

**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-001/2014

Prishtina, 6 October 2015

In the proceedings of:

Ž. N.E.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. 29812), after deliberation held on 6 October 2015, issues the following:

JUDGMENT

- 1. The appeal of Ž. N. E. against the Decision of the KPCC no. KPCC/D/R/199/2013, dated 18 April 2013, is rejected as ungrounded.**
- 2. The decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013, dated 18 April 2013, is confirmed as far as it regards to KPA29812.**

Procedural and factual background:

1. On 30 April 2007, Ž. N. E. as a family household member of his mother M. N. S., filed a claim at the Kosovo Property Agency (KPA) seeking for the repossession over the parcel no. 2589, Street Peka Tepavcevic 12, Cadastral Municipality Ferizaj/Uroševac (henceforth: the claimed property). He stated that on the parcel is located a ground floor house of 48 m² and a backyard of 2.45 ar. He stated that he lost the possession over the property due to the armed conflict, indicating 28 June 1999 as the date of loss and subsequently the claimed property was usurped.
2. The appellant provided the KPA with the following documents to support his claim:
 - Possession list no. 645, dated 14 September 2006, issued by Geodesy Office - Centre for Immovable Property in Municipality of Ferizaj/Uroševac; M. N.S. is listed as the owner of the claimed property;
 - A certificate of evidence no. 43-437-1516, dated 15.09.2006 and issued by Tax administration-Regional Center Pristina which shows that the claimant payed property taxes until 31 December 1998;
 - A birth certificate no. 200-4846/06, dated 9 June 2006, issued by Municipality of Uroševac/Ferizaj; according to this certificate the claimant is son of N. E. and M. S.;
 - A statement of two witnesses: they state that M.S.and M. S. is the same person and that Ž. E. is her son. This statement is verified by the third Municipal Court in Belgrade, Serbia, on 29 January 2008 under OV no. 710/08.
3. The claimed property was physically notified on 16 January 2008. The property at the time of notification was a house and not occupied.
4. The claim is not contested, because no person approached KPA as a respondent.
5. According to the Consolidated Verification Report, dated 7 February 2013, the birth certificate no. 43-437-1516, dated 15.09.2006, and the statement OV.no 710/08, dated 29 January 2008, were positively verified by KPA. The KPA verification team found on 9 January 2008 and 5 May

2011 that the claimed property is registered under the name of B. I. The KPA verification team ex officio added to the case file the following documents:

- Certificate for the immovable property no. UL-72217092-00644, dated 30 March 2011 and issued by Municipal Cadastral Office in Uroševac/Ferizaj; B. I. is listed in this Certificate as owner of the claimed parcel;
- A Contract on sale of the immovable property, dated 14 November 2001, concluded between M. E. S. as seller and B. I. as buyer; according to this contract, the ownership over the claimed property is transferred through a legal transaction to the buyer. The contract was certified by Basic Court in Ferizaj/Uroševac on 15 January 2001 under no.1309/01.

KPA also found that the cadastral data are updated based on this contract.

6. KPCC with the Decision KPPC/D/R/199/2013, dated 18 April 2013, dismissed the claim with the reasoning (in paragraph 10 and 23 in the Cover Decision) that the claimant failed to prove that his claim involves circumstances directly related to or resulting from the armed conflict 1998-1999.
7. The Decision was served on the claimant, Ž. N. E. (hereinafter: the appellant) on 29 August 2013. On 13 September 2013, he filed an appeal against it.

The allegations of the appellant:

8. The appellant challenges the KPCC decision invoking a wrongful and incomplete determination of the factual condition and misapplication of the material law. He states that the alleged alienation of the claimed property by his mother is false. His mother was not the owner of a second house that he himself built on the claimed property but he is the owner of that second building. His mother could not alienate something she did not own.

Legal reasoning:

Admissibility of the appeal

9. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the UNMIK regulation on the resolution of claims relating to private immovable property,

including agricultural and commercial property, amended by Law No. 03/L-079 (henceforth: Law no. 03/L-079).

Merits

10. Following the review of the case file and appellants allegations and pursuant to the provisions of Article 194 of the Law on Contested Procedure (LCP) the Supreme Court has to answer the question whether KPCC had jurisdiction to decide on the claim.
11. Pursuant to Article 3.1 of the Law no. 03/L-079 the KPCC has competence to resolve property claims with respect to private immovable properties, which claims concern property rights that cannot be exercised due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
12. In this case KPA found out that the owner of the claimed property used to be the mother of appellant and that she sold that property in 2001 to a third person, B. I. In the possession list no. 645, dated 14 September 2006, the property was registered under the name of his mother. The KPA found ex officio the Certificate for the immovable property no. UL-72217092-00644 dated 30 March 2011, which lists B. I. as current owner of the claimed property. The changes in the registration of the ownership of the claimed property were done based on the Purchase Contract Vr.nr. 1309/01, concluded on 14 November 2001 between the appellant's mother and B.I. The purchase contract was found ex officio by KPA and positively verified as such and therefore considered as valid. In appeal appellant does not contest these findings of KPA.
13. The fact that the mother of appellant sold the claimed property in 2001 implicates that she by then after the conflict exercised her property rights. Condition for jurisdiction by KPCC is that the property right holder is not able to exercise her property rights. As the mother exercised her property rights after the conflict this condition for jurisdiction is not fulfilled. Therefore the question whether KPCC has jurisdiction has to be answered negative. KPCC rightfully dismissed the claim for this reason.
14. The appellant states for the first time in his letter of appeal that he seeks confirmation of an ownership right over a second building, a house, on the claimed property. This allegation cannot

lead to granting of the appeal. Section 12.11 of Law no. 03/L-079 forbids an appellant to state new facts in appeal when he must have been aware of these facts during the proceedings before KPCC. As appellant alleges in appeal, he was the owner of this second building when his mother still was the owner. He must therefore have been aware of this alleged fact during proceedings before KPA/KPCC. Therefor the Supreme Court cannot take this allegation into account in this appeal. Besides that, the appellant failed to submit any convincing (documentary) evidence for this allegation.

15.The Supreme Court concludes that the appealed decision does not contain any essential violation or any erroneous applications of material and procedural law.

16.The Supreme Court based on the above assesses that the appeal is unfounded. Therefore, on the basis of the above and in accordance with the provisions of the section 13.3 under (c), of the Law 03/L-079 the Court decided as in the enacting clause.

Legal Advice

17.Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, EULEX Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar