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-083/15 **Prishtina,**
11 October 2017

In the proceedings of:

Sh. G.

Appellant/Respondent

vs.

M.J. on behalf of his deceased father J. J.

Appellee/Claimant

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/235/2014 (case file registered with KPA under 14270) dated 30 April 2014, after deliberation held on 11 October 2017, issues this

JUDGMENT

1. **The appeal of Sh. G. against the Decision of Kosovo Property Claims Commission KPCC/D/A/235/2014 dated 30 April 2014, as far as the Claim registered under KPA14270 is concerned, is rejected as ungrounded.**
2. **The Decision of Kosovo Property Claims Commission KPCC/D/A/235/2014 dated 30 April 2014, as far as the Claim registered with Kosovo Property Agency under KPA14270 is concerned, is upheld**

Procedural and factual background

1. On 20 September 2006, M. J. (hereinafter: the appellee) filed a claim on behalf of his deceased father, J. J, with Kosovo Property Agency (hereinafter: KPA) seeking re-possession of the property in cadastral parcel 1420/1, at the place called Ograda, agricultural land, cadastral municipality of Leshan, in Suharekë/Suva Reka, with a surface of 0 h 27 ar and 11 square metres (hereinafter: "claimed property"). He claims that his deceased father is the parcel owner and he lost possession in June 1999 because of circumstances related to conflict in the period 1998-1999.

2. In order to support his Claim, the appellee provided the KPA with the following documents:
   - Possession List no. 109 issued by the Displaced Department of Suhareka Cadastre, which shows the claimed property as registered in the name of his father J. J;
   - Death Certificate dated 11 June 2010 which proves that J. J. passed away on 11 May 1998;
   - Ownership Certificate dated 15 April 2014 which proves that the claimed property is in the name of his deceased father;
   - Claimant's identification card dated 2 November 1993 issued by the Suhareka administration.

3. Claim notification was carried out on 17 May 2007 and on 7 September 2011 with the ascertainment that property was accurately identified through GPS coordinates.

4. Sh. G. (hereinafter: appellant) participated in proceedings before KPA alleging that the claimed property in fact belonged to his family, but it had been confiscated in 1937 until 1949 by the regime of that period because his uncle was declared a "Kulak", and through an administrative decision 7 hectares of land had been confiscated.

5. To support his claim, the appellant provided the KPA with the following:
   - Ruling by Suhareka District Court dated 10 January 1950 by which the property of G. family was confiscated without specifying parcels, but with a description and surface of 7 hectares.
   - Request addressed to the Commission for return of confiscated lands dated 19 July 19 by appellant's family members for the return of claimed property.

- Ruling of the Commission for return of confiscated lands of Suhareka Municipality No.460-31-91 dated 15 April 1993 by which the confiscated land was returned to the family members, but the claimed property was not included.

6. KPA Executive Secretariat positively verified the possession list and ownership certificate, where claimant's deceased father was registered as owner. The Agency Secretariat ex officio also found the Notarial Decision dated 29 January 2013 with number Nr.LRP.289/2013 Hereditary reference 028/13, by which the claimant, now appellee, was declared as owner of 1/4 of the claimed property.

7. On 30 April 2008, KPCC with its decision KPCC/D/A/13/2008 decided that appellee had proven his father's property right over the claimed property and decided to return the claimed property in the possession of the appellee. By its resolution KPCC/RES/24/2010, it had quashed the decision and returned the claim to repeated proceedings.

8. By its decision KPCC/D/A/235/2014 dated 30 April 2014, KPCC decided that appellee had proven that appellee had proven his father's property right over the claimed property and decided to return the claimed property in the possession of the appellee.

9. On 13 November 2014, the decision was served onto the appellee. The appellant received the decision on 20 September 2014. The appeal was filed on 20 October 2014.

Appellant's allegations

10. Appellant stated that KPCC decision contains essential violations of the material and procedural law and erroneous and incomplete determination of the factual situation.

11. The appellant claims to be the owner of claimed property which had been confiscated from his family by the former Serbian regime, without any decision on Confiscation and without any compensation.

12. According to appellant, the decision of the Commission for return of lands included the entire confiscated property but the Suhareka Municipality did not implement the decision on return.

13. In the appeal, the appellant enclosed the same pieces of evidence that were presented in the first instance.

Legal reasoning

Admissibility of the appeal

14. The Supreme Court examined the challenged decision pursuant to provisions of Article 194 of the Law on Contested Procedure no. 03/L-006 (hereinafter: LCP) and after evaluating the appellant's allegations found that: *Appeal is admissible because it was filed within the legal time limit pursuant to Article 12.1 of the Law no. 03/L-079 which foresee that a party may filed an appeal against the Decision of the Commission within thirty (30) days of notification of parties about the decision.*

Merits of the appeal

15. Following examination and evaluation of case file submissions and appellant's allegations, the Supreme Court ascertains that the appeal is ungrounded.

16. The KPCC decision is right. The court could not find incomplete determination of the factual situation or wrongful application of the material and procedural law.

17. Pursuant to Article 3.1 of the Law no. 03/L-079, the claimant is entitled to an order by KPCC on re-possession of property if the claimant proves not only his/her property right over private property, but also that he/she is currently unable to exercise such property rights over the respective property because of circumstances directly related to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, or circumstances resulting from this conflict.

18. The Supreme Court notes that appellant, despite claiming legal rights over the property, did not present any documents to support his right.

19. Documents presented by the appellant do not refer to the claimed property and the fact of confiscation, according to allegations of the party, cannot be subject of examination by KPCC nor by the Supreme Court due to lack of legislation and jurisdiction regarding confiscation. The Law no. 03/L-079 has no legal remedies available to parties for this period because of limitation in time and substance described in the Article 3.1.1 of the Law no. 03/L-079.

20. KPA Executive Secretariat ex officio found no evidence that disputed the right of the appellee in this case because the possession list of cadastral office, before and after the conflict, proves that the property is registered in the name of the deceased father of the appellee. The same is confirmed by the ownership certificate issued by the competent body in Suhareka.

21. Based on the aforementioned facts, it results that the factual situation regarding this legal matter was determined correctly and completely and that the KPCC Decision was not challenged by any valid evidence.

22. Based on the above and pursuant to Article 13.3 (c) of the Law no. 03/L-079, the Court decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Article 13.6 of the Law 03/L-079, this judgment is final and enforceable 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