

**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-091/14

**Prishtinë/Priština,
2 December 2015**

In the proceedings of

B.V.

Vesnik Mira 12, UN village
Kruševac, Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Anna Bednarek, 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 the No. KPA39714), dated 18 April 2013, after deliberation held on 2 December 2015, issues the following

JUDGMENT

- 1. The Appeal of B.V. is rejected as unfounded.**
- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013 (case file registered at the KPA under No. KPA39714), dated 18 April 2013, is confirmed.**

Procedural and factual background:

1. On 21 May 2007 the Appellant B.V. , filed a Claim at the Kosovo Property Agency (KPA), seeking repossession and compensation for the use of ¼ ideal part of a parcel No.1/340, with a surface area of 00.05.54 ha in Videjë/Vidanje, Jelenjak, Municipality of Klinë/Klina (hereinafter: the claimed property).
2. To support his allegations, the Appellant provided the following documents:
 - Copy of Possession List no.155 issued on 01.04.2002 regarding number of parcels, including the claimed property and listing the Appellant as the owner of ¼ ideal part of it.
 - Appellant's ID issued on 13 September 1991.
3. Initially the claim was notified on 25 April 2008 and found not occupied.
4. On 05 February 2013 the KPA Notification Team notified the claimed property again. According to the report from the same date, in the claimed property could be found new constructed one floor house with supporting buildings (stable) and it is occupied by M.K.V. (hereinafter: Appellee).
5. The Appellee has claimed legal rights over the claimed property and signed a Notice of participation on the day of the notification.
6. From the KPA's Consolidated Verification Report dated 07 February 2013 it could be seen that the documents presented by the Appellant were positively verified.
7. The Appellant was contacted by phone on 28 January 2013, but he was not able to talk due to his physical condition. The Appellant's wife R.V. confirmed the Appellant's statement that the claimed parcel has been exchanged between the Appellant's father and the father of the Appellee 60 years ago, but the changes in the cadastral records were not made. The Appellant's father got a property in Klinë/Klina for the exchanged parcel (the claimed property).
8. The KPCC, with its Decision KPCC/D/A/196/2013 dated 18 April 2013, **refused** the claim because the loss of the possession was not related to the armed conflict of 1998/1999, but it was a result of voluntarily alienation before the conflict.
9. The Decision was served on the Appellant on 17 January 2014. B.V. filed an Appeal on 13 February 2014.

Allegations of the Appellant:

10. The Appellant challenged that KPCC's Decision due to incomplete determination of the facts and erroneous application of the substantive law.
11. The Appellant confirms that he filed a claim regarding parcel No.1/340 with the surface of 00.05.54 ha, but alleged that he his intention was to seek confirmation of property rights over parcels No. 605/2 and No. 605/3 located in the town of Klinë/Klina and not for parcels No. 1/340 and 1/342 in the village of Videjë/Vidanje.

12. The Appellant also confirmed that the claimed property has been exchanged in 1954 and not possessed by his family immediately prior and during the armed conflict that occurred 1998/1999 in Kosovo.
13. The Appellant is requesting the Supreme Court to confirm his property rights over parcels No. 605/2 and No. 605/3 located in Klinë/Klina.

Legal reasoning:

Admissibility of the Appeal:

14. The Appeal is admissible. It was filed within the time limit of 30 days as stipulated by Section 12.2 of UNMIK Regulation 2006/50 amended by the Law 03/L-079 on Resolution of Private Immovable Property Claims, including Agricultural and Commercial Property (hereinafter: the Law 03/L-079).

Merits:

15. Pursuant to Section 3.1 of the Law 03/L-079, the Commission has the competence to resolve claims concerning the rights that cannot be exercised due to the circumstances that are related directly to or result from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. In this particular case, the possession of the claimed property was lost in 1954 (the Appellant himself asserts this fact), which means that the claim is not related to the armed conflict of 1998/1999. Therefore, the Commission had to **dismiss** the claim
17. In its Decision KPCC/D/A/196/2013 dated 18 April 2013, the Kosovo Property Claim Commission (KPCC) decided to dismiss the claim due to the lack of jurisdiction as far as it regards the claimed property. On the other side in its Certified Decision it is written that “the claim stands to be **refused**”.
This imprecision is due to a technical error and does not affect the essence of the decision of.
18. The Appellant alleges that there was a misunderstanding during the proceedings because his intention was to seek confirmation of the ownership right over the parcels No. 605/2 and 605/3 and not over the claimed property. He also states that the claimed property was exchanged as early as in 1954 and that he is not challenging this fact.
19. The request of the Appellant for replacing the subject matter of the claim (confirmation of property rights over parcels No. 605/2 and No. 605/3 located in Klinë/Klina instead of parcel no.1/340 in Vidanje) is not permissible.. Therefore the reasons indicated in the Appeal may not be considered as valuable grounds and may not lead to the amendment of the challenged Decision.
20. Section 11.4(b) of the Law 03/L-079 states that “The Commission shall dismiss the whole or part of the claim where the claim is not within the scope of jurisdiction of the Kosovo Property Agency”. Consequently, in the context of the proceedings in front of the KPA Appeals Panel this means that

the Court is to reject the Appeal as unfounded and to modify ex officio the appealed Decision, due to technical discrepancies by dismissing the Claim.

Conclusion:

21. In the light of the abovementioned reasons and pursuant to Article 195.1(e) and 198.1 of the Law on Contested Procedure, the KPCC's Decision is modified and the Claim dismissed as inadmissible due to the lack of jurisdiction.
22. Based on the presented reasons and pursuant to Article 13.3 (a) of the Law 03/L-079, the Court decided as in the enacting clause of this Judgment.

Legal advice:

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar