

**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-215/2014

**Prishtinë/Pristina,
3 August 2016**

In the proceedings of:

V.K.

Street Nikodim Milaš No. 10/1-13

Belgrade

Serbia

Appellant

vs.

H.B.,

Taslixhe 4,

Prishtina

Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anders Cedhagen and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 (case file registered at the KPA under no.KPA50852), dated 13 March 2014, after deliberation held on 3 August 2016 issues the following:

JUDGMENT

- 1. The appeal of V.K. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014, dated 13 March 2014, is rejected as unfounded.**
- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014, dated 13 March 2014, as far as it concerns the claim registered in KPA under KPA50852, is confirmed.**

Procedural and factual background:

1. On 30 November 2007, V.K. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (hereinafter: KPA) seeking ownership of 1/2 part from the 1/3 of the entire property inherited from her mother, which includes a residential premises with a surface of 137+50 square metres in the cadastral parcel no. 5940, located in the street "Nikola Tesla" (Aleksandar Rankovic), Prishtina cadastral zone (hereinafter: the claimed property). The Appellant stated that she acquired the property rights over the claimed property based on inheritance. She alleges that the claimed property was renovated in entirety and that it is currently used by H.B..
2. Together with the claim, the Appellant provided the KPA with the following:

- A Description of the Possession List no. 4141 dated 30 July 2002, issued by the Prishtina cadastral body dislocated in Serbia, which proves that her mother M.K. was the owner of the 1/3 of the claimed property; that is, in the cadastral parcel no. 5940;
 - A Copy of Plan dated 1 August 2002, issued by the Prishtina cadastral body relocated in Serbia, which proves that her mother M.K. was the owner of the 1/3 of the claimed property;
 - A Ruling on Inheritance O.Br..212/64 dated 22 October 1964, issued by the Municipal Court in Prishtina, through which the Appellant's mother M.K. was declared owner of the 1/3 of the claimed property;
 - A Ruling on Inheritance O.Br.2394/05 dated 21 October 2005, issued by the First Municipal Court in Belgrade, which proves that the Appellant was declared inheritor of 1/2 from the 1/3 of the entire claimed property inherited by her mother;
 - An Authorisation Ov. Br.4882/2000, by which the other co-inheritor D.D. authorised the Appellant to act on her behalf for the disposal of property and representation before competent bodies.
 - Statements of persons who testify that the Appellant was in possession and did not sell the property until the armed conflict.
 - A Copy of the Lawsuit, submitted in the Municipal Court in Prishtina on 2 August 2004 by M.K. , D.D. and Z.V., through which they sought compensation of damages worth 326.000.00 euro for the residential premise from the respondents Prishtina Municipality, Kosovo Institutions, UNMIK and KFOR.
3. Verification of the claimed property was done on 4 February 2008 and was confirmed on 9 March 2010 by using the cadastral records and based on the Ortophotos and GPS coordinates. Notification of the claim was carried out on 4 February 2008. According to the notification report, the claimed property was found to be a house occupied by S.B., who, as the son of H.B. (hereinafter: the Respondent), signed the notice of participation and declared that he claimed a legal right over the property.

4. On 8 October 2008, the Respondent filed a response to the claim in which he claimed legal right over the property stating he had purchased the property in October of 1998. Together with the response, he provided the KPA with the following:

- A Copy of Birth Extract that proves that the respondent S.B. is the child of Respondent ;
- A Copy of Decision of the Housing and Property Claims Commission HPCC/REC/89/2007 dated 19 January 2007 by which the request for reconsideration of the decision HPCC/D/170/2004 dated 30 April 2005 was approved, decision was quashed and the claim of one of the co-owners, D.K. DS601561, was rejected;
- An Informal contract concluded between the co-owners M.K. , D.D. and Z.V., represented by the Appellant's father K.K. on one side and Respondent on the other side, in the presence of witnesses N.J. and E.B.;
- A List of banknotes with serial numbers through which it is proved that K.K. , in the presence of two witnesses, received the sum of the purchase price of 120.000.00 DM.
- A Statement certified in the Municipal Court of Prishtina Vr.nr.7734/2006 by which E.B. confirms her presence while the contract was entered;
- A Confirmation from Prishtina Urbanism Directorate 01-367/2000 dated 10 March 2000 which together with photos prove that the property was destroyed to such an extent that it was uninhabitable;
- Utility Bills that prove that the property was in the respondent's possession.
- A Judgment issued by the Municipal Court in Prishtina C.Nr.824/2005 dated 30 September 2009 by which it is confirmed that the Respondent from Prishtina is the owner of the claimed property;
- A Copy of Plan dated 15 January 2010 and a Certificate of Ownership dated 24 August 2012, which prove that cadastral records were changed and that the ownership of the cadastral parcel no.5940 was transferred to the Respondent.

5. According to the verification report, the documents submitted by the parties were positively verified by the KPA, except for the informal contract.
6. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter: KPCC), with its Decision KPCC/D/R/231/2014 (hereinafter: the KPCC Decision) had dismissed the claim and in paragraph 24 of its reasoning stated that the Claimant, in this case the Appellant, had not lost the possession as a result of the 1998/99 conflict.
7. The KPCC decision was served on the Appellant on 29 May 2014. On 27 June 2014, the Appellant filed an appeal against the KPCC decision.

Allegations of the parties

8. The Appellant requests from the Supreme Court of Kosovo to annul the KPCC decision, to approve the appeal and return the case to the KPCC for reconsideration or to amend it and confirm the Appellant's property rights over the claimed property. In the appeal, she stated that the KPCC decision rests on erroneous and incomplete determination of the factual situation. To support her appeal, the Appellant submitted the same documents that were previously submitted at KPCC. The Appellant stated that her arguments were not taken into consideration and that the KPCC disregarded the pieces of evidence submitted by her. Hence, the decision did not determine the facts completely. Further, in her appeal allegations she stated that the contract was forged and that, at the time the contract was concluded K.K. was not the exclusive owner and had no right to sell the same.
9. The appeal was served on the Respondent on 17 October 2014 but he did not respond to the appeal.

Legal reasoning

10. The appeal has been filed within the time limit of 30 days as foreseen by Section 12.1 of Law No. 03/L-079 and is admissible.
11. The Supreme Court of Kosovo ascertained that the challenged KPCC decision was issued following rightful and complete determination of the factual situation as well as rightful application of the procedural and substantial law; therefore, the appeal is rejected as unfounded.
12. The Appellant denied that a legitimate sale had occurred because her mother and her two aunts had not authorised K.K. to sell the property; what is more, the signature in the contract is forged. This is proven by the statements given and certified by D.D. and B.M.. She claims that it is impossible for K.K. to act on behalf of her mother and aunts, whereas there is no authorisation in the case file submissions.
13. The Supreme Court reiterates that taking into consideration what was said above, the Decision of the Housing and Property Claims Commission HPCC/REC/89/2007, dated 19 January 2007, approved the request for consideration and rejected the claim DS60156. In paragraph 20, the Housing and Property Claims Commission explains that the Respondent purchased the property in October of 1998, that the property was destroyed during the war and that she was given the permission for reconstruction. The Commission was satisfied with the informal contract and the certificate on receipt of the amount of money with serial numbers of banknotes to conclude that the loss of possession was not due to the conflict but as a result of this transaction, which even though may not be in the form foreseen by law, it nevertheless is the cause of loss of possession and not the armed conflict or related circumstances.
14. The KPA mandate is to handle cases “that are directly related to or result from the armed conflict that occurred between 27 February 1998 and 20 June 1999”. This means that the scope of KPA’s examination is verifying the following elements: who was in possession of the claimed property prior to 27 February 1998, who is in current

possession, and when and for what reason was the possession lost in the period between 27 February 1998 and 20 June 1999. The phrasing of Article 3.1 “*of conflict-related claims involving circumstances directly related to or resulting from the armed conflict*” implies a direct link between the loss of possession and the armed conflict, or a close correlation of cause and effect which is lacking in this case. According to the view of the Supreme Court, there are sufficient elements in the case file submissions which indicate that the sale and purchase had occurred and that the Appellant was not in possession when the conflict occurred.

15. This leads the Supreme Court to reach the conclusion that the subject matter of the claim falls outside the KPCC jurisdiction and the Appellant’s appeal stands to be rejected as ungrounded, whereas the appealed KPCC decision stands to be confirmed as rightful and based on the law.

16. This Judgment has no prejudice the appellant’s right to refer the case to the competent court outside the jurisdiction foreseen by the provisions of Article 3.1 of the Law no. 03/L-079.

Ascertainment

17. Based on the above and pursuant to Article 13.3.(c) of the Law no. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it was 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 enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anders Cedhagen, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar