

**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-037/2014

Prishtinë/Priština, 21 January 2016

In the proceedings of

- 1. S.M**
- 2. B.B.**
- 3. T.B.**
- 4. B.B.**

All from village Llutogllavë/Ljutoglava

Appellants

vs.

S.M.

Bulevar Despota Stefana 68b/9
11000 Belgrade
Serbia
Representative: Liljana Velimir Obradović

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Anna Bednarek Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission (henceforth: KPCC) No. KPCC/D/A/203/2013 (case file registered at the KPA under No. KPA08816), dated 11 June 2013, after the deliberation held on 21 January 2016 issues the following

JUDGMENT

1. The Appeal of B.B. , T.B. and B.B. against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/203/2013, dated 11 June 2013, is dismissed as inadmissible.
2. The Appeal of S.M against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/203/2013, dated 11 June 2013, is rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission No. KPCC/D/A/203/2013, dated 11 June 2013, is confirmed as far as it concerns Claim No. KPA08816.

Procedural and factual background:

1. On 31 January 2007 L.V.O. filed a Claim at the Kosovo Property Agency (KPA) seeking the confirmation of the ownership right and the repossession of the parcel: forest with the cadastral parcels numbers 167-3 and 167-28, located in Cadastral Zone Llutogllavë/Ljutoglava, Municipality of Pejë/Peč, and with total surface 4.44.09 ha (hereinafter referred to as: the claimed property). L.V.O. presented the Power of Attorney signed by her cousin S.M. (henceforth: the Appellee) giving her the authority to represent him in the proceedings before the KPA. She stated that V.M. – the father of the Appellee, who died in 1977 (henceforth: the Appellee's father), is still registered as $\frac{3}{4}$ owner of the claimed property and that the Appellee inherited the claimed property after his father. She stated further that the property was lost due to the circumstances in Kosovo that took place between 1998/1999, indicating as the date of loss 12 June 1999.
2. Together with the Claim, she provided *inter alia* the following documents:
 - A Possession List No. 181, dated 25 June 1979, issued by the Cadastral Office of Ljutoglava/Ljutogllavë. In this document the Appellee's father is listed as the owner of $\frac{3}{4}$ part of the parcel 167/3 with the surface of 4.44.09 ha;
 - The Inheritance Decision No. O. 605/08, dated 11 December 2008 of the Basic Court in Cetinje, Montenegro. According to this Decision the Appellee has inherited the claimed property from his deceased father;

- A Power of Attorney Ov.Br.8538/2010, dated 31 December 2012, by which the Appellee authorized L.V.O. to undertake any procedural actions regarding the claimed property on his behalf.
3. From the Consolidated Verification Report dated 4 April 2013 it results that these documents submitted by the Appellee were positively verified by the KPA. The latter one *ex officio* found the Certificate for the Immovable Property Rights UL-71611058-00134 dated 25 September 2012, which lists Vaso Martinović, Appellee's father, as the co-owner for $\frac{3}{4}$ parts of the claimed property. The KPA also found that the claimed property, that originally was registered under the number 167/3, was subsequently divided in two parcels with the numbers 167/3 and 167/28.
 4. On 9 November 2012 the KPA located the claimed property based on the coordinates taken from the KPA web map and notified the Claim. According to the notification report on the claimed property there was found a new constructed house with supporting buildings. The claimed property was found occupied by S.M. (henceforth: the Appellant 1). He claimed a legal right over the claimed property and signed a notice of participation on 9 November 2012. Appellant 1 declared that he would participate in the proceedings before the KPA. He indicated moreover to have bought the claimed property 50 years before. He did not submit any evidence to the KPA.
 5. On 11 June 2013, the Kosovo Property Claims Commission through its Decision No. KPCC/D/A/203/2013 (hereafter to be referred to as: the KPCC Decision) granted the Claim. Reasoning its Decision (paragraphs 18-21 of the Cover Decision), the KPCC underlined that the Appellee had filed convincing evidence to prove his ownership right, and that the Appellant 1 failed to provide any evidence to support his assertion.
 6. The KPCC Decision was served upon the Appellant 1 on 1 November 2013 and to the Appellee on 16 September 2013. On 15 November 2013 Appellant 1, as well as B.B. , T.B. , B.B. (the latter persons henceforth referred to as: the Appellants 2-4) filed an Appeal against the KPCC's Decision. On 7 March 2014 the Appellee filed a Response to the Appeal.

Allegation of the parties

7. The Appellants 1 and 2-4 request the Supreme Court to change the KPCC Decision and to issue a decision confirming the right of the possessors to exploit the claimed property. In their Appeal they allege that the claimed property has been a socially owned property on behalf of Agricultural Industrial Cooperation in Pejë/Peč and in the possession of the Appellant's predecessors, U.B., father of Appellants 2-4. To U.B. it was recognized the ownership right over the claimed property with the decision No. 2341/67, dated 1 December 1970, issued by the Commission for the Review of the judicial property relations. The Appellants submit a copy of that (alleged) decision (henceforth: the Review decision of 1970). They propose to summon in the capacity of witnesses two neighbours of the Appellants, who can testify that none of the persons that have been registered in the Cadaster as owners ever possessed the claimed property.
8. In his Response to the Appeal the Appellee requests to reject the Appeal as unfounded. He states that the Appeal does not provide any argument that would challenge the KPCC Decision. Furthermore he explains that the Appellants' statements are contradictory, because in the proceedings before the KPA/KPCC the Appellant 1 stated that he had bought the claimed property 50 years ago. The Appellant 1 could not prove his ownership. In the Appeal the Appellants 1 and 24 claim that the alleged legal predecessors U.B. who acquired the property based on the basis of the decision of the municipal committee.

Legal Reasoning

9. *Admissibility of the Appeal* The Appeal of the Appellants 2-4 is inadmissible, because they were not party in the proceedings before the KPA/KPCC. The Supreme Court reiterates that according to Section 12.1 as read in conjunction with Section 10.2 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) only the responding party who in the first instance informed the KPA of his or her intention to participate in the administrative proceedings, may submit an appeal against a decision of the KPCC. As it was already expressed in the case law of the Supreme Court, only in exceptional circumstances the

deviation from this rule may be allowed when a party has justified reasons for not participating in the proceedings before the first instance. The Appellants 2-4 do not present any such justified reasons, while the Claim has been properly notified by the KPA.

10.The Appeal of the Appellant 1 is admissible. He filed the Appeal within 30 days, as foreseen by Section 12.1 of the Law UNMIK 2006/50.

On the merits

11.The Supreme Court of Kosovo finds that the appealed KPCC Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal of the Appellant 1 is rejected as unfounded. The reasons for this conclusion are the following.

12.The Appellant 1 submitted with the Appeal, the Review decision of 1970 to support his allegations. According to this decision that Commission ‘*recognized the property right of U.B. and other, as well their family members from Llutogllavë/Ljutoglava in the part of parcel No. 167/3 forest in a surface of 2.00.00 ha registered in the Possession List no. 121 in Llutogllavë/Ljutoglava*’.

13.Section 12.11 of UNMIK Regulation 2006/50 foresees: “*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned.*” The Appellant 1 had the opportunity to submit this document before the KPA/KPCC, but he failed to do so. In his Appeal he does not give any explanation why he did not submit the document earlier. On this basis the Supreme Court assesses that this document cannot be considered as evidence in this appeal. The same goes for the proposed witnesses.

14.KPCC established that Appellee has the ownership right to the claimed property. KPCC based that conclusion on the documents submitted by the Appellee and found *ex officio*, meant here fore in paragraphs 2 and 4. Appellant failed to prove before KPCC and in appeal that he has any right to the claimed property. In the first instance proceedings the Appellant 1 declared on 9 November 2012 that he had purchased the property from the previous owner 50 years before, without submitting any evidence to support his statement. When contacted by the KPA on 1 March 2013 the Appellant 1 even denied his

first declaration by alleging that he had not bought the property from anybody since it was owned by the enterprise “Forest Economy”, but also did not provide any evidence for that statement. He confirmed that he had built a house on the claimed property and that he had been in contact with the Appellee after the war in order to buy the claimed property. The negotiations had failed due to disagreement regarding the price. This declaration was confirmed by the Appellee during a phone conversation with the Executive Secretariat. These allegations of the Appellant 1 cannot lead to another conclusion about the property rights of the Appellee on the claimed property.

15. This leads the Supreme Court to the conclusion that the KPCC has taken a correct decision giving proper reasoning while granting the Claim of the Appellee.

Conclusion

16. Considering what was mentioned above and pursuant to Section 13.3(c) of the UNMIK Regulation 2006/50, the Supreme Court decided as in the enacting clause of this Judgment.

Legal Advice

17. Pursuant to Section 13.6 of Law UNMIK 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

Anna Bednarek, EULEX Judge

Sandra Gudaityte, EULEX Registrar