

**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-036/14

Prishtinë/Priština,
4 December 2014

In the proceedings of:

B. B.

Gjakovë/Đakovica

Appellant

vs.

J. G.

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/205/2013 (case file registered at the KPA under the number KPA33837), dated 11 June 2013, after deliberation held on 4 December 2014, issues the following

JUDGMENT

1. The appeal of the appellant filed against the decision of the Kosovo Property Claims Commission KPPC/D/R/205/2013, dated 11 June 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/R/205/2013, dated 11 June 2013 regarding the claim registered at the KPA under the number KPA33837, is confirmed.

Procedural and factual background:

1. On 25 May 2007, claimant filed a claim with Kosovo Property Agency seeking confirmation of ownership right and repossession over the claimed property.
2. In 1963 M. G. became owner of a parcel of ground, now known as cadastral parcel no. 466/7, in the cadastral zone Gjakovë/Đakovica Qytet/Varos, in the Municipality of Gjakovë/Đakovica with the surface of 5 ar 35 m² (henceforth: the claimed property) and built a house on it.
3. The house was burnt down during the war in 1998/1999.
4. M. G. deceased 27 January 2001. His inheritors are his spouse K. G., his sons M. G. (henceforth: claimant) and J. G. (henceforth: appellee) and his daughters S. G. and D.G. Claimant deceased before 25 March 2014.
5. B. B. (henceforth: appellant) built after the war a new house on the claimed property.
6. Together with the claim, the claimant submitted: extract of possession list no. 651, issued on 13 July 2001 by the Cadastral Municipality of Gjakovë/Đakovica, Municipality of Gjakovë/Đakovica. In the possession list M. G. is mentioned as private owner.
7. The possession list was positively verified by the KPA.
8. The claim was registered at the KPA under KPA33837. KPA notified the claim on 10 January 2008.
9. Appellant filed a notice of participation on 18 January 2008 and responded to the claim. Together with his response to the claim the respondent submitted handwritten statements about payments to M.G. on 1 September 1998 and 4 and 13 January 1999 at the total amount of 10.500,00 DM.
10. On 11 June 2013, the Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/R/205/2013 established that M. G.: *“is the owner of 1/1 of the claimed property”*, and that claimant: *“is entitled to possession of the said property”*. In its reasoning – paragraphs 38, 41 KPCC notes as following: *“...[appellant] claims legal rights over the claimed property asserting that he acquired ownership (...) on the basis of a verbal purchase contract concluded with [M. G.] in 1998. The transaction is disputed by the Claimant. According to [appellant], he and [M. G.] agreed that ownership would transfer into the name of [appellant] upon payment of the complete purchase price of 20,000 DM. (...) [appellant]*

admitted that he did not pay the total purchase price as he considered it too high at the time. (...) the possession list from 2001 identifies the Claimant as the owner of the claimed property creating a sufficient presumption of ownership of the Claimant which the Respondent on his part filed to rebut. According to [appellants] own statement he would only have acquired ownership of the claimed property upon payment of the entire payment price, but he admitted that he never paid the entire purchase price”.

11. On 29 October 2013, the decision of the KPCC was served on appellant. Appellant filed an appeal to the KPCC decision on 22 November 2013.
12. Appellee, as claimant's brother, filed a response to the appeal on 25 March 2014.

The allegations of the parties:

Appellant:

13. Appellant alleges that he purchased the claimed property and therefore gained legal right over the claimed property. He states that the contract with M. G. was concluded before the war. He disputes the legitimacy of claimant because he did all transactions with M. G. and claimant was one of five inheritors. He further states that with consent of the successors of the M.G. he was placed in the land and afterward built the new house. He further states that he agreed with the successors that they will implement the procedure of the inheritance of M. G. He adds that since he has constructed a new house and its value is bigger than the land itself and he paid the largest part of the purchase price, he is owner of the claimed property. He still wants to resolve the dispute by coming to an agreement with the successors.

Appellee:

14. Appellee alleges that (d)prh is the owner of the claimed property and states that the decision of KPCC is right. (D)prh and his family lived on the claimed property until June 1999, when they had to leave Kosovo. A nephew of appellant made an agreement with M. G. about another parcel. This is where the signatures of M.G. on the handwritten statements come from.

Legal reasoning:

Admissibility

15. The appeal is admissible.
16. The appeal has been filed within the legal deadline of 30 days.
17. The allegations of appellant about disputing the legitimacy of claimant (and appellee) are ignored. Claimant and appellee are members of the family household of M. G., while M. G. is not able anymore to make the claim. Therefore claimant and appellee are entitled to make the claim and be a party in proceedings in appeal according to Section 5.2 of the Administrative Direction no. 2007/5, implementing UNMIK regulation no. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property..

Jurisdiction

18. Not is disputed that the claimed property is abandoned due to the armed conflict between 27 February 1998 and 20 June 1999 and the house on it was burnt down in that period. Therefore the claim is conflict-related and KPCC and the Supreme Court have jurisdiction in this case.

Merits

19. Between the parties is not disputed that before 1998 M. G. was the legitimate owner of the claimed property. The possession list is also in accordance with that fact. De Supreme court concludes M. G. is also after 1999 the legitimate owner.
20. The appellant's allegation that he purchased the claimed property from the M. G. in 1998 – or before the war - cannot be followed. The hand-written payment slips, mentioned before under par. 9, are not conclusive to decide appellant is owner of the claimed property. As stipulated in Article 33 of the Law on Basic Property Relations (Official Gazette of RS no. 6/80) and Article 13 of the Law on Transfer of Real Property (Official Gazette of RS no. 45/81), that were in force in 1998/1999, in order to acquire the ownership right over a given property one needs a written contract, with the signatures having been certified by the competent authority and have the acquisition registered in the Cadastral books. In the concrete case such written contract is not even presented. The copies of the payment slips cannot serve as documentary evidence about that contract as well. They cannot replace the written contract and certification by the court that is required by the law. Besides that, also appellant stated himself before the that he still did not agree with M. G. or the inheritors about the price for purchase and did also not pay the complete previous alleged purchase price, so as KPCC reasoned, also according to appellants allegations he did not fulfil the requirements for purchasing the claimed property.

21. The appellant's allegation that he acquired the ownership right over the claimed property based on the construction of a building (the house) as is stipulated in Article 24 paragraph 1 of the Law on Basic Property Relations (Official Gazette SFRY, No. 6/80) which says: "*A person...who builds a house or some other building (building object) on a land over which somebody else holds the property right, he/she shall acquire the property right also over the land on which the building object has been erected, as well as over the land that is necessary for regular use of such building object, if he/she hasn't known nor could have known that he/she has built one somebody else's land, ...*", cannot change the KPCC decision, because in this procedure the Supreme Court can take in account only circumstances related to the period of war in 1998 and 1999. According to appellant's statements he built the house on the claimed land after the war.
22. The Supreme Court concludes that the KPCC decision is right and lawful and that the same contains sufficient reasoning. The appealed decision does not contain any essential violations of the material and procedural laws foreseen by the Article 12.3 UNMIK Regulation No. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by the Law No. 03/L079. As a consequence of this the appeal stands to be rejected as unfounded. .

Legal Advice:

Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies

Willem Brower, Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuedini, Judge

Urs Nufer, EULEX Registrar