

**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-077/2015

Prishtinë/Priština
22 February 2017

In the proceedings of:

R. M.

Bresje, Municipality of Fushë Kosovë/Kosovo Polje
Residing at “Dušan Petrović Šane ” str. no.4/1
Lazarevac

Republic of Serbia

Appellant

Vs.

None

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Judges: Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KKPK/D/A/234/2014, the case file registered at the Kosovo Property Agency under the number KPA16446, dated 30 April 2014, after the deliberation held 22 February 2017, issues the following:

JUDGMENT

1. The appeal of R. M. against the Decision KPCC/D/A/234/2014, dated 30 April 2014, regarding the case file registered at the KPA under the number KPA16446 is rejected as ungrounded.
2. The Decision KPCC/D/A/234/2014, dated 30 April 2014, regarding the case file registered at the KPA under the number KPA16446 is confirmed.

Procedural and factual background

1. On 8 November 2006, R. M. (hereinafter: the Appellant), filed a claim before Kosovo Property Agency (hereinafter: KPA) in a capacity of the property right holder. The claimed property is cadastral parcel no 17/2, located at cadastral zone Miradi e Epërme/Gornje Dobrevo, Municipality of Fushë Kosovë/Kosovo Polje, with a surface of 02.11.55 ha. However, in the documents issued by the parallel Cadaster it is stated that this cadastral parcel contains the surface of 02.86.01 ha and was created with the joining of cadastral parcel No 17/1. The Appellant declared that he has inherited the claimed property from his late father and lost it as a result of the conflict and now he seeks return of possession.
2. In support of his claim the Appellant submitted with the KPA the following documents:
 - Possession List No 194 dated 26 September 2004, issued by the (dislocated) Municipal Geodesic Directory of Prishtinë/Priština, showing the cadastral parcel 17/2 with a surface of 02.86.01 ha;
 - The Testament R 1002/91, dated 15 October 1991, by which the Appellant's father, J. M, left the claimed property as inheritance to the Appellant;
 - The Certificate R No 1002/91, dated 15 October 1991, issued by the Municipal Court of Prishtinë/Priština, which proves that J. M. drafted a legal testament and left it under Court's safeguard.
 - The Decision No 184/63, dated 27 January 1964, of the Municipality of Prishtinë/Priština – Regulation Commission, by which the claimed property (both

parcels) were subject of regulation and were joined to the fund of lands belonging to the Agricultural Industrial Combine “Kosmet Export” in Prishtinë/Priština.

- Certificate for Immovable Property Rights issued on 10 January 2009 showing that J. M. as the owner of cadastral parcel 17/2 with a surface of 02.11.55 ha.
 - Certificate for Immovable Property Rights dated 7 March 2013 showing that cadastral parcel 17/1 with a surface of 00.95.00 ha is registered as socially-owned property.
3. On 19 March 2010, the KPA made the Notification of the property by placing a notification sign at the place where the parcel was located, which stated that the claimed property is subject of review and that the interested parties may file in their responses within 30 days. Nobody submitted any response to this notification and therefore the claim was considered as uncontested.
 4. According to the Verification report dated 21 November 2013, the Possession List No 94, containing the parcel 17/2 with a surface of 02.11.55 ha has been positively verified with the cadastral records in Kosovo whereas the Testament and the part of documents including the Possession List issued by the parallel cadastral bodies in Serbia which indicate that parcel 17/1 with a surface of 00.74.46 ha has been joined to the stated parcel, could not be found.
 5. The Kosovo Property Claims Commission in its Decision KPCC/A/234/2014, with regards to the case file registered at the KPA under the number KPA16446, dated 30 March 2014, decided that the Appellant is owner of parcel 17/2 with a surface of 02.11.55 ha and the property must be returned under his possession but this shall not include the part of parcel 17/1 with a surface of 00.74.46 ha which according to the evidence found in Kosovo is socially-owned property, and it is not registered as a property of the Appellant. The documents submitted by the Appellant which were issued by the displaced Cadaster in Serbia show that parcel 17/1 with a surface of 00.74.46 ha has been joined to parcel 17/2.
 6. R. M. received the KPCC’s Decision on 21 October 2014, and filed his appeal on 20 November 2014.

Allegations of the Appellant

7. The Appellant alleges that the KPCC's Decision did not include the entire property claimed by him and that the cadastral parcel 17/1 was joined to parcel 17/2 for which cadastral changes were made in 1988. In his Appeal he admits that the part of parcel 17/1 was subject to the privatization process and it was sold to a private entity. He alleges that formerly the Kosovo Trust Agency – now the Privatization Agency of Kosovo has used the cadastral records of 1980s. Therefore, he seeks from the Supreme Court to amend the KPCC's Decision and recognize his ownership right in addition to parcel 17/2 also over part of parcel 17/1 with a surface of 74 are 46 square meters.

Legal reasoning

Admissibility of the Appeal:

8. After reviewing the case file documents and appellate allegations pursuant to Article 194 of the Law No 03/L-006 on Contested Procedure, Official Gazette of the Republic of Kosovo no.38/2008, (hereinafter: LCP), the Court found that the Appeal is admissible.
9. The Supreme Court of Kosovo considered the Appeal of the Appellant as filed within the legal time limit, pursuant to Article 186 paragraph 1 as read with Article 196 of the LCP given that the Appellant received the KPCC's Decision on 21 October 2014, and he filed an appeal on 20 November 2014. Therefore, it may be concluded that he filed an appeal within a 30-day time period as foreseen by the provisions of Section 12 par. 1 of the Law No 03/L-79. This legal provision provides that the Appeal against the KPCC's Decision may be filed within a time frame of 30 days from the day of its receipt.

Merits

10. Pursuant to Section 3.1 of the UNMIK Regulation 2006/50, the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, (b) Claims involving

property use rights in respect of private immovable property, where the claimant of both categories is not now able to exercise such property rights.

11. In this case, it is necessary to establish if the Appellant possessed any evidence proving that he was the owner of the claimed property, that he was using it and that he lost it as a result of the conflict. The Appellant failed to prove that he had a property right over the stated part of the property. The cadastral data show that during the time of the conflict the property was evidenced as a socially-owned property and there is a discrepancy between the cadastral records in Kosovo and those dislocated to Serbia (See paragraph 13 of the KPCC/A/234/2014 in the reasoning for the Claim KPA16446), and given that the respective part of parcel 17/1 was evidenced as a socially-owned property, it was taken under the administration by the Kosovo Trust Agency – now Privatization Agency of Kosovo. Therefore, it cannot be established that the Appellant had an ownership right because the ownership over immovable property is acquired by registration in public records.
12. Article 20 of the Law on Legal Property Relations (Official Gazette of the SFRY no. 6/80, 36/90 provides as follows “The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law”- which implies the written form, the confirmation by the respective authority and registration of property in public records. The actual law no. 03/l-154 on Property and Other Real Rights under Article 36 provides: “1. the transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the Immovable Property Rights Register.
13. The Appellant has failed to prove that before the conflict he had an ownership right and possession over the part of the claimed property which he has lost as a result of the conflict. The loss of possession, even if it occurred as a result of the conflict, was caused by the initiation of the privatization process by the respective authority appointed by law such as the Kosovo Trust Agency – now Privatization Agency of Kosovo.
14. The Court found that the Appeal filed against the Commission’s Decision is ungrounded due to the fact that the Privatization Agency of Kosovo has taken it under its administration pursuant to the Law no. 04/L-034 on the Privatization Agency of Kosovo (formerly UNMIK Regulation 2002/12), Article 5 which provides the following: “The

Privatization Agency of Kosovo formerly Kosovo Trust Agency shall have exclusive authority over: socially-owned Enterprises, regardless of whether they underwent a Transformation; any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989, except as provided in paragraph 2 of the present Article;

15. The jurisdiction of the Special Chamber of the Supreme Court over this case is based on the Law no. 04/1-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters as provided under Article 4. 1. Where it is stated that “the Special Chamber shall have exclusive jurisdiction over all cases and proceedings involving any of the following:
 - a challenge to a decision or other action of the KTA or the Agency taken pursuant to, respectively, the KTA Regulation or the Law on the Privatization Agency of Kosovo.
 - a claim against an Enterprise or Corporation that is alleged to have arisen during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the KTA, the Agency;
16. In light of the above and regardless of the fact whether the alleged right of the Appellant over the grounds of the stated documents may still be valid, the Supreme Court concludes that the KPCC’s Decision to grant the claim over cadastral parcel 17/2 is correct also because the Appellant had proven that he had an ownership right over this part and that he lost possession as a result of the conflict or circumstances related to it.
17. This Judgment shall not prejudice any confirmed property rights for the actual user and shall not be an obstacle for confirmation of property rights in regular proceedings.
18. In light of the above, the Supreme Court decided as in the enacting clause of this Judgment in terms of the Article 13.3 (c) of the Law No 03/L-079.

Legal advice

Pursuant to Section 13.6 of the 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

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar