

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI**

GSK-KPA-A-152/15

Prishtinë/Priština,
8 November 2017

In the proceedings of:

A. S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission with the number KPCC /D/A/236/2014 (the case file registered with the Kosovo Property Agency under the number KPA51196) dated 30 April 2014, after the deliberation held on 8 November 2017, issues the following

JUDGMENT

1. The Appeal filed by A. S. against the Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/236/2014, dated 30 April 2014, regarding the case registered at the Kosovo Property Agency under the number KPA51196, is rejected and unfounded.
2. The Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/236/2014, dated 30 April 2014, regarding the case registered at the Kosovo Property Agency under the number KPA51196, is quashed.
3. On the basis of Article 198.1 of the Law No. 03/L-006 on contested Procedure the Claim filed by A. S. and registered at the Kosovo Property Agency under the number under KPA51196 is dismissed due to lack of jurisdiction.

Procedural and factual background:

1. On 8 November 2007, A. S. (hereinafter “the Appellant”) filed a Claim to the Kosovo Property Agency (hereinafter “the KPA”), seeking a re-possession of the cadastral parcel No. 1365/3, located in Moravska Street No. 38, cadastral zone Pejë/Peč. He claims that the 3 ar land, from the total surface area of the land parcel No 1365/3, was allocated to him by Pejë/Peč Municipality for the purpose of constructing of a residential premise. He stated he had constructed the building, but lost the possession of it as a consequence of the 1998/99 conflict.
2. Together with the Claim, the Appellant submitted the following documents:
 - A copy of the Decision of Pejë/Peč Municipal Assembly - Secretariat for Urbanism, Municipal and Housing Matters No. 05-463/218 dated 14 September 19979.
 - A copy of the Statement of M. S, according to which on the occasion of the sale of the land parcel with the number 1365/3 that belonged to him, the land parcel owned by his brother A. S. was not sold. The signature of the brother of the appellant was verified by the court under the number OV. Br. 400/2014.
 - A copy of the Certificate issued by the Pejë/Peč Municipality – Directorate for Urbanism No. 05-351/2459 of 6 April 2011 which shows that the Appellant applied for and obtained a construction permit with the number 05-251/209 on 4 April 1980 for the construction of residential building on the land parcel No. 1365/4.
 - The copy of the Identification Card issued by the Pejë/Peč parallel authorities on 25 July 2000
3. The claimed property was visited on 26 July 2008 and on 19 February 2010. As it appears from the Notification Report it was ascertained that the property was identified through GPS coordinates and that the claimed property was an abandoned parcel without any residential buildings, which were completely destroyed. Nobody took part in proceedings before KPCC regarding the published Claim.

4. According to the Consolidated Verification Report dated 27 January 2010, the documents submitted by the Appellant: the Decision of Pejë/Peč Municipal Assembly for allocation of construction land for use and the Certificate issued by Pejë/Peč Municipality for issuing the construction permit were found and positively verified.
5. The Executive Secretariat of the KPA found ex officio that the Possession List dated 20 January 2010 was updated in 2003 and the property was evidenced under the name of A. E. This change was done based on the Sale and Purchase Contract concluded between the Appellant's brother M. S, represented by the lawyer M. J. from Prishtinë/Priština with the authorization certified in the First Municipal Court in Belgrade under the number I/Ov. Br.1524/02 on 8 February 2002. The Contract was concluded on 28 May of 2002, whereas it was certified in the Pejë/Peč Municipal Court under the number Vr.Nr.4435/02 on 30 May 2002. According to the Consolidated Verification Report, these documents were found and positively verified.
6. On 30 April 2014, the KPCC with its Decision KPCC/D/A/236/2014 (hereinafter "KPCC's Decision", "Decision") refused the Claim because the Appellant did not prove that he had lost a possession as a result of armed conflict or conflict-related circumstances. In the respective reasoning, in paragraph 18, it is stated that the Commission considered that it had no jurisdiction over claims whose possession was lost not as a result of conflict, therefore the claim should be dismissed due to lack of jurisdiction.
7. The KPCC Decision was served on the Appellant on 5 December 2014.

Admissibility of the Appeal

8. A.S. filed an Appeal on 29 January 2014, although in the KPA cover letter it is said that the party filed the Appeal on 10 January 2015, which is outside the prescribed time limit. On the envelope, in which the Appeal was posted there was the "R" inscription (which means registered letter or urgent mail delivery) of the postal office bearing the date of 29 January 2014.
9. The court found that based on Section 12.1 of the UNMIK Regulation 2006/50 on Resolution of Claims Concerning Private Immovable Property, Including Agricultural and Commercial Property, as amended by the Law No. 03/L-79, service of the submission via a regular mail is considered to have the same effect as filing it to the court directly.

Allegations of the Appellant

10. The Appellant stated that the Decision of the Commission contains erroneous application of the material and procedural law and rests on erroneous and incomplete determination of the factual situation. He alleges that the subject of his Claim was the vacation of his land, for which he had submitted sufficient evidence proving it was his property, allocated to him by the Municipality.
11. The Appellant challenges the Commission's ascertainment, because the part of the parcel with 3 ar surface that was included in the Sale and Purchase Contract is contrary to the law and for this he provided the statement of cadastral parcel owner's brother where it is stated that the claimed property should not be included in the sale and purchase contract of 2003.
12. Concluding, the Appellant requests the Supreme Court to review the case and decide in his favor by recognizing his property right and returning to him the possession.

Legal reasoning

13. The Supreme Court, following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of the Law No 03/L-079 and Article 194 of the Law No 03/L-006 on Contested Procedure, found that the Appeal is unfounded and thus it stands to be rejected.
14. Pursuant to Article 3.1 of the Law No. 03/L-079, the KPCC has competence to resolve conflict-related ownership claims and property use rights claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999". If the Commission verifies that the possession of claimed property was lost before or after the aforementioned dates or that loss of possession was not related to the conflict, it should dismiss the claim based on Article 11.4 (b) of the Law No. 03/L-079.
15. As it can be seen from the documents gathered in the case file, the Appellant did not prove the property right during the period between 27 February 1998 and 20 June 1999, whereas the building constructed on the allocated land for use by the Municipality is destroyed and the construction land was sold. For this reason, the Supreme Court cannot reach the conclusion that the Appellant lost his possession because of the conflict. As a matter of fact, the documents presented by the Appellant, which according to him prove his right of use over the claimed property, were the Municipal Decision on Allocation of socially-owned property for use and the Permit given for construction of the residential building.
16. The Sale and Purchase Contract was concluded between M. S, represented by the lawyer M. J. from Prishtinë/Priština with the authorization and A. E. on 28 May of 2002 and it was certified before the Pejë/Peč Municipal Court under the number Vr.Nr.4435/02 on 30 May 2002. It includes the entire surface area of the land parcel 1365/3, as well as the 3 ar land allocated by the Municipality with his brother's approval. According to the Consolidated Verification Report, the Contract, the updated Possession List, and the ownership certificate were found and positively verified under the name of A. E. who had registered his ownership in the cadastral books.
17. The Appellant does not deny the fact that transaction between the formal owner and the new buyer took place, but questions the fact that the claimed property was included in the Sale and Purchase Contract. However, it has to be underline here, that the land parcel No.1365/3 has never been divided. That is why no matter which the factual agreement between two brothers was, the claimed property followed the destiny of the whole land parcel and thus, was also subject of the sale. For those reasons, the arguments raised by the Appellant could not lead to acceptance of the Appeal, contrary it has to be rejected as unfounded.
18. The Supreme Court however ex officio that the KPCC's Decision contains a discrepancy between the enacting clause and the reasoning. In the enacting clause the Commission decided that "the Claim be refused", because the Appellant did not prove that he had lost a possession due to the circumstances related directly to the armed conflict or resulting from it, whereas in the respective reasoning, in paragraph 18, it is stated that the Commission considered that it had no jurisdiction to decide over claims which possession was lost not as a result of conflict or conflict-related circumstances. The reasoning was given that the claim had to be dismissed due to lack of jurisdiction because possession was not lost as a consequence of a conflict, but as a result of its inclusion in a transaction by the former owner, the Appellant's brother.

19. Except from the fact that the Decision is contradictory, the fact that the KPCC has no competence over the claims related to properties that were lost not as a result of conflict or due to conflict-related circumstances, is grounded and legally justified. The Supreme Court *ex officio* found that the Appellant's Claim had to be dismissed as inadmissible in accordance with Section 3.1 of UNMIK Regulation No. 2006/50, as amended by the Law No. 03 / L-079. That means that the reasoning of the Decision was correct, while the dispositive part of the Decision was not. Thus, the Commission correctly assessed that the Claim falls outside of its jurisdiction, but incorrectly for those reasons decided to "refuse" the claim.
20. Therefore, pursuant to Article 198.1 of the Law on Contested Procedure, the Supreme Court concludes that the KPCC's Decision has to be quashed *ex officio*, and the Claim be dismissed on the basis of Article 3. 1 quoted above.
21. This Judgment does not prejudice the Appellant's right to seek his solutions before the competent court, if he deems it necessary.
22. Based on what was mentioned above, pursuant to Article 12.2 of the Law No. 03/L-079 and Article 198.1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50, as amended by the Law No. 03 L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar