

**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-147/2015

Prishtinë/Priština,

7 February 2018

In the proceedings of:

V. M.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov EULEX Judge and Isa Kelmendi Judge, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (case file registered at the KPA under the number KPA22116), dated 18 June 2014, after deliberation held on 7 February 2018 issues the following:

JUDGMENT

1. The appeal of V. M. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/244/2014 , dated 18 June 2014, as far as it regards case file registered at the Kosovo Property Agency under the number KPA22116, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/244/2014, dated 18 June 2014, with regard to case KPA22116, is confirmed.

Procedural and factual background

1. On 29 January 2007, V. M. (henceforth: the Appellant), filed a claim with the Kosovo Property Agency (KPA), seeking repossession over the parcel no. 7123/2 with a surface of 0.19.98 ha, located at the place called Buzagilak, Cadastral Municipality of Prizren (henceforth: the claimed property). The claim was registered with the KPA under the number KPA22116.
2. The Appellant alleges that his father S. M. who passed away on 2 August 2004, purchased the claimed property from N. D. on 18 April 1969 and he lost the possession over it on 16 June 1999 as a result of the circumstances related to the armed conflict in Kosovo between 1998 and 1999.
3. In order to support his claim, the Appellant submitted the following documents:
 - A purchase contract no. ov.br.508/69 dated 18 April 1969 by which the alleged property right holder bought the claimed property from D. N. The signatures of the parties have been certified by the Municipal Court in Prizren.
 - An excerpt of the possession list dated 5 June 1969 by which the alleged property right holder is listed as owner of cadastral parcel no.7123/4 with a surface of 0.06.00 ha.
 - A confirmation of the possession list no.br.952-01-2/96-302 dated 4 September 1996 issued by Municipality of Prizren, confirming that the cadastral parcel no.7123/2 with surface of 0.06.00 ha has been listed in the name of the alleged property right holder S. M. until 1986.

- Birth certificate no. 47/68 issued on 8 November 2005 according to which the claimant's father is the alleged property right holder S. M.
 - Death certificate no. 30 for 2004 certifying that the alleged property right holder S. M. passed away on 2 August 2004.
4. The Executive secretariat of the KPA found ex officio a certificate of immovable property rights no.7123/2 listing SOE "Progres" as the property right holder over the claimed property and a certificate of immovable property rights no.17458 listing the alleged property right holder as owner of cadastral parcel no.7770/12 with surface of 0.05.00 ha but located in "Kalaja" and not in "Buzagilak".
 5. From the documents mentioned in par.3 above, only the death certificate and the birth certificate have been positively verified by the Executive secretariat. The verification of the purchase contract, the excerpt of the possession list and the confirmation of the possession was negative.
 6. The physical notification of the claim in 2008 was unsuccessful. In 2010 the notification and confirmation of the claim was done through publication in the KPA's Notification Gazette no.2 and in the UNHCR Property Office. Both publications were placed on 28.12.2010 by the entrance doors of the Municipality of Prizren and the Municipal court of Prizren. No respondent approached the KPA Executive Secretariat within the timeframe of 30 days as provided under Article 10.2 of the UNMIK Regulation no. 2006/50, as amended by Law no. 03/L-079 on Resolution of Claims related to Private Immovable Property including Agricultural and Commercial Property.
 7. On 18 June 2014, the Kosovo Property Claims Commission (henceforth: KPCC) in its certified Decision KPCC/D/A/244/2014, refused the claim. In the reasoning of the stated Decision (paragraphs 60,61), the KPCC found that none of the documents presented by the claimant has been verified by the Executive Secretariat of the KPA as being genuine and according to the obtained ex officio certificate for immovable property rights, the claimed property is owned by Socially owned enterprise. Therefore, the KPCC established that the claimed property right has not been proven.
 8. On 31 October 2014, the KPCC Decision was served on the Appellant. The Appellant filed an appeal against the KPCC's Decision on 1 December 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision contains fundamental error, seriously violates the substantive and procedural law and it is grounded on erroneous and incomplete established state of facts. The Appellant moves the Supreme Court to grant the appeal and render a judgment in which it recognises the Appellant's right over the claimed property.

Legal reasoning:

10. Following the review of the case file documents and allegations of the Appellant, pursuant to Article 12 and 13 of the 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 has been filed within a period of 30 days as provided under Article 12.1 of the UNMIK Regulation 2006/50, amended by Law no. 03/L-079
11. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the Appellant has a right to an order for repossession of the property if the Appellant establishes his ownership or use right over the claimed property, and that he was unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999
12. The Appellant bases his property right on the documents which were not found within the respective services in Kosovo. The cadastral data show that part of the claimed property is evidenced as socially-owned property.
13. Therefore, the Supreme Court considers that the alleged property rights have not been established by the Appellant and there is no evidence the claimed property to have been under the possession of the Appellant.
14. The Supreme Court considers as correct the KPCC's conclusion that the Appellant has failed to establish his property right over the claimed property and the loss of this right immediately before or during the conflict of 1998-1999 and therefore his claim was rejected.
15. Finally, the Supreme Court of Kosovo established that the challenged KPCC Decision was issued after a complete and correct determination of the factual situation and on that basis

the material and procedural rights were correctly applied. Therefore, the Appeal is rejected as unfounded.

16. In light of the above and pursuant to Section 13.3 subparagraph (c) of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of the 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 remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, EULEX Registrar