

**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-221/15

**Prishtinë/Priština,
30 May 2018**

In the proceedings of

V. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 dated 21 October 2014 (case file registered at the Kosovo Property Agency under the number KPA13243) after deliberation held on 30 May 2018, issues the following

JUDGMENT

1. **The Appeal of V. J. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 dated 21 October 2014 with regard to the claim registered under the number KPA13243 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 dated 21 October 2014 with regard to the claim registered with the number KPA13243 is confirmed.**

Procedural and factual background:

1. On 1 July 2008, V.J. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (henceforth: KPA) seeking confirmation of the Ownership Right over a Cadastral Parcel number 958, pasture of 3rd class, with the surface of 00.65.40 ha, located at the place called “ Broška kod Jokića, cadastral zone “Gushicë/Gušica” and registered at Possession List no 240, Municipality of Vitia/Vitina (henceforth: the claimed property).
2. To support the Claim, the Appellant provided KPA with the following documents:
 - Possession List No 240 issued by Directorate of Geodesy of Municipality of Vitia/Vitina on 24 November 1986 showing the claimed property registered on the name of V. P.
 - Judgment No 345/88 issued by District Court of Gjilan/Gniljane on 25 January 1989, whereby, the Lawsuit of L. and V. J. was approved, thus, the Respondents: the Enterprise “Agromorava”, A. S., M. J., B. J., D. P., L. S, F.E.,A. S. and G.S. were obliged to recognize the ownership right over the claimed property to the Claimants (V. and L.J.)
 - Decision No 1105/89 issued by Supreme Court of Kosovo on 15 May 1990 , whereby, the Court confirms that V. and L. J. have the ownership right over the cadastral parcel no 958, pasture of 3rd class, with the surface of 00.65.40 ha, located at the place called “ Broška kod Jokića ” and registered at Possession List no 240. positive
 - Death Certificate No 203-42/04-35 issued on 27 February 2004 by Civil Registration Office of Kragujeva, showing L. J. passed away on 22 February 2004,
 - The request filed before Cadastral Agency of Kosovo by L. and V. J. for the implementation of the changes before the Cadaster,
 - Possession List No 240 issued by dislocated Cadastre Office of Vitia/Vitina on 7 June 2007 showing the claimed property registered on the name of V.P.,
3. In 23 February 2010, the KPA notified the claim by founding the claimed property as not occupied. No interested party filed the response on the claim within 30 days deadline, thus, the claim was considered as uncontested.
4. Decision No 1105/89 issued by Supreme Court of Kosovo on 15 May 1990 was verified positively by Executive Secretariat of KPA while the Department of the Cadastre and

Geodesy of Municipality of Vitia/Vitina confirmed that the claimed property was found on the name of Third Party. At the Verification Report there were attached the following evidences:

- Chronological History regarding cadastral parcel 958 issued on 7 October 2014 by Directory of Cadastre and Geodesy of Municipality of Vitia/Vitina through which the Directorate of Cadastre and Geodesy of Municipality of Vitia/Vitina confirms that the claimed property is listed on the name of H. I. since 1982 and the above-mentioned institution does not possess the changes that may happened during the period 1983-1999.
 - Certificate for Immovable Property Rights No 958-0 issued by Cadastral Municipality of Vitia/Vitina on 7 October 2014, listing the claimed property on the name of H. I.
5. From the evidences on the case file it is noted that the Appellant was contacted by KPA through the telephone and he confirmed that on 1967 he bought the claimed property from V. P. but he was negligent to make the changes at the cadastre right after he has purchased the claimed property and after while his request for transferring of the property on his name was refused by cadastre because V. P. and his son D. passed away. Regarding the findings of the Executive Secretariat of KPA, the Appellant alleges that the claimed property appears to be on the name of Third Party mistakenly. (Page 278, 286, 287 of the case file).
 6. The Kosovo Property Claims Commission through its Decision KPCC/D/A/260/2014 dated on 21 October 2014 decided that the claim is to be refused on the ground that the Appellant has failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
 7. The Decision was served to the Appellant on 23 February 2015. He filed an appeal on 23 March 2015.

Allegations of the Appellant

8. The Appellant alleges that the KPCC has incompletely established material facts.
9. In the Appeal, the Appellant gives a detailed presentation of the documents that he has submitted in order to confirm her Property Right by referring to the Judgment the Judgment No 345/88 issued by District Court of Gjilan/Gnjiljane on 25 January 1989 and the Decision No 1105/89 issued by Supreme Court of Kosovo on 15 May 1990.
10. The Appellant again pointed out that the claimed property was bought from V.P and his son D. P. never denied this fact.
11. By the end of his appeal the Appellant insisted that he has made a request to change the owner of the property at the competent cadastre and he received the answer that the conditions for registering the claimed property on his name were fulfilled.

Legal reasoning:

Admissibility of the appeal

12. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No. 03/L-006 (henceforth: LCP), and after evaluating the appeal statements found that:
The Appeal is admissible because it was filed within the legal time limit pursuant to the Law no. 03/L-079, which stipulates that a party may file an appeal against a Commission decision within thirty (30) days from the day parties were informed about the Decision.

Merits of the appeal

13. However, the appeal is unfounded.
14. The KPCC based its Decision on the fact that Appellant has failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
15. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. Nevertheless, the issue to consider in this case is whether the Appellant presented evidences to prove the ownership right over the claimed property; therefore, the Supreme Court will give a short summary regarding the question at hand.
17. The Appellant himself declared the property was bought from V. P. but he did not perform the changes at the cadastre. Moreover the Executive Secretariat of the KPA had made a negative verification in Certificate on the Immovable Property Rights. The KPCC had not been able to obtain *ex officio* any evidence that supports the Appellant's claim.
18. According to the article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time when the Judgment was issued, the right of property can be acquired by law itself, based on legal affair or inheritance....on the basis of the legal affair (which is the Judgment at this case) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980)
19. The Certificate for Immovable Property Rights has found listing the property initially on the name of V. P. and then on the name of the Third Party, this means that the Judgment No 345/88 issued by District Court of Gjilan/Gniljane on 25 January 1989 and the Decision No 1105/89 issued by Supreme Court of Kosovo on 15 May 1990 were never executed.
20. The Appellant has not gained the property right since the conditions of article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled according to the findings.
21. The allegation of the Appellant that the competent Cadaster allowed the registration of the claimed property on his name relates to another Claim.
22. Based on the above, the Supreme Court finds that the KPCC Decision has to be confirmed.

23. In the light of foregoing, pursuant to Section 13.3 under (a) 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 Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko , EULEX Registrar