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-227/2015 **Prishtinë/Priština,**
18 April 2018

In the proceedings of:

V. J.

Appellant

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani, Judges, deciding on the Appeal filed against the Decision of the Kosovo Property Claims Commission KPCC/D/A/252/2014 (case file registered with the Kosovo Property Agency (hereinafter: the KPA) under the number KPA44799, dated 27 August 2014, after the deliberation held on 12 April 2018, issues the following:

JUDGMENT

1. **The appeal filed by V. J. against the Decision KPCC/D/A/252/2014 dated 27 August 2014 concerning the case file registered at the Kosovo Property Agency under the number KPA44799, is rejected as ungrounded.**

2. **The Decision KPCC/D/A/252/2014, dated 27 August 2014, concerning the case file registered in KPA44799, is confirmed.**

Procedural and factual background:

1. On 16 August 2007, V. J. (hereinafter: "the Appellant") filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), claiming property right and seeking the re-possession over the cadastral parcel with number 1473/3 with an area of 2.16.60 ha, which is located in the cadastral municipality Slatina/Slatina in Viti/Vitina (hereinafter: the claimed property). He stated that the property was acquired through the annulment of the Contract on Sale of 1949 and the claimed property was returned to him in 1994, however, the loss of the possession occurred on 12 June of 1999.
2. To support the Claim, he provided the KPA with the following documents:
    - A copy of the Judgment P.Br.176/94 issued by the Municipal Court in Viti/Vitina on 15 August 1994, which declared the Contract on Gift concluded between M. J. (Appellant's father) and the Enterprise "Agromorava" null and void and the cadastral parcel number 442/5, with a surface of 2.93.37, was partially returned to the Appellant,
    - A copy of the Judgment P.Br.177/94 issued by the Municipal Court of Viti/Vitina on 15 August 1994, which declared the Contract on Gift concluded between M. J, (Appellant's father) and the Enterprise "Agromorava" null and void and the cadastral parcel 1473/3, with a surface of 2.16.60, was returned to the Appellant,
    - A Copy of plan issued by the Municipality of Viti/Vitina on 16 August 1994 showing the claimed property registered under the name of the Enterprise "Agromorava" in the capacity of the user,
    - A Copy of Possession List No 50, issued by the cadastral office in Viti/Vitina on 6 October 1994, showing that the claimed property was registered under the name of the Appellant,
    - A Copy of the Possession List No 313, issued by the Dislocated Cadastral Office of Municipality Viti/Vitina on 29 September 2009, which shows the claimed property being registered under the name of the Appellant,
3. The Notification of the Claim was performed on 17 July 2008 and the claimed property was found not occupied. On July 2010, the KPA published the Claim in the Gazette no.5, by

distributing the notice to the Vitia/Vitna cadastral office, UNHCR regional office in Gjilan/Gnjilane. No one appeared to respond to the Claim.

4. A. K. approached the KPA on 30 July 2010 by stating that he has a legal interest in the claimed property. To support his claim, he submitted:

    - A copy of the Judgment of the Municipal Court in Viti/Vitina P.No.226/94 dated 19 October 1994, by which the land consisting of some parcels was returned to the Appellant. Among others was parcel 1473/2, but not the claimed property.

5. According to the Verification Report of 25 July 2014, the documents submitted by the Appellant were not found before competent institutions. The KPA *ex officio* found the Certificate for the Ownership Right No 01473 dated 25 November 2013 showing the claimed property registered under the name of the Football Club "3 Prilli" in Viti/Vitina. As mentioned in the Report (page 94 of the case file), it is stated that the transfer of the claimed property from the Enterprise "Agromorava" under the name of Football Club "3 Prilli" was performed on the basis of the Decision of the Municipal Assembly of Vitia/Vitina No. 01-013/47/2001 of 31 August 2001.
6. The Kosovo Property Claims Commission (hereinafter; "the KPCC") by its Decision KPCC/D/A/252/2014 dated 27 October 2014, decided to reject the Claim with the reasoning that the claimant initially stated that he lost possession as a result of the armed conflict, but based on the documents and *ex officio* located by the Secretariat, it was found that he could not present any valid evidence and neither did the Secretariat found any evidence that prior to the armed conflict, he had any property rights over the claimed property and that he had lost it as a result of the conflict.
7. The Court found that the individual Decision referring to the Claim KPA44799 had a discrepancy in the Serbian language version with the Cover Decision, because in the individual Serbian language of the Decision it was stated that the claim was dismissed, whereas in the group decision in all three official languages in use it was stated that the claim was rejected.
8. The Appellant received the KPCC Decision on 4 March 2015, while he filed the Appeal on 30 March 2015.

The allegation of the Appellant

9. The Appellant alleges that the KPCC's Decision contains fundamental errors and serious violation of the substantive law and it rests on erroneous and incomplete determination of facts. Further, he challenges the reasoning of the KPCC stating it is unclear whether the Claim was dismissed or rejected, because in the Serbian language the individual Decision states that the Claim is rejected, while in paragraph 64, which refers to the Claim, it is stated that in the absence of the evidence that the Claimant had any property rights over the claimed property, the Claim is rejected.

10. The Appellant alleges that the Decision issued by the Municipal Assembly of Viti/Vitina for the Allocation of the claimed property to the Football Club is unlawful because submitted documents prove that the property is registered under his name.
11. Finally, he requests that the KPCC's Decision be annulled and Appellant's property right over the claimed property be confirmed.

Admissibility of the Appeal

12. After reviewing the case file submissions and the Appeal allegations under Article 194 of the Law No.03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter "the LCP"), the Court found that the Appeal is admissible and timely filed, pursuant to the Article 186, paragraph 1, as read with Article 196 of the LCP, as the Appellant received the Decision on 4 March 2015 and filed the Appeal on 30 March 2015. From this, it can be concluded that the Appeal was filed within 30 days as foreseen by the provision of Section 12, par. 1, of UNMIK Regulation 2006/50, as amended by the Law No.03/L-79. By this legal provision, it is foreseen that "*the appeal against the KPCC decision can be appealed within 30 days from the day of its receipt*".

Merits of the Appeal Jurisdiction

13. The Court found that the Appeal is ungrounded for the fact that the Appellant did not prove that he had property rights registered in public registers and that he lost the possession over the claimed property as a consequence of the armed conflict. The documents submitted by the Appellant prove that until 2001 the claimed property was a socially owned property and afterwards it was allocated to the Football Club.
14. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, as amended by the Law 03/L-079, the KPCC has the competence to resolve the following categories of conflict-related claims, including the circumstances directly related to or are the result of the armed conflict that occurred between 27 February 1998 and 20 June 1999: (a) property claims relating to private immovable property, including agricultural and commercial property, and (b) claims related to the rights to use of **private** immovable, where the property claimant is unable to exercise such property rights.
15. In this case, it is necessary to determine whether the Appellant submitted the evidence proving that he had been the owner of the claimed property, had used it and had lost it as a result of the conflict. Cadastre Office indicates that the documents filed by the Appellant were not found in the cadastre of Viti/Vitina Municipality and neither in the displaced cadastre in Serbia. Moreover, during the conflict, the property was registered as socially-

owned property. Article 20 of the Law on Basic Property Relations (Official Gazette of SFRY No 6/80, 36/90) provides that "*the property right can be acquired by law itself, based on legal action and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law*"- which means the written form and certification by the competent authority and the registration of the property in public records. Article 33 of the Law on Basic Property Relations (OG SFRY, No.6/80) stipulates that on the basis of legal action, the right of ownership over immovable property is acquired by registration in the "public notary book" (cadastral book) or in the other appropriate manner prescribed by the law. As well as the Current law No.03/L-154 on Ownership and other Real Rights, under Article 36.1 provides that "*The transfer of ownership rights 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".*

16. The Appellant did not prove that before the conflict he had executed the property right and had possession over the claimed property, which was subsequently lost as a result of conflict, and this assessment of KPCC.
17. The Appellant noted also that was unclear whether the Claim was dismissed or rejected, because the individual decision in Serbian language stated that the Claim was "dismissed", whereas under paragraph 64, which refers to the Claim, it is said that in the absence of evidence that he had any property rights over the claimed property, the claim was rejected. The Court found that it was a linguistic omission, because the Claim was rejected as it is phrased in the cover Decision in all three official languages, and the individual Decision in English and Albanian languages. This is because according to the substantive law, in case of disagreement or differences between the English version and the versions in other languages, the English language prevails pursuant to Section 3.3 of Administrative Direction No.2007/5 on implementation of UNMIK Regulation No. 2006/50 on Resolution of Claims Related to the Private Immovable Property, Including Agricultural and Commercial Properties as amended by the Law No.03/L-079, which provides that "*Where a conflict or discrepancy arises in relation to a word, or interpretation between the English version of a document or decision and the Albanian and Serbian version, the word, phrase or interpretation in the English language shall prevail and be applied*".
18. This Judgment does not prejudice any property rights confirmed for the current user and is not an obstacle for initiation of the proceedings for confirmation of property rights before the regular Court.
19. Based on the above, the Supreme Court decided as in the enacting clause of this Judgment.

Legal advice:

Pursuant to Article 13.6 of the UNMIK Regulation 2006/50, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, **Presiding Judge**

Anna Bednarek, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar