

**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-136/13**

**Prishtinë/Priština,  
27 May 2014**

In the proceedings of:

**R.Q.S  
A.R.S  
R.Q.S**

Represented through power of attorney by B.L

Hereafter referred to as the:

**Appellants**

vs.

**N/A**

**Appellees**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Dag Brathole and Emine Kaqiku, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/172/2012 dated 24 October 2012 (case file registered at the KPA under No. KPA 00902 and hereafter referred to as; the KPCC decision), after deliberation held on 27 May 2014, issues the following

**JUDGMENT:**

1. **The appeal is rejected as unfounded.**
2. **The decision of the KPCC no. KPCC/D/A/172/2012 dated 24 October 2012 is confirmed as far as it regards case file KPA 00902;**

**Procedural and factual background:**

The Appeals panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following

1. On 14 September 2006 R.S filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a parcel of land at Vitomiricë/Vitomirica, Pejë/Peć, “Te Mulliri Rajkut”, cadastral number 679/1, with a surface of 01.16.47 ha (hereafter to be referred to as: the property).
2. The claim of the property was duly notified on 30 May 2008 by placing a sign on the property.
3. The KPCC decided that the claim should be dismissed as inadmissible since the loss of the property was not related to the armed conflict in Kosovo in the period between 27 February 1998 and 20 June 1999.
4. The KPCC decision was served upon the R.S on 15 May 2013.
5. The Appellants filed an appeal against the KPCC decision at the KPA on 4 June 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property (hereafter referred to as: the UNMIK Regulation).
6. Q.S.V was the rightful owner of the property, he lost possession of this property 1946 as it was confiscated by the Federal Yugoslavian Government.
7. According to a certificate issued by the Municipal Assembly, Directorate for Cadastre and Geodesy of Peja, dated 11 September 2000, no 01-3/86, the property was registered on the name of B.B.D from Vitomiricë/Vitomirica. According to a possession list no. 490 dated 26 August 2008 the property was registered on the name of K.S.Ç.
8. The Appellant’s also filed a civil claim regarding the property at the Municipal Court in Istog/Istok on 31 July 2007. This Court declared itself incompetent by a ruling of 3 July 2008 (no.151/07).

9. Apparently a further civil claim was filed before the Basic court in Peja according to a petition dated 8 April 2013 for a preliminary injunction and a request for scheduling of a main trial in case no.517/08.

**Allegations of the parties**

10. The Appellants, descendant's and allegedly heirs of Q.S.V seek the confirmation of their ownership right over the property since the possession and use of the property has been taken by third parties. To challenge the KPCC decision the Appellants stated that the KPCC decision was taken:
- with essential violations of procedural provisions;
  - with a wrongful application of provisions of the substantive law;
  - with an incomplete and erroneous ascertainment of the factual situation by ignoring relevant legal evidence and non-assessment of material evidence concerning the case file, in favor of the claimant/ appellant.
11. The Appellants therefore request:
- the appeal to be found founded;
  - the KPCC decision to be quashed and returned to the KPA for reconsideration;
  - to have the respondents to leave and hand over the property;
  - to have the respondents to pay a sum of € 650 to the Appellants for compensation for process costs;
  - to order a preliminary measure in order to prevent the respondent parties from changing the administrative and or factual situation

**Legal reasoning:**

*Admissibility of the appeal*

12. The appeal is admissible.

*Jurisdiction*

13. The Supreme Court has jurisdiction.

*Merits*

14. Since the KPCC has dismissed the claim of the appellant as not being within the reach of the jurisdiction of the KPCC, the question to be answered by the Supreme Court is whether the KPCC had jurisdiction or not.

15. The jurisdiction of the KPCC is set up by Section 3.1 of UNMIK Regulation No. 2006/50 as amended by the Law No.03/L-079, which reads that the KPCC has the competence to resolve “*the following categories of conflict-related claims involving circumstances directly related or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: the ownership claims with respect to private immovable property, including agricultural and commercial property, and 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. It is not disputed, nor is there is any doubt that the property was confiscated by the then Federal government of Yugoslavia in 1946. Ever since then the former owner and after him his heirs were not able to exercise their ownership rights. The Supreme Court therefore considers that the requirement “conflict-related” is not met in the present case.
17. These circumstances have as a consequence that the KPCC had no jurisdiction over the matter.
18. As far as the appellants in their appeal mean that there is a violation of UNMIK Regulation 2000/60 of 31 October 2000, more precise the Sections 2 and 3 regarding the loss of a property as a result of discrimination the Supreme Court, this appeal won’t hold either.
19. Since the property has not been lost in the period between 23 March 1989 and 24 March 1999, this regulation is not applicable.

*Conclusion*

20. This leads the Supreme Court to the conclusion that the KPCC has taken a right decision for the right reasons.

**Legal Advice**

21. 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.

**Willem Brouwer, EULEX Presiding Judge**

**Emine Kaqiku, Judge**

**Dag Brathole, EULEX Judge,**

**Urs Nufer, EULEX Registrar**