

**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-007/15

**Prishtinë/Priština,
4 May 2016**

In the proceedings of:

B. S.

Appellant/Claimant

vs.

H. Ç.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 dated 13 March 2014 (case file registered at the Kosovo Property Agency under the number KPA11544), after the deliberation held on 4 May 2016, issues the following:

JUDGMENT

1. **The Appeal of B.S. against the Decision of the Kosovo Property Claims Commission No. KPCC/D/C/232/2014 dated 13 March 2014 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No. KPCC/D/C/232/2014 dated 13 March 2014 regarding the case file registered at the KPA under the number KPA11544 is confirmed.**

Procedural and Factual background:

1. On 5 September 2006, B. S. (henceforth: the Appellant) filed a Claim at the Kosovo Property Agency (KPA), seeking repossession over the business premise with a surface of 25 square meters located at the cadastral parcel No. 3883, Cadastral Municipality of Prizren/Prizren. The Appellant explained that his family has been longstanding owner of the stated immovable property and they inherited it after the death of their father. In 1959 the property was nationalized by the authorities of the time and later it was allocated to D. D. Currently the property is used by H.Ç. and it has been turned into a private College
2. With his Claim the Appellant submitted to the KPA:
 - The copy of the Inheritance Decision No. 123/56 of the District Court of Prizren/Prizren by which N.S.(Appellant's mother) B.S. (Appellant) and Z. S. (Claimant's brother) were declared heirs to the immovable property;
 - The application for nationalization, dated 10 May 1959, addressed to the administrative authority for nationalization;
 - The copy of Claim C.47/2000 addressed to the Municipal Court in Prizren/Prizren for returning possession over the immovable property;
 - The Judgment P.br. 348/95, dated 04.06.1998, of the Municipal Court in Prizren/Prizren irrelevant for the claimed property;
 - The Reply from the State Prosecution Office dated 23.10.2012;
 - The Judgment of the Supreme Military Court irrelevant for the claimed property;
 - The copy of the request for reviewing the Decision of the Housing and Property Claims Commission (HPCC);
 - The Ruling of the Municipal Court in Prizren/Prizren on the suspension of the proceedings for 180 days;
 - The Certificate No. 023-1498/05 12 2001 issued by the Directorate for Cadastre, Geodesy and Property of the Municipality of Prizren/Prizren, proving that the claimed property as of 1957 was

evidenced in the name of S. family whereas on 12.11.1974 the property was registered in the name of D. D;

- The Agreement between the other heirs and B. S. that he represents them in relation to this issue;
 - The Conclusion No. 462-8, dated 12.02.2000, by which was decided that B.S. claim does not fall under the jurisdiction of administrative bodies;
 - The Request addressed to the European Court on Human Rights;
 - Numerous documents, summaries of articles from the press sent to the Institutions, individuals and NGOs in Kosovo and abroad which are irrelevant for the case
3. The Claim was notified on 30 March 2010. According to the Notification report the claimed property was found to be a residential house. On 8 October 2013 it was concluded that the property was correctly identified based on the GPS coordinates and that at the time of the visit the premise was found in use by H. Ç, who was present at the property and signed the notice of participation and stated that he claimed the property right over the same property.
 4. On 25 October 2013, H. Ç. (henceforth: the Respondent) filed a Reply to the Claim with the KPA. He alleged to have the legal rights over the property. He stated that he bought the property from D. D. and that according to cadastral records he purchased the parcels 3882 and 3884 whereas parcel 3883 was joined to parcel 3882.
 5. To support his Response he submitted:
 - The Sales Contract Leg. No. 1640/2007 certified before the Municipal Court in Prizren whereby he purchased the property from D. D;
 - The copy of Plan, dated 2 February 1992, regarding parcels 3882 and 3884; according to the statements given by the Respondent and Cadaster officials the parcel 3883 was joined to parcel 3882;
 - The copy of the Possession List No. 3137, dated 12 July 1994, whereby it is proven that D.D. is owner with 1/1 of parcels 3883 and 3883;
 - A Statement of 24 October 2015;
 - The Record of 16.05.2005 on the handover of keys, proving that after the request of D. D. filed with the former House and Property Directorate.

The Supreme Court found the Decision HPCC/D/79/2003, dated 23.06.2003, on the website of KPA. In this Decision the HPCC established that D. D. has proven his property right over the claimed property and ordered the return of possession, which was executed as per the Claim DS200539.

6. On 13 March 2014, the Kosovo Property Claims Commission (henceforth: the KPCC), through its Decision KPCC/D/C/232/2014 (henceforth: the KPCC Decision) dismissed the Claim. In the reasoning of the Decision (paragraph 31), the KPCC emphasized that the Appellant failed to prove that his Claim included circumstances which are directly related to or result from the conflict of 1998-99 and that he was in possession of the property.

7. The KPCC Decision was served upon the Appellant on 8 July 2014. On 16 July 2014 the Appellant filed an Appeal against the KPCC Decision.
8. The same Decision was served on the Respondent H.Ç. on 14 January 2014. The copy of the Appeal was serviced on the Respondent and on 9 March 2014 he filed a reply on the Appeal where he considered it as ungrounded.

Allegations of the parties

9. The Appellant seeks from the Supreme Court of Kosovo to cancel the KPCC Decision as it contains essential violation of the procedural Law, misapplication of the substantive Law and an erroneous determination of the factual situation. He alleges that the Basic Law on the KPA is in contradiction with the laws in Kosovo and that it needs to incorporate the period before 1998-99 in order to include the Nationalisation cases as is the case with his family. The property was taken from him in an arbitrary manner and needs to be returned to him. He considers that the reallocation of the property to D.D. was done in an illegal manner and that even the sale to the current user of the property was unlawful.

Legal reasoning

10. The Appeal against the KPCC Decision was submitted within 30 days from the day the KPA served the KPCC Decision upon the Appellant, as provided by Section 12.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims related to Private Immovable Property including Agricultural and Commercial Property, amended by Law Nr.03/L-79, and it is admissible.
11. After reviewing the case file documents and allegations of parties it resulted that the Appeal is unfounded.
12. The Supreme Court of Kosovo finds that the appealed KPCC Decision is complete and the factual situation was correctly established and based on this both the substantive and procedural laws have been correctly applied. Therefore, the Appeal stands to be rejected as ungrounded.
13. The Appellant alleges that his father used to have a property right and that the same right was taken away from him through a discriminatory and unlawful action in 1959. He presents his objection to the justice system, the Government and authorities installed by the United Nations Mission – UNMIK, and now the Kosovo Government. He seeks inclusion of the restitution of properties which were lost as a result of the discrimination by the Yugoslav Government of that time although the KPA mandate is limited by law.
14. To materialize his right he addressed to Judicial and Government Institutions, different NGOs, the European Court on Human Rights and to public personalities in and out of Kosovo.

15. Pursuant to Section 3.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, *“The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have 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, and*
 - (b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,*
- Where the Claimant is not now able to exercise such property rights.*
16. None of the documents submitted by the Appellant confirms that the Appellant was in possession of the claimed property before or during the conflict. As established by the KPA, the Appellant in support of his Claim submitted the Inheritance Decision from 1956 and the Nationalization evidence from 1959. The Appellant does not deny that from 1959 he and his family were not in possession of the property.
17. On the other hand, the Respondent submitted documents which prove that D. D. lost the possession of the claimed property as a result of the conflict and had filed a Claim at the Housing and Property Directorate. After these proceedings were concluded, the Housing and Property Claims Commission found that the previous owner had proven his ownership over the claimed property and it was ordered that the claimed property is returned under his possession.
18. The KPA mandate is to review the cases *“directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999”*. This means that the scope of the KPA examination is the verification of the following elements: who was in possession of the claimed property before 27 February 1998, who is currently under its possession, when and for what reasons was the possession lost during the period between 27 February 1998 and 20 June 1999. The wording under Section 3.1 *“conflict-related claims involving circumstances directly related to or resulting from the armed conflict”* require the direct link between the loss of possession and the armed conflict or the close link between the conflict related cause and the consequence which in the concrete case is not present.
19. Therefore, the Supreme Court concludes that the Claim falls outside the KPCC jurisdiction and the Appeal of the Appellant stands to be rejected as unfounded and the appealed KPCC Decision confirmed as just and based on the Law, pursuant to Section 13.3 (c) of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079.

Conclusion

20. In light of the above and pursuant to Article 13.3 (c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure (LCP), the Supreme Court decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of 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

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar