

**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-ës
KOSOVSKA AGENCIJA ZA IMOVINU , ŽALBENO VEĆE KAI**

GSK-KPA-A-072/15

Prishtinë/Priština,
27 July 2017

In the proceedings of:

H. E.

Appellant

vs

D. B.

Appellee 1

and

B. B.

Appellee 2

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 (the case file registered at the KPA under the number KPA00046), dated 30 April 2014, after the deliberation held on 27 July 2017, issues the following:

JUDGMENT

1. **The Appeal filed by H. E. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014, with regard to the Claim registered with Kosovo Property Agency under the number KPA00046 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 with regard to the Claim registered under the number KPA00046 is confirmed.**

Procedural and factual background

1. On 22 November 2006, H. E. (henceforth “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) seeking the repossession of the cadastral parcel No 827/2. Subsequently, the Appellant clarified that he seeks repossession over the cadastral parcel No 827/9 classified at the cadastral registry as agricultural land with the surface of 00.57.28 ha, located at the place called “Njelmësinë/Slanište”, palace called Matiçan/Maticane, Municipality of Prishtinë/Priština (hereinafter “the claimed property”), as well compensation for not being able to use it. The Appellant declared to have bought the claimed property on 2 December 2000.
2. Together with the Claim he submitted to the KPA *inter alia* the following documents:
 - The copy of the Judgment No 3404/91 issued by the Municipal Court of Prishtinë/Priština on 14 February 1995 on the basis of which the Contract on Sale concluded on 29 September 1966 between the late D. A. (father of the Appellant) and the Enterprise PIK “Kosmet Eskport” (legalized under the No 1806/66) was declared null and void. The Enterprise PIK “Kosmet Eskport” was obliged to recognize the ownership right and to handover the possession the claimed property to the heirs of the late D. A. (D, T, B. A. and O. M.). At the same time the heirs of the late D. A. were obliged to pay to the Enterprise PIK “Kosmet Eskport” the amount of 5.717.17 Serbian dinars as compensation. The Judgment became final on 13 November 1996.
 - The copy of the Contract on Sale concluded on 2 December 2000 between D. (D.) A. (represented by S. A.) in a capacity of the Seller and the Appellant in a capacity of the Buyer. Paragraph one (1) of the Contract specifies that the subject of the sale is the claimed property.
 - The copy of the Possession List No 389 issued by the Geodesic Institute of Republic of Serbia, Office for Real Estate and Cadaster (Dislocated Cadaster) on 20 July 2004 showing that the cadastral parcel No 827/8, cultivated land with the surface of 00.77.68 ha is registered as Socially Owned Property under the name of the Enterprise “Kosovo Export” from Fushë Kosovë/Kosovo Polje.
 - The copy of the Certificate for Immovable Property Rights No UL-71914050-02164 issued by Municipal Cadaster Office of Prishtinë/Priština on 23 March 2006, listing the claimed property under the name of D. A.

- The copy of the Contract on Sale concluded between B. (D) A in a capacity of the Seller and the Appellant in capacity of a Buyer on 2 December 2000. The subject of the sale was the claimed property. The Contract was certified before Municipal Court of Prishtinë/Priština on 12 April 2006.
 - The copy of the Judgment rendered by the Municipal Court of Prishtinë/Priština in the case C. Nr 2917/2004 on 2 June 2006 based on which the lawsuit of the Appellant for releasing the claimed property has been accepted as grounded. The respondents: F.G., L. and B. B. were obliged to release the claimed property and to handover the possession of it to the Appellant within 15 days from the date when the Judgment became final (on 26 February 2007).
 - The copy of the Judgment rendered by the District Court of Prishtinë/Priština in the case No 1036/2006 on 26 February 2007 whereby the appeal of L. and B. B. and F. G. was rejected as ungrounded and the Judgment rendered by the Municipal Court of Prishtinë/Priština in the case C.Nr.2917/2004 on 2 June 2006 was confirmed.
 - The copy of the Certificate for Immovable Property Rights No UL-71914050-02164 issued by the Municipal Cadaster Office of Prishtinë/Priština on 7 October 2008, listing the claimed property under the name of the Appellant and Sh. E.
3. The Executive Secretariat of the KPA served the Claim on B. B. (henceforth “the Appellee 2) on 10 January 2007, who claimed a legal right over the claimed property and signed a Notice of Participation. In order to substantiate his position, the Appellee 2 submitted to the KPA the copy of the Statements of three witnesses: S. V, I. B. and I. B, who declared that L. B. had bought the cadastral parcel No 827/8 with the surface of 00.77.68 ha from a person (the name not mentioned) of the Serbian nationality 40 years ago and since then he had been using the property in an uninterrupted manner. The signatures of the witnesses legalized before the Municipal Court of Prishtinë/Priština respectively on 9 January 2007(No VR 137/2007) and on 5 January 2007 (VR 88/2007 and VR 89/2007).
 4. The Claim was notified to D. B. on 18 January 2007, who did not claim a legal right to the claimed property. He alleged that according to the Judgment rendered by the Municipal Court of Prishtinë/Priština in the case No 2917/2004 on 2 June 2006, he was not in possession of the cadastral parcel No 827/8, nor the cadastral parcel No 827/9. He possesses only the cadastral parcel No 827/10.
 5. On 9 October 2007 the Claim was notified to V. G., who claimed a legal right to the claimed property and signed a Notice of Participation.
 6. The Executive Secretariat of the KPA notified again the Claim on 8 March 2011 and found it be occupied by Sh. B. who claimed a legal right over it and signed a Notice of Participation. The latter person explained that he had bought the property from another person: L. B. At the claimed property a new house was constructed.
 7. According to the Verification Reports of 2011, the claimed property was found to be registered at the Cadaster under the name of the Appellant and Sh. E., as the co-owners.
 8. On 30 April 2014, the KPCC with its Decision KPCC/D/A/236/2014 (henceforth “the KPCC’s Decision”, “Decision”) dismissed the Claim due to the fact that it falls outside of the jurisdiction of the Commission, as the possession of the claimed property was not lost as a result of the armed conflict that occurred in Kosovo in 1998-1999. Moreover, the KPCC considered it had no jurisdiction regarding the Claims for compensation for the use of the property without consent.

9. The KPCC Decision was served on the Appellant on 8 September 2014. He filed the Appeal on 30 September 2014. Both, the Appellee 1 and the Appellee 2 have received the KPCC's Decision on 23 March 2015.

Allegations of the Appellant

10. The Appellant states that the Commission decided about his case without his presence, hence, he request the KPCC to decide upon the Claim after it has been reviewed by the Commission individually.

Legal reasoning

11. The Appellant challenges the Decision claiming that the case was decided by the KPCC without his presence. However, he did not raise any of the circumstances provided for in Section 12.3 indicating the grounds for filing of the appeal. The Appellees did not respond to the Appeal.
12. The Supreme Court, after having reviewed the allegations of the Appeal and the content of the case file, concludes that the Decision of the KPCC does not involve any fundamental error or serious misapplication of the applicable substantial law, nor it rests upon an erroneous or incomplete determination of the facts. Hence, the Appeal may not be granted. According to Section 3.1 of Law No 03/L-079 the KPCC has the competence to resolve conflict related ownership claims and property right claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999." That means that the scope of the examination of the KPA is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. If the Commission verifies that the possession of the claimed property was lost before or after the dates indicated above, or that the loss of the possession was not related to the conflict, it shall dismiss the Claim on the basis of the Section 11.4(b) of the Law No 03/L-079. The examination of the other elements that refer to the question of validity of the Contract on Purchase or the question regarding the reasons why the Appellees do not vacate the land, fall outside the competence of the KPA.
13. As it appears from the case file, the Appellant was not in possession of the claimed property during the period between 27 February 1998 and 20 June 1999 and therefore he did not lose the possession of it due to the conflict. Indeed, he purchased the claimed property on 2 December 2000, meaning after the conflict in Kosovo. As mentioned above, any contest related to the property that refers to the circumstances not related to conflict that occurred between 27 February 1998 and 20 June 1999 falls outside the jurisdiction of the KPA. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is ungrounded and has to be rejected
14. Additionally, the Supreme Court wishes to underline that the Appellant initiated court proceedings regarding the same subject matter as in the case at hand before the Municipal Court in Prishtinë/Priština already in the year 2004. Section 18 of the UNMIK Regulation 2006/50 as amended by Law 03/L-079 however provides that the provisions of the Regulation shall be applicable to any claim 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 UNMIK Regulation 2006/50. Further, pursuant to Section 22 of UNMIK Regulation 2006/50, the Regulation entered into force on 16 October 2006. Therefore, taking into consideration that the claim was filed to the competent court almost two years before the current Regulation entered into force, the KPCC and subsequently the Supreme Court do not have jurisdiction over any claim which subject matter was also examined by (or is still pending before) a court of competent jurisdiction prior to 16 October 2006. Consequently, also for that reason the Claim had to be dismissed.

15. Concerning the Appellant's allegations that the Decision about the Claim was taken without his presence request that the Commission should have decided the case individually, the Supreme Court wishes to point out the following:
 - Article 5.3 of Annex III of the Administrative Direction 2007/5 of the Administrative Direction No 2007/5 on Implementing UNMIK Regulation No 2006/50 on the Resolution of Claims relating to Private Immovable Property, Including Agricultural and Commercial Property states that: *"Proceedings before the Commission shall be based on written submissions and, where the interest of justice so require, oral hearings. In the context of section 11.2 of UNMIK Regulation No 2006/50, claims shall be decided on the basis of the submissions by the parties, including documentary evidences"*. That means that the KPCC assesses in each and every case the need to schedule oral hearing. The Court considers the circumstances presented by the parties to the proceedings in the case at hand did not require further clarification during the oral hearing.
 - Article 5.5 of Annex III of the Administrative Direction 2007/5 states: *"The Commission may consider claims raising common legal and evidentiary issued together ..."* This means that the Kosovo Property Claims Commission (KPCC) is the quasi-judicial decision-making body within the Kosovo Property Agency which operated as a mass claims processing mechanism in the field of post-conflict property restitution with the object of facilitating the exercise of property rights by persons displaced by the armed conflict in Kosovo in 1998-1999, irrespective of their ethnicity. Similar mass claims facilities have been created in other post-conflict situations.
16. Furthermore, the Supreme Court is of the opinion that the current case needs no further clarifications and thus it is not necessary to apply Section 12.10 of UNMIK Regulation 2006/50 as amended by Law 03/L-079.
17. As the Kosovo Property Agency had not jurisdiction over the claims for the compensation the Claim of the Appellant in that regard had to be dismissed as inadmissible on the basis of Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law 03/L-079 mentioned above *a contrario*.
18. Considering what was mentioned above, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this Judgment. This Judgment remains without prejudice to the right of the Appellant to pursue his claims before the competent court, if he considers it necessary.

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.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Erdogan Haxhibeqiri, Judge

Sandra Gudaityte, EULEX Registrar