

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-200/2015

**Priština,
17 January 201**

In the proceedings of:

M.V.

Appellant

vs

Z.D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges Beshir Islami, Presiding Judge, Krassimir Mazgalov EULEX Judge and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission, no. KPCC/D/A/228/2014 (the case file registered at KPA under KPA08814) dated 13 March 2014, after the deliberation held on 17 January 2018, issues the following:

Judgment

1. **The appeal of M. V. against the decision of the Kosovo Property Claims Commission no. KPCC/D/A/228/2014, dated 13 March 2014, is rejected as ungrounded.**
2. **The decision of the Kosovo Property Claims Commission no. KPCC/D/A/228/2014, dated 13 March 2014, concerning the case KPA08814, is confirmed.**

Procedural and factual background:

1. On 31 January 2007, **M. V.** (hereinafter: the appellant), filed a claim with Kosovo Property Agency (KPA), claiming co-ownership and seeking re-possession over 1/3 of parcel no.694/1(1211/3), with a surface of 1.65.56 ha, located in Marmull/Marmule village, Gjakovë/Djakovica (hereinafter: the claimed property). The claim was registered in KPA under KPA08814.
2. The appellant alleges that he acquired ownership over 1/3 of the ideal part through the Decision on land regulation through Land Consolidation and now the property is now occupied and he seeks the return of possession.
3. To support his claim, the appellant provided the following documents:
 - Decision on allocation of land through land consolidation 019-161/228, dated 24 August 1997, through which participants in Land Consolidation, the appellant and his two sisters, were allocated the claimed property instead of parcel 228;
 - Copy of plan issued by the Municipal Geodesy Directorate of Gjakova/Djakovica on 9 June 1997 where the cadastral parcel-claimed property is listed in the name of Socially owned Agricultural Enterprise “ERENIKU” in Gjakova/Djakovica;
 - Judgment P.br.261/94, dated 19 June 1997, issued by the Municipal Court in Gjakova by which the SOE “Ereniku” is obligated to recognize the appellant’s ownership over parcel taken in exchange through land consolidation;
 - Identification card issued on 2 March 2009 by parallel bodies of Serbia.
4. On 23 May 2013, the KPA made the notification of the claim by placing a sign on the claimed property. The notification and confirmation of the claim was made through GPS coordinates and the property was found to be a cultivated land occupied by Gj. D, who claimed the legal rights of his family over the property considering it as the property of his predecessors, but he did not present any evidence of property allegations.

5. Pursuant to the summary Verification Report dated 22 March 2013, the KPA ascertained that the supporting documents attached to the claim such as the 1997 Decision of Land Consolidation and the Ownership Certificate for the parcel 2128 were found and verified positively. The ownership certificate was updated in 2009 and the parcel 1211/2 was registered as a co-ownership of the appellant and his sisters to 1/3 of the ideal part.
6. On 8 April 2013, the KPA addressed a request for verification of the data on the claimed property to the Land Consolidation Commission in the Municipality of Gjakova. The Municipal Assembly of Gjakova/Dakovica, respectively the Commission for Regulating Agricultural Lands, on 29 April 2013 responded that the actual execution of the 1997 decision was carried out in 2008.
7. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter referred to as KPCC) in its decision KPCC/D/A/228/2014, dismissed the claim. In the reasoning of the decision (paragraph 18), the KPCC found that the appellant failed to prove that he had property rights over the claimed property and that he lost it as a result of the armed conflict or the circumstances thereof. Consequently, the claim was dismissed due to lack of competence of the KCCP.
8. On 17 November 2014, the KPCC decision was served on the appellant. The appellant filed an appeal against the KPCC decision on 2 December 2014 (the receipt stamp by UNHCR property office in Belgrade is wrong "2 November 2014").
9. On 30 July 2015, T. D. received the appeal but he did not respond to it.

Allegations of the appellant:

10. The appellant alleges that the KPCC decision is unlawful and incorrect because it contains serious violations of the process, misapplication of substantive law, and that his claim for repossession had not been fully verified. The appellant alleges that the offered parcel number 1211/2 has much lower value than parcel 694/1 which was originally allocated through the 1997 land consolidation.
11. Further, the appellant disagreed with the manner in which the documents were served on the appellant by the KPA in Albanian language only (documents submitted by the Land Consolidation Commission) despite the fact that the Serbian language is also in official use in equal manner.

Legal reasoning:

12. Having considered the case file submissions and the allegations of the appellant, pursuant to Section 12 and 13 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 and Article 194 of the Law no.03/L-006 on Contested Procedure, the Court found that the

appeal is admissible. It was filed within a period of 30 days as provided by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.

13. From the examination of the case file submission and the allegations of the party, it results that the appeal is ungrounded and that the decision of the KPCC does not contain any essential violation of the procedural law or misapplication of the substantive law.
14. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, as amended by Law no. 03 / L-079, the appellant is entitled to an order for the repossession of the property if he proves the ownership or the right of use of property over the claimed property and that he was not able to exercise his property rights because of the circumstances which are directly related to or are the result of armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. The appellant bases the property right on the documents found in the relevant services in Kosovo and in 2008 the claimed property was subjected to the rearrangement of agricultural land in the Municipality of Gjakova. Therefore, according to the KPA findings, the appellant lost the ability to use the property not as a result of the conflict but as a result of the administrative actions of the relevant authorities for the regulation of agricultural land.
16. The Supreme Court of Kosovo also considered the allegations of the party as to the use of the language in the proceedings by the KPA and the Court and came to the conclusion that all the files of the KPA and the KPCC were written in three languages and therefore it did not find any violation of the provisions of Section 3 of UNMIK Administrative Instruction/2007/5, as amended by Law no. 03 / L-079, which provides in Section 3.1 "*The languages which may be used by the Kosovo Property Agency in all proceedings filed pursuant to UNMIK Regulation no. 2006/ 50 shall be Albanian, Serbian and English*". Whereas Section 3.2 foresees that "*Any person participating in proceedings before the Commission and in the appellate proceedings before the Supreme Court who does not speak the language of the proceedings shall have the right to speak his/her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceeding*". Clearly, the KPA has complied with this provision because all the KPA's submissions were in three languages in use, whereas the documents filed by the appellant were in the Serbian language and they were served on the appellee as such. The same approach was used with other parties' submissions as well. Law no. 03/L-006 on Contested Procedure, Article 97, provides that only "Calling letters, decisions and other court documents are sent to parties in the official language of the court". Evidence attached to the claims of the parties are not translated for the needs of the parties other than the Court.
17. The Supreme Court considered the ascertainment of the KPCC as correct that the Appellant failed to show the property right and its loss in connection with the 1998-1999 conflict and therefore the claim was dismissed.
18. As such, the Supreme Court considers that the KPCC Decision is based on the law and does not contain essential procedural violations or misapplication of substantive law.
19. This judgment does not prejudice any property rights for the current possessors nor is it an obstacle for the parties to initiate proceedings before the competent body or competent court if they find it in their legal interest.

20. Based on the foregoing and in accordance with Section 13.3 under (c) of UNMIK Regulation 2006/50, as amended by Law no. 03 / L-079, it has been 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 no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, EULEX chief secretary