

**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-146/15

Priština/Prishtinë

22 March 2017

In the proceedings of:

M. U.

Appellant

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 (case file registered at the KPA under KPA54216), after deliberation held on 22 March 2017 issues the following:

JUDGMENT

1. The appeal filed by M. U. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014, with regard to the claim registered with KPA under no KPA54216 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014, with regard to the claim registered with KPA under No KPA54216 is confirmed.

Procedural and factual background

1. On 17 December 2007, M. U. (henceforth: the Appellant) acting on behalf of his late father Đ.U., filed a claim with the Kosovo Property Agency (KPA), seeking repossession right over the housing barrack with the surface of 30.91 m² located at street “Maršala Tita no 152, Municipality of Peja/Peć (henceforth: the claimed property) as well as the compensation for the destroyed property. He explained that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss.
2. To support the claim, the Appellant provided the KPA with the following documents:
 - Contract on Lease of the Apartment No 3064 concluded on 11 June 1960 between the Enterprise “Wood Factory Peja/Peć” in a capacity of the lessor and Đ.U. in a capacity of the lessor. Paragraph two (2) of the Contract specifies that the Lease will have a legal effect until the employment of Đ. U. with the factory would be terminated,
 - Receipt dated on 16 October 1965 showing that Đ. U. had paid to the Enterprise “Wood Factory Peja/Peć” 99.994 dinars (Yugoslavian Currency) for the apartment as per Decision No 01-4312/65,
 - Death Certificate No 264 issued by Civil Registration Office of Peja/Peć on 19 October 1992 showing Đ. U. passed away on 25 July 1992,
 - Various receipts showing that the family U. had performed the Tax payments.
3. On 14 June 2011, the Executive Secretariat of KPA performed physical notification of the claim. According to the Report the claimed property is totally destroyed building and shrubbery.
4. The Claim was considered to be uncontested because no party has expressed an interest to take part in the proceedings within the legal deadline of 30 days, pursuant to article 10.2 of the Law No. 03/L-079.

5. The Executive Secretariat of KPA did not find any of the evidences submitted by the Appellant despite its effort.
6. On 18 June 2014, the Commission with its decision KPCC/D/R/247/2014 dismissed the claim with the reasoning that claimant has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
7. On 23 October 2014, the KPCC decision was served on the Appellant while he failed an appeal before the Supreme Court on 17 November 2014.

Allegations of the appellant

8. The Appellant challenges the Decision by alleging that it is based on erroneously and incomplete established factual situation and wrongly application of the material and procedural law.
9. The Appellant declared that his family have had an ownership and possession right over the claimed property by explaining that his father initially has leased the claimed property based on the Contract on Lease No 3064 and in 1985 had repurchased the claimed property through the Decision No 01-4312/65 and paid the entire price amount. Other evidence that according to the Appellant proves the ownership right over the claimed property are the receipts on payment of the fee for the use of the Construction Land.
10. Based on the above, the Appellant seeks the Supreme Court to annul the KPCC Decision and to confirm the ownership and repossession right in his favour.
11. At the appeal were attached the same documents which were considered by the first instance.

Legal reasoning

Admissibility of the appeal

12. The appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible.

Merits of the appeal

13. Supreme Court of Kosovo reviewed the appeal pursuant to provisions of article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
14. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. According to this legal provision, the Appellant had to submit the evidence to prove the ownership right to, or the right to use the immovable property.
16. The KPCC bases its Decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, that his father as property right holder enjoys any ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence. This is because the KPA Executive Secretariat had made a negative verification in the documents, on which the Appellant bases his claim of ownership.
17. The Appellant declare that his father had bought the claimed property pursuant to the Decision No 01-4312/65; however, he did not submit the said Decision. The allegation as such was considered by the first instance and despite its effort; the Executive Secretariat could not verify the Decision No 01-4312/65 *ex officio*.
18. The appeal of the Appellant recalls exactly the same allegations as he stated before the KPCC. No new evidence was provided with the appeal.
19. The Supreme Court finds that the KPCC has made a correct Decision, based on a thorough and correct procedure.
20. Regarding the claim for Compensation, neither the Commission nor the KPA Appeals Panel of the Supreme Court has the mandate to deliver decisions over claims for compensation in respect of destroyed property. The Law No. 03/L-079 itself does not provide for compensatory mechanism for destroyed property.
21. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar