

**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-182/14

**Prishtinë/Priština,
20 July 2016**

In the proceedings of:

D.T.B.

Str. Aleksandra Veljkovića br. 7/1
Jagodina
Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Sylejmani, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission (henceforth: KPCC) KPPC/D/A/212/2013 (case file registered at the KPA under the number KPA25880) dated 21 August 2013 (henceforth: the contested KPCC decision), after deliberation held on 20 July 2016, issues the following:

JUDGMENT

- 1. The appeal of D.T.B. against the decisions of the Kosovo Property Claims Commission KPPC/D/A/212/2013 (case file registered at the KPA under the number KPA25880) dated 21 August 2013 is rejected as ungrounded.**

2. **The decisions of the Kosovo Property Claims Commission KPPC/D/A/212/2013 (case file registered at the KPA under the number KPA25880) dated 21 August 2013 is confirmed.**

Procedural and factual background:

1. On 14 October 2007, D.T.B. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (henceforth: the KPA) as Family Household Member (FHM) of his deceased father T.M.B. (henceforth: the Property Right Holder) seeking confirmation of the ownership over a parcel No. 8, with a surface of 0He 3Ar 62m², Cadastral Zone Pejë/Peć, Municipality of Pejë/Peć (henceforth: the claimed property).
2. In the claim the Appellant stated that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 13 June 1999 as the date of loss.
3. With the claim he submitted *inter alia* to KPA:
 - Purchase Contract, concluded on 23 May 1960 between the seller N.R. and the buyer Property Right Holder (henceforth: PRH). This document does not specify the number of the Possession List and/or any parcel;
 - Possession List No. 25, issued by the Cadastral District of the Municipality of Pejë/Peć on 31 August 1994, listing the PRH as an owner of the claimed property;
 - Death Certificate of the PRH No. 200-3/000SL/98 issued by the Municipality of Pejë/Peć, Republic of Serbia on 7 April 1998;
 - Power of Attorney (PoA) given from the Appellant to Z.B. to represent him before the KPA.
4. The notification of the claim was carried out through the publication in the KPA Notification Gazette (Nos. 1 and 11) and UNHCR Property Office Bulletin, on 28 May 2010 and 25 April 2013.
5. Following the notifications of the claim and within the legal time limit of 30 days, nobody presented himself/herself as respondent or interested party before the KPA/KPCC, thus the KPA/KPCC treated the filed claim as uncontested.

6. Based on the KPA verification reports dated 5 March and 10 June of 2008 as well as the Consolidated Verification Report dated 18 January 2013, the submitted document (except the PRH's Death Certificate and Appellant's ID *prima facie* verified) were not found at the Department of Cadastre of the Municipality of Pejë/Peć and Municipal Court of Pejë/Peć.
7. The KPA Executive Secretariat contacted the Appellant on 5 August 2009 (he also was contacted earlier) asking for additional documents but he has not provided any of them.
8. On 21 August 2013, the KPCC with its decision KPCC/D/A/212/2013 refused the claim. In the paragraphs 102-103 of the reasoning of the decision, the KPCC notes that the Purchase Contract submitted by the Appellant, concluded in 1960 between the PRH as purchaser and N.R. as seller does not identify the claimed property. The same decision states that Possession List from 1994 from the dislocated cadastre submitted by the Appellant, listing the PRH as the rightful owner of the claimed property could not be verified as being genuine. The said decision also states that the KPA Executive Secretariat (henceforth: ES) found *ex officio* an updated Possession List from 2008, which lists the claimed property in the name of the Municipality of Pejë/Peć. Further, the KPCC points out that the ES contacted the Appellant on several occasions requesting him to submit additional documents to prove the alleged ownership right over the claimed property, but he stated that he has no further evidence to submit. Finally, the KPCC concludes that the Appellant has failed to show ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
9. The KPCC decision was served on the Appellant on 25 April 2014, while he filed an appeal on 22 May 2014.

Allegations of the Appellant:

10. The Appellant alleges in the appeal that the contested KPCC decision is based on erroneously and incompletely established factual state and on wrong application of the material law.
11. The Appellant alleges that the conclusion of the KPCC that the ES could not verify any of the documents he submitted is untrue. According him the institutions that are to

perform the verification are in the possession of the evidences based on which they could confirm that the submitted documents are authentic.

12. The appellant also states that he never submitted the Possession List (mentioned in the KPCC decision) for which it is alleged that the ES had found listing the claimed property in behalf of a third party.
13. According to the Appellant the submitted evidences unequivocally establish that the PRH was a lawful owner and possessor of the claimed property and that this right was lost because of the circumstances which had arisen from the armed conflict that took place between 27 February 1998 and 20 June 1999.
14. Finally, the Appellant proposes the Supreme Court of Kosovo to accept his appeal and establish that he (the Appellant) has the right for repossession over the claimed property.

Legal reasoning:

15. The appeal is admissible. It has been filed within the 30 day period as prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property (hereinafter Law No. 03/L-079).
16. The contested KPCC decision is based on the fact that the ES and the KPCC had made a negative verification in the documents, on which the Appellant bases claim of ownership. The ES had been able to obtain *ex officio* the Possession List No. 25 issued by the Department for Cadastre Geodesy and Property of the Municipality of Pejë/Peć, listing the claimed property as the property of the Municipality of Pejë/Peć. Moreover, ES contacted several times (31 March, 3 June and 18 December of 2008, and 5 August 2009), the Appellant requesting him to submit additional documents for proving the alleged ownership right, but he did not provide any of them.
17. The appeal from the Appellant repeats the same allegations that he made before the KPCC. No new evidence has been submitted with the appeal.
18. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation

of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.

19. In the light of foregoing, pursuant to Section 13.3 under (c) 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 the 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