

**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- 151/14

**Prishtinë/Priština,
18 May 2016**

In the proceedings of:

M. S. R.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 (case file registered at the KPA under the number KPA 20152), dated 21 August 2013, after deliberation held on 18 May 2016, issues the following:

JUDGMENT

1. The appeal of M. S. R. against the decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013, dated 21 August 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/A/212/2013, dated 21 August 2013 as far as it is regarding the claim registered at the KPA under the number KPA 20152, is confirmed.

Procedural and factual background

1. On 30 November 2006, M. S. R. (henceforth: the Appellant) in his capacity of a member of family household of the alleged property right holder, his father S. P. R., filed a claim asking for repossession of the parcel no. 1808 with the surface of a 01.14.44 ha (henceforth: the claimed property), located in Vitomirica, Cadastral Zone of Pejë/Peć, Municipality of Pejë/Peć.
2. In the claim, the Appellant claimed that the possession of the property has been lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 14 June 1999 as a date of loss of the possession.
3. To support the claim he submitted, *inter alia*:
 - Inheritance Ruling O.br.204/58 issued on 07 November 1958 by District Court in Peć, by which the Appellants father and alleged property right holder S. R. is proclaimed for legal successor of the late P. R. with 2/5 ideal parts of the entire heritage, which comprises a house and land with surface area of 07.60.45 Ha in Vitomirica.
 - Judgment C.no.76/96 issued by Municipal court in Peć on 11 April 1996 establishing that the Appellants father and alleged property right holder S. R. is the owner of a part of the parcel no.1808 with surface of 1.14.44 Ha in Vitomirica, which the defendant PKB”Poljoprivreda” is due to recognize and cede the property to the plaintiff for possession, free use and disposal and also bear that the plaintiff be registered as the holder of property rights in the Office of Cadaster of Immovable property in Peć.
 - Birth certificate no.10/1934 certifying that S. R. is son of M. and P. R.

All of the above mentioned documents were positively verified by the Executive Secretariat of the KPA.

4. The KPA obtained *ex officio* a Partial Possession List no.410/06.02.2007 listing P.SH.Inst.Biote.OBPB Fidanishta Bujqesore (a Socially Owned Enterprise) as an owner of the claimed property. In the Possession List the parcel no.1808 is with surface 31.74.33 Ha.
5. The notification of the claim carried out on 24 February 2009 and reflects the property as a commercial without buildings (land/forest) which was not occupied.
6. Since no party contested the validity of the claim within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, the claim remained uncontested.
7. The Appellant was contacted on 03 June 2013 and he stated that he is aware that the submitted Judgment C.no.76/96 issued by Municipal court in Pejë/Peć on 11 April 1996 is not powerful and he does not know if the Court procedure has been finished. He also stated that his family was not in possession of the claimed property in 1999 as the Court procedure was still ongoing and the loss of possession was not related to the armed conflict 1998-1999, but it happened in the decade 1980-1990 when the property was taken from his mother by PKB"Poljoprivreda".
8. On 09 February 2007 the Ministry of Agriculture submitted a letter to KPA informing that the "Kosovar Institute of Agriculture" is the owner of the claimed property since it was created many years before the armed conflict.
9. On 21 August 2013 the Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/212/2013, dismissed the claim. In paragraph 18 of the Decision, which applies to the claim, it is stated that on the basis of the various types of the verified documents submitted by Claimant (the Appellant) or obtained by the Executive Secretariat *ex officio*, or based on the Claimant's (Appellant's) own statement, the latest failed to show that his claim involves circumstances directly related or resulting from the 1998-1999 conflict. Accordingly the claim falls outside the mandate of the Commission and stands to be dismissed.
10. The Decision of the KPCC was served on the Appellant on 28 February 2014 who filed an appeal on 27 March 2014.

Allegations of the Appellant

11. The Appellant asserts that the appealed decision of KPCC contains a fundamental error or seriously violates the law and is based on wrongfully and incompletely based factual situation. The Appellant alleges that as a consequence of the armed conflict that

occurred in Kosovo from 27 February 1998 to 20 June 1999 he failed to achieve his rights to return the claimed property. The Appellant also states that at the time the Judgment C.no.76/96 was passed he and his father S. R. lived in the USA, therefore they were not in a position to immediately return their property.

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 issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of M. S. R. filed with the KPA on 30 November 2006.
14. According to Article 3.1 of Law No. 03/L-079, the KPCC has the competence to resolve conflict related claims **involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999**. Thus, a Claimant is not only to provide an ownership title over a private immovable property but also to show 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**. Both conditions are to be met.
15. In the current case, the possession over the property was lost in 1980-1990 (the Appellant himself asserts this fact). It is clear that the claim concerns a dispute that started before 1998, and that it has no relation to and is not resulting from the armed conflict in 1998/1999. The fact that at the time the Decision no.76/96 was passed the Appellant and his father S. R. lived in the USA is not sufficient to prove that some or both of them possessed the property before the conflict but had lost it due to the circumstances of the armed conflict. The documents in the file and his allegation/admission as well indicate that the loss of the possession took place long before the conflict.

16. The KPCC rightfully dismissed the claim on the grounds of that it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
17. Consequently the appeal according to Section 13.3 (c) of the Law No. 03/L-079 is to be rejected as unfounded and the Decision of the KPCC is to be confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA20152).

Legal Advice

18. 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