

**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-225/15

**Prishtinë/Priština,
30 May 2018**

In the proceedings of:

R. L.

Appellant

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/244/2014 (case file registered at the KPA under No. KPA43160), dated 18 June 2014, after deliberation held on 30 May 2018, issues the following

JUDGMENT

1. The appeal of R. L. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014, with regard to the claim registered with KPA under number KPA43160 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014, with regard to the claim registered with KPA under number KPA43160 is confirmed.

Procedural and factual background:

1. On 21 August 2007, R. L.(hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA) on behalf of J. L. (his late grandfather), seeking confirmation of the ownership right and repossession of the cadastral parcel number 9/92, a 5th class forest with a surface of 00.25.00 ha, located in the village Movljanje- Municipality of Suharekë/Suva Reka (hereinafter: the claimed property).
2. He claimed that his deceased grandfather is the owner of the said property that is usurped by unknown persons. According to him the loss of possession has been occurred on 11 June 1999 due to 1998-99 circumstances. In addition to confirmation of the ownership right and re possession, the Appellant seeks to be compensated for the time that was unable to use the claimed property.
3. To support his claim, the Appellant provided the KPA with the following documents:
 - Possession List No 81 issued on 14 November 1961 by Cadastral Municipality of Suharekë/Suva Reka, listing the claimed property on the name of J. L.,
 - Birth Certificate No 200 on the name of Appellant, issued by Civil Registration Office of Suharekë/Suva Reka Municipality on 11 January 1979,
 - Death Certificate No 73 of N. L. (Appellant's father) issued by Civil Registration Office of Municipality of Lapovo on 8 October 2002, showing that N. (son of J. L.) passed away on 8 October 2002;

- Death certificate No 203-1 issued by Civil Registration Office of Municipality of Suharekë/Suva Reka on 18 January 1982 showing that J. L. passed away on the date 12 March 1976;
 - Contract on Sale concluded on 31 December 1958 between Sh. G. in the capacity of the seller and M. L. (father of J. L.) in capacity of the buyer of claimed property. The Contract was legalized at District Court of Suharekë/Suva Reka under the number OV No 331/58;
4. The Executive Secretariat of KPA notified the claimed property on 1 July 2010 by publishing the claim in the KPA Notification Gazette No. 3 and the UNHCR Property Office Bulletin. The Gazette and the List were left to village leader who accepted to make it available for interested parties as well as at the entrance and exit of village Mohlan. The same publications were published in the Municipality's and Municipal Court's in Region, Cadastral Office of Prizren/Prizren, UNHCR, CPRK, EULEX, Ombudsperson and ICO.
 5. 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 claims were considered as uncontested.
 6. The Executive Secretariat of KPA verified negatively the Purchase Contract OV No 331/58 dated on 31 December 1958 which serves as legal bases for the transfer of the claimed property on the name of Family Jeftić.
 7. As far as concerns the claimed property, it was not found neither at Cadastral Municipality of Suva Reka/Suharekë nor at Dispalced Cadastre of Kruševac. The officers from both competent institutions confirmed that the Possession List No 81 is very old and the number of cadastral parcel from the period of 1961 is not the same as nowadays.
 8. Instead of Possession List No 81 which was submitted by Appellant, the Executive Secretariat of KPA *ex officio* locates the Possession list No 104 which lists cadastral parcel no 1091 and cadastral parcel no 1092 on the name of J. L.
 9. The Appellant has been informed by Executive Secretariat for the findings related to the claimed property. He admitted that on 1970's were undergone some changes related to the numbers of the cadastral parcels for which he claims, however, he does not possess any document explaining the chronological history of the changes.

10. The Appellant was provided with an information letter asking him to submit additional documents to support his claim and he was informed that if fails to submit the request documents the claim may be refused by the Commission.
11. The letter was received by the Appellant on 8 April 2014 (see page 171 of the case file) but he did not reply.
12. On 18 June 2014, the Commission with its Decision KPCC/D/A/244/2014 refused the claim with the reasoning that Claimant/Appellant has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
13. The KPCC Decision was served to the Appellant on 9 March 2015. He submitted the Appeal on 3 April 2015.

Allegations of the appellant

14. The Appellant challenged the Decision of the KPCC on the basis that the Decision involves incomplete determination of the facts and erroneous implementation of material law.
15. The Appellant state that the KPCC Decision does not clearly specify if the claim dismissed or refused. Further, he alleges is not true that he did not submit additional documents to prove the ownership right over the claimed property as he has proposed the names of three witnesses to be heard.
16. By the end of his Appeal, the Appellant gives a detailed presentation of the documents that he has submitted in order to confirm his ownership.
17. Finally, the Appellant seeks the Supreme Court to confirm the ownership right over the claimed property in favour of the Appellant.

Legal reasoning

Admissibility of the appeal

18. The appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible.

Merits of the appeal

19. However, the appeal is ungrounded.

20. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant "proves" his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

21. The Executive Secretariat of KPA has made a negative verification of the Contract on Sale OV No 331/58 submitted by the Appellant as well as the Possession List No 81 issued on 14 November 1961.

22. The Appellant submits no additional evidences proving the ownership right over the claimed property despite it was requested by the Executive Secretariat of KPA.

23. The KPCC bases its Decision to refuse the Appellant's claim based on the fact that the he failed to provide any evidence that could be verified by the KPA, that his grandfather as property right holder enjoys any ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.

24. The appeal of the Appellant recalls the same allegations as he stated before the KPCC. No new evidence was provided with the appeal only his motion the Supreme Court to schedule a hearing session of the three witnesses proposed by him.

25. The court considers that the hearing session proposed by the Appellant is not necessary because the facts, circumstances, and his allegations are sufficient to serve as basis in order to render a meritorious decision.

26. The Supreme Court finds that the KPCC has taken a correct and grounded Decision in the course of a proper procedure. Consequently, the Supreme Court finds that there were no violations of material rights or incomplete determination of factual situation.

27. In the light of the foregoing, pursuant to Article 13.3 sub-para (c) of Law No. 03/L-079 is decided as in the enacting clause of this Judgment.

Legal advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar