

**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-132/2014

**Prishtinë/Priština,
21 January 2016**

In the proceedings of:

M.S.C.

Ul. Skopljanska 7/3
18000 Nish/Niš
Republic of Serbia

Appellants

vs.

1. A.R.
G./D.

2. Municipality of G./D.
Street Nëna Terezë
G./D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/212/2013 (case file registered at the KPA under No. KPA34146), dated 21 August 2013, after deliberation held on 21 January 2016 issues the following

JUDGMENT

1. **The Appeal of M.S.C. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/212/2013, dated 21 August 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/212/2013, dated 21 August 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA34146.**

Procedural and factual background:

1. On 4 April 2007, the Appellant M.S.C. (hereinafter referred to as: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking the confirmation of his ownership right over the commercial premises without building – land/forest, land parcel No. 4052/6 located in Orize 2 n.n., G./D. (hereinafter referred to as: the claimed property). He did not state the exact date that the loss of the property took place.
2. Together with the Claim the Appellant submitted to the KPA:
 - The undated Contract on Lease of the land property on the basis of which the Appellant is given in lease the land parcel No. 4052/6 of the surface of 0.05,00 ha, located in Orize 2 n.n., G./D. for permanent use without compensation;
 - The Ruling of the Municipal Assembly of G./D. of 6 May 1999 on allocation of the socially owned urban construction land;
 - The Power of Attorney granting H.S the authority to represent the Appellant in the proceedings before the KPA. The signature of the Appellant was legalised on 6 April 2009.
3. The case was registered under the number KPA34146.
4. On 16 December 2008 the Municipality of G./D. (hereinafter referred to as: the Appellee 1) filed a Reply to a Claim (entitled “the Appeal”) in which it requested to dismiss the request of M.S.C. . In the reasoning it was indicated that the former authorities of G./D. issued rulings and concluded contracts on permanent use without any payments in violation of the law in force at that time. It was stated also that the Appellant did not have a property rights and was never in possession of the claimed property until 24 March 1999, therefore the possession, if ever, took place after the conflict in Kosovo ended. According to the Appellee 1 the parallel Serbian institutions issued a ruling on the basis of which the land was divided into more land parcels intended for the individual construction.
5. On 21 January 2009 A.R. (hereinafter referred to as: the Appellee 2) filed a Reply to the Claim in which he declared to be the owner of the claimed property, as well as the Possession List No. 856 of 29 November 2008 which indicated the Municipality of

G./D. as the owner of the socially owned land. The Possession List was negatively verified by the KPA, as the parcel No. 4502/06 with the surface of 5 is not recorded in the cadastre.

6. According to the Verification Report dated 9 December 2009 the Contract on Lease and the Allocation Decision submitted by the Appellant were negatively verified by the KPA.
7. The Claim was notified on 25 April 2013 through the publication in the Official Gazette No. 11 and the UNHCR's Property Bulletin in G./D.. The Notification Team placed the publication in the corner of the entrance and in the exit of G./D. town, as well as left it at the office of the Public Lawyer of the Municipality of G./D., cadastre Office, Municipal Court, KPA Regional office in Pejë/Peč. In addition it was distributed to the OSCE, UNHCR, PAK and Ombudsperson.
8. On 21 August 2013, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/C/212/2013 (hereafter to be referred to as: the KPCC's Decision) refused the Claim. In the reasoning of the Decision (paragraphs 11, 58 and 59), the KPCC underlined that the Appellant had failed to show the ownership or any other property right over the claimed property. The KPCC indicated that although the Appellant submitted an allocation decision and a contract on lease, those documents could not be verified by the Executive Secretariat as being genuine, as they could not be found in the archives of the institutions by which they were allegedly issued.
9. The KPCC's Decision was served upon the Appellant on 26 March 2014. On 17 March 2014 the Appellant filed an Appeal against the KPCC's Decision.
10. The same Decision was served on A.R. on 28 February 2014.

Allegation of the parties

11. The Appellant requests the Supreme Court of Kosovo to modify the KPCC's Decision, revise it and acknowledge the property rights over the claimed property of M.S.C. or to quash the Decision and send the case back to the KPCC for re-examination. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves fundamental error and serious breach of substantive and procedural law. In the Appellant's opinion he gained the property rights over the claimed property in accordance with the law in force and therefore the KPCC erroneously established the facts by stating that the Appellant did not show his rights over the claimed property. In case of any doubts the KPCC should have acted ex officio and verify the documents.
12. Moreover the Appellant underlines that in point 1 of the enacting clause of the Decision it is stated that the Claim is dismissed, while in paragraph 59 of the reasoning of the Decision the KPCC the conclusion is that the Claim is refused.

Legal Reasoning

13. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
14. The Appellant alleged to have acquired the ownership rights over the claimed property in accordance with the law. The documents he submitted did not prove that circumstance. As it was mentioned in the Appeal, it is the KPA's duty to verify and assess the evidence submitted by the parties. By acting ex officio the Executive Secretariat took action and the outcome of the verification procedure may be consulted in the Verification Report. The lecture of the latter one allows for understanding that the documents submitted by the Appellant were negatively verified. The reason for that is the following: the allocation decision number 276/87 dated 06.05.1999 is not recorded in the Department of Urbanism in the Municipality of G./D. and neither was the Contract on Lease recorded in the general Administration Office of the same Municipality. That fact had to lead to negative assessment of the evidence submitted by the Appellant. As a result the verification of the authenticity of the documents was done properly by the KPA.
15. Consequently, the Supreme Court contends that the examination of the evidence and their assessment was done correctly by the KPCC. In the opinion of that Court, none of the documents submitted by the Appellant proofs his ownership rights over the claimed property.
16. The Supreme Court is of the opinion that the Appellant did not prove that he has the legal title to possess the claimed property. In the view of the Court, according to the evidence gathered the Appellant is not, and has not been the owner of the claimed property. Allegedly the title to use it for the Appellant was the Contract on Lease and the allocation decision. As the documents were not found in the respective administrative authorities that issued the decision or was competent for the fulfilment of the contract, those documents may not be considered as proving the legal rights of the Appellant and to substantiate the Claim for the repossession.
17. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when refusing 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 the opinion of the Appellant, 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.
18. Additionally it is worth mentioning that the allegation of the Appellant that there is discrepancy in the legal terms between the content of the Decision itself and the reasoning, are not to be considered as valid. The English version of the Decision, as well as of the reasoning contains only term of "refusal" of the Claim. According to Section 3.3 of the Administrative Direction No 2007/5 Implementing UNMIK Regulation 2006/50 on the resolution of Claims relating to Private Immovable Property, Including Agricultural and Commercial Property "where a conflict or discrepancy arises in relation to a word, phrase or interpretation between the English version of a document or

decision and the Albanian or Serbian version, the word, phrase or interpretation in the English language version shall prevail and be applied". Considering that, it should be stated that the discrepancy occurred during the translation process. In such a case, the content of the English version of the Decision prevails. In that text there are no discrepancies between the Decision itself and its reasoning.

19. 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.

Conclusion

20. Based on the aforementioned and in 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.

21. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar