

**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-160/15

**Prishtinë/Priština,
23 May 2018**

In the proceedings of:

V. P.

Appellant

vs

Z. and K. D.

Street "Bingerit No 45"
Prizren

Appellee

The 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 against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 (the case file registered at the Kosovo Property Agency under the number KPA08031) after the deliberation held on 23 May 2018, issues the following:

JUDGMENT

1. The Appeal of V.P. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 with regard to the Claim registered under the number KPA08031 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 with regard to the Claim registered at the Kosovo Property Agency with the number KPA08031 is confirmed.

Procedural and factual background:

1. On 13 December 2006, V.P. (henceforth “the Appellant”) filed a Claim with the Kosovo Property Agency (henceforth “the KPA”) seeking the ownership right over the cadastral parcels No 7010/1 and 6988/1, situated at Bingenska 15 Street in Prizren/Prizren (henceforth “the claimed properties”). The Appellant stated that he was the owner of the claimed properties and that the loss of the possession is related to the armed conflict that occurred in Kosovo in 1998/99, indicating 19 June 1999 as the date of loss.
2. To support his Claim, the Appellant provided the Kosovo Property Agency (henceforth “the KPA”) with the following documents:
 - The copy of the Ruling with the number 03/3-463 on Allocation issued by the Municipal Assembly of Prizren/Prizren on 1994 whereby the Appellant was allocated for use the urban construction land: the cadastral parcels No 7010/1 and 6988/1 with the total surface of 199 m². The purpose of the allocation of the urban construction land was construction of the residential object;
 - Minutes with the No 03/3-463-145 drafted by the Department for Property Legal Affairs of the Prizren/Prizren Municipality on 19 December 1994. The minutes relate the fact that the Appellant enters into possession of the claimed properties;
 - The Decision No 14/94 issued on September 1994 related to the technical documentation for constructing of the residential object at the allocated land.
3. The Notification of the Claim was performed on 25 November 2010. According to the Notification Report, the claimed properties were found to be occupied by Z. D.(hereinafter “the Appellee”) who claimed the legal right over the properties and signed a Notice of Participation. At the claimed properties there was constructed a residential building.
4. The Appellee submitted the following documents:
 - A copy of the Information Letter (No 03/3-465-1) issued by the Interim Government of Kosovo, Directory for Property Legal Affairs on 28 September 1999, whereby, as the response to H. D. request, the Municipal Council confirmed that all the Rulings on Allocation of the Urban Construction Land (including the Ruling No 103/3-463 issued in favour of the Appellant) were annulled;
 - A copy of the Lawsuit for Confirmation of the Ownership right based on the Construction of the House at the Municipal Land, filed to the Municipal Court

of Prizren/Prizren on 1 June 2009. The lawsuit was filed by Z. D. in against the Municipality of Prizren/Prizren. The Lawsuit related to the claimed properties.

5. According to the Verification Reports of the Executive Secretariat of the KPA none of the documents submitted by the Appellant have been verified as being genuine. The Department for Cadastre of the Municipality of Prizren/Prizren presented a Certificate for Immovable Property Rights P-71813068, which shows the claimed properties being a socially-owned property registered under the name of the Municipal Assembly of Prizren/Prizren.
6. On 4 August 2014, the Appellant was contacted by the Executive Secretariat of the KPA asking additional information regarding the Ruling on Allocation No 03/3-463 which stated that the Appellant must construct the residential object within three (3) years from the issuance of the document (page 106 of the case file). The Appellant confirmed that he did not start building the house as set at the Ruling on Allocation because he went abroad for two years. He, however, alleged that when he returned to Kosovo in 1996, the Municipality extended the 1994 Ruling on Allocation, but he was not in possession of the same as he left it at home when he fled from Kosovo.
7. The Kosovo Property Claims Commission through its Decision KPCC/D/A/236/2014 of 30 April 2014 decided to refuse the Claim explaining that the Appellant has failed to show a property right over the claimed property immediately prior to or during the 1998-1999 conflict. The Commission clarified that the documents submitted by the Appellant were negatively verified. Moreover, the certificate for immovable property obtained ex officio by the KPA shows the land being registered under the name of the Municipal Assembly of Prizren/Prizren.
8. The Decision was served on the Appellant on 1 October 2014. He filed an Appeal on 29 October 2014. The Appellee received the KPCC's Decision on 8 October 2014 and subsequently the copy of the Appeal on 17 June 2015.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision is based on an erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.
10. The Appellant states that he never claimed ownership right as he used to have the right to use of the claimed property. This is because in 1994 the urban construction land was a socially- owned property and only the right to use could have been acquired by the natural person. The ownership right could be acquired only over the residential object built on the allocated property.
11. The Appellant quotes the Article 1 of the Administrative Direction No. 2007/5 on Implementing the UNMIK Regulation 2006/50 on Resolving Claims Referring to Private Immovable Property Including Agricultural and Commercial Property which states that the following: "Property rights, the ownership right, lawful possession, right to use or dispose of property" as the legal basis for the Claim before the KPA.
12. The Appellant seeks to be served with the Verification Report on the basis of which the KPCC concluded that the Decision on Allocation and the other documents could not be found and verified as genuine.

Legal reasoning:

13. The Supreme Court reviewed the appealed Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth “the LCP”) and after the review and the assessment of the documents contained in the case file, as well as of the allegations of the Appellant, it found that the Appeal is ungrounded, as the factual situation was established correctly by the KPCC. This conclusion had to lead to the rejection of the Appeal.
14. According to the Ruling on Allocation with the No 03/3-463 issued in 1994 (the Ruling does not have any concrete date) the Appellant was allocated the socially-owned construction land (the cadastral land parcels No 7010/1 and 6988/1) with the purpose of construction of a residential object.
15. Paragraph No 2 of the abovementioned Ruling lists the conditions under which the land was allocated to the Appellant. This conditions read as follows:
“The residential object shall be completed within 3 years from the date when the Ruling on Allocation is concluded”.
16. The Appellant himself confirmed that he had never finalized the residential object as per the Ruling on Allocation. In absence of any documentary evidence proving the existence and the possession of that object before the conflict, a thorough analysis of the content of the documents submitted by the Appellant together with the statement given by him, lead to a conclusion that the circumstance of being in possession and having the title to the residential object was not proven during the proceedings before the Commission.
17. Moreover, the Executive Secretariat of the KPA made a negative verification of the Ruling on Allocation issued in 1994 and this is the main document on which the Appellant based his Claim.
18. Reaching the conclusion that the Appellant did not prove to be in the possession of the claimed property before or during the conflict had to result in rejecting of the Claim and thus the Decision of the KPCC stands to be confirmed. Considering what was mentioned above, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this Judgment. This Judgement remains without prejudice to the right of the Appellant to pursue his claims before the competent court, if he considers it necessary.

Legal Advice

Pursuant to Section 13.6 of Law No 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Ragip Namani, Judge

Anna Bednarek, EULEX Judge

Timo Eljas Torkko, acting EULEX Registrar