

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-230/15

**Prishtinë/Priština,
18 April 2018**

In the proceedings of:

R. M. B.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges, Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/260/2014 (case file registered at the Kosovo Property Agency under No. KPA16381), dated 21 October 2014, after the deliberation held on 12 April 2018, issues the following:

JUDGMENT

1. **The Appeal of R. B., against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/260/2014 dated 21 October 2014, as far as it concerns the Claim registered at the Kosovo Property Agency under No. KPA16381, is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission No. KPCC/D/A/260/2014, dated 21 October 2014, as far as it concerns the Claim registered under the No. KPA16381 is confirmed.**

Procedural and factual background

1. On 30 October 2006, R. B. (hereinafter: the Appellant), filed a Claim at the Kosovo Property Agency (hereinafter: the KPA), seeking repossession over the cadastral parcel No.415/1, with culture field of class 5, at the place called “Utrina”, Cadastral Municipality of Podujvë/Podujevo (hereinafter: the claimed property). The Appellant declared that he inherited the claimed property after his father based on the Ruling on Inheritance O.Nr.29/94. The loss of the possession of the claimed property occurred on 11 June 1999. According to the Appellant the claimed property is usurped by the Veterans Association.
2. With his Claim he had submitted to the KPA, *inter alia*, the following documents:
 - A copy of the Administrative Decision No. 461-19/93, dated 25 October 1993, issued by the Commission for Restitution of Properties – Municipality of Podujevë/Podujevo, whereby the possession and ownership over the undivided cadastral parcel No. 415, was returned to the Appellant and his brother Ž,
 - A copy of the Ruling on Inheritance No. 29/94 dated 05 December 1994 issued by the Municipal Court in Kurshumli/Kuršumljija –Podujevë/Podujevo branch, whereby the Appellant was pronounced to be the co – owner of the claimed property,
 - A copy of the Additional Ruling on Inheritance No.28/94 dated 05 December 1994 issued by the Municipal Court in Kurshumli/Kuršumljija,
 - A copy of the Ruling No.952-3-87/95 dated 02 March 1995, issued by the Republican Institute of Geodesy of Serbia-Service for Immovable Property, whereby, the Additional Ruling on Inheritance No. 28/94 of the Municipal Court of Kurshumli/Kuršumljija, approved the Appellant and his brother be registered as the co-owner of the claimed property,
 - A copy of the Possession List No. 177, issued by the Cadastral Municipality of Podujevë/Podujevo on 23 March 1995, which indicates that the claimed property is registered under the name of the Appellant and his brother as co-ownership with ½, ideal part,

- A copy of the Possession List No.176 dated 18 May 2010, issued by the Displaced Cadaster, based on which the Appellant was registered the co-owner of the ½ ideal part of the claimed property,
 - Copy Plan No. 176 from 2012, whereby it is confirmed that the Appellant is the co-owner with ½ ideal part of the claimed property.
3. The KPA Executive Secretariat notified the Claim on 27 June 2008 and on 26 May 2014, and it found that the claimed property was turned into a memorial graveyard under the administration of the Municipality of Podujevë/Podujevo. The Notice of Participation within the KPA proceedings was served to the Director of Geodesy and Property of the Municipality of Podujevë/Podujevo, Mr. A. L, who signed it without claiming any rights over the claimed property. He stated that the claimed property was allocated to serve as a memorial graveyard by the Kosovo Government in coordination with the Ministry of Environment, the Municipality of Podujevë/Podujevo and the Agricultural Cooperative "Përparimi". Finally, he stated that the property was privatized by the Privatization Agency of Kosovo. On 1 July 2010 the notification of the Claim was published in the PAK's Notification Gazette No. 3 and it was also distributed at the Municipal Court in Podujevë/Podujevo and in Prishtinë/Pristina, Cadastral Office, UNHCR Regional Office, DRC.
 4. Nobody filed a Response to the published Claim.
 5. According to the KPA's Executive Secretariat Verification Report dated 22 September 2014, the Ruling No. 361-19/93 dated 25 October 1993, whereby the Commission for the Restitution of Property of the Municipality of Podujevë/Podujevo returned the cadastral parcel No. 415 to the Appellant and his brother, was negatively verified (this document was neither found in Serbia nor in Kosovo). Furthermore, the Cadastral Ruling No. 952-3-87/95, dated 02 March 1995 was negatively verified, (was neither found in Serbia nor in Kosovo).
 6. The documents filed by the Appellant, namely the Ruling on Inheritance and additional Ruling on Inheritance O.No.29/94 dated 05 December 1994 were considered not related to the claimed property. According to the KPA's Verification Report dated 24 February 2014, the Possession List No. 177 has been verified within the Cadaster of Kruševac, under the remark that the Possession List was changed from number 177 into 176.
 7. The Executive Secretariat established that according to the Certificate for the Immovable Property Rights Ul.71712060-00073, issued by the Cadastral Office in Podujevë/Podujevo, on 30 March 2010, the claimed property is evidenced as a socially-owned property under the name of the Enterprise "Agricultural Cooperative".
 8. The Appellant was contacted by the Executive Secretariat of the KPA on 20 August 2009 and he was informed about the negative result of the verification. He was requested to file additional evidence in order to prove his ownership but he failed to submit any additional evidence to the day the case was referred for decision-taking.
 9. On 21 August 2014, the Privatization Agency of Kosovo, in its information letter responded to the KPA's Executive Secretariat and confirmed that the Appellant has filed a Claim over the same property before the Special Chamber of the Supreme Court, and the proceedings

are being conducted under the Ref. no. C-III-14-0180. From 1996 until 1999 the claimed property has been administered by the AC “Besa”, whereas from 1999 it was transferred under the administration of the *Kosovo Trust Agency, now the Privatization Agency of Kosovo*, and from September 2013, the socially-owned enterprise has entered under liquidation procedure.

10. On 21 October 2014, the KPCC in its Decision KPCC/D/A/260/2014 dismissed the Claim pursuant to Section 18 of the UNMIK Regulation No.2006/50 on Resolution of Claims related to Private Immovable Property, including Agricultural and Commercial Property, as amended by the Law No. 03/L-079, because of the fact that based on the *ex officio* verification by the Executive Secretariat, this matter fell outside the Commission’s jurisdiction due to the reasons presented in the Reasoning of its Decision under paragraph 39, because of the existence of legal proceedings pending before the competent Court that were initiated by the Claimant before 16 October 2006 regarding the confirmation of his ownership rights over the claimed property.
11. The KPCC’s Decision was served on the Claimant (hereinafter: the Appellant) on 4 March 2014. He filed an Appeal on 27 March 2015.

Allegations of the Appellant

12. The Appellant alleges that the KPCC’s Decision contains essential violations of procedural rules, erroneous application of the substantive law and incorrect and incomplete determination of the factual situation, which are essential for ruling over the Claim for establishment of use right and repossession of agricultural property, and because of the mentioned reasons, the KPCC’s Decision is unjust and unlawful.
13. Further in the Appeal, the Appellant mainly describes the proceedings regarding his Claim filed before the KPCC. He entirely based his right over the claimed property on the documents which he has enclosed with the Claim, describing the facts and the documents on the basis of which he alleges that he is a lawful owner of the claimed property.
14. The Appellant fully denies that he has filed a Claim before the Special Chamber of the Supreme Court regarding any property rights or in relation to the claimed property, before or after 16 October 2006, and he states that he has acquired the right over this property through legal procedure before 1999.
15. Finally, the Appellant seeks from the Supreme Court that after it has reviewed the evidence and established facts, it issues a Decision whereby it annuls the challenged KPCC’s Decision and returns the case for retrial, or issues a Decision whereby it approves the Appellant’s Claim for repossession of the claimed property.

Legal Reasoning

Admissibility of the Appeal

16. The Appeal has been filed within the deadline of 30 days as foreseen by the Article 12.1 of the Law No.03/L-079, and therefore it is admissible.

Merits of the Appeal

17. The Supreme Court reviewed the challenged Decision and after evaluating the allegations of the Appellant contained in his Appeal and the content of the case file, pursuant to provisions of Article 194 of the Law on Contested Procedure No. 03/L-006, finds that the KPCC's Decision does not contain any essential procedural omission, erroneous application of the applicable substantive law, and neither contains an incomplete and erroneous determination of the factual situation as stated in the Appeal. Therefore, the Appeal cannot be granted.
18. According to Section 18 of UNMIK Regulation 2006/50, as amended by the Law No. 03 / L-079, it is foreseen that the jurisdiction of the Commission shall be excluded if a judicial proceeding has been initiated in respect of a Claim before 16 October 2006, when UNMIK Regulation 2006/50 entered into force.
19. Based on the Privatization Agency of Kosovo Information Letter No.10199, dated 21 August 2014, sent to the Kosovo Property Agency regarding its *ex officio* Request, the latter is informed that regarding the claimed property the Appellant has filed a Claim at the Special Chamber of the Supreme Court, and the legal proceedings in relation to the claimed property is underway, and this case is evidenced under the reference no. C-III-14-0180. Furthermore, according to this information, it is emphasized that the stated immovable property has been administered by the AC "Besa" during the period before 1996-1999, and this Enterprise was subject to a liquidation process which start on 9 September 2013. The claimed property has been administered by the SOE, now is being administered by the Privatization Agency of Kosovo, and at Agency will participate in proceedings before the KPA in relation to the disputed parcels. At the end of the abovementioned letter it is stated that the Kosovo Property Agency has no jurisdiction over the socially-owned property based on the legal provisions in force, the Supreme Court has to delegate the Claim to the Special Chamber of the Supreme Court.
20. From the situation elaborated in the previous paragraph, based on the assessment of the Court, the challenged KPCC's Decision in which it was concluded that the Claim was dismissed due to the lack of jurisdiction by the Commission is fair and lawful. Therefore, further processing of the Claim regarding the claimed property, fell within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo and not of the Commission and the KPA Appeals Panel of the Supreme Court of Kosovo.
21. From the founding of the Court as outlined above, and from the Kosovo Privatization Agency's Information Letter, it appears that the claimed property is considered as a socially-owned property under the name of the AC "Besa", and as such it was subject to the liquidation process thus the exclusive jurisdiction over it lies with the Special Chamber of the

Supreme Court of Kosovo pursuant to Section 4.1 (c) and Section 5.1 (a) of the UNMIK Regulation 2008/4, as amended by Law No. 04/L-033, and amendments and supplements made thereto. Regardless of the assertion of the Appellant that he did not initiate proceedings before the Special Chamber, is clear that this Claim does not fall within the scope of the KPA's jurisdiction but it rather under the exclusive jurisdiction of the Special Chamber.

22. Therefore, pursuant to Section 11.4, subparagraph (b) of the UNMIK Regulation 2006/50, adopted by Law No. 03/L-079, the same as in the challenged Decision, the Claim was dismissed due to the lack of jurisdiction, and consequently it is not decided on the merits of the case.
23. Based on the facts referred to in the paragraphs above, the Supreme Court concludes that the KPCC's Decision is fair and lawful, and it offers sufficient explanations. The challenged Decision does not contain any substantial violations of essential and procedural law, pursuant to Section 12.3 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079, therefore the Appeal is rejected as ungrounded, and the challenged KPCC's Decision is confirmed as fair and the Law No. 03 / L-079.
24. This Judgment has no prejudice regarding the Appellant's right to seek his rights before the competent body, or competent Court if he deems it to be of legal interest.

Legal Advice

According to Section 13.6 of the UNMIK Regulation 2006/50, as amended by 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

Bjorn Olof Brautigam, EULEX Registrar