

**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-069/2015

Prishtinë/Priština,
7 December 2016

In the proceedings of:

R. V.

On behalf of her late husband

M. V.

Appellant

Vs.

Appellee

N/A

The Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KKPK/D/A/228/2014, case file registered at the Kosovo Property Agency (henceforth: KPA) under no. KPA133315, dated 13 March 2014, after the main deliberation held on 7 December 2016, issues the following:

JUDGMENT

1. **The Appeal of R. V. against the Decision KKPK/D/A /228/2014, dated 30 March 2014, as far as it concerns the case file registered with the KPA under the number KPA33315, is rejected as ungrounded.**
2. **The Decision KKPK/D/A/228/2014, dated 30 March 2014, as far as it concerns the case file registered with the KPA under the number KPA33315 is confirmed.**

Procedural and factual background

1. On 23 March 2007, M. V., filed a claim at the Kosovo Property Agency (henceforth: KPA) registered under the number KPA33315, seeking Confirmation of his Ownership Right and re possession over cadastral parcel no. 208 located in Koreticë/Koretice village, Gjakova/Đakovica Municipality, with a surface of 1.91.34 h (henceforth: the claimed property). M. V. stated that he is owner of the claimed property and that he lost possession over the stated property in June 1999.
2. In support of his claim, he submitted with the KPA the following documents:
 - A Judgment No 561/81 issued by Pejë/Peč District Court on 9 January 1986, proving that R. V. is owner of parcels 206 and 207 and part of parcel 208 and the Socially-Owned Enterprise “Ereniku” is obliged to enable her undisturbed possession.
 - A Contract on a lifelong support concluded between M. V. as the Provider of the Lifelong Support and M.V. as the Lifelong Support Receiver, concluded in Belgrade on 8 January 1987, certified before the Municipal Court V (five) of Belgrade under the number Posl.Br.R.1342/87;
 - A Ruling No 3886/87 of the Municipal Court in Gjakovë/Djakovica, dated 20 March 1987, which provides that part of cadastral parcel no. 208 was allocated under the preservation of M. V.;
 - A Death Certificate No 06734 issued by the Municipality of Savski Venac proving that M.V. passed away on 12 November 1990;
 - A Death Certificate No 5076 issued by the authorities of the City of Belgrade proving that M. V. passed away on 27 August 2010. The Death Certificate was submitted by R.V. (Appellant);
3. The KPA Executive Secretariat, ex officio, has found that parcels no. 206, 207 and 208 are not located in “Koreticë/Koretice” village but rather in the village “Baba i Bokës” and therefore it required background information on cadastral changes in order to establish if the claimed property was a socially-owned property or if it was registered under the names of third parties.

4. According to the data of Cadastral Office of Gjakovë/Đakovica, dated 21 July 2009, parcels were registered as property of the Socially-Owned enterprise “Ereniku”. The Possession List that relates the claimed property was attached to the background information of the Cadastre Office.
5. The KPA Executive Secretariat, as per the Notification Report dated 14 November 2008, established that the claimed property could not be notified based on the data provided by the Claimant and for this reason the notification of the claimed properties was done by publishing the claim in all public places. Meanwhile a confirmation was received from the Cadastral Department that neither M. nor M. V. are registered as owners in any of the previous or current possession lists within Cadastral Records of Gjakovë/Djakovica.
6. According to the Verification Report, dated 28 January 2014, the Contract for Lifelong Support Posl.Br.R.1342/87 of 1987 was positively verified whereas Possession List, Judgment C.nr. 561/1981 and Decision I.Br.3866/87 were not found in the respective archives and the verification for them resulted negative.
7. The Kosovo Property Claims Commission (KPCC) in its Decision KPCC/228/2014, dated 30 March 2014, decided to reject the claim with the reasoning that the Claimant initially has stated that he has lost possession as a result of the armed conflict, however, based on the submitted documentation and the *ex officio* verification by the Secretariat, it resulted that he failed to submit any valid evidence that he has had any property rights over the claimed property before the armed conflict and that he had lost the same as a result of the conflict.
8. M. V. passed away on 27 August 2010 and R. V. in the capacity of the Appellant, on behalf of her late husband, received the Commission’s Decision on 28 August 2014, and she filed an appeal on 26 September 2014.

Appellate allegations

9. The Appellant alleges that the KPCC’s Decision rests on incomplete determination of the factual situation and misapplication of the substantive law. Moreover, the Appellant challenges the KPCC’s reasoning that the property was not lost as a result of the conflict, by claiming that the submitted documentation prove the ownership rights of her late husband. Additionally, she alleges that because of the fact that no one challenged the claim the KPCC should recognize the ownership and return her the possession over the claimed property.

Legal reasoning

Admissibility of the appeal

10. After reviewing the case file and appellate allegations pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (henceforth: LCP), the Court with regards to the revision of Judgment, as per its official duty, and for the reasons mentioned and not mentioned in the appeal, found that the appeal is admissible and timely pursuant to Article 186 paragraph 1 as read with Article 196 of the LCP because the Appellant received the Commission's decision on 28 August 2014 and filed an appeal on 26 September 2014. Therefore, it may be concluded that he has filed the appeal within the prescribed period of time of 30 days as foreseen by the provision of Article 12 paragraph 1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-79. This legal provision provides that "*an appeal against the KPCC's Decision may be filed within a period of 30 days from the day of its receipt*".

Merits of the appeal

The Court found that the appeal against the Commission's Decision is ungrounded because of the fact that the Appellant's husband failed to prove his ownership right registered in public records and that he has lost the same as a result of the armed conflict and circumstances related to it. With the cadastral records of the Municipality of Gjakova/Dhakovica transferred (dislocated) to Serbia, the Appellant's husband is not evidenced as owner.

Jurisdiction

11. Pursuant to Section 3.1 of the UNMIK Regulation 2006/50, as amended by Law 03/L-079, 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.
12. In this case, it is necessary to establish if the Appellant's husband possessed any evidence proving that he was owner of the claimed property, that he was using it and that he lost it as a result of the conflict. The cadastral data show that during the time of the conflict the property was evidenced as a socially-owned property. Article 20 of the Law on Legal Property Relations (Official Gazette of the SFRY no. 6/80, 36/90 provides as follows "*The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law*"- which implies the written form, the confirmation by the respective authority and registration of property in public records. The actual law no. 03/l-154 on Property and Other Real Rights under Article 36 provides: "1. *the transfer of ownership of an*

immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.

13. The Appellant has failed to prove that her husband has executed the Judgment before the conflict and that he had an ownership right and possession over the claimed property which he has lost as a result of the conflict and this conclusion by the KPCC was not challenged by any new evidence with the appeal.
14. This Judgment shall not prejudice any confirmed property rights for the actual user and shall not be an obstacle for confirmation of property rights in regular proceedings.
15. In light of the above, the Supreme Court decided as in the enacting clause of this Judgment.

Legal advice

16. Pursuant to Section 13.6 of the 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

Krassimir Mazgalov, EULEX Judge

Sandra Gutaityde, EULEX Registrar