

**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-091/15

Prishtinë/Priština,

2 August 2017

In the proceedings of

I. S.

Klinë/Klina

Appellant

Vs

R. B.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC), KPCC/D/C/243/2014 (case file registered with the KPA under No KPA13264) dated 18 June 2014, after the deliberation held on 2 August 2017, issues the following

JUDGMENT

1. **The appeal of I. S. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/243/2014 dated 18 June 2014 with regard to the claim registered with the KPA under no KPA13264 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/243/2014 dated 18 June 2014, with regard to the claim registered with the KPA under no KPA13264 is confirmed.**

Procedural and factual background

1. On 17 August 2006, R. B. (hereinafter: the Appellee) filed a claim on behalf of his late father, M. B. with the Kosovo Property Agency (hereinafter: KPA) seeking re-possession of property that allegedly lost the possession over the same on 25 June 1999 due to circumstances related to the 1998-1999 conflict. Initially, the Appellee did not give any data regarding the property for which he claims for. During the proceedings he confirmed (page no 118 of the case file) that the Claim should be processed for Cadastral Parcel no 73 with the surface of 00.96.48 ha, located at village Gjurgjevik/Đurđevic, Municipality of Klinë/Klina (hereinafter: the claimed property).
2. In support of his claim the Appellee submitted with the KPA :
 - Possession List no 69 issued by Displaces Department for Cadaster of Klinë/Klina listing the claimed property registered on the name of M. B,
3. The Notification of the Claim occurred on 22 May 2010 by publishing the claim in the KPA Notification Gazette No 1 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left in Kilinë/Klina Municipality, the Cadastral Office, Municipal Court and Peja/Peč Regional Office of the KPA. In addition, the List and Gazette were distributed to the UNHCR, DRC, OSCE, Kosovo Privatization Agency, Ombudsperson and EULEX.
4. I. S. (hereinafter: the Appellant) participated at the KPA proceeding by alleging that the claimed property actually belonged to his family but it was confiscated on 1918 by Serbian regime.
5. In support of his claim the Appellee submitted with the KPA :
 - Witness Statement, certified before Municipal Court of Klinë/Klina on 31 January 2007 with the number 267/2007, whereby, H. M., B. B. and I. Th., all in the capacity of the witnesses, testified that family S. from village Pogradja were the owners of the

properties listed at the Possession List No 250, Cadastral Zone of Klinovac and Possession List No 69, Cadastral Zone Gjurgjevik. The properties were confiscated by Serbian regime on 1918 while during the year 1943-1947 the family S. manages to return back the properties on their ownership. Again, on 1948, the Serbian regime had confiscated the property and family S. had resisted; therefore, four (4) men's of the family were murdered. The statement was signed only by I. Th.

- Possession List No 69 issued by Directory of Cadaster of Municipality of Klinë/Klina on 1 December 2007, showing the claimed property listed on the name of M.B.
 - The Proposal filed before Municipal Court of Klinë/Klina on 14 February 2014. Based on the proposal the Appellant seek the court to set the temporary measures of insurance of the property against the Appellee.
6. The Executive Secretariat of KPA verified positively the Possession List No 69 submitted by Appellee and Appellant.
 7. On 18 June 2014, the KPCC with its Decision KPCC/D/C/243/2014 decided that the Appellee has established the ownership right of M. B. over the claimed property and decided to return the claimed property into the possession of the Appellee.
 8. On 9 March 2015 the Decision was served on the Appellee.
 9. The Appellant received the Decision on 20 October 2014. The appeal was filed on 14 November 2014.

Allegations of the Appellant

10. The Appellant alleges that the KPCC's Decision contains essential violation of the substantive and procedural law and erroneous and incomplete determination of the factual situation.
11. The Appellant alleges being the owner of the claimed property that was confiscated from his family by former Serbian regime without any Decision on Confiscation or Expropriation nor any Compensation.
12. According the Appellant, four (4) men's of his family were murdered by Serbian regime in order to confiscate the property and to give to the Appellee's family.
13. The Appellant attached on the appeal the same evidences which were presented before the first instance

Legal reasoning

Admissibility of the appeal

14. The Supreme Court reviewed the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after the assessment of the Appellants allegations found that: *The appeal is admissible because it has been filed within the legal deadline pursuant to Section 12.1 of the Law No. 03/L-079 which provides that the party may file an appeal against the Commission's Decision within thirty (30) days from the notification of parties about the Decision.*

Merits of the appeal

15. After reviewing and assessing the case file submissions and Appellant's allegations, the Supreme Court notes that the appeal is ungrounded.
16. The KPCC Decision is correct. The Court could not find an incomplete determination of facts or misapplication of the substantive and procedural laws.
17. According to Section 3.1 of the Law No 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established his/her ownership right over the private property but also that he/she now is unable to exercise such property rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
18. The Supreme Court notes that the Appellant, while alleging legal right over the property, has failed to present any documentation to support his right.
19. Only one Witness Statement through which three (3) witness testify that the property belonged to the Appellants family is not sufficient evidence to prove any ownership right. Moreover, the Statement was signed only by one witness.
20. The Executive Secretariat of the KPA has not found *ex officio* any evidence that lead to the question mark the right of the Appellee at the case at hand.
21. From the abovementioned facts results that the factual situation in relation to this legal case has been correctly and fully established and that the KPCC Decision has not been contested by any valid evidence.
22. In light of the above and pursuant to Section 13.3 (c) of the Law no. 03/L-079, the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of the 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

Erdogan Haxhibeqiri, Judge

Sandra Gudaityte, EULEX Registrar