

**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-137/14**

**Prishtinë/Priština,  
27 January 2016**

In the proceedings of:

**J.V.**

Str. Shpend Berisha  
Prizren/Prizren

**Appellant**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission (henceforth: the KPCC) No. KPCC/D/R/223/2013 dated 27 November 2013 (case file registered at the KPA under the number KPA11724), after the deliberation held on 27 January 2016, issues the following:

**JUDGMENT**

- 1. The Appeal of J.V. is rejected as unfounded.**
- 2. The Decision of the Kosovo Property Claims Commission No. KPCC/D/R/223/2013 (regarding case file registered at the KPA under the number KPA11724), dated 27 November 2013 is confirmed.**

**Procedural and factual background:**

1. On 12 June 2007, J.V. (henceforth: the Appellant) filed a Claim with the Kosovo Property Agency (henceforth: the KPA), seeking for the ownership right and the re-possession of an apartment located in Prizren/Prizren, Str. Zahir Pajaziti, No. A2 33, with the surface of 20m<sup>2</sup> (henceforth: the claimed property).
2. To support his Claim, the Appellant submitted *inter alia* the following documents:
  - The Power of Attorney (PoA) granted by ste to S.C. (verified on 10 August 1984, number Ov.br. 1132/1984));
  - The purchase contract (not verified) concluded between S.N. (represented by S.C.) and A.K., dated 5 October 1984;
  - The purchase contract (not verified) concluded between A.K. and G.V. , the Appellant's brother, dated 5 April 1990;
  - The Appellant's ID card number 1000807890, dated 14 March 2001;

- The statement of S.C. dated 24 April 2007, with his signature verified on the same day under the number Vr.nr.2293/2007,;
  - The Power of Attorney (PoA) granted by G.V. to F.C. and to the Appellant, dated 18 June 2007 (without number);
  - The request for preliminary injunction addressed to the Municipal Court in Prizren/Prizren on 18 June
  - The Ruling of the Municipal Court in Prizren/Prizren, Ndr. 362/07, dated 24 September 2013.
3. On 5 and 11 September 2007, the KPA notified the Claim and found out that the claimed property was empty and was not used by any person. Later on, the KPA re-notified the Claim on 4 March 2008 and the claimed property was found occupied by unknown person who was not present at the property at the time of the notification. The Claim was once again notified on 4 March 2008.
  4. According to the Verification Report dated 11 September 2007 and the Consolidated Verification Report dated 8 March 2011, except for the ID card (*prima facie verified*) and the PoA (Vr.nr.2293/2007), none of the documents submitted by the Appellant could be positively verified.
  5. With the Cover Decision No. KPCC/D/R/223/2013 (*case file registered at the KPA under the number KPA11724*) dated 27 November 2013, the KPCC dismissed the Claim as the Appellant failed to show that his Claim involves circumstances directly related to or resulting from 1998-99 conflict.
  6. The Decision was served on the Appellant on 3 March 2014. He filed an Appeal against the KPCC's Decision on 27 March 2014.

**The allegations of the Appellant:**

7. The Appellant alleges that G.V. had bought the claimed property based on the Purchase Contract concluded between him and A.K. on 5 April 1990. He also states that the claimed property previously has been purchased by A.K. on the basis of the Purchase Contract concluded between him and N.Z (represented by S.C.) on 5 October 1984. He further notes that the claimed property was purchased by N.Z. on the basis of the contract concluded between him and Housing and Communal Construction Enterprise "Universal" from Prizren/Prizren on 21 December 1976.
8. The Appellant alleges that the Purchase Contract concluded between G.V. and A.K. on 5 April 1990 could not be certified due to the discriminatory law. The Appellant notes that the claimed property has been subject to possession and uninterrupted use of G.V. since 1990 onwards. In the opinion of the Appellant, according to the Law on Basic Property Relations as a conscientious holder of the immovable property for the duration of more than 20 years G.V. had acquired the ownership rights over the apartment.
9. The Appellant requests that the KPCC's Decision KPCC/D/R/223/2013, dated 27 November 2013, be annulled and that the ownership right over the claimed property of the Appellant be acknowledged.

10. **Legal reasoning:** The Appellant challenges the Decision claiming that his brother G.V. has been using the claimed property for more than 20 years. The undisturbed use of the apartment leads to gaining of the property rights to it through the adverse possession. The Appellant once again presented the factual background referring to the three Purchase Contracts concluded accordingly in 1976, 1984 and 1990 that lead to gaining the property rights over the apartment to his brother. The Appellant however did not mention why according to him the factual situation was erroneously determined by the KPCC and which was the fundamental error that the Decision contained.
11. The Supreme Court contends that, contrary to the Appellant's statement, the Decision of the KPCC does not involve any fundamental error or serious misapplication of the applicable substantial and the procedural law, nor it rests upon an erroneous or incomplete determination of the facts. The Appellant himself did not claim that the loss of the possession of the claimed property was related to the conflict that occurred in 1998/1999 in Kosovo. He intended that the KPA Appeals Panel modifies the KPCC's Decision, by reaching the conclusion on the acquisition of the property right through the adverse possession.
12. The request of the Appellant may not be granted. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict related ownership claims and property right claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999." That means that the scope of the examination of the KPA is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. If the Commission verifies that the possession of the claimed property was lost before or after the dates indicated above, or that the loss of the possession was not related to the conflict, it shall dismiss the Claim on the basis of the Section 11.4(b) of the Law No. 03/L-079. The examination of the other elements that refer to the acquisition of the property right, e.g. through the adverse possession (art. 28 of the Law on basic Property Relations Official Gazette of SFRY, No. 6/80) falls outside the competence of the KPCC. That argument may only be proven during the proceedings before the competent Municipal Court.
13. The Supreme Court observes that indeed the Claim of the Appellant refers to transfers of the property rights that took place long before the conflict. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is unfounded and has to be rejected.
14. Considering what was mentioned above, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, 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 Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies

**Sylejman Nuredini, Presiding Judge**

**Anna Bednarek, EULEX Judge**

**Beshir Islami, Judge**

**Urs Nufer, EULEX Registrar**