

**UPREME 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-66/2014

**Prishtinë/Priština,
18 November 2015**

In the proceedings of

S.T.J.
Banjicka Street, 48
35000 Jagodina

Claimant/Appellant

vs.

Gjilan/Gnjilane

Respondent/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/196/2013 (case file registered at the KPA under No. KPA31345), dated 18 April 2013, after deliberation held on 18 November 2015, issues the following

JUDGMENT

- 1. The Appeal of S.T.J. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013, dated 18 April 2013, as far as it regards the claim registered with KPA under No. KPA31345, is rejected as unfounded.**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013, dated 18 April 2013, is confirmed as far as it regards the claim registered with KPA under No. KPA31345.**

Procedural and factual background:

1. On 11 May 2007, the Appellant S.T.J. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of her ownership right of the land parcel No 1766/3, located in Gjilan/Gnjilane, with surface 0.43.62 (hereafter to be referred to as the land).
2. S.T.J. alleged that the land is being illegally used by F.R. , who transferred the land parcel under his name illegally. Moreover, she claimed to have lost the ability to exercise her property right due to the circumstances resulting from the armed conflict that occurred in 1998/99.
3. The claim filed by S.T.J. was dismissed by the KPCC/D/A/196/2013 decision, dated 18 April 2013, (hereafter to be referred to as: the KPCC decision) based on the argument that the same matter between the same parties was previously decided finally by the Judgment rendered by the Municipal Court in Gjilan/Gnjilane, in the year 2003. The matter thus became *res judicata* among the parties.
4. On 22 October 2013, the KPCC decision was served upon the Appellee F.R.R. . The Decision was served to the Appellant on 11 December 2013.
5. On 23 December 2013, the Appellant filed an Appeal with the Supreme Court.
6. Previously, the property right and repossession of the said land parcel was subject to the adjudication by the Municipal Court in Gjilan/Gnjilane. With the Judgement rendered in the case C No 383/2002 on 2 December 2003 the Municipal Court approved the claim of the Appellee against the Appellant and confirmed that the Appellee is the owner of the land parcel No 1766, registered in the Possession List No 1676. The Municipal Court also

ordered the immovable property be registered under the name of the Appellee in cadastral records.

Allegation of the parties

7. The Appellant S.T.J. requests the Supreme Court to return her part of the property. Thy Appellant added that from the land parcel No 1766/3 in surface of 0.43.62 m² her part of the parcel is in surface 0.15.00 m² and is located on the upper side of the road. According to the Appellant the other part of 0.28.95 m² belongs to the Appellee, who appropriated her part of the land parcel. Referring to the argument raised by the KPCC in the Decision that she did not take any action against the Judgment of the Municipal Court, S.T.J. pointed out that she learned about the Judgment in 2005 and immediately after she informed about the fact the KPCC requesting the return of the property.

8. The Appeal was served on the Appellee on 28 April 2014. F.R. did not file the Reply to the Appeal.

Legal Reasoning

9. The Appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 of the UNMIK Regulation No 2006/50 as amended by Law No. 03/L-079.

10. The Supreme Court, after the review and assessment of the submissions from the case file, the appealed Decision and the allegations of the Appellant, found that the Appeal is unfounded.

11. Under the principle of *res judicata* a case shall not be examined by a court when the same matter, with the same parties participating in the proceedings, has already been decided by another court. This is the matter in the present case, the same claim was filed and decided by the Municipal Court in Gjilan/Gnjilane, and the participating parties were the same in both proceedings. Also, the facts and the legal grounds were the same in both cases.

12. The KPCC rightfully dismissed the claim of S.T.J. on the grounds of that the subject matter constitutes *res judicata* between the same parties. The same matter had already been adjudicated with a final Judgment, dated 2 December 2003, before this claim at hand was filed. With the aforementioned Judgment, the Court approved the claim and confirmed that the Appellee in the present case is the owner of the land property indicated in the claim of S.T.J. . Accordingly, the Appellant cannot be allowed to have the same claim heard once again on the same matter between the same parties.

13. It is worth mentioning though that in the view of the Supreme Court the allegations of the Appellant as the part of the parcel in the surface of 0.15.00 m² located on the upper side of the road are not substantiated and not supported by any documentation. As it appears from the Judgment mentioned above, as well as from the Decision of the directorate for Geodesy, Cadastre and Property in Gjilan/Gnjilane Municipality of 5 January 2004, the whole parcel being previously registered under number 1766/3 was registered under the name of the Appellee. For that reason the Supreme Court considered that the allegations of the Appellant could not be considered as grounded and did not allow to alter the Decision of the KPCC.

14. Concluding, the Supreme Court considers that the Decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of the KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.

15. Based on the aforementioned and in pursuant to Section 13.3.(b) of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph 2, of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal Advice

16. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by 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

Anna Bednarek, EULEX Judge

Urs Nufer, EULEX Registrar