

**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-266/13

**Prishtinë/Priština,
17 September 2014**

In the proceedings of:

M. Z.

Monte Negro

Appellant/Claimant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 (case files registered at the KPA under number KPA17744), dated 13 February 2013, after deliberation held on 17 September 2014, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 (regarding case file registered at the KPA under number KPA17744), dated 13 February 2013, is annulled as rendered in the lack of jurisdiction.
- 2- The claim of M. Z. is dismissed, as inadmissible.

Procedural and factual background:

1. On 29 December 2006 M. Z. filed a claim with the Kosovo Property Agency (KPA), seeking recognition of his ownership right over parcels 4131/2; 4132/2 and 105 in Junik, Deçan/Deçane, Junik Cadastral Zone. He claimed repossession over the parcels which he had earlier acquired with a ruling of the Ministry of Finance of the Republic of Serbia (Department for property and legal affairs) no.140-461-112/97-01 dated 23 June 1997. According to it the claimant was allocated the parcels under the conditions of the Law *“On Conditions, Manner and Procedure of allocation of the agricultural land to the citizens who want to live and work in territory of the Autonomous province of Kosovo and Metohija”*
2. The claimant presented ruling no.140-461-112/97-01 of the Ministry of Finance of the Republic of Serbia dated 23 June 1997. This ruling was negatively verified by KPA.
3. The claimant stated that the claimed property was lost as a result of the circumstances in 98/99 in Kosovo and that the date of loss is 12 June 1999.
4. KPA physically identified parcels no. 4131/2 and 4132/2. The parcel no.105 was not found. Regarding parcel no.105, KPA found a decision HPCC/D/176/2005/C dated 30 April 2005, issued by Housing and Property Claims Commission, which orders that the possession over this property should be given to the claimant, M. Z.
5. The notification was done through publication in the Gazette no.2 and UNHCR property office Bulletin.
6. No responding party has approached the Executive Secretariat to contest the claim prior to the expiry of the statutory 30 days deadline.
7. The notification report dated 20 February 2008 confirms that the parcels no. 4131/2; 4132/2 were negatively verified. Executive Secretariat obtained ex officio a Partial Possession List no.919, issued by Junik Cadastral Zone, Deçan/Decani Municipality, Kosovo Cadastral Agency dated 26

November 2007 which shows that the parcels are registered under the name of socially owned enterprise “Ereniku Gjakove”.

8. With the Decision KPCC/D/A/188/2013, dated 13 February 2013, the Kosovo Property Claims Commission (KPCC) decided to refuse the claim with the reasoning that:
 - the claimed property was allocated to the claimant based on the law “*On Conditions, Manner and Procedure of allocation of the agricultural land to the citizens who want to live and work in territory of the Autonomous province of Kosovo and Metohija*”, which was repealed by UNMIK Regulation no.1999/10 dated 13 October 1999, on grounds of being discriminatory;
 - The claimant failed to submit further evidences to support his claim;
 - The property is registered under the name of socially owned enterprise “Ereniku Gjakove”, as the rightful owner.
9. The decision was served on the claimant on 16 August 2013
10. On 30 August 2013, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC’s decision. He invokes essential violation of the provision of the civil and administrative procedure, erroneous application of the substantive law, of human rights and erroneous and determination of the factual situation. With his appeal he required from Supreme Court to approve the claim and to return the case to the first instance for reconsideration.

Allegations of the appellant:

11. The appellant states that he gained the claimed property with the decision of the state authority. Therefore, he pretends the right of compensation.

Legal reasoning:

Admissibility of the appeal

12. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

13. According to Section 3.1 of the Law No. 03/L-079 the Commission has the competence to resolve claims related to the armed conflict of 1998/1999, claims related to rights that cannot be

exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

14. Based on established facts, it should be accepted that the dispute is not within the jurisdiction of KPCC. The appellant alleges that he acquired the property and the ownership right over the property pursuant the ruling no.140-461-112/97-01 of the Ministry of Finance of the Republic of Serbia dated 23 June 1997. In the enacting clause of this decision is foreseen that: *“The land allocated pursuant to this decision cannot be sold, divided, leased or on any other way alienated by the receiver within 30 years”*. The Supreme Court notes that the ownership right is not transferred, but the property which is socially owned was given to the receiver for usage purpose as usufructs. In this context the appellant is not legitimated to seek for ownership right over the claimed parcels. His property use right over this socially owned property is revoked with the repealing the Law *“On Conditions, Manner and Procedure of allocation of the agricultural land to the citizens who want to live and work in territory of the Autonomous province of Kosovo and Metohija”*, by UNMIK Regulation no.1999/10 dated 13 October 1999.
15. After the verifications from Executive Secretariat of Partial Possession List no.919, issued by Junik Cadastral Zone, Deçan/Decani Municipality, Kosovo Cadastral Agency dated 26 November 2007, results that the claimed property is registered under the name of socially owned enterprise *“Ereniku Gjakove”*, as a social property. In accordance with Art. 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve ownership to *private property* claims and claims involving property use rights *in respect of private immovable property*. The property in dispute was not a private property but a socially owned land. Therefore, the decision of the KPCC had to be annulled as rendered in the absence of jurisdiction.
16. Regarding the compensation requested by the Claimant in his appeal before the Supreme Court, the Panel assesses that this issue is not within the competence of the Supreme Court. The Supreme Court has the competence to resolve the appeals against the Decisions of the KPCC in claims filed with the KPA related to the property rights on private immovable properties that cannot be exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. On the basis of the above and according to the provision of section 12.2 of the Law No. 03/L-079 and art. 198, paragraph 1 of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice

18. 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.

Elka Filcheva-Ermenkova, Presiding Judge
EULEX

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufet, EULEX Registrar