

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-139/2015

Prishtinë/Priština,
27 September 2017

In the proceedings of:

Z. D.

Appellant

Vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: KPCC Decision), no. KPCC/D/A/236/2014 (case files registered at the KPA under the number KPA26048) dated 30 April 2014, after the deliberation held on 27 September 2017, issues the following

JUDGMENT

The decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 (case file registered at the KPA under number KPA26048) dated 30 April 2014 is annulled and the claim is dismissed due to the lack of jurisdiction.

Procedural and factual background:

1. On 6 February 2007, Z. Đ. (hereinafter: the Appellant), filed a Claim with the Kosovo Property Agency (hereinafter: KPA), seeking repossession of the cadastral parcel no. 2444/62 with surface of 00.02.99 ha, located in the cadastral zone of the Municipality of Gjilan/Gnjilane (hereinafter: claimed property). The Claim is registered in the KPA as KPA26084.
2. The Appellant alleged that he acquired the property upon division of the socially owned construction land for construction of a residential building.
3. To support his Claim, the Appellant submitted the following documents:
 - Ruling of the Municipal Assembly of Gjilan/Gnjilane No. 06-01-46-19 dated 31 December 1996 by which the construction land was allocated to the Appellant for use for construction of an individual residential building within the period of three years after having concluded a contract with the municipal construction land fund.
 - A contract on urban adjustment of the construction land No. 46-06-144 dated 16 May 2007, certified by the Municipal Court of Gjilan/Gnjilane No. 193 on 19 May 1997, concluded between the Appellant and municipal construction land fund of Gjilan/Gnjilane.
 - Proof issued by the municipal construction land fund of Gjilan/Gnjilane No.46-06-144/1, dated 11 June 1999 (after 24 March 1999) indicating that the Appellant has completed financial obligations for the construction land.
 - Copy of the Plan issued by the cadastral office displaced in Krushevc/Krusevac on 13 November 2003 indicating that parcel 2444 is registered entirely as property of the municipality of Gjilan/Gnjilane and has a surface of 1.72.21 ha.

4. On 17 June 2010, the KPA notified the claimed property by placing a sign on the claimed property. Notification and confirmation of the Claim was done through publication in the KPA Gazette No.2 and in the bulletin of the UNHCR Property Office. Both publications were placed at the entrance door in the Municipality of Gjilan/Gnjilane and in the Municipal and District Courts of Gjilan/Gnjilane. No Appellee addressed the KPA Executive Secretariat within the deadline of 30 days as prescribed by article 10.2 of the UNMIK Regulation no. 2006/50, amended by the Law no. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property.
5. Based on the verification report, the KPA concluded that apart from the ruling on allocation of the socially owned land which was found and positively verified, other documents could not be found and their verification was negative. The KPA Secretariat *ex officio* found that the claimed property was construction land registered under the name of the Municipality of Gjilan/Gnjilane.
6. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter: KPCC) by its confirmed Decision KPCC/D/A/212/2013, rejected the Claim. In the reasoning of the Decision (paragraphs 74-76), the KPCC stated that the Appellant's use right was granted on the condition that he should construct the building on the property within the prescribed period of time. Further, the KPCC stated that during telephone conversations between the Appellant and the KPA Executive Secretariat, the Appellant did not provide any proof that he had constructed the residential building which the Appellant himself admitted, however he stated that it was the municipality's fault as they did not complete the utility service works. Therefore, the KPCC concluded that the Claimant failed to prove any property rights and that the loss of the property is not related to the circumstances of the conflict.
7. The KPCC Decision was served on the Appellant on 26 December 2014. On 19 January 2015, the Appellant filed an Appeal against the Decision of the KPCC.

Allegations of the Appellant:

8. The Appellant alleges that the KPCC Decision is unlawful and inaccurate because it contains serious violation of the process, erroneous application of the material law and that his Claim for repossession is not completely reviewed. The Appellant proposed to the Supreme Court

to approve the Appeal and return the case to the first instance for reconsideration or to issue a judgment recognizing the Appellant's use rights over the claimed property.

Legal reasoning:

9. Following review of the case files and Appellant's allegations, pursuant to articles 12 and 13 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, and article 194 of the Law no. 03/L-006 on contested procedure, the Court found that the Appeal is admissible. It was filed within the period of 30 days as prescribed by article 12.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.
10. The Supreme Court of Kosovo found that the appealed Decision of the KPCC was rendered in complete and proper determination of the factual situation and on this ground also the material and procedural laws were properly applied. Therefore, the Appeal is rejected as unfounded.
11. Pursuant to article 3.1 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, the Appellant is entitled to an order for repossession of the property if he proves the ownership or the right to use the claimed property, and that he was unable to exercise his property rights due to circumstances which are directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Therefore, the jurisdiction of the KPCC is limited exclusively to resolution, adjudication and decision of the ownership claims with respect to private immovable property.
12. The Appellant does not dispute the fact that he was allocated one part of the cadastral parcel 2444/62 in surface of 0.02.29 ha on which he was supposed to construct the building for housing needs, however he had not been able to construct this building, according to the appeal allegations, as a result of the fault of the authority that had allocated the land.
13. As such, the Supreme Court considers that a part of the claimed property, respectively the construction land without the residential building will be considered as public property and that there is no way to acquire property rights over the said property or to order repossession. The Claim has to do with the right to use the socially owner property and not private property; the Supreme Court found that the Claim does not fall within the jurisdiction of the KPCC, consequently of the Supreme Court. Article 3.1 of the UNMIK Regulation 2006/50 clearly stipulates that only property rights or lawful possession or other

lawful use right of the private immovable property may be an object of the Claim before the KPA.

14. Based on the above and pursuant to article 13.3 subpar (a) UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, it is decided as in the enacting clause of the present judgment.

Legal Advice:

Pursuant to article 13.6 of the UNMIK Regulation 2006/50, as amended by the Law no 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, EULEX Registrar