

**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-012/14

**Prishtinë/Priština,
21 October 2015**

In the proceedings of

P.R.

Shpenadi/Špenadija
Prizren/Prizren

Appellant

vs.

T.K.

KC Vranjska Banja “Rasadnici”
17542 Vranjska Banja
Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered as KPA16057), dated 23 February 2011, after deliberation held on 21 October 2015, issues the following

JUDGMENT

The appeal of P.R. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered as KPA16057), dated 23 February 2011 is rejected as unfounded.

The abovementioned decision of KPCC is confirmed.

Procedural and factual background:

1. On 13 September 2006 T.S.K. (hereinafter “the Claimant”) as a member of the family household of his father S.K. filed a claim with Kosovo Property Agency (KPA) seeking confirmation and re-possession over parcel 155 of 41 ar and 62 sq m, in street Gornja Kamenica (hereinafter “the claimed property”), Possession List no. 11, cadastral zone Shpenadi/Špenadija, Prizren.

The property allegedly is lost due to circumstances that occurred in Kosovo during 1998/1999.

2. The Claimant submitted inter alia to KPA:
 - Transcript/extract from the Possession List (PL) No. 11, issued by the Center for Cadaster of the Immovable Property of the Municipality of Prishtinë/Priština on 4 July 2003, listing S.K as a property right holder over the claimed property
 - Copy of plan (CP) No. 953-2/2003-218, issued by the Office of Immovable Property of the Municipality of Prizren on 4 July 2003;
 - Death Certificate No. 1/1986, issued by the United Nations Interim Administration Mission in Kosovo (UNMIK) on 6 December 2007 certifying the death of S.K ; and
 - ID card of the claimant No. 170902, issued by Republic of Serbia on 17 May 1993.
3. The verification reports (dated 14 March 2007 and 13 February 2008) noted that both the PL and CP were positively verified by the Executive Secretariat (ES) at the KPA. The ES *ex officio* established that in the current cadastral plan the property holds the same number and surface – parcel 155 of 41 ar and 62 sq m. and it is registered on the name of the same PRH.
4. The claim was treated as uncontested.

5. On 19 February 2010, the KPCC with its Resolution KPCC/RES/15/2010 rescinded the KPCC Decision KPCC/A/13/2008 of 30 April 2008 and referred the claim to KPA Executive Secretariat for further processing and decision based on a correct identification and proper notification of the claimed property.
6. On 24 September 2010 the KPA Executive Secretariat re-notified the claim property through a publication in its notification gazette no. 9 and UNHCHR property office Bulletin. The KPA Notification Team has left the Gazette and the List to the nephew of the village leader to be handed over to the village leader, who accepted to make it available for interested parties. The publication was placed also in two different places of village Shpenadi/Špenadijaq published in all Municipalities and Municipal Courts in Region and Cadastral Office in Prizren and distributed to UNHCHR, EULEX, OMBUDSPERSON, and ICO.
7. The Appellant did not take part in the proceedings.
8. On 23 February 2011, the Kosovo Property Claims Commission (KPCC) rendered decision KPCC/D/A/100/2011 by accepting the Claimant's claim as founded. The KPCC recognized that the Claimant's father - property right holder (PRH) is the owner of the property.
9. The decision was served on J.K- the Claimant's daughter on 13 July 2011, while the same is delivered on P.R. (hereinafter "the Appellant") on 24 September 2013.
10. The Appellant filed an appeal against the KPCC decision (hereinafter "the appealed KPCC decision") on 24 October 2013.
11. Z.K. - the Claimant's wife (hereinafter "the Appellee") sent in a reply to the appeal on 28 January 2014.

Allegations of the parties:

The Appellant:

12. The Appellant alleges that the appealed KPCC decision contains an essential erroneous or misapplication of the substantive or procedural law and rests on an erroneous evaluation or

incomplete establishments of the facts. Moreover, the Appellant alleges that the enacting clause of the appealed KPCC decision is in contradiction with its reasoning.

13. The appellant asserts that the owner of the claimed property always used to be his family and that he several times tried to gain the documents regarding the ownership over the claimed property but he could not since the Cadastral Service replied that they do not have any document regarding it. Therefore, he adds that the KPCC has wrongly decided when KPCC concluded that the claimed property belongs to the appellee and not to him personally and his family.

The Claimant:

14. The Claimant stated that he together with his brother D.K. and his sister O.K. inherited the claimed property after the death of his father. He added that the inheritance decision is currently under way.

The Appellee:

15. The appellee alleges that the Appellant's appeal is illegal. He asserted that the Appellant did not take part in the proceedings before the KPA and as such he was not a party in the proceedings before the KPA/KPCC, therefore, he does not have a right to file an appeal against the KPCC decision.
16. The Appellee states that the legal owner of the claimed property is the late father (S.K - PRH) of her husband (T.K. the Claimant) who filed a claim to the KPA, and who in the meantime died as well on 27 September 2008, therefore, she took his place in the further procedure. The Appellee explains that based on the submitted evidences it is unequivocally determined that the claimed property is possessed by her family until 1999, when they were forced to leave Kosovo and that the Appellant never gained any right on it. She adds that the Appellant owns a parcel of the same size that is located a bit further from the claimed property and that the Appellant wants to prolong illegal usurpation of the claimed property. The statement of the Appellant that the claimed property is registered in his name is not true and that this is evident also from his appeal and from the fact that he did not submit a single evidence to support it.
17. The Appellee in her response to the appeal finally proposed the Supreme Court that the Appellant's appeal be dismissed as unacceptable or be rejected as ungrounded.

18. The Appellant did not present any document supporting his appeal's allegation.

Legal reasoning:

Admissibility of the appeal:

19. The appeal is admissible.
20. Section 10.2 Law 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim.
21. In this particular case it is not clear that the Appellant had the possibility to take part in the proceedings in front of the KPCC. The KPA Executive Secretariat notified the claim property through a publication in its notification gazette no. 9 and UNHCHR property office Bulletin and the KPA Notification Team has left the Gazette and the List, to the nephew of the village leader to be handover to the village leader, who accepted to make it available for interested parties. This publication is placed also in two different place of village Shpenadi/Špenadija. The same is published in all Municipalities and Municipal Courts in Region and Cadastral Office in Prizren, as well. Finally, the Gazette and List is distributed to UNHCHR, EULEX, OMBUDSPERSON, and ICO.
22. The Supreme Court considers that the KPA Executive Secretariat has not taken all necessary actions for the notification of the claim submitted regarding the claimed property, because of absence of physical notification on the claimed property.

Merits:

23. The appeal is unfounded because the appellant has adduced no evidence for his allegations. Moreover he claims that such evidence does not exist. On the other hand the claimant provided KPA, and KPA found ex officio, sufficient evidences leading to the conclusion that the claim is grounded and has to be accepted. There are no evidences in the file which can rebut or at least weaken this conclusion.

24. On the basis of the above and in accordance with section 13.3.b and 12.2 of Law 03/L-079 in relation with art. 196 and art. 186.3 of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of 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

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar