

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-190/14

Prishtinë/Priština, 27 July 2016

In the proceedings of

S. K.

Appellant

vs.

Sh. E.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 (case file registered at the KPA under the number KPA14212) dated 27 November 2013, after deliberation held on 27 July 2016, issues the following

JUDGMENT

1. **The appeal of S. K. against the decision of the Kosovo Property Claims Commission No. KPCC/D/C/224/2013 (case file registered at the KPA under the number KPA14212), dated 27 November 2013, is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission No. KPCC/D/C/224/2013 is confirmed as far as it concerns claim No. KPA14212.**

Procedural and factual background

1. On 22 September 2006, S. K. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking ownership right of the business premises (hereinafter: the claimed property) with the surface of 20.80 m² (ground floor) and 17.80m² (attic) located on street Karadžëva BB E22, Municipality of Suharekë/Suva Reka. He also claimed compensation for the unlawful usage of the claimed property. He alleged that he gained the property right to the claimed property through a purchase contract concluded on 18 December 1998 and that he lost the possession as a result of the circumstances in Kosovo in 1998/1999, stating as date of loss 11 June 1999.
2. To support his claim, the Appellant provided KPA with a Purchase Contract, certified by the Municipal Court of Suharekë/Suva Reka under Ov.br.2088/98 on 18 December 1998, concluded between the Municipal Assembly of Suharekë/Suva Reka, represented by the Mayor of the Municipality, as seller and Appellant as buyer of “the business space under construction, shop no E-22, with the surface of 20.80 m² (ground floor) and 17.30m² (attic), located in the craft service center in Street “Karadžëva” in Suharekë/Suva Reka” (henceforth: the Purchase Contract). Pursuant to article III of the Purchase Contract, the purchase price will be paid in 12 equal monthly instalments; failure of payment of three consecutive monthly instalments entails the seller the right to terminate the contract.
3. On 30 November 2006, the KPA notified the claim by placing a sign where the business premises were located. The property was found to be a house and in possession of Sh. E. (hereinafter: the Appellee).
4. The Appellee asserted having bought the property from the property right holder or the rightful successor in title. He signed the ‘Declaration from the responding party’ and the ‘Notice of participation’ to join the proceedings; however he did not submit any further statement or evidence in support of his allegations.

5. According to the KPA verification report of September 2013, the Purchase Contract was found in the archive of the Municipal Court of Suharekë/Suva Reka whereas the same contract was not found in the archives of the Municipality of Suharekë/Suva Reka
6. The KPA contacted the Appellant requesting additional evidence to support his claim, hereunder payments of the instalments. The Appellant responded that he does not own further documents nor can provide any evidence of the payments.
7. On 27 November 2013, the Kosovo Property Claims Commission (KPCC), through its decision No. KPCC/D/C/224/2013, refused the claim. In the paragraphs 52-55 of the cover decision the KPCC reasons as follows. Pursuant to the Purchase Contract the Appellant was to acquire ownership over the claimed property against payment of the fully paid-up contractual price, to be made in twelve monthly instalments starting from January 1999. The contract stipulates that in the event that the Appellant defaulted on three consecutive instalments, the contract would be terminated. The Appellant did not provide any evidence of payment of any of the instalments. In addition, the Appellant did not provide any evidence that the mayor was duly authorized by the competent bodies of the Municipality of Suva Reka/Suharekë to dispose of the property in the favour of the Appellant. In these circumstances, the KPCC finds that there is no evidence that the transfer of the ownership under the contract took place. The KPCC concludes that the Appellant has failed to show ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict. The Appellant's claim for compensation for physical damage to, or for loss of use, of the claimed property is also refused, as the KPCC has no jurisdiction over such claim.
8. On 31 March 2013, the KPCC decision was served on the Appellant. The KPA delivered the KPCC decision on Appellee on 5 February 2014 but he refused to accept it
9. The Appellant filed an appeal before the Supreme Court on 25 April 2014. The Appeal was served on the Appellee on 2 October 2014, but he did not accept that. He neither filed a response to the appeal.

The allegations of the appellant

10. The Appellant challenges the KPCC Decision by stating that he has the evidences on paying the instalments. Moreover he invested in the claimed property approximately 10000 DM. He proposes the Supreme Court to approve the appeal and annul the KPCC decision.

11. The Appellant additionally presented a receipt dated 20 March 1999 on which it is written that he has paid instalments in the amount of 4000 dinars for the purchase of the claimed property to the Municipal Assembly of Suharekë/Suva Reka.

Legal reasoning

Admissibility of the appeal

12. The Supreme Court found that the appeal is admissible because it was filed within the legal time limit according to Section 12.1 of Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law No. 03/L-079), which foresees that a party may file an appeal against a KPCC decision within thirty (30) days from the day parties are notified of the decision.
13. The Supreme Court comes to the same conclusion as KPCC, but on different grounds.
14. According to Section 3.1 of the Law No. 03/L-079 the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.
15. The question to be answered in this case in respect of this provision is whether the Appellant gained ownership of the claimed property, presumed that it is a private immovable property, through the Purchase Contract.
16. It is not clear in this case whether the claimed property at the time of purchase was an immovable property. The KPA found at the spot of the claimed property a house and not the business premises as the Appellant alleges to have bought in 1998. The Appellant provided no further details on the character of the claimed property. The Purchase Contract only describes a ground floor and an attic. The contract does not involve a parcel of land underneath the premises nor describes the claimed property as a part of a bigger, multi storey building with more business units. The Appellant did not provide any other evidence like a possession list that could clarify the character of the claimed property.
17. If it was meant by the parties to the Purchase Contract to transfer private ownership of a building including the parcel of land on which it was built, than the Purchase Contract does not prove a valid transfer of ownership, because of the following reason. In 1998, according to the then in force Articles 20 and 33 of the Law on Basic Property Relations (Official Gazette SFRY, No. 6/80) and

Article 4.2 of the Law on Transfer of Immovable Properties (Official Gazette Republic of Serbia, No. 43/81) not only a written contract on transfer of immovable property, certified by the competent court, was needed for a valid transfer of a real estate, but also registration in the public notary book. The Appellant did not provide such registration. Therefore he did not prove that he gained private ownership of such real estate.

18. For a valid transfer of an business unit, or an apartment, in a multi storey building in 1998 a certified contract on transfer was enough for transfer of the property right if there was no registration of apartments or business units in the Cadastre where the property is registered. In this case the Appellant does not state, nor prove that the business premises was a business unit or apartment in this sense. The Purchase Contract is not convincing to conclude otherwise as it states nothing about the character of the sold property. Further KPA did not find on notification a business unit in this sense.
19. From the allegations of the Appellant or the Purchase Contract also cannot be concluded that another way of retrieving ownership of an immovable private property is at stake in this case. E.g. there is also no indication, nor prove, that the claimed property is a building constructed on urban land for construction. So there is no indication that the Appellant gained the ownership right to such a type of private immovable property.
20. From the previous reasoning follows that the Appellant did not prove that he based on the Purchase Contract became owner in 1998 or 1999 of a private property and therefore the KPCC rightfully refused his claim. The Supreme Court does therefore not have to assess whether the Purchase Contract was valid in the light of the competences of the Mayor of the Municipality as party to such a contract, as KPCC also took into account.
21. Other than KPCC reasoned, Article 3 of the Purchase Contract about the payment of the 12 equal monthly instalments is not decisive in the case, because there is no indication that the seller who had according to the contract had the opportunity to do so, used this possibility and terminated the contract.
22. On the basis of the above and in accordance with section 13.3 sub c of the Law No. 03/L-079 the Court decides as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar