

**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-184-185/14

Prishtinë/Priština,
18 May 2016

In the proceedings of:

D. J.

Appellant

Vs.

No one

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/RA/220/2013 (case files registered at the KPA under the numbers KPA54074 and KPA54076) dated 27 November 2013, after deliberation held on 18 May 2016, issues the following

JUDGMENT

1. The appeals of D. J., registered under the numbers GSK-KPA-A-184/2014 and GSK-KPA-A-185/2014 as far as they concern the cases registered in AKP with numbers KPA54074 and KPA54076 are joined in a single case under the number GSK-KPA-A-184/2014.
2. The appeals of D. J. filed against the decision of the Kosovo Property Claims Commission No. KPCC/D/A/220/2013 dated 27 November 2013 as far as they concern the claim numbers KPA354074 and KPA54076 are rejected as unfounded.
3. The decision of the Kosovo Property Claims Commission No. KPCC/D/R/220/2013 dated 27 November 2013 is confirmed as far as it concerns claims KP54074 and KPA54076.

Procedural and Factual background:

1. On 16 November 2007 D. J. (henceforth: the Appellant), filed a claim KPA54074 with the Kosovo Property Agency (KPA), in the capacity of alleged property right holder seeking repossession of the cadastral parcel no. 825/2, located in a place called "Gropa- kërshi", Cadastral Municipality Pakashticë e Epërme/Gornja Pakaštica, with the surface of 5.51.99 h, culture forest of III class, which she alleges to have won through inheritance from her father in the ½ ideal part of 1/10 of the inheritance part of her father M. S. and the claim KPA54076 seeking the cadastral parcel no. 866 located in a place called "Bjeshka", Cadastral Municipality Pakashticë e Epërme/Gornja Pakaštica, with the surface of 2.55.50 h culture forest of IV class which she alleges to have won through inheritance from her father in the ½ ideal part of 1/10 of the inheritance part of her father M. S.
2. To support her claims the Appellee provided with the following documents:
 - The Ruling on Inheritance O.Br. 77/89 dated 14 August 1989 issued by the Municipal Court in Podujevë/Podujevo with which the Appellant's father M.S. is declared an inheritor of ¼ of the total property of the late D.S. registered in the Possession List No. 48 Cadastral Zone Pakashticë e Epërme/Gornja Pakastica, without specifying the cadastral parcel no. 825/2.
 - The Ruling on Inheritance O.br.818/07 dated 25 April 2004 issued by the Municipal Court in Belgrade, proving that the Appellant has inherited, along with D. S., the ½ of 1/10 of cadastral parcels no. 825/2 and no. 866.

- Description of the Possession List 197 issued by the dislocated archive of Cadastral Service in Podujevë/Podujevo on 25 December 2006 proving that the Appellant's father is a co-owner of an ideal part of 1/10 of the claimed property
- The ID card issued by authorities in Belgrade – Municipality of Rakovica on 11 November 2005
- A copy of the Marriage Certificate issued by Marriage Books in Belgrade on 04 December 2006 proving that D. J., maiden name S., is M. daughter
- The Death Certificate dated 03.10.2001 proving that M. S. has passed away on 2 October 2001.
- The Verification Unit found *ex officio* the Possession List no.103 date 19 August 2009, issued by the Department for the Cadastre Geodesy and Property in Municipality of Podujevë/ Podujevo, which shows that the claimed property was registered as socially owned property in the name of Public Forestry Enterprise “Javor”-Podujevë/ Podujevo.

Appeal number and Case number of KPA	Data regarding the requested parcel
GSK-KPA-A-184/14 (KPA54074)	Cadastral parcel no. 825/2, located in a place called “Gropakërshi”, Cadastral Municipality Pakashticë e Epërme/Gornja Pakaštica, with the surface of 5.51.99 h, culture forest of III class
GSK-KPA-185/14 (KPA54076)	Cadastral parcel no. 866 located in a place called “Bjeshka”, Cadastral Municipality Pakashticë e Epërme/Gornja Pakaštica, with the surface of 2.55.50 h culture forest of IV class

3. The properties were physically verified on 11 June 2008. The KPA notified it by posting signs in the requested properties and found that the property was identified correctly via Orto-photos and GPS coordinates, and it was published in the Agency Gazette on 01 July 2010 through UNHCR Office in Belgrade.
4. No one appeared to challenge the claim.
5. By its decision of 27 November 2013 (no. KPCC/D/A/220/2013), based on evidence submitted by parties referring to cases registered in KPA with number KP54074 and KP54076, the Kosovo Property Claims Commission (KPCC), decided to reject the claim, with reasoning that the Appellant firstly declared she lost possession due to the armed conflict but based on submitted documents and “*ex officio*” findings of the Secretariat it resulted that the property is socially owned and it belongs to the Public Forestry Enterprise “Javor” Podujevë/ Podujevo.

Joining of Appeals:

6. According to section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the KPCC pursuant to Section 11.3 (a) of the Law. This section allows the KPCC to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.
7. The provisions of the Law on Civil Procedure which are applicable to proceedings before the Appeals Panel of the Supreme Court in compliance with Article 12.2 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, as well as the provision of Article 408.1 in view of article 193 of Law no. 03/L006 on Contested Procedure, provide the possibility of joining the claims through a decision if this ensures court efficiency and reduces time and costs of the proceedings.
8. In the text of the appeals filed by the appellant, the Supreme Court notes that apart from the numbers of the appeals filed which are different, the facts, the legal grounds and the evidence are exactly the same in both cases. Only the parcels, subject of the property right alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documents. Moreover, the legal reasoning of the KPCC is the same for the claims.
9. The appeals registered with numbers GSK-KPA-A-184/2014 and GSK-KPA-A-185/2014 are joined in one single case with number GSK-KPA-A-184/2014
10. D. J. (in the civil registry documents J.) in the capacity of the appellant received the decision of the Commission on 16 April 2014, whereas she filed the appeal on 12 May 2014.

Admissibility of the appeals:

11. After having reviewed the case files and appeal allegations, pursuant to Article 194 of Law no. 03 / L-006 on Civil Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter as: LCP), the Court upon review of the judgment *ex officio* based on the reasons mentioned and not mentioned in the appeal, found that the appeal is admissible and timely filed.

Appeal allegations

12. The appellant alleges that the claimed property was owned by her father and the conclusion that the loss of possession was not as a result of the conflict is incorrect because the property was lost as a result of armed conflict and the circumstances related to the conflict. She claims that her property did not have a status of the socially owned property and that this was proved with

documents attached to the claim. For this reason, she requests annulment of the Commission's Decision and confirmation of the ownership over the claimed property by the court and repossession.

Merits of the appeal

13. Decision KPCC/D/A/220/2013, dated 27 November 2013, in paragraph 18 states that the claimant could not prove that the possession was lost as a result of the circumstances directly related or resulting from the conflict which occurred in 1998-1999 and as such falls outside the mandate of the Commission.
14. The mandate of the Agency and the Commission is to review the cases ", which are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999". This means that the scope of examination of KPA is verification of the following elements: who was in possession of the claimed property before 27 February 1998, who is now in possession of the property, when and for what reason the possession was lost in the period between 27 February 1998 and 20 June 1999. The wording of Article 3.1 "claims that are related to the conflict, including circumstances directly related to or resulting from the armed conflict" means a direct connection between the loss of possession and armed conflict or close connection of the cause and effect which in the concrete case is missing.
15. In the Supreme Court's view, there are sufficient elements in the case files that indicate that the property was registered as socially owner property and belonged to Forest Enterprise "Javor" from Podujevo. Hence, the appellant's allegation regarding the possession of the claimed property before or during the conflict should be considered in contradiction with the submitted evidence.
16. This makes the Supreme Court to reach to the conclusion that the claim falls outside the jurisdiction of the KPCC, the appellant's appeal should be rejected as unfounded and the appealed decision of the KPCC be affirmed as fair and based on the law in compliance with Article 13.3 (c) of UNMIK Regulation 2006/50 as amended by the Law no.03/L-079.
17. Based on the above, pursuant to Section 13.3 subparagraph (c) of UNMIK Regulation 2006/50 as amended by the Law no.03/L-079, it is decided as in the enacting clause of this judgment.

Legal advice:

18. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law no.03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies

Sylejman Nuredini, Presiding Judge,

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gutaityde, EULEX Registrar