

**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-217/14

Prishtinë/Priština
5 October 2016

In the proceedings of

B.Z.

From Gjakovë/Đakovica

Represented by I.O. , lawyer from Dečan/Dečani

Appellant

Vs.

I.V.N.

Pakovrača 32

Čačak

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges: Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (the case file registered at the KPA under No KPA16520), dated 11.06.2014, after the deliberation held on 5 October 2016, issues the following:

JUDGMENT

1. The Appeal of B.Z. represented by the lawyer I.O., from Deçan/ Deçani against the Decision of the Kosovo Property Claims Commission KPCC/D/R/206/2013 dated 11 June 2013 regarding the claim registered at the KPA under the number KPA16520 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/206/2013, dated 11 June 2013 as far as it regards the claim registered at the KPA under the number KPA16520 is confirmed.

Procedural and factual background

1. I.N. filed a claim as the title holder of the property right whereby he claimed the ownership right over the parcel 182 which is located in the cadastral area of Strelcë i Poshtëm/Donji Streoc, Municipality of Deçan/Deçani and over the house with a surface of 90m² built on the parcel in 1949. She states that she lost the possession of the apartment due to armed conflict in the period between 1998/99, mentioning 13.06.1999 as the date of loss. The claim was registered at the KPA under the number KPA16520.
2. In order to support her claim, the Appellant submitted the following documents:
 - Possession List No 384 dated 20.3.2008, issued by the Directorate of Cadastre, Geodesy and Property of the Municipality of Deçan/Deçani. According to this Possession List it can be concluded that the cadastral parcel No 182 which is located at the place called "Zlapek-Lugi i Locit", with the culture orchard of the II class, house, building and yard with a surface of 0.58.74 ha is registered under the name of the Claimant;
 - Certificate of Immovable Property Right UL-70511022-00384 dated 08.01.2013, which indicates that the cadastral parcel No 182 with a surface of 5874 m² is registered under the name of the Claimant.

3. The abovementioned documents according to the KPA Verification Reports dated 20 March 2008 and 18 January 2013 are positively verified.
4. The claim was notified on 4 February 2009 and 30 March 2010. It has been concluded that the property is being occupied by B.Z. (henceforth: the Respondent), who has claimed the legal right over the claimed property.
5. In order to support his claim, the Respondent submitted the minutes of the District Agrarian Commission of Pejë/Peć dated 6 January 1926, written by the Ministry of Agrarian Reform of the Serbian, Croatian and Slovenian Kingdom No. 928 dated 4 April 1928 and also some letters addressed to the party bodies of that period and also the responses of those bodies wherewith the requests and the complaints were forwarded to the Municipal Committee of LSPP (Social Union of Working People) in Deçan/Deçani for verification and action.
6. According to the Verification Report of the Kosovo Property Agency dated 20 March 2008, the minutes of the Ministry for Agrarian Reform of the Serbian, Croatian and Slovenian Kingdom No 928 dated 4 April 1928, verified on 09 July 1969 had not been found by the Directorate of Cadastre, Geodesy and Property of the Municipality of Deçan/Deçani.
7. The Kosovo Property Claims Commission (KPCC) by its decision KPCC/ D/ R/206/2013 dated 11 June 2013 granted the Claim of I.V.N. , stating that she enjoys the possession right over the property and that the same is the owner of the parcel No 182 registered in the Possession List No 382, located in the cadastral zone of Strelcë i Epërm/Gornji Streoc, Municipality of Deçan/Deçani with the surface of 0.58.74 ha.
8. In the reasoning of the challenged Decision it is mentioned that the Claimant by submitting the Possession List and the Certificate of Immovable Ownership Right without any doubt and with certainty has proven that she is the legal owner of the claimed property, such capacity of her is therefore accepted by verifying the ownership over this property which is the subject of the claim. On the other hand, although the Respondent claims the legal right over the claimed property through the Claim registered under the number KPA16520, by submitting the decision of the Ministry for Agrarian Reform of the Serbian, Croatian and Slovenian Kingdom No 928 dated 4 April 1928 in Beograd, as well as through the claim for determination of ownership rights filed to the Basic Court of Pejë/Peć - Deçan/Deçani Branch, (case no C. No 89/2014) by which he requested the ownership right over the parcel which is a subject to this claim, these pieces of evidence are not legally valid to prove the ownership right which is a subject of this legal obligation matter. The Commission

concludes that these documents submitted by the Respondent could not be verified as positive, moreover the same documents do not represent any legally valid evidence to prove his allegations over the claimed property, therefore it is concluded that the Claimant has entirely and precisely proved that she has the right over the property which is subject of the present claim.

9. The Decision was served to the Respondent on 10 June 2014, whereas he (henceforth: the Appellant) filed an Appeal on 17 June 2014. The Decision was served on the Claimant on 03 June 2014 and she submitted a response on the appeal on 26 November 2014.

Allegations of the parties

10. The Appellant, B.Z. , through his representative I.D., lawyer from Deçan/Deçani, claims that the KPCC Decision involves essential violation of LCP provisions, erroneous and incomplete determination of factual situation, erroneous and incomplete application of substantive law and also was issued due to erroneous application of the underlined Order on the appealed Decision. She asks his Appeal to be granted and appealed Decision to be quashed and to have the case sent back to Basic Court of Pejë/Peć - Deçan/Deçani Brach, as the local court have the subject matter jurisdiction. The Appellant alleges that the claimed properties were taken from her grandfather unlawfully during the Agrarian Reform after the I World War and that her ownership right which is the subject of the claim was not reinstated at any subsequent period. In order to support her Claim, the Appellant submitted the Ruling issued by the Ministry for Agrarian Reform of Serbian, Croatian and Slovenian Kingdom No 928 dated 4 April 1928. Likewise, the Appellant filed a lawsuit before the Municipal Court of Deçan/Deçani on 16 June 2014 requesting that Court to confirm the ownership right over the cadastral parcel No 182.
11. The Appellee through her submission dated 26 November 2014 claims that the appealed Decision is fair and lawful and that the Appellant has not presented any legally valid fact and has not submitted any relevant evidence which would prove the ownership right which is subject to the claim. Furthermore, the Appellee states that from 1919 until leaving Kosovo on 13 June 1999 he has continuously been in the possession and being using the claimed property. The Appellee underlines that by submitting the legally valid evidence, including the Possession List No 384 issued by the Directorate of Cadastre, Geodesy and Property dated 20 March 2008 and the Certificate of Immovable Property Rights dated 13 January 2013 it was shown that the claimed property has been continuously registered under her name. By the Decision of the Ministry for Agrarian Reform of Serbian, Croatian and Slovenian

Kingdom No 928 dated 4 April 1928, it cannot be exactly verified which is that cadastral parcel, the signature and stamp seen on that Decision and that the same one is written in the Latin alphabet, although at that time all the documents were written in Cyrillic. For these reasons she requests the Court to verify the appealed KPCC's Decision and to reject the Appeal of the Appellant as unfounded.

Legal reasoning

Admissibility of the Appeal

12. The Appeal is admissible as it has been filed within the period of 30 days as it is prescribed in the Article 12.1 of the Law No. 03/L-079.

Jurisdiction

13. The Supreme Court has the jurisdiction to review the Appeal.
14. The Supreme Court after the review of the appealed Decision, the case file and the allegations stated in the Appeal considers that the Appeal is unfounded, pursuant to the provision of Article 194 of Law on Contested Procedure.
15. The Supreme Court notes that the appealed KPCC's Decision is correct, complete, accurate, and comprehensible and it includes the explanation and clarification of all decisive facts for rendering a lawful decision. The KPCC by its Decision has correctly determined the factual situation, and on that ground correctly applied the substantive law while rejecting the Claim of the Claimant for confirmation of the ownership right regarding the cadastral parcel 182 which is located at the place called "Zlapek-Lugu i Locit" with a surface of 5874 m², cadastral zone of Strelc i Epërm/Gornji Streoc, Municipality of Dečan/ Dečani.
16. As the subject of specific review and consideration of the Court were also the allegations of the Appellant that the claimed properties were taken unlawfully from his great-grandfather at the time of the Kingdom of Yugoslavia as part of the Agrarian Reform after World War I and later on his ownership right was not reinstated, presenting the administrative Decision of Serbian, Croatian and Slovenian Kingdom No 928 dated 4 April 1928, however the Court found that these allegations were unfounded and therefore without legal basis. This is precisely because the Decision has not been verified positively and that the same one not only fails to determine the cadastral parcel, but it also fails to give concrete measurement

- and accurate geometric descriptions. In addition, this Decision also lacks its constitutive elements which primarily have been submitted in copies illegible in some places, and as such it is not adequate to support the Judgment by these documents. Furthermore, the Appellee by presenting legally valid evidence, basically the Possession List of the Directorate of Cadastre, Geodesy and Property No 384 dated 20 March 2008 and later on also the Certificate of Immovable Property Rights dated 18.01.2013, which proves that the Appellee has acquired the ownership rights through the valid legal basis pursuant to the provision of Article 20 of the Law on Basic Legal Property Relations and Article 36 of the Law on Ownership and Other Real Rights.
17. Moreover, according to the provision of Article 7 para 2 of the Law 2002/5 on the Establishment of the Register of Immovable Property Rights, which provides for the recorded data on the Certificate of Immovable Property Rights UL-70511022-00384 dated 18.01.2013 of the Cadastral Office in Deçan/ Deçani, it is ascertained that the cadastral parcel 182 with a surface of 5874 m² is registered under the name of Appellee. It is therefore assumed that these data are accurate, reliable, and legitimate until they are corrected according to the procedures established by the law. Therefore, if eventually the Appellant claims that the register of the rights over these real properties in the Cadastral Office of Deçan/ Deçani is unlawful and it violates his rights, then he has the authorization and the responsibility pursuant to Article 5.4 of the same Law to initiate respective court procedures to prove such allegations.
 18. The subject of the Court's evaluation was also the lawsuit for confirming the property rights filed before the Basic Court of Peja/Peć- Deçan/Deçani Branch, but it found that according to Article 13 para 6 of Law No 03 / L-79, this Judgment is final and binding and it cannot be challenged through ordinary or extraordinary legal remedies. The Court concludes that the Commission, as well as the Supreme Court, cannot accept the Appellant's request to grant the Claim on the basis of the documents which have been negatively verified.
 19. The subject of the review and the consideration were also some the other submissions presented by the Appellant, but the same ones remained irrelevant and could not lead the Court to render different Decision.
 20. In the light of the foregoing, the Supreme Court finds that the KPCC has based its Decision on correct and complete determination of the factual situation and the proper application of the substantive law. Therefore, the Supreme Court concludes that the Appeal is unfounded.
 21. Based on the aforementioned reasons, pursuant to Article 13.3.(c) of the Law No 03/L-079 and Article 200 of the LCP, the KPCC Decision is confirmed and the Appeal is rejected as unfounded.

Legal Advice

Pursuant to Section 13.6 of Law No. 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar