

**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-138/12

Prishtinë/Priština, 17 January 2014

In the proceedings of

Municipality of S., represented by the Municipal Public Lawyer

Appellant

vs.

J. A.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered at the KPA under No. KPA49488) of 23 February 2011, after deliberation held on 17 January 2014, issues the following

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 of 23 February 2011 as far as it regards the claim registered under No. KPA49488 is annulled.

2. The claim of J. A., registered under No. KPA49488 is dismissed due to lack of jurisdiction.

Procedural and factual background:

1. On 23 November 2011, J. A. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of the cadastral parcel no. 1765 at the place called “Kodra”, a 5th class field, with a surface of 0.30.07 ha, cadastral zone of Mohlan., Municipality of S. Possession over this immovable property was lost on 13 June 1999 as a result of circumstances in Kosovo in 1998/1999. He sought the ownership confirmation and repossession right. To support his claim the claimant provided the KPA with the following documents:

- Possession list no. 58 of Municipal Department of Geodesy in S., dated 11.12.1985. This possession list established that the claimant A. J. is the property right holder over the claimed cadastral parcel.
- Claimant’s ID card issued by the Municipality of S. under no. 13640 dated 17.03.1981

2. In the meantime, the claimant’s daughter Ž. M. provided the KPA Executive Secretariat with the following evidence:

- ID card of the claimant’s daughter Ž. M. issued by the Municipality of S. on 27.06.2006 (parallel body of Serbia),
- Death certificate of the claimant J. A. dated 19.10.2009 issued by the Municipality of Užice, Republic of Serbia, which established that the claimant died on 11 October 2009 in Užice, Republic of Serbia.

3. The KPA Executive Secretariat has obtained ex officio the Certificate of Immoveable Property Rights no. UL-72116028-00058 issued by the Municipal Cadastral Office in S. on 5 May 2008,

whereby it is established that the cadastral parcel 1765 is registered under the claimant's name. The KPA Executive Secretariat has also established that the possession list no. 58 dated 11.12.1985 regarding the cadastral parcel 1765 of cadastral zone of Mohlan, Municipality of S., is identical with the Certificate of Immovable Property Rights no. UL-72116028-00058 issued by Municipal Cadastral office in S. on 05 May 2008.

4. In April 2008, KPA made the notification regarding the claim by placing a sign at a place where the parcel was allegedly situated.

5. In June 2010, KPA made again the notification regarding the claim by publishing the claim on the Notification Gazette No. 4 and on the Bulletin of UNHCR Property Office. The gazette and the list were also left with the owner of a shop in the village of Mohlan who accepted to make them available to interested parties. Similar publications were also left at the entrance and the exit of the village of Mohlan as well as in several public offices in S. Distribution and publication of the newspaper was also done in the municipal building, Municipal Court and Cadastral Office in Prizren.

6. Since no party responded, the claim was treated as uncontested and the KPCC through its decision KPCC/D/A/100/2011 dated 23 February 2011, granted the claim and ruled that the claimant had proven the property right, thus recognizing his property right over the parcel and granting repossession.

7. On 14 November 2012, the Municipal Public Lawyer of S. (hereinafter: the appellant) filed an appeal with the KPA, indicating that the parcel 1765 was registered in the claimant's name but it is being used for the needs of a Health House in the village of Mohlan, Municipality of S. He further stated that according to the decision 6672/54 dated 02 July 1955 the parcel was expropriated according to the descriptive cadaster in the interest of the construction of school, and the Health House premises were built 20 years ago on the same parcel. These changes according to the said decision have not been recorded in cadaster, and the immovable property is therefore still under the name of the claimant.

8. On 27 December 2012, the appeal was served to the claimant's daughter (hereinafter: the appellee) and she submitted a response to the appeal on 21 January 2013. In her response to the appeal, she stated that the appellant has not participated in the administrative procedure before KPA and according to the notification of publication of the claim on the official gazette or before the relevant public authorities as well as the expropriation documentation submitted by the appellant, the

appellant does not refer to the property of his father S. A. but of his grandfather J. A., and he therefore proposed to reject the appeal as unfounded.

Legal reasoning:

9. Pursuant to Section 12.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property, a party may file an appeal within thirty (30) days of notification of decision.

10. The municipality of S. was not a party before the KPCC. The Supreme Court therefore has to decide whether the appeal is admissible.

11. The Supreme Court has in several judgments taken the position that an appellant who was not aware of the proceedings before the KPCC, may appeal a KPCC decision when the claim was published by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin, and not by posting of sign on the claimed property. The Supreme Court refers i.e. to case GSK-KPA-A-109/12, where it is stated that:

“The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings - his appeals are admissible”

12. In case GSK-KPA-A-62/12 the Supreme Court has stated that public bodies must be expected to make itself acquainted with the publications of the KPA, and that public bodies therefore cannot be excused for not being aware of claims that have been published in this manner.

13. The Supreme Court has therefore established a norm that is more strict for public bodies than for private persons and entities.

14. The Supreme Court finds that the principle laid down in case GSK-KPA-A-62/12 cannot be followed in cases where the KPCC has decided a case outside its jurisdiction. The consequence of such a practice would be that vital public interests could be harmed by an invalid decision. Taking this into consideration the Supreme Court finds the omission of the municipality to take notice of the claim excusable, and decides that the appeal is admissible.

15. According to Section 3.1 of UNMIK Regulation 2006/50 as amended with Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of 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.

16. According to the expertise of the geodesic expert dated 3 September 2013, after observing the orthophoto and the copy plan of the cadastral parcel which is the subject matter of the claim, it is ascertained that the primarily school and ambulance buildings were erected on it.

17. Also, according to the reply No. 245 dated 14 November 2013 of the Directorate of Service for Property Related Matters and Cadaster of S. the Panel's order dated 31 October 2013, it is confirmed that within the part of the cadastral parcel 1765 in 1973 the prefabricated school building of Molhan village was erected. That building does not exist anymore, since the same is destroyed. Road through this parcel has existed since before the war.

18. Based on these evidences and without any hesitation, it is to be confirmed that the KPCC and KPA Appeals Panel of the Supreme Court does not have the jurisdiction to decide on this concrete judicial dispute. This is because the verified facts and administrated evidences showed that the claimant and the property right holder neither left the claimed property nor lost possession of it because of the conflict or as a result of the circumstances which are directly related or as a result of the armed conflict occurred in Kosovo between 1998/1999. The burden of proof was on the appellee in order to prove his allegation that he lost possession of the property as the result of this conflict.

19. It is undoubtedly that the loss or inability of the possession refers to the period of time before 1998/1999 – before the armed conflict started.

20. This is why the KPCC decision had to be annulled and the claim be dismissed (Article 11.4 (b) of the UNMIK Regulation 2006/50 as amended with Law No. 03/L-079).

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar