

**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-005/14

Priština/Prishtinë

21 October 2015

In the proceedings of:

D. S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under no. 31500), after deliberation held on 21 October 2015 issues the following:

JUDGMENT

1. The appeal of D. S. against the decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013 regarding the case file registered at the KPA under the number KPA31500 is accepted as grounded.
2. The decision of the Kosovo Property Claims Commission no. KPCC/D/R/199/2013 regarding the case file registered at the KPA under the number KPA31500 is annulled.
3. The claim of D. S. is dismissed due to lack of jurisdiction of the KPCC.

Procedural and factual background

1. On 3 August 2007, D. S. (henceforth: the claimant) filed a claim with the Kosovo Property Agency (KPA) as an heir to her late father, D. D., stating that her late father is the owner of the cadastral parcel no. 362 with the total surface 00.19.40 ha, which is composed from the house with the surface 80 m², yard of the surface 00.05.00 ha and meadow of the surface 00.13.60 ha (henceforth: the claimed property). The claimed property is located on the village Rufe i vjetër/Staro Rujice, Municipality of Lipjan/Lipljan. The claimant seeks repossession of the property alleging that the possession was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 17 June 1999 as the date of loss.
2. In order to support her claim, she provided the KPA with the following documents:
 - Marriage Certificate no. 4, on the name of D. D., issued by Civil Registration Office, Municipality of Fushë Kosovë/Kosovo Polje, showing the family relation with D. D.
 - Possession List no 40 issued on 3 August 2007 by Geodesic Institution of Serbia, Centre for Cadastre of Immovable Property in Lipjan/ Lipljan, where the claimed property was registered on the name of D.D.as the sole owner.
 - Death Certificate no. 203-19/08-08-176 issued by Civil Registration Office of Lipjan/Lipljan Municipality on 15 January 2008, showing D. D. passed away on 9 September 1996.

- Letter Proposal of D. S., to the Municipal Court of Prishtinë/Priština for initiating the Inheritance proceedings after her late father passed away.
3. The Possession List no 40 and Marriage Certificate were positively verified by the KPA verification unit.
 4. On 22 October 2007, the KPA notified the claim by putting up a sign at the place where the parcel was allegedly located indicating that the property was subject to a claim and that interested parties should file their response within 30 days. No one responded to this notification.
 5. The Kosovo Property Claims Commission (KPCC), with its decision KPCC/D/R/16/2008 dated 30 April 2008, decided to confirm the claimant's property right because the claimant established that D.D. was the owner of the claimed property, at the date of destruction of the claimed residential property and the underlying and associated land, thus, D. S. is entitled to possession of the said property.
 6. With the Decision no. KPCC/RES/17/2010 dated 8 March 2010, the KPCC was informed by the KPA Executive Secretariat that the claim was not properly processed by the Secretariat or more specifically that the claimed property was not properly notified and that the Commission was not informed about this fact. The decision KPCC/D/R/16/2008 dated 30 April 2008 was rescinded. The claim was returned back to the KPA Executive Secretariat for further processing by making the correct notification of the property.
 7. On 31 August 2010, KPA again notified the claim property by publishing it in the Notification Gazette no. 8 and in the UNHCR Property Bulletin Office. The Gazette and the List were left to the Head of the village in Rufc i vjetër/ Staro Rujce who agreed to make them available to the interested parties and at the entry of village Rufc i vjetër/ Staro Rujce. The same publications were also left at the Municipal Court, Cadastral Office and Municipality of Lipjan/Lipljan and Prishtinë/Priština Regional Office, as well as in the Head Offices of UNHCR, Ombudsperson, KCA, DRC and UNMIK Office in Graçanicë/Gracanica.
On 25 January 2011 KPA once more did the notification of the property but this time by visiting it. The property was found to be cultivated land occupied by an unknown person
 8. Within the legal deadline of 30 days, pursuant to Article 10.2 of the Law no. 03/L-079, no party has expressed an interest to take part in proceedings with regards to the property which is subject of the claim; therefore the claim was again considered as uncontested.

9. From the evidences in the file is established that on 26 March 2013 claimant was contacted by the Executive Secretariat of KPA (page 87 of the case file). She confirmed that her father sold the claimed property to his neighbour 17 years ago but the transfer of the property right was not performed, thus, the property remains still on her father's name.
10. By its decision dated 18 April 2013 (KPCC/D/R/199/2013) the Kosovo Property Claim Commission (KPCC) established that the Claimant initially claimed that she or her family lost the claimed property as a result of the 1998-1999 conflict. However, the claimant subsequently advised the Executive Secretariat that she or her family disposed of the claimed property voluntary before the 1998/1999 conflict; hence, the claim stands to be refused.
11. On 27 August 2013, the KPCC decision was served on the claimant.
12. On 26 September 2013, the claimant (hereinafter: the appellant) filed an appeal.

Allegations of the appellant

13. The Appellant challenges the KPCC decision with the reasoning that the claimed property has been unlawfully sold by N. R. to a buyer who is an ethnic Albanian and he did it without anyone's knowledge and consent.

Legal reasoning

Admissibility of the appeal

14. The appeal is admissible. It was filed within the period of 30 days as prescribed by article 12.1 of the Law no. 03/L-079.

Jurisdiction

15. The KPCC has no jurisdiction to review the claim.
16. According to Article 3, paragraph 1, sub-paragraphs a) and b) of the Law no. 03/L-079, a claimant is entitled to seek confirmation and repossession of the claimed property when he/she not only proves this right with valid and documented evidence, but that he/she is not now able to exercise his/her property right due to the circumstances related to or resulting from the armed conflict of 98-99.

17. The Supreme Court notes that based on her statement, the appellant has failed to prove that her claim involves circumstances related to or resulting from the armed conflict of 98-99. In addition, the Supreme Court considers that the loss of possession was a result of voluntary alienation of this property by selling it before the conflict as the appellant herself stated that her father sold the property to his neighbour 17 years ago (approximately year 1996).
18. Cases like these are not within the scope of jurisdiction of the KPCC; they have to be adjudicated by the competent general civil courts. In its reasoning KPCC refers to circumstances that took place before the conflict, but the KPCC decided to refuse the claim. Refusal is not in accordance with the law, but the case has to be dismissed in this situation.
19. In light of the above and pursuant to Article 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment
20. The Courts decision is without prejudice to the right of the appellant to seek confirmation of her property right before the competent local authorities.

Legal advice

21. Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar