

**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-089/2015

Prishtina, 2 August 2017

In the proceedings of:

L. L.J.

Appellant

Vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Erdogan Haxhibeqiri and Krassimir Mazgalov, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014 (case file registered with Kosovo Property Agency under KPA33859) dated 27 August 2014, after deliberation held on 2 August 2017, issues this:

JUDGMENT

1. The appeal of L. L. J., filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014, as far as it concerns the case registered at the KPA under KPA33859 dated 27 August 2014, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC / D/R/255/2014, as far as it concerns the case registered at the KPA under KPA33859 dated 27 August 2014, is confirmed

Procedural and factual background:

1. On 28 May 2007, L. L.J. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA) on behalf of her late father, S. L, seeking re-possession of the three-room apartment with a surface of 90 m², located in Farme neighbourhood, village of Miradi e Epërme, Municipality of Fushë Kosova/Kosovo Polje (hereinafter: the claimed property). She alleges that her father had the right of use over a one-room apartment, but he had expanded the property into three rooms through personal investments. He had lost the possession in June of 1999.
2. Together with the claim, the appellant filed the following documents:
 - Contract on use no.123 dated 7 February 1988 concluded between AIC “KOSMET-EXPORT” and S. L.,
 - Certificate of birth dated 26 August 1976 which proves that S. L. is the father of L. L. J.,
 - Certificate of death dated 16 October 2009 which proves that S. L.died on 11 September 2001,
 - Various decisions that prove that appellant is the inheritor of the immovable property of S. L.
3. Notification of the Claim was performed on 30 January 2008 and the property was found destroyed whereas the parcel on which the property was located had not been usurped.
4. KPA ex officio obtained information which proves that the claimed property is registered in the name of AIC “Kosova Export” or “Kosmet Export” and that this enterprise was subjected to privatisation.
5. KPCC rejected the claim with its decision KPCC/D/R/2255/2014 dated 27 August 2013. In paragraph 28 of the cover decision, it is said that the claim is outside the KPCC jurisdiction because the claimant failed to show that she had the ownership right over the claimed property, because it is a socially owned property and it was given on use.
6. The decision was served on the claimant on 28 October 2014. She filed an appeal with the Supreme Court through the KPA on 25 November 2014.

Allegations of the appellant

7. The appellant requests from the Supreme Court to modify the KPCC decision and recognize her right of use over the residential property, because she has produced sufficient pieces of evidence. She alleges that in that parcel her father expanded the residential premise with his own funds and that after his death she lived in that property unimpeded until June of 1999. Therefore, she requests from the Supreme Court to render a decision returning her possession over the claimed property. The appellant does not deny it and in the claim, she states that her father had the right of use over the claimed property.

Legal reasoning

8. The appeal is admissible. It was filed within the deadline of 30 days pursuant to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079.
9. The Supreme Court of Kosovo ascertained that the appealed decision of KPCC was issued upon complete and correct determination of the factual situation as well as proper application of the substantial and procedural law. Therefore, ***the appeal is rejected as ungrounded.***
10. Regarding the appellant, to whom were allocated the parcel and the apartment for use by the decision for allocation of property, the Supreme Court also finds that this right of use was not given for private property. From the documents presented by the appellant, it results that the socially owned enterprise was the owner of the immovable property and that it was subjected to the privatisation process. The residential property was destroyed to such extent that it could not be used for habitation and there was no activity on the claimed parcel.
11. According to Section 3.1 of UNMIK Regulation 2006/50, KPCC has jurisdiction to resolve the following categories of claims related to conflict, including circumstances that are directly related to or result from the armed conflict that occurred in the period between 27 February 1998 and 20 June 1999: (a) ownership claims related to private immovable property, including agricultural and commercial property, and (b) claims related to the right of using private immovable property, where the claimant is not able to exercise such property rights.
12. Because the claim does not concern a private immovable property, the KPCC had no jurisdiction to decide on this claim. From this applied provision, it follows that appellant's appeal is ungrounded and her claim has to be rejected.

13. In relation to appellant's ownership over the residential premise constructed by own funds, the Supreme Court states that any potential compensation of damages falls outside the Jurisdiction of KPCC.
14. Consequently, the appellant's appeal is rejected as ungrounded and the appealed KPCC decision is upheld as right and based on the law, in accordance with Section 13.3 (c) of the UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079.
15. This judgment does not confirm any right over the property for the potential users and does not prejudice the appellant's right to refer the claim to a competent court outside the jurisdiction foreseen by provisions of Article 3.1 of the Law no.03/L-079.

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 legal remedies.

Beshir Islami, Presiding Judge

Erdogan Haxhibeqiri, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar