

**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-228/2015

**Prishtinë/Priština,
25 April 2018**

In the proceedings of:

R. N., on behalf of his late father L. N.

Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges: Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/260/2014 (case file registered at the Kosovo Property Agency under no. KPA38601), dated 21 October 2014, after deliberation held on 25 April 2018, issued the following

JUDGMENT

1. **The Appeal of R. N, registered under the number GSK-KPA-A-228/2015, against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/260/2014, as far as it concerns the case file registered at the KPA under no. KPA38601 is rejected as ungrounded.**
2. **The KPCC's Decision KPCC/D/A/260/2014, dated 21 October 2014, as far as it concerns the case file registered at the KPA under the no. KPA38601 is confirmed.**

Procedural and Factual Background

1. On 28 May 2007 R.N. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession over the cadastral parcel number 119/10, cultivated land and pasture with a surface of 08.95.58 ha, located at the Cadastral Zone Vrellë/Vrelo, Municipality of Lipjan/Lipljan (hereinafter: the claimed property). He alleged that his father has acquired the ownership over the claimed property through the Annulment of the Contract on Sale which was conducted on 1965 between his father as the seller and the Agricultural Cooperative in capacity of the buyer of the claimed property. He alleges that the claimed property is located nearby the Prishtinë/Priština International Airport and part of it is inside the Airport and that the loss of possession was as a result of the circumstances in Kosovo during 1998/1999 period.
2. To support his Claim, the Appellant submitted with the KPA the following documents:
 - The Judgment P.Br.541/92, issued by the Municipal Court in Lipjan/Lipljan on 20 July 1993, whereby, the claimed property was returned under the possession and ownership of the Appellant,
 - The Judgment GŽ.br. 765/93 issued by the District Court in Prishtinë/Priština on 29 October 1993, whereby the Judgment of the Municipal Court in Lipjan/Lipljan P.Br.541/92 was amended only in the part of returning the purchase price of the Appellant whereas in other parts it was confirmed,
 - A Copy of the Contract on Rent No.75, dated 31 March 1994 which was concluded between the Socially Owned Enterprise "Poljoprivreda" and the Appellant on renting out the claimed property.
 - A copy of the Power of Attorney, whereby, L. N. authorized R.N. to represent him before the relevant institutions relating to the claimed property. The Power of Attorney was legalized before the Municipal Court in Kraljevë/Kraljevo on 1 July 2002 under the number Ov. Br.3124/2,
 - A Death Certificate issued by Civil Registration Office of the Municipality of Kraljevë/Kraljevo on 6 September 2006 proving that the father of the Appellant L. N. had passed away on 21 August 2006 in Kraljevë/Kraljevo,

- The Request of the Appellant filed with the Cadaster of the Municipality of Lipjan/Lipljan on 9 February 2012 for issuing the Possession List on his name with the legal basis a final Judgment P.Br.541/92,
 - The Ruling of the Department for Geodesy and Cadaster of the Municipality of Lipjan/Lipljan No. 9-464-659, Protocol no. 139/2011, dated 30 March 2011, whereby the Claim of R. N. was rejected.
3. The notification of the Claim was performed on 8 February 2008 by finding the claimed property as not occupied pasture. On 24 September 2010, the Notification of the Claim was re performed by publishing the claim in the Notification Gazette No. 3 and on the UNHCR's Property Office List. The gazette and the list were left with the village leader who agreed to make them available for the interested parties, and they were left also at the Municipal Court of Lipjan/Lipljan, and the KPA Regional Office in Prishtinë/Pristina. Additionally, the List and Gazette were distributed to the UNHCR Main Office, the Ombudsperson and Kosovo Cadastral Agency (KCA).
 4. The Executive Secretariat of KPA managed to locate *ex officio* the Certificate for the Immovable Property Rights showing the claimed property as a socially-owned property, registered under the name of Agricultural Cooperative which was subject to the privatization process through the Kosovo Privatization Agency. The claimed property was partially used by Prishtinë/Priština Airport.
 5. On 24 February 2014, the Privatization Agency of Kosovo answered on the request of the KPA for additional information regarding the claimed property. The Executive Secretariat of KPA was informed the claimed property was registered as a Socially-Owned Property under the name of Agricultural Enterprise "Kosova", which was under the administration of the Privatization Agency of Kosovo.
 6. On 18 June 2014, the Kosovo Property Claims Commission rejected the Claim through its Decision KPCC/D/A/260/2014, dated 21 October 2014. In paragraphs 19 and 20 of the Cover Decision, which according to the confirmed Decision applies exclusively to the stated Claim, it is said that the claimed property was placed under the administration of the Kosovo Trust Agency (and subsequently under its successor the Privatization Agency of Kosovo) pursuant to UNMIK Regulation 2002/12, as amended by the UNMIK Regulation 2005/18 and that the socially-owned enterprise was in liquidation and therefore the claimed property falls exclusively under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo pursuant to Section 4.1 (c) and Section 5.1 (a) of the UNMIK Regulation 2008/4. In these circumstances, the Commission finds that the alleged property right holder has not lost the ability to exercise his property right over the claimed property as a result of the 1998-1999 conflict, but rather as a result of the subsequent privatization process. Consequently, the Claim falls outside the jurisdiction of the Commission
 7. The Decision was served on the Appellant on 18 February 2015. He filed an Appeal on 6 March 2015.

Allegations of the Appellant

8. The Appellant states that the KPCC's Decision contains essential violations and misapplication of substantive and procedural law, as well as erroneous determination of the facts. He alleges that the claimed property was taken under pressure by the Socially-Owned Enterprise in 1964 and that the Contract on Sale as such was annulled in 1993 after Court's assessment that the Contract was contradictory to the then-applicable laws.
9. The Appellant alleges that he acquired property rights over the claimed property based on the Judgment of the Municipal Court in Lipjan/Lipljan. The Appellant stated that in cadastral records the property is evidenced on the name of his father.
10. The Appellant underlines that the Commission acted in violation of its legal obligation when it failed to determine who had used the claimed property before the 1998/1999 conflict. Likewise, the Appellant states that from 1993 until 1997 the property was used by the Socially-Owned Enterprise after it was rented out by his father and that the conclusions in the KPCC Decision are incorrect because they cannot administer the private property.
11. In light of the above, the Appellant requests the Supreme Court to annul the KPCC's Decision and confirm the Appellant's right for repossession.

Legal Reasoning

12. After reviewing the case file submissions and appellate allegations pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter: LCP), the Court, found that the Appeal is admissible and timely pursuant to Article 186 par. 1 in conjunction with Article 196 of the LCP. This is because the Appellant received the Commission's Decision on 18 February 2015 and he filed an Appeal on 6 March 2015. Therefore, it can be concluded that Appeal was filed within the 30-day deadline provided by the provision of Section 12 par. 1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-79. This legal provision provides that "*an Appeal against a KPCC Decision may be filed within 30 days from the date of receipt*".

Merits of the Appeal

13. The Supreme Court reviewed the Appealed Decision and found that the Appeal is unfounded and that the KPCC issued a correct Decision when dismissing the Claim due to its lack of jurisdiction.
14. Pursuant to Article 3.1 of the Law No.03/L-079, the Claimant has a right to an order from the Commission for repossession of the property if the Claimant not only has established his/her ownership right over the private property but also that he/she now is 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.

15. Initially, the Appellant alleges that he acquired the claimed property based on the Judgment of the Municipal Court in Lipjan/Lipljan P.Br.541/92, dated 20 July 1993. This judgment was positively verified. However the KPA Executive Secretariat found *ex officio* the Certificate for the Immovable Property Rights that reflected the claimed property registered in the name of the Agricultural Enterprise of Vrellë/Vrelo that undergoes the privatization process and part of it was being used by the Pristina International Civilian Airport.
16. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No.6/80), in force at the time the judgment is pronounced, the property right can be acquired by law itself, based on a legal affair (legal transfer) and by inheritance.
17. However, Article 33 of the Law on Basic Property Relations (OG of SFRY, No.6/80) stipulates that on the basis of a legal work the property right over immovable property shall be acquired by registration in the public notary book or in some other appropriate way that is prescribed by law.. Even the current Law No. 03/l-154 on Property and Other Real Rights in Article 36, item 1 provides that "The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.
18. This leads to the conclusion that the Appellant's family did not acquire the property right given that the conditions foreseen under Articles 20 and 33 of the Law on Basic Property Relations (OG of SFRY, No.6/80) have not been met.
19. The claimed property has been and is still registered in the name of the Enterprise "Kooperativa Bujqësore "Kosova" from Vellë/Vrelo, Lipjan/Lipljan Municipality, which means that it has been and still is a socially-owned property. Therefore the jurisdiction over it lies exclusively with the Special Chamber of the Supreme Court of Kosovo pursuant to Section 4.1 (c) and Section 5.1 (a) of UNMIK Regulation No. 2008/4 as amended by Law no. 04/l-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters and Amendments to this Law.
20. The protection of property rights over socially-owned property is not within the jurisdiction of the KPCC, respectively the KPA Appeals Panel.
21. In light of the above, the Supreme Court finds that the Appellant did not lose the possession over the claimed property because of the conflict but rather as a result of the privatization process executed by the Kosovo Trust Agency now Privatization Agency of Kosovo.
22. The Supreme Court finds that there was no violation of substantive law or incomplete determination of facts.

This judgment does not prejudice any property right for the current holder nor is it an obstacle for the parties to initiate proceedings before the competent body or competent court if they deem it in their legal interest

24. In light of the above and pursuant to Article 13.3 sub (c) of Law 03/L-079, it is decided as in the enacting clause of this Judgment.

Legal Remedy

Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar