

**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-074/15

**Prishtinë/Priština,
2 November 2016**

In the proceedings of:

R. S-S

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman 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/228/2014 dated 13 March 2014 (case file registered at the Kosovo Property Agency under the number KPA38602 after deliberation held on 2 November 2016, issues the following

JUDGMENT

1. **The Appeal of R.S-S against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 with regard to the claim registered under the number KPA38602 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 with regard to the claim registered with the number KPA38602 is confirmed.**

Procedural and factual background:

1. On 6 June 2007, R. S.-S. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (henceforth: KPA) seeking confirmation of the Ownership Right over a Cadastral Parcel number 95/1 with the culture, cultivated land and the surface of 03.40.00 ha which is located at the place called “Maliste-Stojanova”, village “Gusicë/Gusica” at the Municipality of Vitia/Vitina (henceforth: the claimed property).
2. To support the claim, the Appellant provided KPA with the following documents:
 - The Minutes No 166/97 related to the Court Settlement, issued by Municipal Court of Vitia/Vitina on 26 June 1997. Based on Minutes, the Enterprise “AgroMorava” in the capacity of the debtor was obliged to recognize the Ownership Right and handover the possession over the claimed property to R. S-S in the capacity of the Creditor.
 - The transcript of the Possession List no 2/94 issued by Geodetic Administration of the Municipality of Vitia/Vitina on 30 April 1998, listing the Appellant as the owner of claimed property.
3. In 17 June 2008, the KPA notified the claimed property by publishing the claim in the KPA Notification Gazette No 2 of June 2010 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Municipality of Vitia/Vitina who accepted to make it available for interested parties. The same Publications were left in entrance and exit of the village Gërmovë/Grmovo, the Cadastral Office of the Municipality of Vitia/Vitina and the Municipal Court of Vitia/Vitina. The correctness of the notification was confirmed by the same date.

No interested party filed the response on the claim within 30 days deadline, thus, the claim was considered as uncontested.
4. The Minutes No 166/97 was negatively verified by Executive Secretariat of KPA at both Municipal Court of Vitia/Vitina and at the displaced institutions of the Republic of Serbia, while the Department for Cadastre of the Municipality of Vitia/Vitina confirmed that Cadastral Parcel no 95 was found to be as whole, not divided and registered as Socially Owned Property “Zemljoradnica Zadruga” (Agricultural Cooperative). The Executive Secretariat of KPA attempted to verify *ex officio* the Judgment No 112/96, dated on 06 February 1997 issued by Municipal Court of Vitia/Vitina which was the legal bases of gaining of ownership right over the claimed property but the result of the verification was Negative.
5. From the evidences on the case file it is noted that the Appellant was contacted by KPA though the telephone and she confirmed that she loss possession over the claimed property in 1954 (page 054 of the case file).
6. The Kosovo Property Claims Commission through its Decision KPCC/D/A/228/2014 dated on 13 March 2014 decided that the claim is to be dismissed as being outside the

- jurisdiction of the KPCC on the ground that the Claimant has failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
7. The Decision was served to the Appellant on 27 October 2014. She filed an appeal on 17 November 2014.

Allegations of the Appellant

8. The Appellant alleges that the KPCC has incompletely established material facts and has made wrongful implementation of substantial law.
9. The Appellant alleged that the assertion of the KPCC that based on the Appellant's statement the loss of the possession over the claimed property happened on 1954 is not true. She declared that she never gave any statement to anyone or submits any document regarding the issue mentioned on the KPCC Decision. The Appellant asked to provide her with the document on which she declared as such if the same document exists
10. In the Appel, she gives a detailed presentation of the documents that she has submitted in order to confirm her Property Right and seeks Supreme Court to accept the Appeal and make a new decision though which it would be established her Property Right.

Legal reasoning:

Admissibility of the appeal

11. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No. 03/L-006 (henceforth: LCP), and after evaluating the appeal statements found that:
The Appeal is admissible because it was filed within the legal time limit pursuant to the Law no. 03/L-079, which stipulates that a party may file an appeal against a Commission decision within thirty (30) days from the day parties were informed about the decision.

Merits of the appeal

12. 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 unfounded.
13. The KPCC based its Decision on the fact that Claimant has failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
14. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. During the submission of the claim before KPA, on 6 June 2007, the Appellant declared the date of loss of the possession over the claimed property 12 June 1999.
16. From the evidences on the case file can be seen that she allegedly has been contacted by telephone from the KPA officer and according to the notes on the case file she confirmed that the loss of possession over the Claimed Property happened in 1954, but this allegation was denied by the Appellant on the appellate stage.

17. Article 99 paragraph 1 of the LCP stipulates that the claim, reply to the claim, appeals and **other statements, proposals and notices that are made out of court are submitted in written (submissions).**
18. There is no evidence in the case file proving that the Appellant submitted a written statement declaring that the loss of possession was on 1954. The **telephone conversation is not sufficient evidence for proving a fact.**
19. Nevertheless, the issue to consider in this case is whether the Appellant presented evidences to prove the ownership right over the claimed property; therefore, the Supreme Court will give a short summary regarding the question at hand.
20. The Executive Secretariat of the KPA had made a negative verification in the documents, on which the Appellant bases her claim of ownership. The KPCC had not been able to obtain *ex officio* any evidence that supports the Appellant's claim.
21. The Minutes No 166/97 related to the Court Settlement, issued by Municipal Court of Vitia/Vitina on 26 June 1997, was not found before competent institutions in Kosovo and Serbia as well. Even the legal bases through which the Appellant allegedly gained the ownership right, the Judgment No 112/96, dated on 06 February 1997 issued by Municipal Court of Vitita/Vitina was not found before the competent institution.
22. According to the article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time when the Judgment was issued, the right of property can be acquired by law itself, based on legal affair or inheritance....on the basis of the legal affair (which is the Judgment at this case) 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 article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980)
23. The Certificate for Immovable Property Rights has found listing the property as whole under the number 95 and not divided into ne cadastral parcel 95/1, moreover the property is registered as a Socially Owned Property "Zemljoradnica Zadruga" (Agricultural Cooperative), and meaning that the Judgment mentioned at paragraph no 23 of this Judgment was never executed. The Appellant has not gained the property right since the conditions of article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled according to the findings.
24. Based on the above, the Supreme Court finds that the KPCC instead of dismissing the Appellant's claim as outside the scope of its jurisdiction should have rejected the claim due to lack of evidence proving the right of ownership.
25. Since only the Appellant filled an appeal and the court may not worsen the situation of the appellant compared with the contested decision (*reformation in pejus*), the Decision of the KPCC has to be confirmed.
26. In the light of foregoing, pursuant to Section 13.3 under (a) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar