

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-137/13

Prishtinë/Priština,

11 December 2013

In the proceedings of

N.K

Claimant/Appellant

vs.

M.K

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/172/2010 (case file registered at the KPA under the number KPA 00472) dated 24 October 2012, after deliberation held on 11 December 2013, issues the following

JUDGMENT

1. The appeal of N.K against the decision of the Kosovo Property Claims Commission KPCC/D/A/172/2012, dated 24 October 2012, with regard to the claim registered with KPA under No. KPA00472 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/172/2012, dated 24 October 2012, with regard to the claim registered with the KPA under No. KPA00742 is confirmed.

Procedural and factual background

1. On 13 November 2006 N.K filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a part of parcel no. 583, street Marshall Tito/Maršal Tita, Possession List 7821, in surface of 0.03.05 ha, of the Cadastral Zone of Pejë/Peć, Municipality Pejë/Peć, on which he claimed that his neighbor had constructed a building with a surface of 11 square meters. The neighbor, M.K, was named as an occupant in the claim. Krasniqi did not respond to the claim.
2. On 24 October 2012 the Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/A/172/2012, dated 24 October 2012 dismissed the claim in Kosovo Property Claims Commission. In paragraph 18 in the cover decision, which according to the certified decision dated 24 April 2013 applies specifically to the claim, it is stated that according to documents submitted by the claimant, and which have been verified by the Executive Secretariat or confirmed by the claimant, the claimant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict. Accordingly the claim was considered to fall outside the mandate of the Commission, and was dismissed.
3. The KPCC decision was served on N.K on 28 May 2013. He appealed the decision on 19 June 2013. In the appeal M.K is named as the appellee. However the appeal was not served on M.K.
4. The Supreme Court received the case-file on 22 November 2013.

5. As M.K is named as appellee in the appeal, The Supreme Court has filed him as appellee. The Court has not considered it necessary to obtain a statement from M.K him in the matter.

Allegations of the parties

6. N.K claims that the KPCC decision is factually ungrounded, logically nonsensical and legally ungrounded and unlawful, referring especially to the statement in the certified decision paragraph 2, where it is stated that:

“The Commission noted that where the properties concerned are unlawfully occupied, the above decision does not confer any rights on the respondents or current occupants.”

7. N.K’s main allegation in is that his neighbor, Krasniqi, has erected a building that reaches into N.K’s property covering 11 square meters, and therefore usurps a part of N.K’s property. This creates difficulties for N.K because the entrance to his own property is now only 80 cm. The usurpation includes the time period between 23 March 1989 and 24 March 1999, and is therefore covered by the UNMIK Regulation no. 1999/23. The KPCC decision violates UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079 (hereinafter: Law No. 03/L-079), ECHR Art. 8.1 and 8.2 (right to privacy), Art. 6 (right to fair trial), Protocol 1 and 2 on protection and respect of property, the constitution of Kosovo Art. 46 and the Law on Property art. 1 and 4 which gives protection against discrimination.
8. In the appeal N.K gives a detailed account of the dispute between him and M.K. He also states that he filed a claim in the matter before the Basic Court of Pejë/Peja before the war in 1999. This case is still pending because the Supreme Court of the Republic of Kosovo on 8 November 2008 quashed the judgment of Basic Court in Pejë/Peja dated 7 August 2008.
9. M.K has been informed of the case by neither the KPCC nor the Supreme Court, and has not made any statement in the case.

Legal reasoning

10. The appeal has been filed within the time limit of 30 days set in Law No. 03/L-079 Art. 12.1, and is admissible.

11. However the Supreme Court seconds the legal reasoning of the KPCC that the claim is not within the jurisdiction of the KPCC, and accordingly not within the jurisdiction of the KPA Appeals Panel of the Supreme Court. The Supreme Court also mainly agrees with the reason given by the KPCC.
12. KPCC has given a certified decision dated 24 April 2013. In this decision a reference is made to “relevant paragraphs” in the Cover Decision dated 24 October 2012. A special reference is made to paragraphs 12, 18, and 91. The reasoning of the KPCC is not easily accessible. The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have jurisdiction in the case.
13. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict-related claims concerning ownership over or property rights to private immovable property, including agricultural and commercial property. The KPCC is only competent if the claims are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
14. In the present case the KPA has noted that N.K claims that 11 square meters of his property has been usurped by his neighbour for 33 years. N.K himself has stated in the appeal that the usurpation of his property includes the period from 23 March 1989 to 24 March 1999. It is clear that the claim concerns a dispute that started before 1998, and it has no relation to and is not resulting from the armed conflict in 1998/1999.
15. The Supreme Court also notes that the dispute was pending before the Basic Court of Pejë/Peć when the claim was made before the KPA, and would therefore also have to be dismissed in accordance with Art. 262 paragraph 3 of the Law on Contested Procedure.
16. Because the KPCC and the KPA Appeal Panel does not have jurisdiction in the case, neither the KPCC nor the KPA Panel of the Supreme Court has reviewed the merits of the case, which will have to be decided independently by the ordinary courts in Kosovo.
17. The Supreme Court has noted that N.K challenges the statement made by the KPCC, and which is quoted in paragraph 6 above. The Supreme Court understands this statement only reflects the competence of the KPCC as stated in section 3.2 of the Law No. 03/L-079.

Legal Advice

18. Pursuant to Section 13.6 of UNMIK 06, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann EULEX Registrar