

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

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

GSK-KPA-A-090/15

Prishtinë/Priština,

21 March 2018

In the proceedings of:

M. S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case file registered at the KPA under the number KPA13479), after deliberation held on 21 March 2018, issues the following:

JUDGMENT

1. The Appeal of M. S, filed against the Decision KPCC/D/A/228/2014 (the case file registered at the KPA under the number KPA13479), dated 13 March 2014, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014; as far as it regards the Claim registered under the number KPA13479 is confirmed.

Procedural and factual background:

1. On 18 September 2006, M. S. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), claiming to be recognized as the co-owner to $\frac{1}{4}$ ideal part of the cadastral parcel no 2583/1 with the surface of 00.44.28 ha, located at place called "Vlaštica Przar", Municipality of Gjilan/Gnjilane. The Appellant asserted that the cadastral parcel no 2583/1 was lost on 12 June 1999 as a result of the circumstances in Kosovo in 1998/99.
2. To support his claim, the Appellant provided the KPA with the following documents:
 - The Possession List No. 382 issued by the Displaced Cadaster of the Republic of Serbia, Geodesy Office for Municipality of Gjilan/Gnjilane, Cadastral Zone Llashticë/Vlaštica on 29 August 2006, showing that the cadastral parcel no 2583/1 was registered under the name of the Appellant as co-owner to $\frac{1}{4}$ part of the property;
 - The Ruling on Inheritance O.br. 55/70, issued by the Municipal Court of Gjilan/Gnjilane on 21 December 1971, according to which the Appellant inherited $\frac{1}{4}$ of cadastral parcel no 2583 from his grandfather P. S. The Ruling became final since 24 April 1974.
 - The Contract on the Division of the Immovable Property Cv.br.1213/79 concluded on 2 November 1979 in Gjilan/Gnjilane whereby the cadastral parcel 2583/1 with the surface of 00.44.28 ha, belongs to the Appellant.

3. The Executive Secretariat of KPA organized the notification of the Claim several times. After the information regarding the coordinates for the cadastral parcel no 2583/1 taken by the Directory of Geodesy, Property and Cadaster of the Municipality of Gjilan/Gnjilane, the Notification Team discovered that the cadastral parcel no 2583/1 does not exist but the coordinates match with the cadastral parcel no 2523/1 instead of cadastral parcel no 2583/1.

The Notification Team put the sign indicating that the property was subject to a Claim and that interested parties should have filed their response within 30 days. No interested person approached KPA as a responding party, thus, the Claim was considered as uncontested.

4. Both, the Ruling on Inheritance O.br. 55/70 and the Contract on Division Cv.br.1213/79 were verified positively. The Executive Secretariat of KPA located *ex officio* the Certificate for Immovable Property Rights UL-70403008-00382 issued by Cadastral Municipality of Gjilan/Gnjilane on 9 July 2010 showing the cadastral parcel no 2523/1 with the surface of 00.44.28 ha listed on name of the Appellant as co-owner of $\frac{1}{4}$ equal part.
5. From the case file submissions appears that the Appellant was informed by the Executive Secretariat of the KPA that cadastral parcel no 2583/1 as claimed by him does not exist and that instead it was found the cadastral parcel no 2523/1 with the same surface as it was claimed by him and the Appellant had agreed the Claim to be processed with the newly founded cadastral parcel, namely cadastral parcel no 2523/1 (see page no 067 of the case file).
6. Furthermore, according to the findings on the Claim (see page no 067), the Appellant himself confirmed that he left Kosovo in 1970's and that did not regain the possession of the property before the conflict.
7. On 13 March 2014, the KPCC in its Decisions KPCC/D/A/228/2014 dismissed the Claim. The Decision reads: "the Commission considers that, on the basis of the various documents submitted by the Appellant and verified *ex officio* or based on the Appellant own statement he failed to show that the Claim involve the circumstances directly related or resulting from the armed conflict 1998-1999, accordingly, the Claim fall outside of the mandate of the Commission and stand to be dismissed".

8. The Decision was served on the Appellant on 22 October 2014. On 20 November 2014, the Appellant filed an appeal with the Supreme Court.

The allegations of the Appellant

9. The Appellant challenged the Decision for reason of serious violation of the procedure and incorrect and incomplete establishment of facts.
10. He stated that he never had been informed the KPA during the procedure that he lost the possession before the war 1998-99, as noted in the KPCC's Decisions.
11. The Appellant insisted that he is the owner of the cadastral parcel no 2583/1, with the culture, forest of the 3rd class and with the surface of 00.44.28 ha which is listed at the Possession List no 382.
12. The Appellant claims cancellation of the KPCC Decisions and the case to be sent for reconsideration to KPA or a Decision for repossession.

Legal reasoning:

13. The appeal has been filed within the deadline of 30 days prescribed by the law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Yet it is not grounded.
14. The Supreme Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law. The KPCC correctly assessed that the claims do not fall within the scope of its jurisdiction.
15. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves a right to the property but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. In the case file at hand, the Court found a note of a KPA officer, who described a conversation with the Appellant about the claimed property: "The ES contacted the

- Claimant in order to clarify why he during the Claim intake stated that he lost the possession of the claimed property during 99, and afterwards he stated he lost the possession of the claimed property in 1970. The claimant stated he left Kosovo in 1970 and went to Belgrade where he is still living. He did not give any explanation why there is such discrepancy between his statements.”
17. Moreover, before the first instance, the Appellant agreed his claim to be processed for the newly found cadastral parcel no 2523/1 while during the appellate stage he insists that his claim should be preceded for the cadastral parcel no 2583/1.
18. On 29 December 2017, the Supreme Court sent a Court Order to the Appellant. The Court Order states:
- *To clarify if the Appellant is claiming for the cadastral parcel no 2583/1, forest of the 3rd class with the surface 00.44.28 ha listed on the Possession List 382 or cadastral parcel no 2523/1, forest of the 3rd class with the surface 00.44.28 ha.*
 - *To explain exactly when and due to which reason he or his family lost the possession of the alleged property and present evidence to indicate the loss of property derives from conditions of the conflict.*
 - *the party should answer to the Court Order **within 2 (two) weeks from the receipt of this order.***
 - *the party is advised that failure to respond to this order may lead to a Judgment from the Supreme Court, based on the information and evidence available, without inquiring the party any further.*
19. The Appellant answered to the Court on 28 February 2018, almost 3 (three) months after the deadline prescribed by the Court Order elapsed. The Appellant declared that he received the Court Order on 23 February 2018 but did not provide the Court with the receipt proving the exact date when he received the Order, hence, his answer would not be considered by the Court.
20. Moreover, the Court notes that on 10 January 2012, the Appellant have had file an Appeal (**GSK-KPA-A-034/12**) with the Supreme Court for the case files registered at the KPA under the numbers KPA13473, KPA13474, KPA13475, KPA13476, KPA13477 which were dismissed by the KPCC through the Decision KPCC/D/A/120/2011 due to the reason that the loss of possession of the claimed properties cannot be related to the 1998-99 conflict.

21. The subjects of the Claims were the properties included at the same documents (the List No. 382, the Ruling on Inheritance O.br. 55/70 and the Contract on Division No.1213/79) as were presented before the case at hand.
22. However, because the claimed property is different even though the matter is the same, the case at hand does not fall under the principle of *res judicata*.
23. From the above elaboration of facts and documents, as well as because the Appellant stayed passive even though the Court through the Court Order offered him an opportunity to express his arguments related to the case, the Court concludes that the Appellant has not proven that loss of the property is in any connection with the armed conflict of 1998/1999.
24. Therefore the Court finds that the case is not within the scope of its jurisdiction pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.
25. According to all this, the Appeal had to be rejected and the Decision of the KPCC as far as it regards the claimed property is confirmed.
26. The Courts Decision is without prejudice to the right of the appellant to seek confirmation of his property before the competent local authorities.

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.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar