

**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-220/15

Prishtinë/Priština,

16 May 2018

In the proceedings of:

D. B. Đ.

Appellant

vs.

N.A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 (case file registered at the KPA under the number KPA28128), dated 21 October 2014, after deliberation held on 16 May 2018, issues the following

JUDGMENT

1. The appeal of D. Đ. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 (case file registered at the KPA under the number KPA28128), dated 21 October 2014, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 with regard to the claim registered with KPA under KPA28128, dated 21 October 2014 is confirmed.

Procedural and factual background:

1. On 28 February 2008, D. Đ. (henceforth: the Appellant), filed a claim (on behalf of his mother V. Đ.), with the Kosovo Property Agency (KPA) seeking repossession of the cadastral parcel no 402/10 with the culture, cultivated land of the 6th class, with the surface 04.76.36 ha. The cadastral parcel no 402/10 is situated in Municipality of Uroševac/Ferizaj, Cadastral Zone of Nekodim (henceforth: the claimed property). The Claimant stated that the possession over the claimed property was lost on 12 June 1999 due to the armed conflict in 1998/1999 and it is illegally usurped by N.B.
2. To support his claim he provided the KPA with the following documents:
 - Marriage Certificate No 484 issued by Civil Registration Office of Uroševac/Ferizaj on 20 Maj 1987 showing that the Appellant is the son of V. Đ.,
 - Minutes from the main Hearing compiled on 5 December 1995 by Municipal Court of Uroševac/Ferizaj, whereby the Purchase Contract verified at Municipal Court of Uroševac/Ferizaj under the number Ov.Br.945/62 dated on 12 December 1962 and concluded between late father of V.Đ. in the capacity of the seller and Agricultural Cooperative was annulled. The SOE Poljuprirodno Dobro Uroševac/Ferizaj was ordered to return the possession of the claimed property to V.Đ.,
 - Cadastral Decision No 952-01-1/97-210 issued by Directorate for Geodesy of Republic of Serbia on 2 December 1997 whereby, V. Đ. was granted the change of

the user in cadastral register for the claimed property which until the date of issuance of the Decision was registered on the name of Socially Owned Property (henceforth “SOE”)- Kombinat Mladost) from Uroševac/Ferizaj on her name. The legal bases of the cadastral changes was used to be the Decision No 188/97 issued by Municipal Court of Uroševac/Ferizaj on 26 July 1997,

- Possession List No 416 issued by Geodesy Office Centre for Cadastre and Immovable Property Rights of Republic of Serbia (displaced Cadastre) on 18 June 2001 registering the claimed property on the name of V. Đ.,
 - Written Statement of V. Đ. whereby she stated that the claimed property has never been sold by her nor her family members and yet it is registered on her name .According to her the part of the claimed property has been occupied by N. and if N. and in case he possesses any document related to the claimed property, those documents are forged.
3. On 28 May 2010, KPA notified the claim by publishing it in the Notification Gazette no. 1 and in the UNHCR Property Bulletin Office. The Gazette and the List were left to Head of the village in Nekodim who agreed to make them available to the interested parties. The same publications were also left at the Municipality, Cadastral Office and Municipal Court of Uroševac/Ferizaj. The correctness of the Notification was confirmed on 1 June 2010.
 4. Within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, no parties expressed any interest to take part in the proceedings regarding the property that is subject of the claim; since no party contested the validity of the claim the same remained uncontested.
 5. The Cadastral Decision No 952-04/97-250 was not found at Cadastral Municipality of Uroševac/Ferizaj as well as at the displaced Cadaster in Kruševac, thus, the verification of the same document results to be Negative. As far as it relates to the Possession List, it was verified at Cadastral Municipality of Uroševac/Ferizaj. According to the Verification Report, the claimed property was found to be registered on the name of N. B. The chronological history of the changes was described as below:
 - claimed property was used to be registered on the name of SOE “Agricultural Cooperative-Mladost. Following the Decision No 1986/92 issued by Municipal Court of Uroševac/Ferizaj on 17 July 1995 and the Decision No 51/07 issued by Municipal Court of Uroševac/Ferizaj onn 27 July 2002 the property was transferred on the name of N. B. Then

from N. B. the claimed property was transferred on the name of I. B. according to the Ruling on Inheritance No 152/02 issued by Municipal Court of Uroševac/Ferizaj on 31 July 2003 and finally through the Purchase Contract verified at Municipal Court of Uroševac/Ferizaj under the number Vr.Nr.1761/03 the claimed property was transferred on the name of N. Bl.

The Displaced Cadaster in Kruševac verified positively Possession List by saying that the changes before the cadaster register were done in accordance with the Decision No 188/97 issued on 8th October 1997 but same Displaced Cadaster verified negatively the Decision No 188/97 which allegedly used to be legal basis of the above mentioned changes.

6. The Appellant was informed (on 20 August 2009 via telephone) regarding the results of verification of the documents submitted by him in support of his claim (see page no 146 of the case file)
7. As an additional effort, the Executive Secretariat of the KPA on 26 March 2013 has sent a letter on Notice of a Potential Refuse of the claim to the Appellant asking him to submit additional evidence which proves ownership right of his mother property right within 30 days deadline. The claimant received the letter, however did not response and provided no evidence (see page 234 of the case file).
8. With its decision KPCC/D/A/260/2014 of 21 October 2014 the KPCC refused the claim on the basis that the Appellant has failed to show ownership or any other property right over the claimed property immediately to or prior to or during 1998-1999 conflict.
9. On 23 February 2015, the Decision was served on Appellant. He filed an appeal at the Supreme Court on 23 March 2015.

Allegations of the Appellant

10. The appellant alleged that the KPCC's Decision relies on incompletely determined factual situation and erroneous application of material law. The appellant, furthermore, alleged that the ownership over the claimed property was proven with the Court Settlement No 221/95 dated on 5 October 1995, Cadastral Decision No 952-01-1/97-210 from 1997, Possession List No 416 dated on 18 June 2001 issued by dislocated cadastral service which represent a condition of immobile property right from 1999. According to the Appellant it is impossible Possession List was not verified when the same document exist in records of displaced

cadastral service form Kosovo. Also according to the Appellant it is absolutely untrue that any document which represents grounds for the registration of the abovementioned property could not be located because those documents were issued to me by the same institution.

11. By the end of his appeal the Appellant has made a detailed presentation of the evidences he has submitted in order to establish the property right and proposes to the Supreme Court to grant the claim on his favor.

Legal reasoning:

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079. The Supreme Court has jurisdiction over the appeal against the Decision of the KPCC. The appeal is admissible.

Merits of the Appeal

13. The Supreme Court of Kosovo reviewed the appeal pursuant to provisions of article 194 of LCP and after the assessment of allegations in the appeal it found that the appeal is ungrounded.
14. The KPCC based its Decision on the fact that the KPA Executive Secretariat and the KPCC had made a negative verification in the documents on which the Appellant bases his claim of ownership. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported Appellant's claim. Based on this, the KPCC found that he had failed to establish any property right over the disputed property.
15. A special reference on the KPCC Decision was made to the paragraphs 58-60 of the Decision KPCC/D/A/260/2014. According the KPCC the Appellant submitted a Court Settlement from 1995 as well as Cadastral Decision from 1997 by which he alleged the ownership right over the claimed property was transferred to the Appellant's mother.

16. The right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance, Article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time of the alleged transfer of property.
17. The Appellant bases his claim on Minutes from the main Hearing compiled on 5 December 1995 by Municipal Court of Uroševac/Ferizaj and Cadastral Decision No 952-01-1/97-210 issued by Directorate for Geodesy of Republic of Serbia on 2 December 1997. Those documents, however, could not be verified neither at Municipal Court or Municipal Cadastre of Uroševac/Ferizaj nor at displaced institutions at Republic of Serbia.
18. According to the article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980), on the basis of the legal affair (legal transfer) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law.
19. The Appellant presents the Possession List No 416 issued by Dislocated Cadaster on Kruševac/Serbia on 18 June 2001 listing the claimed property on the name of his mother.
20. The Executive Secretariat located ex officio a Certificate of Immovable Property Rights listing the property in the name of a third party.
21. It is obvious that there is a discrepancy between the records in the cadastral office in Uroševac/Ferizaj and those in the dislocated cadastral archives in Serbia for Uroševac/Ferizaj.
22. This leads to the conclusion that the Appellant's family has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/80) were not fulfilled.
23. This leads to the conclusion that the Appellant's mother never gained the property right since the Cadastral Decision No 952-01-1/97-210 issued by Directorate for Geodesy of Republic of Serbia on 2 December 1997 was never executed as it was specified, thus, the conditions of article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled.
24. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.

25. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani , Judge

Timo Eljas Torkko, EULEX Registrar