

**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-202/15

Pristina,
24 January 2018

In the proceedings of:

S. S.

Appellant

Vs.

M. M.

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014 dated 30 April 2014 (case file registered under KPA91748), after the deliberation held on 24 January, issues the following:

JUDGMENT

1. The appeal of S. S. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014, dated 30 April 2014, as far as the claim registered in KPA under KPA91748 is concerned, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014, dated 30 April 2014, as far as the claim registered in KPA under KPA91748 is concerned, is quashed.
3. Based on Article 198.1 of the Law no.03/L006 on the Contested Procedure, the claim of S. S. with number KPA91748 is dismissed due to lack of jurisdiction of the KPCC.

Procedural and factual background:

1. On 16 October 2006, S. S. (hereinafter: the appellant) filed a claim with Kosovo Property Agency (hereinafter: the KPA) on behalf of his father Milorad Stanisavljevic seeking confirmation of the property right over several cadastral parcels at the place called "Karagačko Polje". Among others, also over the parcel which is subject of the claim with number 5656/4, with a surface of 0.04.39 ha, Municipality of Peja/Peć (hereinafter: the claimed property). According to the appellee, the loss of possession over the claimed property had occurred in June of 1999 as a result of circumstances in the period 1998/1999 in Kosovo.
2. To support the claim, the appellant, together with the claim, provided the KPA with the following documents:
 - Copy of Possession List no.4674, issued by the Peja/Peć Cadastral Municipality on 10 September 1998 which shows the claimed property listed in the name of claimant's father M. S.;
 - Birth certificate issued by Civil Registration Office of Peja/Peć Municipality on 30 June 1976 proving that S. S. is the son of M.;
 - Power of Attorney given by M. S. to the appellant and certified in the Municipal Court of Užice under Ov.Br.1316/8 dated 7 March 2008 ;
 - Death certificate issued by the Municipality of Užice on 10 August 2010 proving that M. S. passed away on 5 August 2009 in Užice.
 - Possession list issued by the Cadastre Directorate in Peja on 10 March 1987 proving that the claimed property was registered in the name of appellant's grandfather A.S..

- Possession list issued by the UNMIK Administration, Cadastre Directorate in Peja on 30 October 2006 proving that the claimed property was registered in the name of appellant's grandfather A. S;
 - Contract on Sale concluded between A. S. and the L.family on 9 March 1965 certified in the Municipal Court of Peja/Peć under 1704/1965 dated 25 December 1965.
3. On 17 October 2012, the KPA Executive Secretariat notified the claimed property by placing a sign at the claimed property, which was an orchard occupied by unknown persons who were not present during the visit at the claimed property.
 4. M. M. (hereinafter: the appellee) signed the notice of participation and stated that the claimed property, respectively the parcel 5656/4, has been in his unobstructed ownership and possession since 1955 when he purchased it. He has presented:
 - Ruling on Inheritance T.Nr.626/03 dated 22 November 2006 by which after the death of E. M., the inheritance mass, including the claimed property, was inherited by the appellee and S. M., maiden name M.
 - Possession List no.1894 issued by UNMIK Administration in Peja/Peć on 16 August 2002 which shows the claimed property listed in the name of appellant's father E. M. and that the mentioned parcel has a surface area of 0.92.94 H, which culture an orchard.
 - Evidence of history of the parcels with number 01-3/33 dated 14 June 2012 whereby the Cadastre Directorate of Peja/Peć Municipality provides the chronology of cadastral changes pertaining to the parcel no.5656/4.
 - Notary statement of A. and A. L. proving that when the property was sold, parcel 5656/4 was also included and was purchased from the appellee together with other parcels. Also, he does not know why the parcel remained listed in the name of A. S, but he knows that appellant's family took the property in unimpeded possession as of 1955.
 5. KPA Executive Secretariat was able to verify positively the documents provided by the appellant to support the claim.
 6. On 18 June 2014, the Kosovo Property Claims Commission, through its decision KPCC/D/R/247/2014, decided to reject the claim because according to the reasoning in paragraph 25 "the claimant failed to present evidence and the Executive Secretariat ex officio was not able to find any evidence in the public records supporting the appellant's property rights allegations, because the loss of possession is not related to the circumstances of the armed conflict that occurred in 1998/99, but to voluntary alienation of the property".
 7. The Decision was served on the appellant on 29 October 2014. On 24 November 2014, the appellant filed an appeal with the Supreme Court.
 8. The appellee received the appeal on 3 August 2015 but he did not respond to the appeal.

Appellant's allegations

9. The appellant stated that the KPCC Decision contains essential violations of the substantive law as well as erroneous and incomplete determination of the factual situation.
10. According to the appellant, the submitted documents prove that the property is listed in the name of his grandfather and later in the name of his father, and that it is not possible for the properties to have remained erroneously listed even though he himself confirmed the sale of the property through communication by phone (page 132).
11. In the end of his appeal, the appellant requests from the Supreme Court to grant his appeal and quash the KPCC decision and to issue a new decision on the matter ordering the return of the property to the appellant.

Legal reasoning:

12. The appeal was filed within the 30-day time limit as stipulated by Article 12.1 of the Law no. 03/L-079 and is admissible.

Merits of the appeal

13. After examining the case file submissions, challenged decision and allegations of the appellant, pursuant to Article 194 of LCP, the Supreme Court found that the KPCC decision had to be annulled not on merits of the appeal but *ex officio* because it contained contradictions between the order and the reasoning, and because the claim does not fall under its jurisdiction.
14. Based on Article 3.1 of the Law no.03/L-079, the KPCC has jurisdiction over immovable property claims and the right of use over private properties “loss of possession of which is directly related to the consequences of the armed conflict or circumstances related to the conflict that occurred between 27 February 1998 and 20 June 1999”. If the Commission ascertains that loss of possession is not the result of conflict, than it dismisses the claim pursuant to Article 11.4(b) of the Law no.03/L-079.
15. Furthermore, under Section 2.1 of UNMIK Administrative Direction 2007/5 on the implementation of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property Including Agricultural and Commercial Property, as amended with Law no. 03/L-079, hereinafter the Administrative Direction (AI) "any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, including agricultural and commercial property, who at the time of filing a claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict of 1998/1999, is entitled to reinstatement as the property rights holder in of his/her property right"

16. In the concrete case, the appellant alleges ownership which is proven by the cadastral record, but he could prove that he had possession because upon the purchase of parcels 5670 and 5671 by his grandfather, although included in cadastral documents according to assertions of previous owners, they were not included in the sale and purchase and were not taken into possession. According to statements of M. family, the land was sold based on boundary lines without cadastral measurements.
17. From the case file submissions, it follows that when asked by the Executive Secretariat on 1 August 2008, the claimant, respectively the appellant's father, stated that the property in parcel 5656/4 was aliened prior to the conflict.
18. KPCC decided to reject the claim with the reasoning that the claimed property was lost not as a result of conflict but as consequence of voluntary disposal by the owner. The Supreme Court found that the KPPCC decision contained contradictions and that in Albanian and English versions it is said that the claim was rejected, whereas in the Serbian version the claim was "dismissed.
19. The Supreme Court found that KPCC had reasoned well when it stated that the claim was not in the competence of KPCC, because possession was not lost as a consequence of conflict or circumstances related thereof, but it did not act pursuant to law when it ordered for the claim to be rejected. Therefore, the KPCC decision had to be quashed ex officio and the claim had to be dismissed due to lack of competence in accordance with provisions of Article 198.1 of the Law no. 03/L-079 and for the reasons stated in Article 3.1
20. This Judgment does not prejudice any property right for the current possessors nor does it present an obstacle to initiating proceedings before competent body or competent court for parties that consider it necessary.
21. Based on the above and in accordance with Article 12.2 of the Law no.03/L-079 and Article 198.1 of the Law on Contested Procedure, the court decided as in the enacting clause of this judgment.

Legal advice:

22. 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.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejamni , Judge

Timo Eljas Torkko, EULEX Registrar