

**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-153/2015

Prishtinë/Priština,
20 September 2017

In the proceedings of:

M. Z.

Appellant

vs

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 (case file registered at the KPA under the number KPA27273) dated 18 June 2014, after deliberation held on 20 September 2017 issues the following:

JUDGMENT

1. The appeal of M. Z. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 dated 18 June 2014 regarding the case file registered with KPA under number KPA27273 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014, dated 18 June 2014 as far as it concerns the claim number KPA27273 is confirmed.

Procedural and factual background

1. On 23 March 2007, M. Z. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession of a business premises. She alleges to be co-owner of the business premises with the surface of 30.45 m², located at the street “Dardania” No 16, Municipality of Prishtinë/Priština (henceforth: the claimed property).
2. The Appellant explained that another co-owner is O.C-T. and that the right over the claimed property was lost on 22 March 1999, as a result of the armed conflict that occurred in Kosovo between 27 February and 20 June 1999.
3. To support her claim, the Appellant provided the KPA the following evidences:
 - Decision No.07-361-451, issued by Executive Council of the Municipal Assembly of Prishtinë/Priština on 16 March 1992, whereby, the request of O.C. was approved, thus, she was allowed to perform the Sale of the business premises no 16 with the surface 30.45 m², located at street Dardania-Prishtinë/Prištinë.
 - Contract on Sale of the Business Premises through the Loan No. 1336 concluded on 6 April 1992 between Construction Company “Granding” in capacity of the seller and O. C. in capacity of the buyer.
 - Receipt dated on 14 April 1992 through which can be seen that O.C-T has paid an amount of 1.593.053 dinars (Yugoslavian currency) to the Construction Company “Gradning” on the name of sale of the business premises.
 - Minutes issued by Construction Company “Granding” on which it is written that on 6 September 1993 O. C-T received the keys of the claimed property.

- Power of Attorney legalized before Municipal Court of Prishtinë/Priština on 30 May 1996 under the No 1365/96 through which O. T. authorized M. J. that she, in capacity of the co-owner can undertake all needed measures for adaptation and extension of the claimed property.
4. The notification of the claim was carried out on 14 January 2008 wherewith it was ascertained that the property was a shop used by G. B. B. did not claim any legal right over the property and did not participate in the proceedings before the KPA. Because no party filed a response to the claim within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079 the claim was considered as uncontested.
 5. The Executive Secretariat of KPA did not found any of the evidences submitted by the Appellant despite its effort.
 6. The Appellant has been contacted by the Executive Secretariat of KPA and she has been advised to submit additional evidences for proving her right because the documents that she already submitted do not support her rights over the claimed property and also they were not found before the competent institutions.
 7. Moreover, as an additional effort, the Executive Secretariat of KPA provided the Appellant with an information letter asking her to submit additional documents and informing her that if she fails to submit the request documents the claim may be refused by the Commission. The letter was received by the Appellant on 26 August 2013. In response to the letter, she has re-submitted the same documents.
 8. On 18 June 2014, the KPCC with its decision KPCC/D/C/248/2014 refused the Appellant's claim with the reasoning that the she has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
 9. The Decision was served on the Appellant on 1 December 2014, while she filed an appeal on 24 December 2014.

Allegations of the Appellant

10. The Appellant challenged the KPCC's Decision by stating that the Decision rests on the erroneously and incomplete established of the factual situation and violation of the material and procedural law.
11. According to the Appellant, O. C. is the owner of the claimed property based on the submitted evidences. To her it is not clear why the claim was refused and why the

Executive Secretariat of KPA could not verify the documents that prove her co-ownership right despite the fact that according to her, she submitted the evidences through which can be seen that she is co-owner.

12. The Appellant repeat the same allegations as at the first instance by presenting again the same documents which were already considered by KPCC.

Legal reasoning

Admissibility of the appeal

13. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

14. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
15. The Supreme Court finds that the KPCC has rendered a correct Decision when refused the claim.
16. Pursuant to Section 3.1 of the Law 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. According to this legal provision, the Appellant had to submit evidence in support to his claim to prove the ownership/co-ownership right to, or the right to use the immovable property.
18. The KPCC bases its Decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, that she as property right holder enjoys any co-ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.

19. The only evidence that refers to the Appellant as co-owner is the Power of Attorney No 1365/96 which was legalized before Municipal Court of Prishtinë/Priština on 30 May 1996. Nevertheless, the Power of Attorney has absolutely no legal value for proving co-ownership right over the claimed property.
20. All the evidences refer O. C-T. as the sole owner of the claimed property, while the Appellant was not mentioned on none of the evidences. Moreover, these documents were not found before the competent institutions that issued them, leading to the conclusion that even the alleged O. C. right over the claimed property was not proven.
21. The appeal of the Appellant recalls the same allegations as she stated before the KPCC. No new evidence was provided with the appeal.
22. Considering the above, the Supreme Court finds that the KPCC has taken a correct and grounded Decision in the course of a proper procedure. Consequently, the Court finds that there were no violations of material rights or incomplete determination of factual situation.
23. In the light of the foregoing, pursuant to Article 13.3 sub-para (c) of Law No. 03/L-079 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 the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Shukri Sylejmani, Judge

Krassimir Mazgalov, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar