

**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-141/2014

Prishtinë/Priština, 27 January 2016

In the proceedings of:

N.A .

Village Brestovik

Municipality Pejë/Pec

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/212/2013 dated 21 August 2013 (case file registered at the KPA under No. KPA00881), henceforth also: the KPCC Decision, after deliberation held on 27 January 2016, issues the following

JUDGMENT:

- 1. The appeal of N.A . is rejected as unfounded.**
- 2. The decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 (case file registered at the KPA under no. KPA00881), dated 21 August 2013, is confirmed.**

Procedural and factual background:

1. On 5 June 2007 the claimant N.A . , filed a claim at the Kosovo Property Agency (KPA) as a member of the family of the property right holder (PRH)- his father R.A. , seeking repossession over a land with surface 3.00.00 ha located at str.Zef Ljus Marku in Pejë/Pec, (hereinafter: the claimed property). In his claim he stated that an apartment was constructed over the claimed

- property and that there is a HPCC decision regarding this apartment. Since the apartment seems to be destroyed after 1999, the claimant seeks repossession over the remaining parcel.
2. To support his allegations, the claimant provided the following documents:
 - Allocation Decision no.3614/17, date 9 August 1978(allocation decision) issued by Construction Enterprise “Izgradnja”. By this decision to R.A. (claimant’s father) was allocated an apartment for use;
 - Contract on use of an apartment No.Br.1157 date 6 February 1979, concluded between SIZ(Self Interest Community) Stanovanja and R.A. (claimant’s father);
 - Decision HPCC/D/172/2005/C dated 24 February 2005 issued by Housing and Property Claims Commission. Through this decision the claimant’s father was granted the right of repossession over the residential property which now is destroyed and the land parcel where the property was built is now vacant.
 3. KPA registered the claim under the number KPA00881. KPA verification team verified the documents submitted by the claimant. Based on the KPA Consolidated Verification Report date 14 May 2013 the submitted documents were positively verified. From the verification done ex-officio by KPA is found a Certificate for the Immovable Property Rights no.UL-71611071-09070, date 5 July 2013, which lists the company LLC Pejë/Pec as the owner of the claimed parcel.
 4. On 25 March 2013 the KPA Notification Team notified the claimed property. According to the report from the same date, at the time of the visit the claimed property was found a garage and a pasture. No party was present during notification process. The claim seems to be uncontested, because no party approached KPA as a responding party.
 5. The KPCC, with its decision KPCC/D/A/212/2013 dated 21 August 2013, refused the claim with the reasoning that the claimant failed to prove a property right over the claimed property immediately prior to or during the 1998-99 conflict.
 6. The decision was served on the claimant on 17 March 2014. On 3 April 2014, the claimant, N.A . (hereinafter: the appellant) filed an appeal.

Allegations of the appellant:

7. With his appeal the Appellant challenged that KPCC decision due to discrimination and erroneous application of the substantive law.

8. The Appellant in his appeal declared that he is not seeking only the confirmation the use right of the claimed property (land parcel), but also the use right over the apartment with surface 51m².
9. The appellant is asking the SC to confirm that the appellant meet the criteria to use the claimed property.

Legal reasoning:

Admissibility of the appeal:

10. 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

11. The Supreme Court, after the review of the submissions in the case file, the appealed decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is unfounded.
12. The KPCC based its decision on the fact that the claimant failed to prove any property right over the claimed property. The claimant's father has never entered into possession of the claimed property. With the allocation decision no.3614/17, date 9 August 1978 the claimant's father was given the use right over an apartment, not over the land parcel where the apartment was built.
13. The appeal repeats the same allegations which have been made before the KPCC. No new evidence of significance has been submitted with the appeal.
14. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. Therefore the Supreme Court finds the appeal unfounded.
15. In the light of foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, the Supreme Court decides 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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Urs Nufer, EULEX Registrar