

**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-186/14

**Prishtinë/Priština,
27 April 2016**

In the proceedings of:

S. M.N.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (case file registered at the KPA under No. KPA22035), dated 27 November 2013, after the deliberation held on 27 April 2016 issues the following:

JUDGMENT

1. **The Appeal of S. M. N. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013, dated 27 November 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013, dated 27 November 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA22035.**

Procedural and factual background:

1. On 19 January 2007, the Appellant S. M. N. (hereinafter referred to as: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter referred to as: the KPA), seeking the confirmation of his ownership right and the repossession over land parcel No. 315, located in street Breg Kod Stanice, Possession List No. 58, Cadastral Zone Bablak/Babljak, Municipality of Ferizaj/Uroševac (hereinafter referred to as: the claimed property). He stated that the loss of possession took place on 14 June 1999.
2. Together with the Claim the Appellant submitted to the KPA the copy of the Possession List No. 58, issued by the Centre for Immovable Cadastre of Feriza/Uroševac, Republic of Serbia on 17 January 2002, showing his name as the owner of the claimed property.
3. The case was registered under the number KPA22035.
4. According to the Verification Reports dated 30 March and 13 August of 2007, the KPA *ex officio* established Possession List No. 58, issued by the Department of the Cadastre of the Municipality of Ferizaj/Uroševac, on 20 March and 8 August 2007 (hereinafter referred to as: the new Possession List). However, the new Possession List showing the name of the Appellant does not contain the claimed property (cadastral parcel No. 315). Furthermore, the KPA *ex officio* established also the Possession List No. 195 issued by the Department for Cadastre Geodesy and Property of the Municipality of Ferizaj/Uroševac containing the claimed property (cadastral parcel No. 315) registered in the name of Socially Owned Enterprise (hereinafter referred to as: the SOE) “Pasuri Bujqësore”/”Opšta Zemljirođnička Zadruga”.
5. On 18 August 2008, the KPA Notification Team identified the claimed property and it was found to be an uncultivated land, and nobody responded to the Claim. On 22 February 2010, the KPA confirmed the previous location ascertaining that the property was accurately identified.
6. On 27 November 2013, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/R/223/2013 (hereafter to be referred to as: the KPCC’s Decision) dismissed the Claim. In the reasoning of the Decision (paragraph 20), the KPCC underlined that the Appellant had failed to show that his Claim involves the circumstances directly related to or resulting from the 1998-99 conflict, therefore the Claim falls outside the mandate of the KPCC.
7. The KPCC’s Decision was served upon the Appellant on 23 May 2014. On 30 May 2014 the Appellant filed an Appeal against the KPCC’s Decision.

Allegation of the parties

8. The Appellant requests the Supreme Court of Kosovo to grant his Appeal and to order the repossession of the claimed property. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as involves incorrect application of the property law.
9. In the Appellant's opinion the claimed property has been the property of his family since 1965, and he had inherited and registered it on his name after the father's death. He states that his father - based on a Contract of Exchange - "exchanges" one of his parcels, the Pojate field, with the surface area 24 are with the claimed property. He adds that he disposed of the said contract until 1999, when he had to flee to Serbia, so the same was burned "with the house and all auxiliary structures which were then destroyed and torched".
10. The Appellant argues that the KPCC's conclusion that he had never been in possession of the claimed property and that he has not lost his right over it due to the armed conflict is completely untrue. He adds that the claimed property was in his possession until June 1999, when he had to leave Kosovo together with his family.
11. Finally, the Appellant indicates that the documents submitted as the attachments to his Appeal unequivocally establish that he had the ownership and lawful possession over the claimed property, and therefore his right was lost because of the circumstances "which had arisen from the armed clash that took place between 27 February 1998 and 20 June 1999".

Legal Reasoning

12. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
13. The Appellant alleges that the claimed property was owned by his family since 1965, when his "late father exchanged one of his parcels, the Pojate field, with the surface area of 24 are" for the claimed property (cadastral parcel No. 315). The Contract on Exchange based on which the properties were allegedly exchanged was not submitted by the Appellant to the KPA. The reason for that, according to the Appellant was that the same was burned together with his house as a result of the conflict related circumstances of 1998/1999.
14. In further support of his allegations, the Appellant provided Possession List No. 58, issued by the Centre for Immovable Cadastre of Ferizaj/Uroševac, Republic of Serbia, on 17 January 2002, showing his name as the owner of the claimed property.
15. According to the Verification Reports dated 30 March and 8 August of 2007, the KPA Verification Unit has obtained (another) the new Possession List (with the same number), issued by the United Nation Mission in Kosovo (hereinafter: the UNMIK) - Department for Cadastre Geodesy and Property of the Municipality of Ferizaj/Uroševac, on 20 March and 8 August of 2007.
16. The new Possession List indicates the name of the Appellant as the owner of several parcels (such as: 164, 550, 610, 773/2, 785/1, 788/1 and 881), but did not contain the claimed property (cadastral parcel No. 315) which is the subject matter of the dispute at hand.

17. Moreover, the KPA *ex officio* found also the Possession List No. 195 issued by the UNMIK -Department for Cadastre Geodesy and Property of the Municipality of Ferizaj/Urosevac, showing the SOE “Pasuri Bujqësore”/Opšta Zemljoradnička Zadruga” as the owner of the claimed property, and not the Appellant.
18. The Supreme Court contends that the examination of the evidence and its assessment was done correctly by the KPCC. In the opinion of the Court, the document submitted by the Appellant does not prove his ownership rights and loss of the possession of the claimed property as a result of circumstances resulting from the armed conflict that took place between 27 February 1998 and 20 June 1999.
19. The Supreme Court is of the opinion that the Appellant did not prove that he had the legal title to possess the claimed property. He did not submit any document that would prove this circumstance. The only document presented to the KPCC was the Possession List issued by the parallel institution in the Republic of Serbia in 2002. In another Possession List No. 58 the claimed property was not included and the Possession List No. 195 contained indeed the claimed parcel, but indicated the Socially Owned Enterprise as the owner of the land. Considering that, it was the duty of the Appellant to submit the evidence that would prove his title to claim the repossession of the parcel No. 315.
20. The Appellant was contacted by the KPA, informed about that fact and requested to submit the evidence within certain time limit. The time limits elapsed though without the party submitting any further proof. The negative consequences of the failure to prove the circumstance important for the interest of the Appellant had to result, according to Article 319 of the Law on Contested Procedure, in concluding that he did not prove that he indeed had the title to the claimed property.
21. Moreover, the Supreme Court considers that the Appellant failed to prove that he had lost the possession of the claimed property due to the armed conflict. While contacted by the KPA on 10 November 2013 he stated that the loss of possession took place in 1983 through the expropriation and since that he had never been using the claimed parcel. Subsequently, in the Appeal he mentioned that in fact he lost the possession on 14 June 1996 when he fled Kosovo. The statements of the Appellant are not coherent: they are contradictory one to another. Taking into consideration the fact, that the Certificate for the Immovable Property Rights found by the KPA *ex officio* mentions the Socially Owned Enterprise as the owner of the parcel, the Supreme Court contends that the property right of the Appellant over the land parcel No. 315 may not be seen as proven.
22. All the elements mentioned above lead the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when dismissing the Claim of the Appellant. According to Section 3.1 of Law 03/L-079, a claimant is entitled to an order from the KPCC for repossession of the property if the claimant not only proves ownership of a private immovable property, but also that he or she is not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
23. Consequently, the Appellant’s Appeal is rejected as unfounded and the appealed KPCC’s Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

24. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure (LCP), it is decided as in the enacting clause of this Judgment.

25. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

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

Beshir Islami, Judge

Anna Bednarek, EULEX Judge

Sandra Gudaityte, EULEX Registrar