

**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-225-/2014

**Prishtinë/Priština,
26 October 2016**

In the proceedings of

M. P.

Appellant

vs.

T. H.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek (Reporting) and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 (case files registered at the KPA under the number KPA00137), dated 27 November 2013, after the deliberation held on 26 October 2016 issues the following:

JUDGMENT

1. **The Appeal of M. P. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013 related to the Claim registered under the number KPA00137 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013, dated 27 November 2013, with regard to the Claim registered under the number KPA00137 is confirmed.**

Procedural and factual background:

1. On 15 November 2006, the Appellant M. P. filed a Claim in the capacity of the property right holder, seeking the repossession of the land parcels with the numbers 662/3 and 662/4 with the total surface area of 75 ar, 66m², located in the place called Brezhanik/Brežanik in Bellopole/Belo Polje, in Pejë/Peć (hereinafter “the claimed properties”). The Appellant stated that the properties were occupied by two unknown persons and the loss of the ownership over the properties occurred in 2001 on the basis of the illegally concluded Purchase Contract. He stated that the properties were lost due to the armed conflict that occurred in Kosovo between 1998 and 1999, indicating 1 January 2001 as the date of loss. The Claim was registered by the KPA under the number KPA00137.
2. To support his Claim, M.P. submitted the following documents:
 - The copy of the Possession List No 197, issued on 18 May 2004 by the Department of Immovable Property, Cadastral Registry in Municipality of Pejë/Peć, in which his father appears as the co-owner of the 1/7 ideal part of the claimed properties;
 - The copy of the Power of Attorney granted by M. P. and Z. P. to their relative G. P. authorizing the latter person to sell the claimed properties. The signature of Z. P. below the Power of Attorney was legalised by the First Municipal Court in Belgrade on 9 March 2001 (No 2843/01);
 - The copy of the Power of Attorney granted by G. P. to R. R. to sign on his behalf the Sale Contract regarding the claimed properties and to verify it before the Municipal Court of Pejë/Peć. The signature of G. P. below the Power of Attorney was legalised by the Court on 10 March 2001 (No 720/01);
 - The Copy of the Decision on Determining the Property Tax for Natural Persons bearing the number 430-0007536/93, issued on 31 March 1993 by the Republic Administration of Public Revenues, the District Department establishing the amount of tax to be paid in the year 1993 by M. P., for constructing the building;
 - The copies of the two Contracts on Sale of the immovable property concluded on 12 March 2001 between R. R. acting as the representative of the M. P. and Z. as the Seller and T. H. as the buyer in one Contract, where the signatures of the persons who signed the Contract were legalised before the Municipal Court of Pejë/Peć on 15 March 2001 and holds the number: Ov. 769/01 and J.A. as the buyer in the second Contract where the signatures of the persons who

signed the Contract were legalised before the Municipal Court of Pejë/Peć on 15 March 2001 and holds the number: Ov. 767/01. On the basis of the Contracts “1/2 of each of” the land parcels with the numbers 662/3 and 662/4 containing the claimed properties, with the total surface of 0.37,83 ha was sold to the buyers: T. H.and J. A.;

- The copy of the Death Certificate No E/6158/2006 of Z. P. issued on 15 November 2006 by the Municipality of Pejë/Peć.
3. According to the Consolidated Verification Report dated 30 September 2013, the documents submitted by the Appellant were positively verified, except for the Possession List No 197.
 4. Initially the claimed properties were visited on 7 September 2007, but the notification of the Claim was considered as incorrect due to the technical issues. On 7 July 2010 another notification was carried out. From the Notification Report it results that the property was a store occupied by T.H., who was present at the property, claimed he had legal right to the property, but refused to sign the Notice of Participation.
 5. On 16 July 2008, the T. H. (the Appellee) filed a Response to the Claim to the KPA, demanding a legal right over the claimed properties, which he asserted having purchased in 2001. In support to his assertions he submitted the following documents:
 - A contract on sale of immovable property concluded on 12 March 2001 between R. R. as a representative of the Appellant, according to the authorization for the replacement, as a seller and T.H.as the buyer. The contract was certified before the Municipal Court of Pejë/Peć and holds the No769/01,on 15 March 2001. According this Contract the possession over the claimed properties was transferred to T. H.;
 - A Power of Attorney of 10 March 2001, legalised by the First Municipal Court in Belgrade. Through this Power of Attorney the authorization grantor G. P. authorized R. R. to sign on his behalf and to verify before the Municipal Court of Pejë/Peć the Purchase Contract for the immovable property owned by M. P., regarding the land parcel No 662/3 with the surface 0.49.50 ha and the land parcel No 662/4 with the surface 0.26.16 ha;
 - A Power of Attorney of 9 March 2001 issued by the Appellant, M. P. who authorized G. P. to sell the claimed properties, respectively the land parcels with the numbers 662/3 with the surface 0.49.50 ha and 662/4 with the surface 0.26.16 ha. The Power of Attorney was legalised by the First Municipal Court in Belgrade;
 - A decision on determining the property tax for natural person no.430-0007536/93, date 31 March 1993 issued by the District Department of Republic Administration of Public Revenues;
 - An extract from the possession list no.197 date 6 August 2003 issued by Municipality Court of Pejë/Peć.
 6. On 27 November 2013, the Kosovo Property Claims Commission (hereinafter “the KPCC”), through its Decision KPCC/D/A/220/2013 (hereinafter “the KPCC’s Decision”) dismissed the Claims as falling outside of its mandate. In the reasoning of the Decision, the KPCC explained that the Appellant failed to show that his Claims involve the circumstances directly related to or resulting from the 1998-1999 conflict.
 7. The KPCC’s Decision was served upon the Appellant on 12 June 2014. The Appellee, T. H. received the Decision on 5 May 2014. On 30 June 2014 the Appellant filed an Appeal against the KPCC’s Decision. The Appeal was served to the Appellee on 12 November 2014.

Allegation of the Appellant

8. The Appellant requests the Supreme Court of Kosovo to accept his Appeal and to recognize him as the owner of the claimed properties. In the Appeal he indicated that the KPCC's Decision rests upon an erroneous or incomplete determination of the facts and involves misapplication of substantive law. The Appellant argued that he had owned the claimed property until June 1999, when he had to leave Kosovo due to safety reasons. He stated that he did not authorize anyone to sell the claimed properties, neither did his mother. The documents were forged and the personal data of the sellers were wrong. Therefore, he submitted a lawsuit before the Municipal Court in Pejë/Peć, demanding the annulment of the Sale Contract as forged, but still does not have a final decision. In the opinion of the Appellant, the KPCC should declare void the Contract on the basis of Article 4 of the Administrative Direction (hereinafter "AD") 2007/5 on Implementing the UNMIK Regulation (hereinafter "Reg.") 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property.

Legal Reasoning

9. The Appeal is unfounded and thus it stands to be rejected.
According to Article 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, *"The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, 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, including agricultural and commercial property,**where the claimant is not now able to exercise such property rights".*
10. During the Claim intake the Appellant indicated that he had lost possession over the claimed properties in 2001. To prove that circumstance he attached the copy of two Sales Contracts allegedly concluded in 2001. Therefore, the Appellant reasoned his Claim indicating the falsified Contracts as the legal basis for the loss of possession of the claimed properties. Moreover, the Appellant attached the copy of the claim filed to the Municipal Court in Pejë/Peć in 2005 in which he requested to establish his ownership rights over the claimed properties and to declare the Sales Contracts as null and void as they were falsified. So the reasons mentioned by the Appellant for the loss of possession all related to the year 2001 and the allegedly concluded Sales Contracts. Only after having received the copy of the KPCC's Decision, the Appellant stated that he was displaced from Kosovo during the conflict.
11. The Supreme Court, after having examined the evidence gathered in the case assesses that the Appellant did not prove that the loss of possession of the claimed properties was conflict related. On the other hand, according to the Consolidated Verification Report of 30 September 2013, the KPA's Verification Team positively verified the Contract on Sale, which signatures were legalized under the number Vr.769/01 on 12 March 2001. Independently of the constation weather the Contracts were indeed falsified or not, the dispute concentrates on the issue of the Contracts of 2001.

12. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when dismissing the Claim of the Appellant. The Commission is right while considering that the Appellant has failed to prove to have lost the property right over the premise immediately prior or during the 1998/99 conflict. The documents submitted with the Appeal, contrary to his opinion, could not prove those circumstances: the property rights and the possession of the claimed property before or during the conflict in Kosovo that took place in 1998/1999. The Appellant constructed his reasoning on the allegation of the falsified Sales Contracts of 2001. Those circumstances and the assessment of the potential validity of those Contracts however fall outside the KPCC's jurisdiction. On the other hand, challenging the Contracts signed in the year 2001 would mean that the possession during or after the conflict was not the case. That presumption may be challenged again, before the competent Municipal Court. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is unfounded and has to be rejected.
13. Additionally, it should be noted that the Appellant filed in 2005 a claim to the Municipal Court in Pejë/Peć against T. H. requesting to establish his ownership rights over the claimed property. Section 18 of the UNMIK Regulation 2006/50 as amended by Law 03/L-079 however foresees that *“The provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation”*. The fact that the claim with regard to the claimed property was filed to the Municipal Court before the UNMIK Regulation 2006/50 entered into force (16 October 2010) excludes the jurisdiction of the KPCC. Hence the Claim of the Appellant had to be dismissed also due to that fact.
14. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No 03/L-079.
15. Based on the aforementioned and pursuant to Section 13.3.(c) of the Law No 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar