

**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-216/15

**Prishtinë/Priština,
14 March 2018**

In the proceedings of:

W. A. "H"

Represented by **S. D.**

Appellant

vs.

Z. P.

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov EULEX Judge and Ragip Namani, Judge, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC), KPCC/D/R/254/2014 (case file registered with KPA under KPA47614) dated 27 August 2014, after deliberation held on 14 March 2018, issues this

JUDGMENT

1. The appeal of S. D. on behalf of the W. A. “H” from Rahovec/Orahovac against the Decision of the Kosovo Property Claims Commission KPCC/D/R/254/2014, dated 27 August 2014, as far as it regards the Claim registered under KPA47614, is rejected as ungrounded.
2. Item (1), sub-item (b) of the Individual Decision of the Kosovo Property Claims Commission KPCC/D/R/254/2014, dated 27 August 2014, as far as it regards the Claim registered under 47614, is amended as below:
 - 2.1. Existing sub-paragraph (b), as follows:
 “Z. P. is entitled to possession of the claimed property”,
 2.1. IS REPLACED with sub-paragraph (b):
 Z. P., on the day the claimed property was destroyed, proved his ownership over the claimed property and fulfilled the legal requirements for return of its possession. However, the order for expulsion from the property is not issued because the property is completely destroyed.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/R/254/2014, dated 27 August 2014, as far as it regards the Claim registered under KPA47614, is confirmed.

Procedural and factual background

1. On 30 November 2007, Z. P. (hereinafter: the appellee) filed a claim with Kosovo Property Agency (hereinafter: the KPA) seeking re-possession of a house –apartment of the surface 60m², located in “Svetosavska” street bb, Rahovec/Orahovac (hereinafter: the claimed property). He claims to have had ownership rights over this property and that he lost it because of the armed conflict that occurred in Kosovo in 1998/99. The appellee stated that the property was completely destroyed and that a new building was erected. He requests confirmation of the ownership right and compensation for material damages.
2. To support the claim, the appellee provided the KPA with the following pieces of evidence:
 - Decision on Allocation 06 Br.360-311, issued by the Secretariat for Economy of Rahovec/Orahovac Municipality through which the appellee was allowed to expand the residential building from 30 m² to 60 m²,
 - Contract on Sale of the apartment concluded between Rahovec/Orahovac Municipality and the appellee on 29 January 1993. The Contract was legalized in before Municipal Court of Rahovec/Orahovac under the number Ov.Br.163/93,
 - Payment receipt showing that the purchase price was paid into the account of Rahovec/Orahovac Municipality by the appellee,
3. On 23 July 2008 and 18 August 2008, KPA notified the claimed property which was found to be completely destroyed and newly constructed residential-business premise,

by the W.A. “H”, represented by S.D. who claimed legal right. On 18 August 2008, Se. D. (hereinafter: the appellant) approached the KPA.

4. The Executive Secretariat found *ex officio* that the appellee Z.P. had filed a claim with the Housing and Property Directorate (hereinafter the HPD) DS303457 requesting the return of the possession and the Directorate had referred the request to the Housing and Property Claims Commission, which through its decision HPCC/D/193/2005/C had issued a declarative order ascertaining that the appellee had fulfilled the legal requirements for an order for restitution of property, because on the day of the destruction of the property, he proved the property right over the claimed property.
5. The appellee have had filed a request for reconsideration against the KPCC Decision HPCC/D/193/2005/C. The Commission, through its Decision HPCC/REC/66/2006, had rejected the request for reconsideration and confirmed the first instance Decision.
6. The KPA Executive Secretariat positively verified all the documents submitted by the appellee in the appeal as well as the Decisions of the Housing and Property Claims Commission.
7. On 27 August 2014, the KPCC with its Decision KPCC/D/R/254/2014, decided that the appellee had established the ownership right over the claimed property and that he had met the conditions for the return of possession, but the claimed property did not exist because it was completely destroyed and a new premise was built in its place. The individual Decision was in contradiction with the cover decision because in the individual decision it was ordered that “Z.P. is entitled to possession over the claimed property”. In addition, the KPCC dismissed the compensation claim due to lack of jurisdiction of the KPCC.
8. On 12 December 2014, the decision was served to the appellant. On 12 January 2015, the appellant filed an appeal. The appellee received a copy of the appeal on 21 January 2016, but did not respond.

Allegations of the appellant

9. The appellant alleges that the KPCC Decision rests on erroneous and incomplete determination of the factual situation. According to appellant, the claimed property was in the socially owned land (property of Municipality) which was used by the appellee, and the premise/building has not existed since 1999 and that now a new building was constructed by the permission of authorities.

Legal reasoning

Admissibility of the appeal

10. After reviewing the case file submissions and appeal allegations pursuant to Article 194 of the Law no.03/L-006 on Contested Procedure (hereinafter LCP), the Court found that the appeal is admissible and timely filed, pursuant to Article 186, paragraph 1, in conjunction with Article 196 of the LCP.

11. Although in the cover letter of the KPA to the Supreme Court it is stated that the appellant received the Decision on 12 December 2014, while it filed the appeal on 12 January 2015, which falls outside the 30-day deadline, i.e. on the 31st day after the receipt of the Decision. The Appellant received the KPCC Decision on 12 December 2014 and starting on the next day on 13 December 2014, the thirty-day period ended on 11 January 2015, which was Sunday, i.e. a non-working day. Pursuant to Article 126.5 of the LCP regarding the calculation of the deadlines, it is stated that *"If the last day of the prescribed period of time falls on an official holiday, on Saturday or Sunday or on any other day when the competent body does not work, the prescribed period of time shall expire at the end of the next working day"*
12. If the appeal was submitted on 12 January 2015, then it is timely in view of Article 127.2 of the Law no.03/L-006 on the Contested Procedure which foresees that *"When a submission (in this case the appeal) is sent by post, registered mail or telegram, the date of mailing or sending it shall be considered as the date of the service on the court to which it has been sent"*.
13. Therefore, the Supreme Court considered the appeal as timely, examined the challenged decision in accordance with the legal provisions and after evaluating the claims of the appellant found that: The appeal is admissible because it was filed within the legal deadline in accordance with Article 12.1 of Law no.03/L-079 on amending the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property (hereinafter Law No.03/L-079) which foresees that *"The party may file an appeal against the Commission's decision within thirty (30) days from the notification of the parties of the decision"*.

Merits of the appeal

14. However, after reviewing and evaluating the case file submissions and the appellant's allegations, the Supreme Court notes that the appeal is ungrounded.
15. The Decision of KPCC is correct. The court could not find an incomplete determination of facts or misapplication of substantive and procedural laws.
16. Pursuant to Section 3.1 of Law no.03/L-079, the claimant is entitled to an order by the KPCC for repossession of the property if the claimant not only proves his/her property right over the private property, but also that he/she is currently not able to exercise such property rights over the respective property by reason of circumstances related directly or indirectly to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. The KPCC indicated that the appellee filed various documents in support of his claim, including the Allocation Decision 06 No.360-311, issued by the Secretary of Economy of the Municipality of Rahovec/Orahovac, which allowed the extension of the residential building from 30 square meters to 60 square meters; the sale and purchase contract concluded between the Municipality of Rahovec/Orahovac and the appellee on 29 January 1993, certified by the Municipal Court of Rahovec/Orahovac, with no. No.163/93; Payment receipt of the full purchase price paid onto the account of Rahovec/Orahovac Municipality by the appellee.
18. The KPA Executive Secretariat has been able to verify positively all the aforementioned documents which led the Commission to the conclusion that the appellee has fulfilled the request for a valid residence right as well as the property right valid under Law on Housing Relations with OG SAPK 42/86), hereinafter the Allocation Decision, Lease Agreement, Sale and Possession Contract.

19. However, the property was completely destroyed and at this stage the claims of the appellant are not assessed by the Supreme Court, because the subject of the claim was the premise-building rather than the socially-owned land. Whereas, the KPCC decision on the part where compensation, damage or loss of use was sought is rejected as inadmissible since it is not within the jurisdiction of the KPCC. The court finds the dismissal of the claim for compensation of damages as lawful.
20. The Supreme Court considers that the appellee provided sufficient evidence proving the ownership right over the claimed property on the day of its destruction.
21. From the aforementioned facts, it results that the factual situation regarding this legal matter has been determined in a correct and complete manner and that the decision of the KPCC has not been challenged with any valid evidence
22. The Court amended the individual decision because it was in contradiction with the KPCC Cover Decision, because under item 2 of the cover decision pertaining to the claim KPA47614 it is stated that "On the day of the destruction of the residential property, the claimant proved ownership over the property but due to the destruction of property and land ownership by the Municipality of Rahovec/Orahovas, the expulsion order is not issued. Whereas in the individual decision under item 1 (b) it is stated that "Z. P. is entitled to the possession of property" which makes it contradictory to the Cover Decision.
23. For these reasons and pursuant on Article 195.1 of the Law no.03/L-006 on Contested Procedure, the Court amended the individual decision adapting it to the cover decision, which it considered as having been issued in accordance with the procedural and substantive law that does not include any violation or incomplete determination of the factual situation.
24. This judgment does not prejudice the right of parties in the proceedings to seek their rights before regular courts in Kosovo if they see it reasonable.
25. Based on the above and pursuant to Article 13.3 (c) of the Law no.03/L-079, the court decided as in the enacting clause.

Legal advice

Pursuant to Article 13.6 of the Law 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

Ragip Namani, Judge

Timo Eljas Torkko, Acting EULEX Registrar