

**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-159/2015

**Prishtinë/Priština,
11 October 2017**

In the proceedings of:

Z. J.

Shërbimi "Arngjilë Vasić (No. 10)"
"11.400" Mladenovice
Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 (case files registered at the KPA under number KPA33632), after deliberation held on 11 October 2017, issues the following

JUDGMENT

1. The appeal of Z. J. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 regarding case file registered at the KPA under the number KPA33632, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission, KPCC/D/A/228/2014 regarding the case file registered at the KPA under the number KPA33632 is confirmed.

Procedural and factual background

1. On 10 May 2007, Z. J. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking confirmation of the ownership right and repossession over the cadastral parcel no 245 with the culture cultivated land and surface of 00.02.50 ha, located at the place called Carakofc/Carakovac, Municipality of Kamenicë/Kamenica (hereinafter: the claimed property).
2. The Appellant declared that he has bought the claimed property from S. A. but since all the documents were burned during the conflict he possesses only one Witness Statement as document.
3. To support his Claim, the Appellant provided the KPA with the:
 - Witness Statement No 4297/07 certified before Municipality of Mladenovac on 30 April 2007, whereby, R. T. and M.J. testify that Z. J. has bought the claimed property in 1989.
4. The notification of the claim was carried out on 28 October 2008. The claimed property allegedly was found to be occupied by unknown person, however, the Claim was considered uncontested by Executive Secretariat of KPA because no party filed a response within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079.
5. The Executive Secretariat of KPA has found ex officio two Possession Lists showing that cadastral parcel no 245 was found as divided into (2) two parts which are registered on the name of the third persons. Namely, Possession List No 27 shows cadastral parcel no 245/1, cultivated land with the surface 00.05.31 ha, located at place called Carakovc/Carakofc registered on the name of B. D. while Possession List no 49 shows cadastral parcel no 245/2, cultivated land with the surface 00.07.30 ha, located at the place called Carakovc/Carakofc registered on the name of Ž.T. Both Possession Lists were issued on 1 August 2008 by Municipality of Kamenicë/Kamenica, Department for Cadaster Geodesy and Property.
6. The Appellant has been contacted by the Executive Secretariat of KPA and he has been advised to submit additional evidences for proving his right because the document that he already submitted does not support his rights over the claimed property. As an additional effort, the Executive Secretariat of KPA provided the Appellant with an information letter asking him to submit the documents and informing that if he fails to do so the claim may be refused by the Commission. The letter was received by the Appellant on 21 November 2013; however, he did not react to the letter.

7. On 13 March 2014, Kosovo Property Claims Commission refused the claim through its Decision KPCC/D/A/228/2014 with the reasoning that the Appellant has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
8. The Decision was served on Appellant on 23 December 2014. He filed an appeal on 22 January 2015.

Allegations of the appellant

9. The Appellant states that the KPCC Decision contains incomplete and erroneous determination of the facts and wrongful application of the material and procedural law.
10. The Appellant insists that he has bought the claimed property on 1989 but all of his documents were burned due to 1998-1999 circumstances. The Appellant submitted the Witness Statement which was certified by the officers of Municipality of Mladenovac but the Commission did not consider the Statements as relevant which according to the Appellant is wrong.
11. Based on the above, the Appellant seeks the Supreme Court to accept his appeal as grounded and to confirm the ownership right and repossession right over the claimed property in his favour.

Legal reasoning

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

13. The Supreme Court of Kosovo reviewed the appeal pursuant to provisions of article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
14. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

15. According to this legal provision, the Appellant had to submit the evidence to prove the ownership right to, or the right to use the immovable property.
16. The KPCC bases its Decision on the fact that the Appellant failed to provide any evidence which could be verified by the KPA, that he as the property right holder enjoys any ownership right over the claimed property. Moreover, the Executive Secretariat of KPA did not *ex officio* obtain such evidences. This is because the Secretariat despite its efforts had made a negative verification of the Possession Lists which were founded *ex officio*.
17. The Appellant declared that he has bought the claimed property but the documents have been burned and the only evidence that he has to show is the Statement of Two Witnesses declaring the same.
18. The Witness Statement, solely, with no other supporting evidences is not sufficient document to prove the crucial right such is the property right. Further, when the allegation of the Appellant was not proven by the Executive Secretariat of KPA.
19. The appeal of the Appellant recalls exactly the same allegations as he stated before the KPCC. No new evidence was provided with the appeal.
20. The Supreme Court finds that the KPCC has made a correct Decision, based on a thorough and correct procedure.
21. In the light of foregoing, pursuant to Section 13.3 under (c) 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

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Timo Eljas Torkko, EULEX Registrar