

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-205/15

**Prishtinë/Priština
7 February 2018**

In the proceedings of:

B. M.,

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judge Beshir Islami, Presiding Judge, Krassimir Mazgalov and Isa Kelmendi, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC”) No KPCC/D/A/244/2014 dated 18 June 2014 (the case files registered at the Kosovo Property Agency under the number KPA44813), after the deliberation held on 7 February 2018, issues the following:

JUDGMENT

1. The Appeal filed by B. M. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/244/2014, dated 18 June 2014, concerning the cases registered at the Kosovo Property Agency under the number KPA44813, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, dated 18 June 2014, as far as it concerns the claim number KPA44813, is confirmed.

Procedural and factual background

1. On 20 August 2007, Ž. M. (hereinafter: “the Claimant”) filed a claim with the Kosovo Property Agency (hereinafter “the KPA”) seeking repossession of the cadastral parcel No ... with the surface of 0.50.34 ha, located in the place called *name of the place* ..., Municipality of Lipjan/Lipljan (hereinafter “the claimed property”), which he stated that he owned and lost it as a result of the circumstances related to the armed conflict. The claimed property now is occupied.
2. Supporting the Claim, he submitted to the KPA *inter alia* the following documents:
 - Ruling on inheritance O.br.134/84 dated 28 January 1985 issued by the Municipal Court of Lipjan/Lipljan, whereby the Claimant was pronounced the heir of the claimed property,
 - Death certificate issued by the parallel Municipality of Lipjan/Lipljan on 5 January 2007, indicating that the Claimant’s father J. M. passed away on 1 September 1969,
 - Copy of the Possession List 339 issued by the Cadastral Office of Lipjan/Lipljan on 22 February 2008, indicating that the cadastral parcel 1709 with the surface of 0.50.34 ha, is registered under the Claimant’s name.
 - Copy of the possession list 339 issued by UNMIK Cadastral Office in Lipjan/Lipljan on 15 March 2007, indicating that the cadastral parcel *parcel’s number* ..., with the surface of 0.50.34 ha, is registered under the Claimant’s name.
 - Confirmation No 952-3/2017-93 issued by the Cadastral Office of Lipjan/Lipljan dislocated in Serbia on 8 February 2007 correcting paragraph 2 of the Ruling on inheritance O.br.134/84, namely, cadastral parcel no ... located at the place called *name of the place* ... with the culture- 2nd class cultivated land has the surface of 00.12.46 ha while cadastral parcel no 1709 located at the place called *place’s name* ..., -4th class cultivated land has the surface of 00.50.34 ha
3. The Executive Secretariat of KPA notified the claimed property on 9 March 2010.

4. Because no party filed a response to the claim within the legal deadline of 30 days, pursuant to Section 10.2 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50), the claim was considered as uncontested.
5. According to the verification reports dated 24 December 2009, the claimed property is registered under the name of S. M.
6. The Claimant was contacted several times by phone by the KPA officers and was requested to provide additional documents because, according to the records, the claimed property was found to be registered under the name of his brother S. (see case files pages 52-55).
7. On 30 April 2014, the KPCC through its Decision KPCC/D/A/244/2014 (hereinafter: “the KPCC’s Decision”) dismissed the Claim due to the fact that it fell outside the jurisdiction of the Commission as the possession of the claimed property was not lost as a result of the armed conflict which occurred in Kosovo in 1998-1999.
8. Ž. M. passed away on 4 January 2012 in Belgrade. Decision of the KPCC was served on the Claimant’s wife B. M., (hereinafter: “the Appellant”) on 7 November 2014. She filed an Appeal on 4 December 2014.

Allegations of the Appellant

9. The Appellant states that the Decision of the KPCC was rendered in violation of procedural provisions and erroneous determination of the factual situation and erroneous application of the material law.
10. She further states that the Decision was rendered alluding that the loss of the property did not occur as a result of the conflict or the circumstances related to the conflict, which is not true. The Commission, according to the Appellant, did not undertake all procedural actions and did not review facts and evidence to reach a correct conclusion concerning the Claim.
11. The Appellant requested the Supreme Court to quash the Decision of the KPCC and render a judgment recognizing the Appellant’s property right and returning possession over the property.

Legal reasoning

12. After having reviewed the case files and appeal allegations, pursuant to articles 12 and 13 of the UNMIK Regulation 2006/50, as amended by the Law No 03/L-079 and article 194 of the Law No 03/L-006 on Contested Procedure, the court found that the Appeal is

- admissible because it was filed within the time period of 30 days as prescribed by article 12.1 of the UNMIK Regulation 2006/50, as amended by the Law No 03/L-079.
13. The Appellant has proved to be a close family member of the Claimant pursuant to the provision of the article 1 par 12 of the Administrative Direction No 2007/5 Implementing UNMIK Regulation No 2006/50 on the Resolution of the Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by the Law No 03/L-079 relating to the definition “*A member of the family household*” means the spouse, children (*born in and out of wedlock or adopted*) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law,
 14. The Supreme Court, after having reviewed appeal allegations and the content of the case files found that the KPCC’s Decision does not contain any essential violation or erroneous application of the material law and it is not based on erroneous and incomplete determination of the facts. Therefore, the Appeal may not be granted.
 15. Pursuant to article 3.1 of the Law No. 03/L-079, the KPCC shall have jurisdiction to resolve conflict related property claims and ownership claims “which are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
 16. Based on the documents submitted and found at the respective registries, the property was registered under the name of S. M. and with different surface from the claimed property.
 17. The Appellant indicated that her late husband is the legitimate owner of the claimed property but the property is unlawfully occupied by her brother in law. This is because the Ruling on inheritance was not executed.
 18. After having reviewed the evidence gathered in this case, the Supreme Court considers that the Appellant did not prove that the loss of possession of the claimed property is related to the conflict. On the other hand, according to the Verification Report, the Executive Secretariat of KPA found the claimed property to be registered on the name of S. M.
 19. This leads the Supreme Court to the conclusion that the KPCC has rendered a fair decision based on right reasons when it dismissed the Appellant’s claim. The Commission rightfully found that the Appellant failed to prove the loss of property right over that property immediately before or during the conflict of 1998/99. Those circumstances and the assessment of the potential validity of the ruling on inheritance between the Claimant and his brother, nonetheless falls outside the jurisdiction of the KPCC.
 20. Regarding Appellant’s allegation that the Decision on the Claim was taken without his presence and the request that the Commission should have opened a hearing and invited the Appellant, the Supreme Court notes as follows: article 5.3 of Annex III to Administrative Direction 2007/5 Implementing UNMIK Regulation No. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property states that: “*The proceedings before the Commission are based on verbal submissions and documents, if the interest of justice so require, oral hearing. Pursuant to Section 11.2 of UNMIK Regulation No. 2006/50, Claims shall be decided on the basis of the submissions by the parties, including documentary evidence*”. Also, the Supreme Court is of the opinion that the present case

does not require additional clarification and therefore it is not necessary to apply Section 12.10 of UNMIK Regulation 2006/50, as amended by the Law No 03/L-079 and hold a hearing.

21. In light of the above, pursuant to section 13.3 (c) of UNMIK Regulation 2006/50, as amended by the Law No 03/L-079, it is decided as in the enacting clause of the present judgment.
22. This Judgment does not prejudice the Appellant's right to seek his rights before the competent court, if he deems necessary.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, as amended by the Law No 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, EULEX Registrar