

**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-194/13**

**Prishtinë/Priština,**

**23 July 2015**

In the proceedings of:

**J. T.**

Montenegro

***Appellant/Claimant***

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case file registered at the KPA under the numbers KPA28622) dated 5 September 2012, after deliberation held on 23 July 2015, issues the following

**JUDGMENT**

1. The appeal filed by J. T. dated 12 August 2013, registered under number GSK-KPA-A-194/2013 against the Decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 dated 5 September 2012 as far as it regards the claim registered at the KPA under number KPA28622 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 dated 5 September 2012 as far as it regards the claim registered at the KPA under number KPA28622, is confirmed.

**Procedural and factual background:**

1. On 15 March 2007 the appellant, then claimant, J. T. in the capacity of the household member of the alleged property right holder filed a claim at the Kosovo Property Agency (KPA) seeking ownership right and repossession of the cadastral parcel no. 504/4, with a surface 2ha 7ar 63m<sup>2</sup>, in the Cadastral Zone Rastavicë/Rastavica, Municipality of Deçan/Deçane (hereafter: the claimed property).
2. In order to support his claim, the claimant provided these documents:
  - Administrative decision (Background opinion) no. 07-952/2-125/95 issued by the Service of Immovable Cadaster of the Municipality of Deçan/Deçane on 19 October 1994. This decision explains the history of the changes of the claimed property in the cadaster. Furthermore, the same indicates that the claimed property is recorded in the name of the claimant's father (N. T.);
  - Expert findings by Dr. M. J. of Republic Geodesy Administration, Real Estate Cadastral Office, dated 14 May 1996, prepared by an expert meant to explain the cadastral history of the parcels *inter alia* nos. 504/4 and 519 and to answer the question whether the purchase price of the parcels in 1963 was a real market price;
  - The Birth certificate of the appellant's mother issued by the Municipality of Nikšić (Montenegro) on 7 March 1997;
  - The birth certificate of the claimant issued by the Municipality of Cetinje (Montenegro) on 15 August 2008;
  - Commemorative publication showing that claimant's mother M. T. died on 11 January 1996; and
  - A copy of the ID card of the claimant no. CG00619201 issued by the Montenegro authorities on 26 April 2006.
3. On 26 June 2008, the KPA notified the claim. The claimed property was found not occupied. On 1 July 2010 the KPA confirmed the notification of the claimed property through publication in the KPA gazette. The gazette and list were left with the leader of the village of Rastavicë/Rastavica, as well as at the entrance and on the public board at the entrance/exit of the village. The same publication (list and gazette) has been published in Deçan/Deçane Municipality-Public Lawyer's Office, the Cadaster Office of Deçan/Deçane Municipality, the Municipal Court of Deçan/Deçane and in the KPA Regional Office of

Peja/Peć. The KPA gazette is distributed also to DRC, OSCE, UNHCR, and to the the Ombudsperson.

4. According to the KPA verification report dated 26 February 2009, the administrative decision (Background opinion) no. 07-952/2-125/95 dated 19 October 1994 could not be verified.

According to the consolidated KPA verification report dated 2 July 2010 the submitted possession list and the ID card have been positively verified.

5. The Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/164/2012 dated 5 September 2012 (hereafter to be referred to as: The KPCC Decision) dismissed the claim of the appellant on the ground that “[...*the claimant concedes that the alleged property right holder sold the claimed properties already in 1963 to the socially owned enterprise Ereniku*]”. The decision concludes that the alleged loss of possession cannot be considered to result from the 1998-1999 conflict. This means that the claim is outside jurisdiction of KPCC.
6. The decision was served on the appellant on Friday 12 July 2013. He filed an appeal on Monday 12 August 2013.

**Allegations of the appellant:**

7. The appellant asserts that the KPCC decision is based on a erroneous and incomplete determination of facts and on misapplication of the substantive law. According to the appellant the KPCC examined the claim superficially and decided without previously establishing the facts.
8. He explains that his mother M. T. [(hereafter: the alleged property right holder (PRH))] is the owner of the claimed property. He alleges that the claimed property was lost on 12 June 1999 and that the loss was as a result of circumstances 1998/1999 in Kosovo. He added that he does not know who is using the claimed property.
9. The appellant alleges further that the total surface of the claimed property is over 7 hectares and that the challenged decision rejecting the claim for the area of 0ha 89ar 97m<sup>2</sup> is absurd.
10. The appellant alleges that the challenged decision is contradictory because the decision is about the property for which the appellant did not made a claim while the property he

claimed for is missing. He added also that the number of the possession lists and numbers of the parcel do not match.

11. The appellant alleges also that the legal ground of the KPCC decision is not completely clear. This because the conducted court proceeding for establishment of the property right over claimed properties before the Municipal Court of Pejë/Peć against the SOE Ereniku is disrupted due to conflict 1998/1999 and this has to be considered as the loss of the property resulted from it.

The appellant proposes the Supreme Court of Kosovo to accept the filed appeal, to examine the allegations to reverse the challenged decision and send back the case file for retrial.

**Legal reasoning:**

*Admissibility of the appeal:*

12. Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 (hereinafter Law No. 03/L-079) on the resolution of claims relating to private immovable property, including agricultural and commercial property provides that “*within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*”.
13. The KPCC decision was served on the appellant on 12 July 2013. The period of 30 days thus expired on 11 August 2013, this being on a Sunday means that according to article 126 Paragraph 5 of the Law on Contested Procedures the appeal is considered to be timely when filed before the end of the next working day. The appellant filed an appeal on Monday 12 August 2013, the appeal is therefore admissible.

*Merits of the appeal*

14. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

15. This however appears not to be the case. In his appeal the appellant stated that the procedure for establishment of the property right over the claimed property conducted against Agricultural Complex Ereniku before the Municipal Court of Pejë/Peć was **disrupted due to the conflict 1998/1999**. Obviously the dispute regarding the claimed property has started before the events in 1998 and 1999. That this process was disrupted by the armed conflict does not mean that the property rights were lost because of that. On the contrary it is clear that the PRH donated the claimed property a long time before the conflict, in 1963, and she did not regain property rights on the claimed property, because the proceedings were until now not successful. These facts shows that those rights were lost before the conflict.
16. The conclusion mentioned above is supported by the Expert findings dated 14 May 1996 of the expert Dr. M. J. for the Municipal Court of Pejë/Peć. The Report is submitted by the appellant himself. The report explains that the property right holder (the appellant's mother) and Agricultural Complex Ereniku concluded a purchase contract in 1963. Based on the contract on sale and gift OV.br. 1649/63 certified before the Municipal Court of Pejë/Peć, the claimed property was transferred from the property right holder (appellant's mother) into the ownership of Agricultural Complex "Ereniku" from Gjakovë/Đakovica. The same report notes that the proceedings before the Municipal Court of Pejë/Peć with case number 229/95 [(determination on nullity of a contract on sale and gift (OV.br. 1649/63)] for the restitution of the claimed property has been initiated in 1995. It is not disputed that these proceedings were not successful until now.
17. Appellant complains further that KPCC did take into account the wrong property because KPCC mentions the parcel nr. 504/4 is only 00.89.97 ha and Appellants states that it is over 7 ha. This ground for appeal is also not founded. Appellant with his claim did not submit any document on the claimed property and not even specific information on the claimed property. Based on that rudimentary information KPCC made a reasonable establishment on the facts about the claimed property. Appellant also in appeal did not provide any evidence that the establishment of the facts by KPA/KPCC on the specifications of the claimed property is wrong.
18. The Supreme Court concludes that the dispute regarding the property rights toward the claimed property is not related with the armed conflict of 1998-1999 and KPCC decided correctly that KPCC does not have jurisdiction.

19. On the basis of the above the appeal has to be rejected as unfounded.

**Legal Advice:**

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Sylejman Nuredini, Presiding Judge**

**Willem Brouwer, EULEX Judge**

**Rolandus Bruin, EULEX Judge**

**Urs Nufer, EULEX Registrar**