

**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-042/2015

Prishtinë/Priština
12 October 2016

In the proceedings of:

B. (M) S.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (case file registered at the KPA with number KPA06331) dated 23 November 2013, after deliberation held on 12 October 2016 issues the following:

JUDGMENT

1. The appeal of the appellant B. (M.) S. filed against the Decision of the Kosovo Property Claims Commission KPPC/D/A/220/2013 dated 27 November 2013 with regard to the claim registered with KPA under KPA06331, is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPPC/D/A/220/2013 dated 27 November 2013 with regard to the claim registered with KPA under KPA06331 is confirmed.

Procedural and factual background:

1. On 10 January 2007, B.S., filed a claim at the Kosovo Property Agency (KPA) in the capacity of the property title holder seeking re-possession over the parcel no.4455, of meadow culture located at cadastral zone in Gjakova, at the place called Sade Qerim, with the surface of 04.27.62 ha (hereinafter: the claimed property).
2. S. states that he cannot exercise the property right due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 13 June 1999 as the date of loss, and that the property is usurped by T. G..
3. To support his claim, he provided the KPA with the following documents:
 - Possession List no. 2259, issued by the Geodesy and Cadastral Service Institution in the Municipality of Gjakova, dated 7 October 1997, showing S. as co-owner of the claimed property. Other co-owners are Industrial Agricultural Combine "Ereniku" from Gjakova, and two other persons.
 - Minutes dated 16 February 1998 of the judicial settlement at the Municipal Court of Krushevc.
 - Decision no. 952-01-98-53-C, issued by the Geodesy and Cadastral Service Institution in the Municipality of Gjakova, dated 17 February 1998, wherewith the request for registration at cadastre of 1/3 ideal parts of the claimed property on behalf of B. S., was granted, following the judicial settlement on property inheritance of M. S.

4. According to the verification report dated 21 December 2010, the claimed property was divided into three parcels and the same was sold based on the Purchase Contract Vr. Nr. 273/2007, dated 29 January 2007.
5. Identification of the claimed property took place on 10 July 2007. The property was not occupied. On 30 July 2010, the PAK re-identified the property by publishing it in the Notification Gazette no. 6 and at the UNHCR Property Bulletin Office. The same publications were also left at the Municipal Court in Gjakova, Cadastral Office, Municipality of Gjakova, Peja Regional Office, Ombudsperson, EULEX, etc.
6. On 27 November 2013, with its decision KPCC/D/A/220/2013, the Commission dismissed the request due to the lack of jurisdiction. The KPCC in its reasoning notes that the claimant initially states that he lost the possession as the consequence of armed conflict but according to the submitted document and the researches “ex officio” by the Secretariat, it resulted that the property was lost due to the voluntary alienation through sale.
7. On 6 June 2014, the KPCC decision was served on the claimant. B. S. received the KPCC decision through his adult son M. S. (his family relation with the claimant was proven at the Agency through birth Certificate dated 31.01.2014)
8. On 1 August 2014, the claimant (hereinafter: the appellant) filed an appeal.

Allegations of the appellant

9. The appellant alleges to have lost the possession due to involuntary abandonment of the property and seeks the return of possession of the claimed property. Following the information received by the PAK, that the property was alienated through sale, he initially stated that he gave authorization to lawyer T. B, and that the same acted on his behalf, but later on he denied to have given the authorization. However, he did not submit any additional document to support his allegation.

Legal reasoning

Admissibility of the appeal

10. The Supreme Court of Kosovo reviewed the appealed Judgment pursuant to provisions of article 194 of LCP, and after the assessment of appealed allegations it found that:

The Court accepts the reasoning on the delay after 30 days but concludes that the appeal is unfounded.

11. Article 12.1 of Law no. 03/L-079 provides as follows: “*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the [KPCC] on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*”.

12. The KPCC decision was served on the appellant on 06 June 2014. The appellant filed the appeal on 1 August 2014.

13. The KPCC decision was served on the appellant pursuant to Article 111.1 of the LCP that provides the possibility of serving the document to any adult member of his or her household.

14. The appellant requested the review of his appeal although he missed the legal deadline of 30 days, by indicating in the appeal that the reason of his delay is the illness and the medical treatment at the respective health Institutions.

15. To support his allegation for failing to file the appeal he attached the following medical documentation:

- a. Discharge paper dated 09 July 2014 by the General Hospital in Krushevac.
- b. Discharge paper by the Cardiovascular Institute “Dedinje” Beograd

16. The Court found that the appellant’s claim for return to previous situation is pursuant to Article 129.1 of LCP which provides that “when the party does not take part in the proceeding or misses the due date for completion of any procedural action and due to this it loses the right to complete the procedural action bound to the prescribed period of time, the court may permit this party to complete this action with delay if there are reasonable circumstances which cannot be determined or avoided.

17. Article 7.4 of Administrative Directive no. 2007/05 on the implementation of Regulation no. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property provides that “if a party fails to comply with any

requirement for an action to be taken within a prescribed period of time pursuant to section 12 of UNMIK Regulation No. 2006/50 or the present Administrative Direction, the Chairperson of the Commission or the Presiding Judge in the appeal may permit the party to comply with that requirement outside the prescribed period of time if he or she considers that there are justifiable reasons for that party's failure and that no other party would suffer serious and irreparable prejudice if the defaulting party were permitted to comply outside the prescribed period of time".

18. The Court considers the appeal as timely, because party submitted documents' proving that his illness could not be anticipated nor avoided and the procedure is returned to previous state prior to party's omission.

Merits of the appeal

15. Following the review of the case file and appellants allegations, the Supreme Court found that the appeal is unfounded.
16. The KPCC decision is correct. The Court finds that neither violation of substantive law or procedural law nor an erroneous or incomplete determination of the facts has been made.
17. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereinafter: the Regulation), a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 (the armed conflict).
18. It is undisputed between parties that the appellant, or his family, initially have lost their possession of the claimed property due to circumstances resulting from the armed conflict.
19. However, on 31 July 2013 and 4 September 2013, the appellant was contacted by the Executive Secretariat of PAK, regarding the fact that on cadastral registries the claimed property is found to be under the name of third persons as co-owners and that the sale

and the physical parcelling of the claimed properties took place according to the authorization given by the appellant. The appellant confirmed that the properties were sold based on the authorization he gave to T.B.

20. The appeal of S. reiterates the same allegations he made before the KPCC. No new evidence was submitted with the appeal.
21. Item 27 of the KPCC decision explains that despite the allegations of claimant that the property was lost due to the conflict and not because of the sales through contract, the parcel no. 4455 is actually divided into three parcels 4455/1, 4455/2 and registered under the name of new owners according to the contract Vr.Nr.273/2007, whereas parcel no. 4455/3 with the surface of 01.42.54 ha, is registered as socially-owned property of Agricultural Combine “Ereniku”.
22. The Supreme Court considers based on his statement that the appellant failed to prove that his claim involves circumstances related to or resulting from the armed conflict during 98-99. In addition, the Supreme Court considers that the loss of possession is a result of voluntary alienation of this property by its sale after the conflict.
23. In the light of foregoing, pursuant to Section 13.3 (c) of the Law 03/L-079, the Court decided as in the enacting clause.

Legal Advice:

24. Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge,

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar