

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-039/14

**Prishtinë/Priština,
16 December 2015**

In the proceedings of

B.B.

Lazara Lopičića 19/1

Kraljevo, Serbia

Appellant

vs.

D.B.

Tirana 13

Gjakovë/Đakovica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 (case file registered at the KPA under the numbers KPA40552 and KPA40553), dated 13 February 2013, after the deliberation held on 16 December 2015, issues the following

JUDGMENT

1. The Appeals filed by B.B. , registered under the numbers GSK-KPA-A-039/2014 and GSK-KPA-A-040/2014, are joined in a single case under the number GSK-KPA-A-039/2014.
2. The Appeals filed by B.B. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013, dated 13 February 2013, with regard to the Claim registered with KPA under No. KPA40552 and KPA40553, are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 dated 13 February 2013, with regard to the Claims No KPA40552 and KPA40553, is confirmed.

Procedural and factual background

1. On 21 May 2007, B.B. (henceforth: the Appellant) filed two separate Claims with the Kosovo Property Agency (hereinafter: the KPA), registered under the case No. KPA40552 and case No. KPA40553, seeking the repossession of the cadastral parcel 1297/1 with the surface of 1.83.74 ha and the cadastral parcel 1298/2 with the surface of 0.80.66 ha, located in the village of Bec/Bec, Municipality of Gjakovë/Đakovica (hereinafter: the claimed property), and asking for the compensation for use of the claimed property without his approval.
2. With the Claims he submitted *inter alia* to the KPA:
 - Copy of the Possession List No. 96/20.02.2002 listing the Appellant as a property right holder (PRH) of 30/120 (¼) ideal part of the claimed property;
 - Copy of the plan No. 953-2/2005-486/21.12.2005 listing the Appellant as a PRH of the claimed property;
 - Contract on gift No. 938/1977 shows that the Appellant received ¼ of the claimed property from his uncle.

All the above mentioned documents were positively verified by the KPA.

3. On 03 November 2010 the KPA notified the claim. The property was found occupied by D.B. (henceforth: the Appellee) who claimed a legal right over it and expressed his intention to participate

in the proceedings. The Appellee alleged that he had purchased the parcels in 2001 from the Appellant's father and the purchase contract was concluded in 2004.

4. The Appellee submitted to the KPA:
 - Contract on purchase of real estate, concluded on 16 November 2004 between the Appellant as a seller and the Appellee as a buyer regarding the claimed property.
5. The Appellant was contacted on 11 January 2013 by KPA and he confirmed that he had sold the claimed property to the Appellee in 2001 and in 2004 the purchase contract was concluded.
6. On 13 February 2013, the KPCC with its Decision KPCC/D/A/188/2013 dismissed the Claims due to the fact that they fall outside the mandate of the Commission, as the possession of the claimed property was not lost as a result of the armed conflict that occurred in Kosovo in 1998-1999 and due to lack of jurisdiction regarding the Claims for compensation for use without approval.
7. The KPCC Decision was served on the Appellant on 15 August 2013. On 27 August 2013 Appeals were filed by the Appellant.

Allegations of the Appellant

8. In his Appeals, the Appellant alleges that the Decision of the KPCC involves a serious misapplication of the applicable material and procedural law and erroneously and incompletely determination of the relevant facts. He also alleges that he has never received the documents provided by the Appellee and he has never made any statement with regard to losing the possession over the claimed property voluntarily or due to other circumstances, other than exclusively due to the armed conflict. The Appellant requests the Supreme Court to annul the Decision of the KPCC and to recognize his ownership over the claimed property.

Legal reasoning

Admissibility of the Appeals

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

Joining the Appeals

10. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 states that the Supreme Court can decide upon joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This Section allows the

Supreme Court to take into consideration the joining or merger of appeals in order to review and render judgments when there are common legal and evidentiary issues.

11. The provisions of Law on Contested Procedure that are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read in conjunction with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
12. In the text of Appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective Appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in two cases. Only the parcels, subject of the property right which is alleged in each Claim, are different. The Appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Claims is the same one.
13. Therefore the Appeals registered under GSK-KPA-A-039/14 and GSK-KPA-A-040/14 is joined in a single case under the number GSK-KPA-A-039/14.

Merits of the Appeal

14. According to Article 3.1 of the 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, the Appellant is not only to provide an ownership title over a private immovable property but also to show that he or she **is now not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.**
15. According to the Article 2.1 of the Administrative Direction 2007/5, ...“any person who had the ownership right, lawful possession of or lawful right of use of or to private immovable property, including agricultural and commercial property, who at the time of filling the claim is not able to exercise his/her property right due to the circumstances directly related to or resulting from the armed conflict...”. The Claims at hand were filed in 2007 with the Kosovo Property Agency. However, the Appellant sold the claimed property in 2001, a purchase contract was concluded in 2004 and the Appellant confirmed this fact. The matter therefore, falls outside of the jurisdiction of the KPCC as the inability to exercise the property rights is not as a result of the armed conflict when the Claim was filed with the KPA.
16. The KPCC has a limited mandate dealing with only the property claims in relation to private immovable property of which possession was lost 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.

17. Avoiding in the moment any assessment of validity of the oral contract or the of the contract on sale of the whole property, the Supreme court comes to a conclusion that those activities mentioned by the Appellant prove the fact that he had not lost the possession of the claimed property due to the armed conflict, as he vilingly entered into contract on purchase of the property after the war. Irrespectively of the legal effects of these activities, one must notice that the Appellant could have disposed properly of the property after the conflict. His allegations though about losing the possession during the conflict are to be considered as not trustworthy.
18. The Supreme Court wishes to point out that for the Court in order to grant the claim both requirements are to be fulfilled at the same time: the rights of the claimant are proven and the loss of possession takes place due to the circumstances that took place in Kosovo between 1998/1999. Fulfilling by the party only one of the requirements excludes the possibility of granting of the claim.
19. Accordingly, the KPCC was correct to consider that the matter was excluded from its jurisdiction. Neither violation of substantive law or procedural law, nor an erroneous or incomplete determination of the facts has been made. The Supreme Court finds the Appeals as unfounded.
20. 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. This judgement is without prejudice of the right of the Appellant to pursue his claims before the competent court, if he considers it necessary.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Anna Bednarek, EULEX Judge

Urs Nufer, EULEX Registrar