

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEÇE KAI**

GSK-KPA-A- 083/13

**Prishtinë/Priština,
16 April 2014**

In the proceedings of:

S (V) M

B K A 243,

11000 B S

Claimant/Appellee

vs.

T N

Str. Sh B , nr.42 P /P

K

Appellant 1

C K

Str. Sh B , nr.42 P /P

K

Appellant 2

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Erdogan Haxibeqiri Judges, on the appeal against the decision of the Kosovo Property Claims Commission(KPCC) KPPC/D/A/140/2012 (case file registered at the KPA under the number KPA 08690), dated 29 February 2012, after deliberation held on 16 April 2014, issues the following:

JUDGMENT

1. The appeal of the appellants against the decision of the Kosovo Property Claims Commission KPPC/D/A/140/2012, dated 29 February 2012, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/A/140/2012, dated 29 February 2012 regarding the claim registered at the KPA under the number KPA08690, is confirmed.

Procedural and factual background:

1. On 25 January 2007, the Claimant S (V) M filed a claim asking for the repossession of the cadastral parcel no 4278/20, in the place called Kamenica, in Pejë/Peć. Together with the claim, he provided the copy of the possession list no 8337, issued by the Republic Geodesy Directorate, Office of Cadastre of for Immovable Property, in the Municipality of Pejë/Peć, on 22 January 2007, indicating the name of the possessor of the cadastral parcel nr 4278/20 as S (V) M. The possession list submitted by the claimant is verified by the KPA.
2. The notification of the claim and the claimed property was carried out through publication on the KPA Notification Gazette and UNHCR Property Bulletin on 30 August 2010.
3. No notice of participation to the proceedings was filed. The case remained uncontested at first instance level.
4. On 2 February 2012, the KPCC granted the claim considering that the cadastral parcel 4278/20 is registered under the name of the claimant.
5. On 6 March 2013, the Decision of the KPCC was served on the appellants who are occupying the land in question. They both submitted the appeals on 4 April 2013.
6. The appeals were served on the claimant on 16 September 2013. He did not file a response to the appeal.

Allegations of the parties**Claimant/Appellee**

7. The claimant alleges that he is the owner of the cadastral parcel 4278/20. He provided evidence to show that he was the registered possessor in the cadastre. He claims that he lost the possession of it due to the conditions deriving from the armed conflict.

Respondents/Appellants

8. Both Respondents, with the identical texts in their appeal as to their allegations, claimed that it is not ascertained whether the land is registered under the name of the claimant. They both alleged, in a similar way, that they have been using this land with their family members even before they constructed the house on it. They alleged to have built a house on it in good faith.

Legal reasoning:**Admissibility of the appeal**

9. The appeals were filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079- hereinafter Law 03/L-079) as being aware of the Decision of the KPCC. The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Jurisdiction of the KPCC

10. According to Article 3.1 of the Law 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a claimant is not only to provide an ownership title over a private immovable property but also to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict. Both conditions are to be met.
11. The claimant provides a document showing his title over the property which was confirmed by the KPA. This is contested by the appellants in way maintaining that it cannot be ascertained whether the land is registered under the name of the claimant or not. Actually, KPA verified the possession list submitted by the claimant with official documents in the Cadastre so the arguments of the appellants in this regard cannot be upheld. There is no doubt that the claimant was the registered possessor of this land in the cadastre as of filing of the claim. The appellants did not produce evidence to show that the loss of possession of the claimant did not derive from the conditions of the conflict. Thus, both conditions mentioned above met. KPCC had jurisdiction over the claim and the ownership title of the claimant was presented through documentary evidence submitted before the KPCC.

Merits of the appeal

12. The appellants both claimed to have been using the land before they constructed the house on it; however they did not explain how and why they started having the possession of it. They neither claimed an ownership title over it based on a legal act such as a sales contract or a decision of any administrative or judicial authority but simply relied on possession. Nor did they produce any evidence to show their ownership title over the land on which they allegedly constructed the house. They claimed that they constructed the house in good faith without giving details on when they started the possession, how long they used it, when they constructed the house and why they considered the land as their property, if this is the case, etc. However, the construction such alleged house apparently occurred before the claim was filed with the KPA.
13. More importantly, the Supreme Court notes that the appellants' allegations are based on constructing a house on land which is not registered under their names. Accordingly, their allegations are based on either Article 24 or 25 of the Law on Basic Property Relations (Official Gazette of SFRY, No 6/80) as applicable law of then as to the legal grounds.
14. Regardless of whether the appellants have acquired such rights based on building a house in good faith on a land over which somebody else holds the property, a claim based on such legal grounds is out of jurisdiction and competence of the KPA Appeals Panel of the Supreme Court.
15. This is because, the KPCC, accordingly the KPA Appeals Panel can only examine any claim involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. The appellants neither presented any legal ground nor any document to show that they have an ownership title over the property before or after conflict. The claimant produced evidence to show that he is registered as possessor in the cadastre. Therefore, the conclusion of the KPCC was correct. Even if the appellants constructed a house in good faith meeting the all conditions of the law for acquiring the ownership title over the land, this examination is beyond the jurisdiction and competence of the KPCC and that of KPA Appeals Panel.
17. The appeals of the appellants are, therefore, rejected as unfounded. Accordingly, the decision of the KPCC is to be confirmed pursuant to Section 13.3 (c) of the UNMIK Regulation No 2006/50, as amended by Law No 03L-079.

Legal Advice

18. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies. This judgment is without prejudice of the appellants to pursue their rights, if exist, before the competent courts for other legal grounds.

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Erdogan Haxibeqiri, Judge

Urs Nufer, EULEX Registrar