

**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-176/2015

Prishtinë/Priština
18 April 2018

In the proceedings of:

M. D.

Represented by:

I.O. (lawyer)

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 (the case file registered at the Kosovo Property Agency under the number KPA21380), after the deliberation held on 18 April 2018, issues the following:

JUDGMENT

1. **The Appeal filed by Z. D. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014; with regard to the Claim registered with Kosovo Property Agency under the number KPA21380 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 with regard to the Claim registered under the number KPA21380 is confirmed.**

Procedural and factual background

1. On 20 April 2007, M. D. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) seeking a repossession over the part of the cadastral parcel No 857/2, classified as forest with the surface of 03.38.00 ha, located at the village “Drsnik”, in the Municipality of Klinë/Klina (hereinafter “the claimed property”). She declared to be the sole owner of the property that she had acquired on the basis of the Decision of the Municipality of Klinë/Klina. According to the Appellant, the claimed property is being occupied by unknown person. The loss of the possession over the property was as the result of the circumstances of 1998/1999 that accrued in Kosovo. As a date of loss she indicated 17 June 1999.
2. To support her Claim, the Appellant provided the KPA with the copy of the Decision No 04-463-54/92-2, issued by the Municipal Assembly of Klinë/Klina, Department for Urbanism, Housing, Utilities and Immovable Property Affairs on 5 March 1997 whereby the request of the Appellant was approved and the final Ruling No 215 issued by Second Municipal Commission on Review of Property Relations deriving from arbitrary usurpation of socially owned land dated on 1 December 1963 was quashed. Moreover, it was established that the Appellant was the owner of the claimed property; hence, the Cadastral Office of Klinë/Klina was obliged to register the claimed property under the name of the Appellant. The Decision became final on 8 April 1997.
3. The Notification of the Claim occurred on 17 Jun 2010 by publishing it in the KPA Notification Gazette No 2 and the UNHCR’s Property Office Bulletin. The Gazette and the list were left with the Head of Village, who accepted to make it available for interested parties. The same publications were left at the Municipality of Klinë/Klina, the Cadastral Office and Municipal Court of Klinë/Klina, the KPA Regional Office of Pejë/Peç. In addition, the List and the Gazette were distributed to the UNHCR, the Ombudsperson, the DRC, the Kosovo Privatization Agency.
4. The Decision No 04-463-54/92-2 was neither found at the competent institutions in Kosovo nor in dislocated organs, while the claimed property was found to be socially-owned Property registered under the name of the SOE “Ekonomia e Pyjeve”.
5. On 30 April 2014, the KPCC with its Decision KPCC/D/A/236/2014 dismissed the Appellant’s Claim with the reasoning that she had failed to show that the Claim involved circumstances directly related or resulting from the 1998-1999 conflict. For that reason, in

the opinion of the Commission, the Claim fell outside of its jurisdiction and thus stood to be dismissed.

6. The Decision was served on the Appellant on 24 November 2014, while the Executive Secretariat of the KPA received the Appeal on 24 December 2014.

Allegations of the Appellant

7. The Appellant challenged the KPCC's Decision on the grounds of substantial violation of substantial and procedural law, as well as on the ground of incomplete determination of the factual situation.
8. According to the Appellant, the KPA rendered its Decision without analysing and reviewing the evidence attached to the Claim, because the Appellant is the owner of the claimed property based on the Decision No 04-463-54/92-2, which became final on 8 April 1997. The Appellant declared that the Directory for Cadastre has been authorized to perform the changes at the Cadastre, meaning that if the Cadastre failed to perform its duties this cannot affect her rights over the claimed property.
9. Finally, the Appellant requests the Supreme Court of Kosovo to approve her appeal as grounded and to recognize her as the owner of the claimed properties.

Admissibility of the Appeal

10. Section 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 Commission 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*".
11. The Decision was served on the Appellant on 24 November 2014, while the Executive Secretariat of the KPA received the Appeal on 14 January 2015. However, the Supreme Court found the receipt of the Post of Kosovo showing that the Appellant submitted the Appeal on 24 December 2014.
12. Article 127.2 of Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008) provides as follows: "*when a submission is sent by post, registered mail or telegram, the date of mailing or sending it shall be considered as the date of the service on the court to which it has been sent....*"
13. Therefore, the Appeal was filed within 30 days as foreseen by Article 12.1 of the Law No. 03/L-079 and is admissible.

Legal reasoning

14. After having reviewed the documents contained in the case file, the Supreme Court is of the opinion that the assessment of the KPCC was correct and the arguments raised by the Appellant could not lead to the modification of the Decision.
15. In the light of the documentation gathered in the case file the only valid conclusion about the property/possession right of the Appellant is that none of the evidence shows indeed that the Appellant was in possession of the claimed property before or during the conflict and that the loss of possession of it took place due to the conflict.

16. The Executive Secretariat of the KPA had made a negative verification of the document, on which the Appellant bases her Claim for ownership. The KPCC had not been able to obtain *ex officio* any further evidence that would support the Appellant's allegations.
17. According to the Article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time when the Decision No 04-463-54/92-2 was issued, the right of property can be acquired by law itself, based on legal action or inheritance....on the basis of the legal action (which is the Decision at this case) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by Law (article 33 of the Law on Basic Property Relations, OG SFRY, No 6/1980).
18. The Appellant did not submit any document with that regard. In particular, she did not prove that the Decision No 04-463-54/92-2 of the Municipal Assembly of Klinë/Klina of 5 March 1997 has ever been executed, and as a consequence that the Appellant obtained the possession of the claimed property, which subsequently could have been lost due to the conflict. The Executive Secretariat of the KPA instead, has found *ex officio*, the Certificate for Immovable Property Rights showing that the claimed property was registered as the socially-owned property under the name of "Ekonomia e Pyjeve". This lead the Court to the conclusion that the Appellant could not have gained the property right effectively, since the requirements of the Article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled.
19. Considering what was mentioned above, the Supreme Court contends that the Claim falls outside the jurisdiction of the KPA. The fact that within the cadastral registers the claimed property appears to be registered as the socially -owned property excludes the possibility for the KPA to examine the case. For that reason the Claim was to be dismissed and the Appeal rejected as unfounded.
20. In the light of the foregoing, pursuant to Section 13.3(a) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar