

**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-188/14

Prishtinë/Priština,
27 July 2016

In the proceedings of:

D. V.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/A/220/2013 (case file registered at the KPA under the number KPA27869), dated 27 November 2013, after deliberation held on 27 July 2016, issues the following

JUDGMENT

1. The appeal of D. V. is accepted as grounded.
2. The decision of the Kosovo Property Claims Commission no. KPCC/D/A/220/2013, dated 27 November 2013, as far as it concerns claim no. KPA27869 is modified as follows:

2.1. D. V. has established that his deceased father S. V. is the owner of $\frac{1}{4}$ of the cadastral parcel no. 303/34 with a surface of 07.72.55 ha, located at the place called Fongishta, Cadastral Zone Kpuz/Kpuz, in the Municipality of Klinë/Klina;

2.2. D. V. is entitled to repossession of the parcel mentioned under 2.1;

2.3. Any other person occupying the parcel mentioned under 2.1 has to vacate the parcel within 30 (thirty) days of delivery of this Judgment;

2.4. Should any other person occupying the parcel mentioned under 2.1 fail to comply with this Judgment to vacate the parcel within the time period stated, he or she shall be evicted from the parcel.

Procedural and factual background:

1. On 20 February 2007, D. V., as Claimant (henceforth: the Appellant), as a family member of his deceased father S. V., filed a claim with the Kosovo Property Agency (KPA), seeking his father to be confirmed as the property right holder and claiming repossession over the parcel, a 2nd class forest with a surface of 07.72.55 ha, located at a place called Fongishta, Cadastral Zone Kpuz/Kpuz, parcel no. 303/34, in the Municipality of Klinë/Klina (henceforth: the claimed property).
2. The Appellant alleged that the claimed property was lost on 11 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.
3. To support his claim, the Appellant provided the KPA with the following documents:
 - 3.1. Decision of Forth Municipal Court of Belgrade on Inheritance no.I-0-1558/97, dated 2 July 1997. This document shows that M. V. (Appellant's uncle) was one of the co-owners of $\frac{1}{4}$ of claimed property and that after his death (he died on 10 December 1994) heirs in his part over the claimed property were declared his wife (S. V.) and two of his sons (D. V. and B. V.);

- 3.2. The Transcript/Extract from the Possession List no. 74 of the Cadastral Service of Pejë/Peć, Branch Office of Klinë/Klina, Municipality of Klinë/Klina, Cadastral District Kpuz/Kpuz, dated 19 June 1997, showing the claimed property registered under the name of S. V. - Appellant's father [(henceforth: Property Right Holder (PRH)], S. A., M.A. (Appellant's aunts) and M. V. (Appellant's deceased uncle) as the co-owners of $\frac{1}{4}$;
- 3.3. The Death Certificate issued by the Civil Registration Office, Municipality of Savski Venac, Serbia, on 28 February 2007, showing that in the register of deaths under no. 01188 of the year 2005 is registered that PRH, whose mother was P. V., died on 18 February 2005 in Savski Venac, Beograd, Serbia. The place of birth of the deceased was Crnća, Bjelo Polje, Serbia;
4. According to the Verification Report dated 10 February 2007, the KPA Verification Unit found the Possession List no. 74 in the Department of the Cadaster, Geodesy and Property of the Municipality of Klinë/Klina.
 5. On 6 May 2008, the KPA notified the claim through a sign placed at the wrong property. During the visit carried out by the KPA Notification Team, it was ascertained that the property was not occupied.
 6. On 20 June 2008, based on the wrong notification, the KPCC had issued its decision KPCC/D/A/19/2008 by which it had decided that the Appellant had proven that PRH was the owner of $\frac{1}{4}$ of the claimed property.
 7. It was ascertained that the notification of the claim was not carried out properly. Through the KPCC decision KPCC/RES/19/2010, dated 12 May 2010, the previous decision (KPCC/D/A/19/2008) was annulled (rescinded) and the claim was returned to Executive Secretariat for further processing in order to correctly identify the claim and properly notify the claimed property and to hear any responding parties in relation to the claim.
 8. The (correct) notification through publishing in the KPA Gazette (no.8) and UNMIK Property Office Bulletin was carried out on 31 August 2010. The KPA Gazette and the Bulletin were left with the village leader so that he could make it accessible to interested parties, then in the corner in the entrance and in the exit of Kpuz/Kpuz village in Klinë/Klina. Furthermore, the same publication (List and the Gazette) was published in the Klinë/Klina Municipality-Office of Public Lawyer, Cadastral Office, Municipal Court, KPA Regional Office of Pejë/Peć, Danish Red Cross (DRD), OSCE, UNHCR, Ombudsperson, Privatization Agency of Kosovo and EULEX.
 9. Upon the abovementioned notification of the property that is subject of the claim, no notice of participation was submitted.

10. The KPA established *ex officio* the Certificate for the Immovable Property Rights UL-71011046-00074, issued by the Cadastral Office of Klinë/Klina, Municipality of Klinë/Klina on 13 August 2013. This document shows the claimed property registered under the name of PRH, M. V., S. A., M. A. (the same people) as co-owners of ¼ for each as within the (Transcript) Possession List no. 74 (dated 19 June 1997), submitted by the Appellant.
11. Through its decision KPCC/D/A/220/2013, dated 27 November 2013, the KPCC dismissed the claim with the reasoning that the Appellant or PRH did not lose possession as a result of the 1998-1999 conflict, but rather as a result of a voluntary disposal after the conflict.
12. The KPCC decision was received by the Appellant on 22 April 2014. He filed an appeal on 8 May 2014.

Allegations of the parties:

13. The Appellant alleges that the KPCC decision contains erroneous and incomplete determination of the factual situation as well as wrongful application of the substantive law.
14. The Appellant states that the KPCC conclusion that the claimed property in which he pretends is co-owner of 1/11 together with his mother, sisters and brothers was sold to the third person after the conflict pursuant to the legitimate purchase contract and that the loss of the possession over the property is not related due to the conflict does not stand. He adds that he never sold the property to anyone and that he did not inform anybody from the Kosovo Property Agency regarding the fact that he sold the property. He alleges that he gained the co-ownership pursuant to the decision on inheritance and that previously his father was the co-owner of the claimed property with the ¼ of his part. He also states that none of the co-owners sold the claimed property.
15. The Appellant points out that based on the evidences he submitted it is unequivocally established that he was the legal co-owner and possessor of the claimed property and that he lost that the right over it due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
16. Together with his appeal addressed to the Supreme Court, he submitted *inter alia* the following documents:
 - 16.1. Inheritance Decision no. 383/08, issued by the Second Municipal Court of Belgrade, Serbia, on 28 February 2008 showing that heirs of PRH on 1/11 of the claimed property (as well as in other listed properties) are his wife (M.V.) and his children [(M. V., M. D., D. R., S. V., J. V., R. V., G. V., R.N., D. V. (the Appellant) dhe G. V.)];

16.2. The Transcript/Extract from the Possession List no. 74 of the Cadastral Service of Municipality of Klinë/Klina, Cadastral District Kpuz/Kpuz, dated 9 July 2009. This document shows PRH, M. V., S. A., M. A. (the same people) co-owners on $\frac{1}{4}$ for each over the claimed property [as within the (Transcript) Possession List no. 74 (dated 19 June 1997) and the Certificate for the Immovable Property Rights UL-71011046-00074 (dated 13 August 2013)]; and

16.3. Appellant's identification card no. B290770, dated 4 January 2008.

17. Finally, the Appellant proposes that the Supreme Court of Kosovo accept his appeal and rendered the decision by which his right of possession over the claimed property be established.

Legal reasoning:

18. The Appellant has filed his appeal within the deadline prescribed by Section 12.1 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: Law No. 03/L-079). Therefore the appeal is admissible.
19. The Supreme Court further concludes, based on the Death Certificates, that the Appellant as an heir to PRH was entitled to file the claim in this case on his own behalf and to file the appeal.
20. The question to be answered in this case is whether the KPCC decision rests upon an erroneous or incomplete determination of the facts.
21. The KPCC concluded that in this claim the Appellant or his father did not lose possession over a claimed property as a result of the 1998-1999 conflict, but rather as a result of a voluntary disposal after the conflict. In fact the KPA case file does not show even a single document that could serve as evidence in which the KPCC decision could be relied on. In the KPA case file (see page 94) there is a kind of correspondence report between the KPA Executive Secretariat and the person called B. B. (Claimant within the claims nos. KPA27896 and KPA27897), which is not related with claim at hand (KPA27869).
22. After reviewing and evaluating the allegations, the case file and the appeal, the Supreme Court has noticed a discrepancy between what the appealed decision ascertains as to what the Appellant stated-declared before the KPA/KPCC, and what he personally alleges-states in his submitted appeal. This is because the KPCC decision noted that the Appellant had informed the KPA Executive Secretariat for selling the claimed property (after the conflict), while in his appeal he (the Appellant) entirely denies this sort of fact, adding that he never and to nobody had sold the claimed property.

The Supreme Court considers that the reliance of the KPCC decision in any possible verbal statement without respecting the written form of it as a legal criteria foreseen with the Article 99 of the Law on Contested Procedure (applied *mutatis mutandis* on appellate proceedings pursuant to Article 12.2 of Law No. 03/L-079) cannot serve as legally valid basis for a decision on merits in general and in this case in particular. Moreover, the said statement does not represent a legally valid action which would create property legal effects in the case at hand. This means that it cannot and has not been able to serve as a legal base for transferring the property right from one subject to another over the claimed property - Article 36 paragraphs of the Law on Ownership and other Real Rights foresees that *“the transfer of real estate contract must be concluded in written form in the presence of both parties in a competent organ”*.

23. The Supreme Court concludes that base on this the decision of the KPCC was based on the wrong and incomplete factual situation and such resulted with essential violations of the material and procedural law, therefore the appealed decision should be modified, as following:
- 23.1. D. V. has established that his deceased father S.V. is the owner of $\frac{1}{4}$ of the cadastral parcel no. 303/34 with a surface of 07.72.55 ha, located at the place called Fongishta, Cadastral Zone Kpuz/Kpuz, in the Municipality of Klinë/Klina;
 - 23.2. D. V.is entitled to repossession of the parcel mentioned under (23.1);
 - 23.3. Any other person occupying the parcel mentioned under 23.1 has to vacate the parcel within 30 (thirty) days of delivery of this Judgment; and
 - 23.4. Should any other person occupying the parcel mentioned under 23.1 fail to comply with this Judgment to vacate the parcel within the time period stated, he or she shall be evicted from the parcel.
24. On the basis of the above and in accordance with Section 13.3 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the Supreme Court decides as in the enacting clause.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar