

**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-158/14

**Prishtinë/Priština,
5 October 2016**

In the proceedings of:

S. G.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2014 (case file registered at the KPA under the number KPA27005), dated 27 November 2013, after the deliberation held on 5 October 2016, issues the following:

JUDGMENT

1. The appeal of S. G. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013, dated 27 November 2013, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (with regards to the case file registered at the KPA under the number KPA27005), dated 27 November 2013, is confirmed.

Procedural and factual background

1. On 2 February 2007 S. D.(hereinafter: the Claimant) filed a claim to the Kosovo Property Agency (henceforth: the KPA) seeking the repossession right over the cadastral parcel no 360 with a surface of 00.24.42 ha, at the Cadastral Zone Miradi e Epërme/Gornje Dobrevo, Municipality of Fushë Kosovë/Kosovo Polje (henceforth: the claimed property). He alleges that his father M. G. has paid a monetary amount for the parcel and that the property was lost in June 1999.
2. Together with the claim, the Claimant has submitted the following documents:
 - The Decision on the Allocation of parcel No 170, dated 2 April 1975, whereby the socially-owned company allocated a parcel with a surface of 00.08.00 ha to the Claimant without specifying which parcel.
 - The Possession List No 168 issued by the Institute of Geodesy and Cadastre in Prishtinë/Priština, Branch in Fushë Kosovë/Kosovo Polje, which proves that the claimed property is registered as a socially-owned property of the Agricultural Industrial Enterprise “Kosovo Eksport” from Fushë Kosovë/Kosovo Polje.
 - The Permission No 139, dated 23 March 1993, issued by the Public Company “Gornje Dobrevo” proving that the Public Company has given its consent for the registration of the property in the Cadastre under the name of the Claimant.

- Various Decisions proving that the Claimant has paid the property tax before the armed conflict.
 - The KPA officials obtained *ex officio* the Decision of the Housing and Property Claims Commission HPCC/D/177/2005/C, dated 29 April 2005, whereby through a Declarative Order it has been confirmed that the claimed property had been demolished and was uninhabitable and that on the day of the demolition the Claimant met the requirements for return of possession.
3. The Notification of the claim was done on 1 September 2008 and during the notification it was found that the residential property had been demolished and the parcel is being occupied by H. N. who, on 11 January 2008, signed the Notice on Participation and did not claim any legal rights over the property.
 4. No one participated in the proceedings before the KPA.
 5. The documents filed by the Claimant were positively verified. On 17 January 2013, the KPA obtained *ex officio* the Certificate for the Immovable Property Rights confirming that the claimed property is registered in the name of “K.B.I Kosova Export”.
 6. The Claimant was contacted by the KPA on 20 January 2009 and on 29 September 2009 and he was requested to provide additional documents by which he would prove his ownership right. However, within the prescribed period of time he provided the proofs that he had paid the property tax and also a three-lateral agreement between the Municipality of Fushë Kosovë/Kosovo Polje, the Claimant and the Humanitarian Organization for Reconstructing the house.
 7. The KPCC rejected the Claim with its Decision KPCC/D/R/223/2013, dated 27 November 2013. In paragraphs 50 and 51 of the Cover Decision it is stated that the Claim stands to be dismissed because the Claimant failed to prove that he had ownership rights over the claimed property and that the same is a socially-owned property which had been given for use. In the Commission’s opinion the Registration Consent and the Allocation Decision do not suffice for establishing the alleged ownership rights.

8. The Decision was served on the Claimant (hereinafter: the Appellant) on 20 March 2014. He filed an appeal before the KPA Appeals Panel of the Supreme Court on 17 April 2014.

Allegations of the Appellant

9. The Appellant seeks from the Supreme Court of Kosovo to modify the KPCC's Decision after it has reviewed it, and to recognize his ownership right over the residential property due to the mentioned reasons, as he had provided sufficient evidence in that regard. He alleges that his father had constructed a residential building with his means on that parcel and after his death he lived in the same house undisturbed until June 1999. Therefore, he asks the Supreme Court to render a decision whereby the claimed property is returned under his possession.

Legal reasoning

10. The appeal is admissible. It has been filed within the time period of 30 days as foreseen under Section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No 03/L-079.
11. The Supreme Court of Kosovo concludes that the KPCC's Decision was taken after a complete and correct determination of the factual situation, and on that basis the substantive and procedural laws have been correctly applied. Therefore, the appeal is rejected as ungrounded.
12. Regarding the Appellant's allegation according to which through the Decision on Allocation a cadastre with the surface of 00.08.00 ha was allocated to him, but without specifying the number of the same, the Supreme Court establishes that this use right over the cadastral parcel was related to the socially - owned land and not as a private property. From the documents presented by the Appellant it results that the socially-owned enterprise has been the owner of the immovable property.
13. Pursuant to Section 3.1 of the UNMIK Regulation 2006/50, the KPCC has 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, (b) Claims involving property use rights in respect of private

immovable property, where the claimant of both categories is not now able to exercise such property rights.

14. Given that the Claim is not related to private immovable property, the KPCC did not have the jurisdiction to decide on this Claim. From this provision it results that the appeal of the Appellant is ungrounded and as such it stands to be rejected.
15. As far as it concerns the Appellant's ownership right over the residential building constructed with his own means, the Supreme Court found that any possible compensation for damage falls outside the KPCC's jurisdiction.
16. Therefore, the appeal of the Appellant is rejected as ungrounded and the appealed KPCC's Decision confirmed as correct and based on the correct application of the law. Thus, pursuant to Section 13.3 (c) of the UNMIK Regulation 2006/50, as amended by Law No 03/L-079, paragraph 1(d) of the Law on Contested Procedure, it was decided as in the enacting clause of this Judgment.
17. This Judgment neither establishes any rights over the property for the current users nor has any prejudice regarding the right of the Appellant to refer his Claim for inclusion in the Rent Scheme or before the competent Court, outside the jurisdiction envisaged under provisions of Article 3.1 of the Law No 03/L-079.
18. In the light of the above, it was decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anna Bendarek, EULEX Judge

Sandra Gudaityte, EULEX Registrar