

**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-094/15

**Prishtinë/Priština
13 September 2017**

In the proceedings of:

M. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Isa Kelmendi, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (the case file registered at the KPA under the No KPA50836) of 27 November 2013, after the deliberation held on 13 September 2017, issues the following:

JUDGMENT

- 1. The Appeal of M. J. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 of 27 November 2013, regarding the case file registered at the KPA under the number KPA50836 is rejected as unfounded.**
- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 of 27 November 2013, as far as it regards the case registered under the number KPA50836 is confirmed.**

Procedural and factual background

1. On 30 November 2007, M. J. (henceforth “the Appellant”) filed a Claim to the Kosovo Property Agency explaining that her late father M. M. was a property right holder and sought a repossession of the immovable property located at the place called Zllakuqan/Zlakucane in the Municipality of Klinë/Klina, cadastral parcel No 371/1 with a surface of 00.60.56 ha (henceforth “the claimed property”). She claims to have lost the claimed property due to circumstances related to the armed conflict of 1998/99 that occurred in Kosovo and indicated 17 June 1999 as the day of loss.
2. To support her Claim, M. J. provided the KPA with the following documents:
 - The copy of the Purchase Contract concluded on 12 December 1958 between M. J. as a Seller and M. M. as a Buyer of the claimed property. The signatures below the Contract were legalised by the clerk of the District Court of Gurakoc/Đurakovac under the No 425/58.
 - The Copy of the Marriage Certificate No 10 issued by the Civil Registration Office of the Municipality of Plavë/Plav, in Montenegro on 15 November 2007, proving family relationship between the Appellant and her late father.
 - The copy of the Birth Certificate No III-200-3-1639/2008-07 issued by the Civil Registration Office of the Municipality of Kragujevac on 19 May 2008, proving family relationship between the Appellant and her late father.
 - The copy of the Possession List No 46 issued by the Geodesic Institute of the Republic of Serbia, Office for Real Estate and Cadastre for Klinë/Klina Municipality on 15 September 2008, showing the claimed property being registered under the name of M. M.
 - The copy of the Death Certificate No 6 issued by the Civil Registration Office of the Municipality of Klinë/Klina on 24 August 2009, showing M. M. passed away on 7 August 1991 at the place called Radulovac.
3. On 25 October 2013, the Executive Secretariat of the KPA carried out the physical notification of the Claim and the claimed property was found to be occupied by unknown person. Following the notification of the claim and within the legal time limit of 30 days, nobody presented himself/herself as Respondent or Interested Party before the KPCC, thus the Claim was considered uncontested.
4. According to the verification reports all the documents submitted by the Appellant were positively verified.
5. With its Decision number KPCC/D/C/220/2013 of 27 November 2013, the KPCC dismissed the Claim of the Appellant on the basis of Section 11.4 of the Law No 03/L-079, as the Claim has been previously considered and decided in a final administrative decision. The Commission explained that the claimed property had been subject of the revision and Decision of the KPCC already in February 2013. The Appellant had filed another Claim, registered at the KPA under the number KPA50832. The subject matter of that Claim was the repossession over the claimed property.
6. The KPCC’s Decision was served on the Appellant on 30 October 2014. She filed an Appeal on 28 November 2014.

Allegations of the Appellant

7. The Appellant alleged that the Decision made by the KPCC is based on erroneous and incomplete determination of the factual situation and on misapplication of the substantial law. She stated that it was not true that the case had been previously decided by the administrative or judicial decision and that she was not aware of that circumstance. The claimed property subject to the Claim KPA50836 had never been under the administrative or judicial procedure. Concluding, the Appellant requested to review the Claim again and to reverse the Decision of the KPCC by granting the repossession in her favour.

Legal reasoning:

8. The Supreme Court, after having reviewed the allegations of the Appeal and the content of the case file, concludes that the Decision of the KPCC does not involve any fundamental error or serious misapplication of the applicable substantial law, nor it rests upon an erroneous or incomplete determination of the facts. Hence, the Appeal may not be granted.
9. On 30 November 2007, the Appellant filed the Claim to the KPA. The Claim was registered under the number KPA50832. The subject matter of that Claim was a cadastral parcel No 371/1 with the surface 00.60.56 ha, located in the Municipality of Klinë/Klina, in Zllakuqan/Zlakucane. By its Decision KPCC/D/A/186/2013 issued on 13 February 2013, the Commission established that M. M. was the owner of the claimed property, hence, the Appellant was entitled to the possession of the claimed property (cadastral parcel No 371/1 and cadastral parcel No 371/2). The mentioned Decision was served to the Appellant on 31 July 2013. She signed the receipt and attached a copy of her ID card.
10. On the very same day, the Appellant filed another Claim for the re-possession of the same land parcel. That Claim was registered under different number, namely: KPA50836. The latter one is subject to the Appeal in the case at hand. However, according to Section 11.4 of the Law No 03/L-079 the same Claim cannot be reviewed and decided twice. Considering that the KPCC has previously decided upon the same request of the Appellant, the Claim in the present case has to be dismissed, as the Decision KPCC/D/A/186/2013 was issued as a result of an administrative procedure.
11. Therefore, the Supreme Court considers that the Decision of the KPCC was correct and based on properly applied legal provisions of Section 11.4(c) of the Law No 03/L-079. Consequently, pursuant to Section 13.3.(c) of the Law No 03/L-079 and Article 195.1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal Advice

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

Beshir Islami Presiding Judge

Anna Bednarek, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, EULEX Registrar