

**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-242/2015

**Prishtinë/Priština,
3 May 2018**

In the legal proceedings of:

M.Sh.

Appellant

vs.

B. D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, members, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 (case file registered at the KPA under the number KPA17623) dated 30 April 2014, after deliberation held on 3 May 2018, issued the following:

JUDGMENT

1. The Appeals of M. Sh. against the Decision of the Kosovo Property Claims Commission No. KPCC/D/C/240/2014 dated 30 April 2014, regarding the Claim registered at the KPA under the number KPA17623 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014, dated 30 April 2014, regarding the Claim registered at the KPA under the number KPA17623 is confirmed.

Procedural and Factual Background

1. On 1 December 2006 B. D. (hereinafter: Appellee), filed a Claim seeking confirmation of his property right over business premises built on parcel Nr.1355/9, with a surface of 23 square meters located on “Miladin Popovic” Street, Municipality of Rahovec/Orahovac (hereinafter: the claimed property). He states that the claimed property is occupied and that he has lost the possession over it because of the armed conflict of 1998/99, indicating 12 June 1999 as the date of loss.
2. To support his Claim, the Appellee submitted at the KPA the following documents:
 - The Possession List No. 2630 issued by the Department for Geodesy of the Municipality of Rahovec/Orahovac on 13 April 1984,
 - The Decision No. 463-47, issued by the Local Community Office of the Municipal Assembly of Rahovec/Orahovac on 28 October 1983, which approved M.D. request by allocating the socially-owned property (cadastral parcel No.1355/9 with a surface of 4.81 ha),
 - Copy of Plan issued by the Municipality Office for Geodesy, Cadastral Municipality of Rahovec/Orahovac on 13 April 2004;
 - The Settlement for division of the property concluded on 1 June 2008 and certified at Municipal Court of Rahovec/Orahovac, whereby, M. D. (the owner), divided his property among his sons B, Z and N. D,
 - Power of Attorney Ov.Br.10311/08 certified before Fifth Municipal Court in Belgrade on 28 March 2008; whereby N. D (Appellee’s brother and one of the co-owners) authorized the Appellee to possess the claimed property,
 - Ruling on Inheritance O.br.25/2008 dated 14 April 2008 and issued by the Municipal Court of Rahovec/Orahovac. According to the Inheritance Ruling, the Appellee and his brothers have inherited properties from their late father, including parcel No.1355/9, where each of them received an ideal part of 1/3 of the claimed property;
 - The Ruling number 369 issued by Ministry for Public Services, Department for Cadaster in Rahovec/Orahovac on 10 June 2008, granting the transfer of ownership regarding parcel 1355/9;

3. The abovementioned documents were positively verified by the Executive Secretariat with the exception of Decision No. 463-47 which has not been found in the Archive of the Municipality of Rahovec/Orahovac.
4. The Claim has been challenged by M. Sh. (hereinafter: the Appellant) who alleged legal right over the claimed property. The Appellant stated that this property belonged to his grandfather but it was expropriated in 1954. On 3 August 2010, he signed the notice of Participation.
5. To support his allegations, the Appellant *inter alia* submitted:
 - The Decision No.463-47, issued by the Council of Local Communities of the Municipal Assembly of Rahovec/Orahovac on 28 October 1983;
 - The Decision No.10-133/84 dated 2 October 1984, issued by the Department for Property and Legal Affairs of the Municipal Assembly of Rahovec/Orahovac, ordering M. D. (Appellee's father) to urgently withdraw the respective borders in parcel No.1355/9;
6. The abovementioned documents were positively verified by the Executive Secretariat with the exception of Decision No. 463-47, which not been found in the Archive of the Municipality of Rahovec/Orahovac.
7. The physical identification of the Claim was initially done on 7 March 2007 based on the GPS coordinates, orthophoto and cadastral plan. The claimed property was found to be a restaurant occupied by V and B. B. who have stated that they do not allege any legal rights over the claimed property.
8. With its Decision KPCC/D/R/213/2012, dated 21 August 2013, the Kosovo Property Claims Commission (KPCC) decided to grant the Claim of Appellee. According to this Decision, the Appellee is owner with 1/3 of the claimed property and has the right of possession over the stated property.
9. The KPCC's Decision was served on the Appellant on 15 January 2015 and he filed an Appeal on 6 February 2015.
10. The Appeal was serviced on the Appellee on 7 October 2015.

Allegations of the parties

Allegations of the Appellant

11. The Appellant alleges that he has the property right over the parcel 1355/9 and therefore he submitted the Claim No. 294/2011 before the Municipal Court of Rahovec/Orahovac. He states that the Municipality of Rahovec/Orahovac has allocated to the Appellee's father the right of permanent use over the property without the alienation right, but the Appellee's father has abused with this right by usurping the socially-owned property which was in border with the claimed property. The Appellant further states that the real owner of the stated property is the Municipality of Rahovec/Orahovac.

Allegations of the Appellee

12. The Appellant, states that the claimed property was under the ownership of his father based on the Decision No.463-47 and Possession List No. 2630. The Appellee acquired the co-ownership right on the basis of the Inheritance Ruling, which shows that the property right over the property has been transferred from the Appellee's father on his brothers and himself. As far as it relates the allegations of the Appellant that the Appellee's father has usurped part of another parcel, he clarifies that the KPCC's Decision has confirmed the property right over the claimed parcel rather than over the other parcel. For the abovementioned reasons, he seeks the Supreme Court to reject the Appeal of M.Sh. as ungrounded.

Legal reasoning

Merits

13. Following the review of the case file and allegations of parties, the Supreme Court did not find a substantial error or misapplication of the material or procedural right, nor an erroneous and incomplete determination of the facts.
14. The Possession List No.2630 shows that the Appellee's father was recognized and registered as a legitimate owner of the claimed property. Furthermore, the transfer of the property right on the name of the Appellee has been properly executed pursuant to the Inheritance Ruling which was positively verified. The Supreme Court concludes that the established facts and the evidence submitted by the Appellee show that he is a legal owner of the claimed property.
15. The allegation of the Appellant that his grandfather was owner of the property which was expropriated in 1954, does not affect the KPCC's Decision.
16. The Appellant failed to present valid legal facts or valid evidence in order to prove that the KPCC's Decision is ungrounded.
17. The Supreme Court concludes that the KPCC has issued a correct Decision, based on a thorough and correct procedure. Therefore, there was no violation of the substantive law or incomplete determination of facts. The Supreme Court concludes that the Appeal is ungrounded and therefore the challenged Decision stands to be confirmed. The Appellant has failed to present legally valid facts to prove that the Decision of the KPCC is ungrounded. Paragraphs 25-28 of the KPCC Decision state that the Appellee has proved co ownership right over of the claimed property. The KPCC recognized the co ownership right in favor of the Appellee but did not issue the edition order because the claimed property was in use as a restaurant with the consent of the Appellee

18. In light of the above and pursuant to the provisions of Article 12.2 of the Law No. 03/L-079 and Article 195 paragraph 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 the 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

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar