

**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-265/15

Prishtinë/Priština,
3 May 2018

In the legal proceedings of:

V.M. D.

Appellant

vs.

M. C.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani members, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/262/2014 (case file registered at the KPA under the number KPA06555), dated 21 October 2014, after the deliberation held on 3 May 2018 issued the following:

JUDGMENT

1. **The Appeal of V. D. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/262/2014 dated 21 October 2014; regarding the Claim registered at the KPA under the number KPA06555 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/262/2014 dated 21 October 2014; regarding the Claim registered at the KPA under the number KPA06555 is confirmed.**

Procedural and Factual Background

1. On 02 February 2007, M. C. (hereinafter: the Appellee) filed a Claim with the Kosovo Property Agency (hereinafter: the "KPA") whereby she requested the confirmation of the ownership right and repossession over the cadastral parcel No.13, with culture yard with a surface of 0.04.51 ha, located at the village Krstovac Municipality of Peja/Peć (hereinafter: the claimed property). She stated that her late father, S. C, is the owner of the claimed property on which was located a house which had been demolished. She has no information about the status of the property and seeks its repossession. The Appellee alleges that loss of the possession over the claimed property was as a result of the circumstances in Kosovo during the period 1998/99, indicating the date 15 June 1999.
2. To support her Claim she submitted the following evidence at the KPA:
 - The Possession List No.11 dated on 08 December 2004, issued by the Department for Cadaster and Geodesy of the Republic of Serbia, Service for the Municipality of Pejë/Peć, (displaced in Serbia). According to the Possession List, C. S.. is owner of the claimed property.
 - The Birth Certificate No. 200-1-781, of M. C., issued by the Civil Registry Office, of Gorazhdec/Gorzdec on 14 April 1994,
 - The Death Certificate Certificate No. III-203-2162/2007/07 issued by Civil Registration office of Kragujevac on 29 October 2007, confirming S. C.had died on 12 August 1973 in the village Kerstoc/Krstovac.
3. On 07 March 2007, the KPA performed the notification of the Claim which was found to be a destroyed house with a yard. On 24 September 2010, the notification was performed by publishing it in the KPA Notification Gazette No. 9 and in the UNHCR Bulletin, at the Municipality of Pejë/Peć, Municipal Court pf Peja/Peć as well as the List was left with the village leader I.S. to make it available to the interested parties. On 09 February 2011, the KPA made a new notification of the claimed by founding it to be a new house usurped by M. D., who stated that he bought the property from I.R.(third party) but without registering it in their names. In meantime M.D had died.

4. On 19 August 2014, the son of M. D., V.M. D., (hereinafter: the Appellant) approached the KPA by confirming his participation in the proceedings and claiming a legal right over the property. He alleges that his father, M. D. has bought the claimed property before 1999 from a third party who has bought this property from the property right holder 30-40 years ago. Additionally, he states that he has no documents to prove his property right over the stated property but he will try to obtain statements from witnesses.
5. The Appellee has been contacted by the KPA Secretariat, and she denied that the claimed property has been sold by the property right holder (her father) to the Appellant or to a third party.
6. According to the KPA verification reports, the above-mentioned documents have been positively verified. Also, the Possession List No. 11 dated 26 August 2008 was obtained *ex officio* by the Secretariat and it shows the claimed property in the name of the Appellee's father.
7. On 21 October 2014, in its Decision KKPK/D/R/262/2014, the KPCC decided that the Appellee has proven that S. C. is owner with 1/1 ideal part of the claimed property and that the Appellee has a right of possession over the claimed property.
8. On 26 March 2015, the KPCC's Decision was served on Appellee who did not file in a Response.
9. The Appellant received the KPCC's Decision on 26 January 2015. He filed an Appeal at the Supreme Court on 10 February 2015.

Allegations of the Appellant

10. The Appellant states that he challenges the KPCC's Decision which is in favor of the Appellee. The Appellant added that he has inherited the claimed property from his predecessor who has settled in Krstoc/Krstovac village in 1970, and that S. C. had sold the claimed property to R. B. in 1979. His grandfather R. D. and his brothers in 1980 bought the (the claimed property from R.B. He also added that there were two old houses in this parcel, which were burned during the armed conflict and that ever since they bought the claimed property they have paid the property tax but in his Municipality there are no pre-conflict registries. He also claims that there are many witnesses (in the Appeal he has indicated three witnesses by their name and surname) who are ready to tell truth before any competent body.
11. The Appellant submitted with his Appeal the following document:
 - Property Tax Bill for the year 2006, the year 2014 and of 30 December 2014 in the name of M. R. D. as well as five pictures of houses.

Legal Reasoning

Admissibility of the Appeal

12. The Supreme Court of Kosovo reviewed the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure (Law No. 03/L-006) and after considering the appellate allegations found that the Appeal is admissible because it has been filed within the deadline provided under Section 12.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, which provides that the party may file an Appeal against the Commission's Decision, within the deadline of thirty (30) days from the notification of the party about the Decision.

Merits of the Appeal

13. After reviewing and assessing the case file documents and the allegations of the Appellant, the Supreme Court found that the Appeal is ungrounded. The KPCC Decision is fair. The Court could not find any evidence to conclude that the challenged Decision rests on incomplete determination of the factual situation or on erroneous application of material and procedural law.
14. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Claimant has a right to an order from the Commission for repossession of the property if the Claimant not only has established his/her ownership right over the private immovable property but also that he/she now is unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. Given that the Appellant states that the date of loss is June 1999 the claim is related to the circumstances which are directly related to or result from the armed conflict in Kosovo.
16. The Supreme Court agrees with the KPA's Decision that the Appellant while claiming his legal right over the property, failed to file any documents or any other valid information to support such rights during the adjudication at the first instance by the KPCC despite the fact that he was given such an opportunity. The same, apart from stating the same arguments before the Supreme Court he failed to submit any evidence to prove that such a sale transaction has been made by him, his father or his predecessors. With his Appeal, the Appellant presents a number of property tax bills. Nevertheless, based on them, an acquisition of a legal property right over an immovable property cannot be established because the property tax is paid for the use of the residential premises and it does not establish a property title.
17. According to Article 12.11 of the Law No. 03/L-079, 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. Therefore, such statements at this stage would not be relevant and would not have another legal effect during the adjudication.

18. As to the request of the Appellant for reviewing witnesses statements who would eventually testify regarding the informal transaction, the Supreme Court points out also based on the following legal basis: Article 5.3 of the Annex III of the Administrative Direction 2007/5 on the Implementation of the UNMIK Regulation 2006/50, on the Resolution of Claims related to Private Immovable Property including Agricultural and Commercial Property that: *“The proceedings before the Commission is based on verbal submissions and documents, where it serves the interest of justice, a verbal hearing. In view of Section 11.2 of the UNMIK Regulation No. 2006/50. The decisions are reached on the basis of the claims from parties, including documentary evidence”*. Therefore, the Supreme Court considers that the present case under review has no need for further explanations. Hence there is no need of applying Section 12.10 of the UNMIK Regulation 2006/50, as amended by the Law 03/L-079, to hold a hearing or administer evidence.
19. The possible declarations of witnesses would have not present a valid defense because the cadastral data prove that the property is registered in the name of the Appellee’s father and based on the legislation in force, specifically Article 33 of the Law on Basic Legal Property Relations (OG SFRY, No. 6/80) it is provided that, on the basis of the legal action the property right over a real estate shall be acquired by registration into the “public notary book’ (cadastral books) or in some other appropriate way that is prescribed by law. Even the present law (Law No. 03/1-154 on Property and other Real Rights) under Article 36.1 provides: “The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register”.
20. From the abovementioned facts it results that the factual condition in this legal matter has been correctly and fully established and that the confirmation of the KPCC’s Decision has not been put at any doubt from the allegations in the Appeal because these allegations are not supported with any valid evidence.
21. In light of the above and pursuant to Article 13.3 (c) of the Law No. 03/L-079, the Court decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Article 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

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam , EULEX Registrar