

**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-205/2014

**Prishtinë/Priština,
25 January 2017**

In the proceedings of:

A.S.
Landquartstrasse 27
9320 Arbon
Switzerland

Appellant

vs.

Z.B.
Str. Fahredin Hoti
Prizren/Prizren

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Anna Bednarek, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/228/2014 (the case file registered at the KPA under the number KPA11739) dated 7 July 2014, after the deliberation held on 25 January 2017, issues the following:

JUDGMENT

1. **The Appeal of A.S. against the Decision of the Kosovo Property Claims Commission with the number KPCC/D/A/228/2014, dated 7 July 2014, as far as it concerns the Claim registered with the KPA under the number KPA11739, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims with the number KPCC/D/A/228/2014, dated 7 July 2014, as far as it concerns the Claim registered with the KPA under the number KPA11739, is confirmed.**

Procedural and factual background:

1. On 7 August 2007, A.S. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”), seeking the repossession of the land parcel No 5380/03 with the surface of 00.04.00 ha, located in Nena Tereze Street, in Prizren/Prizren (hereinafter “the claimed property”). The Claim was registered at the KPA under the number KPA11739.
2. The Appellant alleged that he had lost the property during the conflict that occurred in Kosovo in 1998/1999. The property is currently occupied by Z.B. (hereinafter “the Appellee”) who also built a house on it.
3. To support his Claim, the Appellant submitted the following documents:
 - The copy of the Possession List No 11484, dated 11 April 2004, which indicates that the land parcel No 5380/03 is registered under the name of the Appellant.
 - The copy of the Certificate No UL-7183068-11484, dated 4 July 2010, indicating that the Appellant is the owner of the land parcel No 5380/03.
 - The copy of the Real Estate Evaluation Report, dated 4 April 2007, prepared by a real estate agency in the case No 918/05, upon the request of the Municipal Court of Prizren/Prizren.
 - The copy of the Claimant’s request to be served with the Judgment of the Municipal Court of Prizren/Prizren rendered in the case P. No 417/08 on 3 December 2008, dated 4 July 2010, in which the Appellant indicates that he found out about the final Judgment only after he had returned from abroad.
 - The copy of the Power of Attorney 02/2, legalised under the No 038/820 on 24 May 2007, in which the Appellant authorised R.M. to obtain the Judgment of the Municipal Court of Prizren/Prizren rendered in the case P. No 918/05.

4. On 22 August 2008, the KPA notified the Claim with the help of the local people and using the cadastre map. The property was found to be occupied by B.B. who claimed legal rights to the property and signed Notice of Participation. However, this notification was considered to be incorrect and on 1 February 2011, the Claim was notified and the claimed property appeared to be occupied by Z.B. (hereinafter “the Appellee”) who claimed legal rights to the claimed property and signed a Notice of Participation. During the notification, it was noted that a house was built on the parcel. The claimed property was located with the use of ortophoto and the GPS coordinates (see report of 2 February 2011).
5. The Appellee alleged that he bought the claimed property in 1999, and constructed a residential building on it. To support his statement, the Appellee submitted the following documents:
 - The copy of the Purchase Contract concluded on 25 August 1999 between R.K. and S.S. as the Sellers, and the Appellee as the Buyer of the land parcel of 00.16.00 ha.
 - The copy of the Contract on Immovable Property Transaction of 12 February 2004, concluded between R.S. as the Seller and R.K. as the Buyer of the land parcel No 5380/04 with a total surface of 00.04.00 ha.
 - The copy of the Claim submitted on 11 November 2005 to the Municipal Court of Prizren/Prizren by the lawyer Z.D. on behalf of the Appellant in which he requests to order to the Appellee the demolition of the illegal structure built on the land parcel No 5380/03 which belongs to the Appellant, or to return the parcel to its original stage, and to compensate the damage, or the value of the parcel.
 - The copy of the Counterclaim submitted by the lawyer R.B. on behalf of the Appellee on 12 January 2006, alleging that the Appellee had legally purchased the property from R.K. and S.S..
 - The copy of the Real Estate Evaluation Report, dated 4 April 2007, prepared by a Real Estate Agency for the proceedings 918/05 pending before the Municipal Court of Prizren/Prizren.
 - The copy of the Judgement rendered by the Municipal Court of Prizren/Prizren in the case C 417/08 on 3 December 2008 through which the claim of the Appellant was considered as withdrawn, and the counterclaim of the Appellee was approved. The Court decided that the Appellee was the owner of the immovable property – the cadastral parcel No 5380/03 with the surface area of 00.04.00 ha. The Appellant was obliged to accept the Judgement and to allow the Appellee to change the registration of the property within 15 days from the moment the Judgement became final.
6. On 14 October 2008, the KPA positively verified the Possession List No 11484 dated 4 July 2010. The Department of Cadastre of the Municipality of Prizren/Prizren confirmed that the Possession List has not been modified. The KPA further attempted number of times to verify whether the proceedings initiated by the Appellant before the Municipal Court of Prizren/Prizren were finalised. On 3 October 2010, the KPA verified that the Appellant filed his claim on 14 November 2005; the counterclaim was filed on 12 January 2006, and the Judgement in case C No 417/08 was rendered on 3 December 2008. However, the Judgement did not have a required stamp to show that it was final. On 11 July 2013, the KPA confirmed with the Municipal Court of Prizren/Prizren that the hard copy of the mentioned Judgement was not found.

7. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter “the KPCC”) in its certified decision KPCC/D/A/228/2014 dismissed the Claim. In the reasoning of the Decision (paragraphs 44 and 45), the KPCC indicated that the evidence submitted and verified by the KPA shows that a lawsuit was filed with a competent court seeking the confirmation of the property right over the claimed property prior to 16 October 2006. Pursuant to Section 18 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No 03/L-079 (hereinafter “UNMIK Regulation 2006/50”), the KPCC does not have jurisdiction in case the judicial proceedings in relation to the claimed property were initiated prior to 16 October 2006, the date when UNMIK Regulation 2006/50 entered into force.
8. On 4 August 2014, the KPCC’s Decision was served to the Appellant. The Appellee received the Decision on 20 August 2014. The Appellant filed the Appeal against the Decision on 15 August 2014. On 16 November 2014, the KPCC’s Appeal was served to the Appellee; however, he did not submit any Reply.

Allegations of the Appellant

9. The Appellant alleges that the KPCC’s Decision contains fundamental error or serious misapplication of the applicable material law and procedural law, as well as it rests upon erroneous or incomplete determination of the factual situation. The Appellant moves the Supreme Court to approve the Appeal, amend the KPCC’s Decision by granting the Claim, by quashing the challenged Decision and returning the case to the first instance for review.
10. In the opinion of the Appellant the Decision is incomprehensible and contradictory; moreover it does not provide any explanation which evidence was considered by the Commission and the cover Decision does not provide any reasoning showing what the KPCC decided. The Applicant further claims that the first instance court erroneously verified the factual situation and erroneously dismissed the claim. He challenges the arguments used by the Municipal Court of Prizren/Prizren, and indicates that he did not have a chance to Appeal against the Judgement, because it was not served to the person holding his authorisation.

Legal reasoning:

11. Following the review of the case file and the Appellant’s allegations, pursuant to Sections 12 and 13 of the Law No 03/L-079, and to Article 194 of the Law No 03/L-006 on Contested Procedure, the Supreme Court found that the Appeal is unfounded and thus it stands to be rejected.
12. The Supreme Court notes that the Appellant submitted the claim to the Municipal Court of Prizren/Prizren on 14 November 2005, in which he requested the latter Court to confirm his property rights over the land parcel No 5380/03, and to: either order the demolition of the illegally built structure, or the compensation. Therefore, the Supreme Court is satisfied that the KPCC correctly determined that the Appellant had initiated proceedings with a competent court seeking the confirmation of the same property rights as he did with the

Claim addressed to the KPA. The claim before the Municipal Court of Prizren/Prizren had been brought against the Appellee, which means that the subject and the parties to the proceedings before the Municipal Court of Prizren/Prizren and the KPCC are the same.

13. Section 18 of the UNMIK Regulation 2006/50 provides that the provisions of the Regulation shall be applicable to any claim 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 UNMIK Regulation 2006/50. Further, pursuant to Section 22 of UNMIK Regulation 2006/50, the Regulation entered into force on 16 October 2006. Therefore, taking into consideration that the Claim was filed to the competent court almost two years before the current Regulation entered into force, the KPCC and subsequently the Supreme Court do not have jurisdiction over any claim which subject matter was also examined by a court of competent jurisdiction prior to 16 October 2006. Consequently, the KPCC was correct to consider that the matter falls outside the jurisdiction of the KPCC.
14. In the light of the foregoing and pursuant to Section 13.3 (c) of the Law No 03/L-079, it is decided as in the enacting clause of this Judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anna Bednarek, EULEX Judge

Sandra Gudaityte, EULEX Registrar