

**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-81/2015

Prishtinë/Priština
23 May 2018

In the proceedings of:

N. D.

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 (the case file registered at the Kosovo Property Agency under the No KPA13561) of 30 April 2014, after the deliberation held on 23 May 2018, issues the following:

JUDGMENT

1. **The Appeal of N. D. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/236/2014 of 30 April 2014, regarding the case file registered at the Kosovo Property Agency under the number KPA13561 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No KPCC/D/A/236/2014, dated 30 April 2014, as far as it regards the case registered under the number KPA13561 is annulled.**
3. **The Claim of N. D. registered at the Kosovo Property Agency under the number KPA13561 is dismissed as inadmissible due to lack of Jurisdiction.**

Procedural and factual background

1. On 27 September 2006, N. D. (hereinafter “the Appellant”), filed two separate Claims with the Kosovo Property Agency (hereinafter “the KPA”), seeking the repossession over the cadastral parcel No 2484/4, cultivated land of the 3rd class, with a surface of 00.73.66 ha, located at the place called “Jeloš in Cadastral Municipality of Viti/Vitina (hereinafter “the claimed property”). The Appellant alleged being the co-owner over ½ equal part of the claimed property. The possession over it was lost on 18 June 1999 due to circumstances related to 1998-1999 conflict.
2. In order to support his Claim, the Appellant submitted the following documents:
 - A copy of the Decision on Inheritance No 62/63 (illegible);
 - A copy of the Possession List No 1989 issued by dislocated Department of Cadastre and Geodesy of Viti/Vitina Municipality on 21 February 2000. The claimed property is listed under the name of the Appellant and M. R. - each in the capacity of the co-owners with ½ ideal parts;
 - A copy of the Judgment rendered in the case No 210/94 by the Municipal Court of Viti/Vitina on 20 October 1994, whereby the Enterprise “Agromorava” from Viti/Vitina in a capacity of the Respondent was obliged to recognize the ownership right and to return the possession of the claimed property to N. D. and M. R. After the Judgment became final, the Administration of the Department of Cadastre and Geodesy would have to perform the changes in the cadastral records.
3. On 6 May 2007, the KPA made the notification of the Claim No KPA13561, while on . The confirmation of the correctness of the notification of the Claim was done through publication in the KPA’s Notification Gazette No 1 and in the UNHCR’s Property Office. The Notification team left the Gazette and List in the Viti/Vitina Municipality, in the Court and in the Cadastral Office.
4. The Executive Secretariat of the KPA verified negatively the Judgment No 210/94 issued by the Municipal Court of Viti/Vitina on 20 October 1994. It was not found at the Municipal Court of Viti/Vitina, neither at the displaced Court of Viti/Vitina and according to the

officials of the Municipal Court of Vitia/Vitina the Judgment was not final. Also the Possession List No 1989 was verified negatively at the Department of Cadastre of Vitia/Vitina.

5. The Appellant was informed about the results obtained by the Executive Secretariat of the KPA related to the verification of the documents. He insisted that the Judgment No 210/94 became final and he had paid the taxes to transfer the property right under his name even though he was not in possession of the receipts.
6. The Executive Secretariat of the KPA, through the official letter sent to the Appellant, requested him to submit additional documents through which he would show his right over the claimed property. At the same time he was advised that in case of the failure to submit the requested documents the claim may be refused by the Commission (page 097 of the case file). The Appellant stayed passive.
7. On 30 April 2014, the Kosovo Property Claims Commission (hereinafter "the KPCC") through its Decision KPCC/D/A/236/2014, refused the Claim. In the reasoning of its Decision (paragraphs 77-78), the KPCC found that the Judgment was not final and that the cadastral data in Vitia/Vitina shows the existing land parcel No 2484/ evidenced under the name of the other parties, while the claimed property - the cadastral parcel No 2484/4 was not found. Therefore, the KPCC established that the Claimant failed to show property right over the claimed property immediately prior or during the 1998-1999 conflict.
8. On 13 October 2014, the KPCC's Decision was served on the Appellant. The Appeal was filed 30 October 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision is unlawful and incorrect due to incompletely established factual situation and erroneous application of substantive law.
10. The Appellant insisted that the claimed properties exist and this can be proven by the documents already submitted by him (referring to the Possession List No 1989 and Judgment No 210/94)
11. The Appellant stated that the KPA through its Decision KPCC/D/C/184/2012 dated 14 December 2012 decided positively about his Claim KPA13562 which subject was the cadastral parcel No 2483/3. This cadastral parcel was part of the Possession List No 1989, the same as the claimed property.
12. To the Appeal he attached the following documents:
 - A copy of the Possession List No 4/94 issued by the Department for Cadastre and Geodesy of Municipality of Vitia/Vitina on 26 December 1994 listing the claimed property under the name of Appellant and M. R, each in 1/2 equal parts;
 - A copy of the Possession List No 1989 issued by the dislocated department of the Cadastre and Geodesy of Vita/Vitina Municipality on 21 February 2000. The claimed property is listed under the name of the Appellant and M. R., each in 1/2 equal parts;
 - A copy of the letter with the No 02-672/8 sent by the Kosovo Cadastral Agency on 6 June 2007 describing the coordinates related to the claimed property;

- A copy of the sketch of measurements regarding the cadastral parcels No 2483/3 and 2484/4 issued by the Municipal Cadaster of Vitia/Vitina on 17 January 2014. The measurements were performed based on the request of the Basic Court of Gjilan/Gnjilane, branch of Vitia/Vitina.
13. Finally, the Appellant requested the Supreme Court to accept his Appeal as grounded and to render a Judgment in which the Appellant's right be recognised over the claimed property.

Legal reasoning:

14. The Supreme Court, after having reviewed the allegations of the Appeal and the content of the case file found that the Appeal is grounded.
15. The Decision of the KPCC has to be annulled *ex officio* as the case does not fall within its jurisdiction. The KPCC should not have decided on the merits of the case but to dismiss it - Section 11.4 (b) of Law No. 03/L-079. As this has not been done, the appealed Decision *ex officio* has to be annulled and the Claim dismissed.
16. First of all, the Appellant alleges that the KPCC granted his Claim No KPA13562 which was filed with regard to the property that was included in the Possession List No 1989.. Indeed the mentioned Claim was granted by the KPCC by the Decision KPCC/D/C/184/2012 of 14 December 2012.
17. In the legal reasoning of the Decision (paragraph 14-16) it was stated... *in support of his claim the Claimants has submitted various documents including positively verified Possession List No 1989 obtained from the dislocated cadastral records of Serbia....*
18. The Supreme Court of Kosovo considers that the Possession List No 1989 issued by the dislocated Cadastral Records in the Republic of Serbia should not be have been accepted by the Commission at all as the evidence, moreover considering the fact that the officials from the dislocated Cadaster Records in the Republic of Serbia were unable to locate *ex officio* the supporting document in order to establish the basis for registration of the claimed property under the name of the Appellant.
19. Nevertheless, the Supreme Court of Kosovo cannot undertake any action with regard to the Commission's Decision KPCC/D/C/184/2012, as there was no Appeal filed against the Decision pursuant to Section 12.1 of the Law No. 03/L-.
20. The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have the jurisdiction to adjudicate the case at hand.
21. According to Section 3.1 of the Law No. 03/L-079, the Appellant has a right to an order for repossession of the property if he establishes his ownership or use right over the private claimed property, and that he was 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.
22. The Executive Secretariat of the KPA made a negative verification of the documents, on which the Appellant bases his Claim. The KPA was not able to obtain *ex officio* any evidence that would support the Appellant's Claim.
23. Based on the Judgment rendered in the case No 210/94 by the Municipal Court of Vitia/Vitina on 20 October 1994, the Enterprise "Agromorava" in a capacity of the Respondent was obliged to recognize the ownership right and to perform restitution of the possession of the claimed properties to the Appellant and M. R. After the Judgment became

final, the Administration of the Department of Cadastre and Geodesy was supposed to perform the changes at the Cadastre. The Supreme Court of Kosovo observes that the Judgment contains the stamp showing that it became final on 7 November 1994 even though the stamp is not entirely visible. However, the same Judgment was not found at the Municipal Court of Vita/Vitina or at the displaced court of the Republic of Serbia.

24. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No 6/80), - applicable at the time when the Judgment No 210/94 was rendered, the property right can be acquired by law itself based on legal affair (legal transfer) or inheritance.
25. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80) stipulates that on the basis of the legal affair 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 provided for by the law.
26. The claimed properties were not found registered at the Department for Cadastre and Geodesy of the Municipality of Vitia/Vitina, which showed that the updates as ordered in the Judgment were not performed. That means that the Judgment No 210/94 was not executed during the period of year 1994-1999.
27. Furthermore, the Supreme Court of Kosovo established that the claimed property was subject of the claim filed to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters.
28. The KPA Appeals Panel of the Supreme Court was provided with the Judgment AC-i-14-0142 rendered on 14 April 2016 by the Special Chamber of the Supreme Court for the PAK Related Matters and the Cadastral Decision No 603/2016 issued by the Department of Cadastre of the Municipality of Vitia/Vitina on 7 October 2016.
29. According to the Judgment AC-i-14-0142 rendered on 14 April 2016 by the Special Chamber of the Supreme Court for the PAK Related Matters:
the Appellant was admitted to the proceedings before the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters with the status of consolidated joint litigant and Respondents (the Socially Owned Enterprise “Agromorava” and Kosovo Privatization Agency) were enjoined to undertake any action regarding the claimed properties until the dispute regarding the registration of the ownership right over the claimed properties pursuant to the Judgement No 210/94 is finally settled.
30. According to the Cadastral Decision No 603/2016 the request of the Appellant and M. R. for registering the claimed property under their names was approved.
31. Based on what was mentioned above, the Supreme Court concludes that the claimed property was registered as a socially- owned property during the period of time 1998-1999.
32. Confirmation and protection of the property rights over socially-owned properties and/or state-owned properties is not however subject of the jurisdiction of the KPCC, respectively of the KPA Appeals Panel.
33. The Supreme Court concludes that the Commission decided on a subject matter it had no jurisdiction over.. Therefore, the Appellant’s Appeal has to be accepted, the KPCC Decision has to be annulled and the Claim is to be dismissed pursuant to Section 13.3 (a) of the Law No. 03/L-079.
34. For all those reasons and pursuant to Article 12.2 of the Law No. 03/L-079 and Article 198.1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this Judgment.

Pursuant to Section 13.6 of the Law no. 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

Timo Eljas Torkko, acting EULEX Registrar