

**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-005/2015

Prishtinë/Priština,
12 October 2016

In the proceedings of

N. S.

Appellant

vs.

S. C.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejmn Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (case file registered at the KPA under No.KPA01090), dated 27 November 2013, after deliberation held on 12 October 2016, issues the following

JUDGMENT

1. The appeal of N. S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013, is confirmed as far as it regards the claim registered with KPA under No. KPA01090.

Procedural and factual background:

1. On 20 August 2007, N. S. (henceforth: the Appellant) in her capacity of family household member of the alleged property right holder- her father R. S., filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a cadastral parcel 1853, located in Mitrovicë/Mitrovica, with a surface of 0.01.20 Ha (hereinafter: the claimed property).
2. Together with the claim, the Appellant provided:
 - Inheritance Decision no.28/74 issued on 30 April 1974 by Municipal Court in Mitrovica with which R. S. and M. S. are pronounced as the only successors of the late K. S. with ½ ideal part for every one of them;
 - Transcript/extract from the Possession list no.78 issued on 23 January 2001 by Cadastral Office- Kosovska Mitrovica, listing R. S. and M. S. as owners of some cadastral parcels, including the claimed property, with ½ ideal part for every one of them;
 - Verdict in case no.141/2003 issued on 20 January 2004 by the Municipal Court of Mitrovicë/Mitrovica and granting the claim of S. C. for recognition of his property rights as a sole owner of the claimed property.
 - Motion for reinstating proceedings filed on 04 March 2005 by R. S. and M. S. with the Municipal Court of Mitrovicë/Mitrovica.
 - Possession list no.6108 issued on 18 March 2005 by Kosovo Cadastral Agency in Mitrovicë/Mitrovica, listing S. C. (hereinafter: the Appellee) as a sole owner of the claimed property;
 - Birth certificate no.1632/61/1979 certifying that the Appellant is a daughter of R. S..

3. The Appellant stated that her father R. S. has left the property in 1999 due to circumstances related to the armed conflict.
4. The documents submitted by the Appellant are positively verified by the KPA.
5. On 25 September 2008 the claim was notified. The claimed property was found occupied by the Appellee.
6. On the same date, the Appellee signed the notification to the proceeding but did not claim any legal right on the claimed property.
7. On 27 November 2013, Kosovo Property Claims Commission (hereinafter: the KPCC), through its decision KPCC/D/A/220/2013 dismissed the claim because of absence of jurisdiction with the reasoning that a lawsuit with a competent court seeking confirmation of property rights over the claimed property has been filed prior to 16 October 2006. The KPCC refers to Section 18 of UNMIK/REG/2006/50 as adopted by Law Nr. 03/L-079 as the legal basis by which *“the Commission’s jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force”*.
8. On 23 July 2013, the KPCC decision was served upon the Appellee, and upon the Appellant on 9 June 2013. Against the KPCC decision the Appellant filed an appeal on 9 July 2013.

Allegation of the parties

The Appellant:

9. The Appellant requests the Supreme Court of Kosovo to repeal the KPCC decision and to uphold the ownership right and reinstate the claimed property to the co-owners R. S. and M. S. or to repeal the decision of KPCC and remand the case to the first instance for retrial.
10. To support her appeal the Appellant attached to her appeal the same documents presented previously in the proceeding in front of the KPA/KPCC and a Response from the Basic Court of Mitrovica stating that the property dispute case no.141/2003 is concluded and became final on 26 July 2004, whereas the request to repeat the proceedings was done on 4 April 2005. The case was submitted to the judge who worked on it for restoration to the previous state on 11 April 2005 and currently is in the northern part.

The Appellee:

11. The Appellee did not reply to the appeal.

Legal Reasoning

Admissibility of the appeal

12. The appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 of the Law No. 03/L-079. This is because the decision was served on the Appellant on 9 June 2013 and she filed an appeal on 9 July 2013.

Merits

13. Since the KPCC has reasoned its decision on Section 18 of Law No. 03/L-079, by which the claim of the Appellant is dismissed, the question to be answered by the Supreme Court is whether the KPCC had jurisdiction or not.
14. The exclusion of the Commission's jurisdiction is set up by Section 18 of Law No.03/L-079, which reads that *"the provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation"*.
15. It is not disputed that in 2003 the Appellee filed a claim regarding the ownership right over the claimed property with the Municipal Court of Mitrovicë/Mitrovica. As it can be seen from the presented by the Appellant Response from the Basic Court of Mitrovica, the dispute (case no.141/2003) is concluded and became final on 26 July 2004. The request of the Appellant to repeat the proceedings was done on 4 April 2005 and the case was submitted to the judge who worked on it for restoration to the previous state on 11 April 2005. Currently the case is in the northern part. This means that the proceeding regarding this legal issue is still ongoing before the Basic Court of Mitrovica and the initial lawsuit is filed prior to 16 October 2006.

Conclusion

16. The foregoing leads the Supreme Court to the conclusion that the KPCC has taken a right decision for the right reasons when dismissing the claim of the Appellant and applying Section 18 of Law No. 03/L-079.

17. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1, under (d) of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar