

**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-187/2014

**Prishtinë/Priština,
27 April 2016**

In the proceedings of:

L. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini Presiding Judge, Beshir Islami and Anna Bednarek, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (case file registered at the KPA under No. KPA35709), dated 27 November 2013, after deliberation held on 27 April 2016, issues the following

JUDGMENT

1. **The Appeal filed by L. J. against the Decisions of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013 is rejected as unfounded.**
2. **The Decisions of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013 as far as it regards the Claim registered under No. KPA35709 is confirmed.**

Procedural and factual background:

1. On 13 April 2007, L. J. (hereinafter: the Appellant) filed the Claim with the Kosovo Property Agency (KPA), registered under the case number KPA35709 seeking for the repossession of the cadastral parcel No. 547 of the surface 00.07.60 ha, located in Livadnica/Livadnicë, cadastral zone Radevo/Radevë, registered in the Possession List number 129 (hereinafter: the claimed property).
2. The Appellant stated that his father had been the co-owner (1/4 ideal part) of the mentioned parcel. According to the appellant it has been being used by unknown persons. For that reason he also requested the compensation for its use. The appellant added that he lost the possession of the land on 10 June 1999.
3. Together with the claim he submitted *inter alia* to the KPA:
 - The copy of the Decision of the Municipal Court in Lipljan/Lipjan rendered in the case No. O.br 12/83 on 1 June 1983, on the basis of which the father of the Appellant: M. J. in ¼ ideal part and his grandmother: S. J. in 1/5 ideal part inherited the real estates left by the late M. J.
 - Contract on division Ov. Br. 868/83 dated 26 July 1983, on the basis of which the Appellant's father became the sole owner of the claimed property
 - The copy of the Death Certificate No. 34 of the year 1989 of the grandfather of the Appellant: M. J.
 - The copy of the Birth Certificate of the Appellant.
 - The copy of the Decision of the Municipal Court in Kragujevac rendered in the case No. O-677/93 on 15 January 2009 amending the Decision of the same Court of 17 May 1994, on the basis of which the Appellant, his son N. J. and brother G. J. inherited in 1/3 of ideal part of the immovable properties listed in the Possession List No. 129 after their father M. J.
4. The abovementioned Decisions were positively verified by the KPA.
5. According to the Notification Report on 23 November 2007 the KPA located the claimed property. It was found as the cultivated land, occupied by unknown person. No responding party was present at the property.
6. On 1 July 2010 the KPA notified the Claim through the publication in the KPA Notification Gazette No. 3 and the UNHCR's Property Office Bulletin. The Gazette and the List were left with the Head of Village Radevë/Radevo. They were also published in Lipjan/Lipljan Municipality and the Cadastral Office, both located in

- the same premises as the Municipal Court. The List and the Gazette were distributed to the Head Offices of UNHCR, Ombudsperson, KCA, DRC and UNMIK Office in Graçanica/Gračanica. Moreover the publications were placed at the entrance and exit from the village Radevë/Radevo.
7. No one submitted any Reply to the Claim.
 8. During the verification procedure the KPA found ex officio the CIPR No. 547 listing P. J. (cousin of the Appellant) as the property right holder of the claimed parcel.
 9. On 27 November 2013, the KPCC with its Group Decision KPCC/D/A/220/2013 (para. 12. 157-158) refused the Claim due to fact that the appellant failed to show ownership or any other property right over the claimed property. The KPA based its Decision on the content of the updated certificate for immovable property rights obtained ex officio in 2008 which identified P. J. as the sole owner of the parcel No. 547. Moreover, according to the reasoning of the Decision the KPA contacted the Appellant and the latter explained that the land parcel No. 547 had been gifted to his cousin P. J. a long time before and he did not claim ownership rights over it.
 10. On 10 April 2014, the KPCC's Decision was served upon the Appellant.
 11. On 10 May 2014, the Appellant filed an Appeal with the Supreme Court.
 12. On 30 June 2015 the Supreme Court issued an order to the Municipal Cadastre Office in Lipjan/Lipljan requesting "to provide the Court with a documentation of the full cadastral history of property" (...) as well as "to explain the possibility that in one cadastral zone exist two cadastral parcels under the same number but with different surfaces and with different owners (what does mean 547/D)".
 13. On 15 July 2015 the Municipal Cadastre Office in Lipjan/Lipljan replied to the order explaining that based on the request dated 20.06.2005 the Cadastral Office corrected the data introduced to "Bormann" programme by giving the new number: 546 to the land parcel with the previous number 547 mentioned in the Possession List No 129.

Allegation of the parties

14. The Appellant L. J. requests the Supreme Court to grant the Appeal and to confirm that he is authorised to repossess the property. The Appellant alleged that the Commission erroneously and incompletely established the facts and erroneously applied the substantive law. He stated that the constatation of the Commission that P. J. is the owner of the parcel 547/D is not correct. He explained that land parcel No. 547 "was previously divided in four parts and two parts of that parcel went to his father and two parcels to his uncle". The parcels of his father were listed in the Possession List No. 129, while those of his uncle S. J. in the Possession List No. 40. Moreover he added that although the divided parcels were registered under the same number, they are of different surface.

Legal Reasoning

Merits

15. 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.

16. The Commission based its opinion on the assumption that the owner of the claimed property was P. J., as it appeared in the Possession List obtained ex officio in 2008 by the Executive Secretariat. The Appellant contested that circumstance and thought the Supreme Court considered it necessary to clarify that circumstance before deciding on the Appeal. On 30 June 2015 the Order to the Municipal Cadastre Office in Lipjan/Lipljan was issued requesting for further clarification on the matter and for the full cadastral history of the claimed property. Replying to the Order on 15 July 2015 the Cadastre and Geodesy Directorate of the said Municipality informed that:
- “The cadastral parcel No. 547-0, CZ Radeve, according to “Bormen” Programme was listed in the name of S. (M.) J. from Radeva, Possession List No. 40, place called “Livadica”, agricultural land, 3rd class with the surface of 0.19.27 ha and agricultural land, 2nd class with the surface of 0.27.27 ha. On the basis of the Inheritance Decision T. No. 40/2003 of 12 May 2003 (...) it was registered in the name of P.J. from Radeva.
- The cadastral parcel No. 574-0, CZ Radeve, according to “Bormen” Programme was listed in the name of M. (M.) J. from Radeva, Possession List No. 129, place called “Livadica”, agricultural land, 3rd class with the surface of 0.18.46 ha and agricultural land, 2nd class with the surface of 0.07.60 ha, the total surface 0.26.06 ha”.
- The requested authority added moreover that responding to the request dated 20 June 2005 the Kosovo Cadastral Agency corrected the cadastral data and as a result the land parcel 547-0 with the total surface of 0.26.06 ha, registered in the Possession List No. 129 was given a new number: 546-0. The partial Possession Lists No. 129 and 40 followed the reply.
17. However, it should be pointed out here that the reply of the cadastral authority may not be considered as constituting a proof of the ownership of the claimed property by the Appellant. Section 17 of the Law No 2003/25 on Cadastre, being in force at the time the amendment in the cadastral data was made, stipulates for the procedure which needs to be followed in order to introduce the data to the cadastral books. Section 21 of the same Law indicates in which circumstances and how the data in the register may be corrected. In the view of the Supreme Court none of the provisions mentioned above were followed in order to amend the data in the Cadastre. For that reason the reply of the Cadastral Office in Lipjan/Lipljan could not be taken into consideration while examining the Appeal.
18. In this particular case though the Supreme Court considers that the Commission was right while deciding the case, as taking into consideration the lack of clarity of the data (numbers of the parcels) contained in the documents submitted to the Commission and the Court, the property rights of the Appellant over the claimed property could not have been established as fact. In such a case the Claim stood to be refused as unfounded.
19. Based on the aforementioned and pursuant to Section 13.3(c) of the Law No 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.
20. As the Kosovo Property Agency had not jurisdiction over the claims for the compensation the Claim of the Appellant in that regard had to be dismissed as inadmissible on the basis of Section 3.1 of the UNMIK Regulation mentioned above *a contrario*.

Legal Advice

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.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar