificate, parcel no. 4406/4 is registered in the name of the Claimant's father whereas parcel 4406/5 is a socially-owned property of Hospital Clinical Centre of Prishtinë /Priština
 7. The Executive Secretariat requested from the Claimant any document on the purchase of parcel 4406/5 from the authorities but he failed to provide them.
 8. According to the referral report the Appellant also had filed a claim with the Housing and Property Directorate for the same property and that the Directorate referred the claim to the Housing and Property Claims Commission and that the same approved the claim through decision HPCC/D/78/2003 dated 27 June 2003 and ordered the return of possession over the claimed property to the Claimant.

9. On 30 April 2014, the Kosovo Property Claims Commission (KPCC) in its cover decision KPCC/D/R/237/2014, on claim KPA50325 decided that D. S. is 1/1 owner of the claimed residential property registered at cadastral parcel 4406/4 and use right holder of the underlying land and that the possession over the claimed property must be returned to the Claimant as a family household member. Under paragraph 34 of the KPCC Decision, the KPCC also allows the Executive Secretariat of the KPA in cooperation with the KPCC or the Court to delay the implementation of the Eviction Order for a reasonable time period and consider the possibility of amicable resolution of the dispute.
10. On 27 August 2014, the KPCC decision on KPA50325 was served on the Appellant . He filed an appeal with the Supreme Court on 24 September 2014.

Allegations of the Appellant

11. The Appellant alleges that the KPCC decision (hereinafter: “the challenged decision”) is based on an erroneous and incomplete determination of the factual situation and misapplication of the substantive law. He alleges that this decision wrongful does not include the claimed property on parcel 4406/5 which relates to urban land for construction in a surface of 83 square meters.
12. The Appellant explained that with the challenged decision it was decided only in relation to parcel 4406/4 and because of these reasons he requests the decision be quashed or be amended in order to include all properties claimed with his original claim KPA50325.
13. In support of his appeal, the Appellant presented the same documents he presented in the proceedings before the KPA/KPCC. Furthermore he requests from the Supreme Court to schedule a hearing.

Legal reasoning

Admissibility of the appeal

14. The appeal has been filed within the time period of 30 days as provided by Article 12.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims Related to Private Immovable Property including Agricultural and Commercial Property, as amended by Law no. 03/L-079, (hereinafter: Law 03/L-079). The Appellant received the decision on 27 August 2014

and filed an appeal on 24 September 2014. The Supreme Court has jurisdiction over the appeals against the KPCC's decision.

The appeal is admissible.

Merits of the appeal

15. The Court found that the Executive Secretariat of the Kosovo Property Agency after completing the claim verification process concluded that the claim KPA50325 included two different parcels. In order to facilitate the identification of the properties and the processing of the claims, the KPA separate the claim on parcel 4406/5 from the original claim KPA50325 and create a new claim KPA91584 regarding the cadastral parcel 4406/5. This is a standard procedure of KPA, as it did the same with other claims which included more parcels next to one another.
16. In the case file there is a decision on the partition of the claims on the parcels from claim KPA50325 into another claim KPA91584 and that the claim KPA5035 remains for parcel 4406/4 whereas claim KPA91584 has as its subject the property on parcel 4406/05
17. This decision of the Secretariat of the KPA is based on internal rules for facilitating the processing of the claims on the Secretariat's proposal received and decided by the KPCC on 15 April 2009.
18. The KPCC in its decision KPCC/D/R/237/2014 decided in favour of the Claimant only in relation to claim KPA50325 on parcel 4406/4 and did not examine the merits of claim KPA91584 on parcel 4406/5.
19. According to the KPA official data, claim KPA91584 has been subject of review by the KPCC with its decision KPCC/D/R/270/2014, dated 17 December 2014. According to the same data the Claimant received that KPCC's decision on 5 May 2015.
20. The Court did not examine the merits of the appeal in relation to the claimed property 4406/5 in KPA91584 because it was not subject of adjudication by the KPCC.
21. The Supreme Court did not find any violation of procedural provisions or substantive law with regard to the appeal against the KPCC's decision that relates to claim KPA50325. The appellate allegations that the decision needed to include the entire claimed property cannot be grounded because of the fact that the remaining part of the claimed property was reviewed with a separate decision by the Commission.

22. Therefore, the appeal stands to be rejected as ungrounded and the KPCC's decision confirmed pursuant to Article 13.3 (c) of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.

Legal advice

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 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