

**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-030/14

Prishtinë/Priština,

16 December 2015

In the proceedings of:

H.R.

Konik

81000 Podgorica

Montenegro

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 (case file registered at the KPA under the number KPA28997), dated 11 June 2013, after deliberation held on 16 December 2015, issues the following:

JUDGMENT

1. The appeal of H.R. against the decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013, dated 11 June 2013, as far as it concerns the claim registered at the KPA under the number KPA28997 is rejected as unfounded.
2. The decision of the Kosovo Property Claim Commission KPCC/D/R/207/2013, dated 11 June 2013, as far as it concerns the claim registered at the KPA under the number KPA28997 is confirmed.

Procedural and factual background:

1. On 24 September 2007, H.R. (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of his ownership right and re-possession of a property with a house, with a surface of 701 m², which is located in street “Jovana Đorđevića”, no. 35 “Kolonija” in Gjakovë/Đakovica, Municipality of Gjakovë/Đakovica (henceforth: the claimed property).

In his claim the Claimant alleges that he lost the possession over the claimed property due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, where he mentions 12 June 1999 as the date of loss.

2. To support his claim he submitted the following documents with the KPA:
 - Transcript of the Possession List no. 1340, issued by Geodetic Institute of the Cadastral Municipality of Gjakovë/Đakovica Varosh/Varoš, Municipality of Gjakovë/Đakovica on 7 May 2009. This document shows that the parcel no. 1187/2 (consisting of “a house, building and garden”) in a total surface of 0.01.69 ha, is registered in the name of Z.H.R. (most probably the Claimant’s father) and S.H.R. (probably the Claimant’s uncle), ½ per each. The property mentioned in this

document is with the different surface (and address) from the property subject matter of the claim;

- Possession List no. 1339, issued by the Department for Cadaster Geodesy and Property of the Municipality of Gjakovë/Đakovica on 13 May 2009. This document shows that the parcel no. 1187/3 (consisting of “a house-building”) in a surface of 54 m², is registered in the name of S.R. (probably the Claimant’s uncle). The property mentioned in this document is with different surface from the property subject matter of the claim;
 - Copy of Claimant’s electronic ID card. no.003380356, dated 15 November 2011.
3. The KPA Verification Unit in its reports dated 8 March 2010, as well as the consolidated verification report dated 16 March 2010, established as far as relevant, that the submitted Possession List in the archive of Department for the Cadaster of Gjakovë/Đakovica was negatively verified.
 4. According to the KPA notification report dated 22 September 2008, the claim was notified and A.N. was found occupying the claimed property. The same notification report states that A.N. was present at the property (at the time of notification) and that he did not claim a legal right to the claimed property. On 7 June 2011, notice of participation is signed by A.N.. He explained the same as in the above mentioned report that he does not claim a legal right to the claimed property. The notification of the claim is repeated on 20 June 2011, and the same person (A.N.) was found occupying the claimed property. On 21 June 2011, the notification of the claimed property is confirmed. The confirmation report notes that based on Ortophoto, GPS coordinates and address of the claimed property, the notification of the claim property is accurate.
 5. On 11 June 2013, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/R/207/2013 refused the Claimant’s claim. In paragraph 30 of the cover decision, it is explained that the Claimant have failed to submit any evidence at all, or *“any evidence that could be verified by the Executive Secretariat, that the alleged property right holder enjoys any property rights over the claimed property, nor has the Executive Secretariat obtained ex officio any such evidence... “*.

6. On 12 November 2013, the KPCC decision was served on the Claimant (hereinafter: the Appellant). The Appellant filed an appeal with the Supreme Court on 25 November 2013.
7. The only allegation that the Appellant has made in his appeal is that the KPCC decision is incorrect. As a confirmation of the incorrectness of the KPCC decision he presented non verified Purchase Contract, dated 19 February 1989.

Legal reasoning:

Admissibility:

8. The appeal is admissible. It has been filed within the 30 days period as prescribed in section 12.1 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).
9. The Supreme Court has to answer to the question whether the Appellant evidenced his property right over the claim property.
10. The Appellant did not provide before the KPA/KPCC any evidence proving his alleged property right. Before the Supreme Court he presented a non-verified Purchase Contract, claiming that the KPCC decision is incorrect, without giving any further reasons for that.
11. The Supreme Court considers that a non-verified purchase contract as a new evidence presented by the Appellant in the appeal procedure before the Supreme Court is not acceptable and cannot be considered. This is because Article 12, paragraph 11 of UNMIK Regulation 2006/50 stipulates that: “[*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned ...*]”. Furthermore, the Supreme Court notes that the Appellant has not provided any justification as to why he could not have knowledge of the said contract.

12. The Supreme Court concludes that the appeal is unfounded, and that the KPCC has taken a correct, fair and grounded decision in complete and correct proceedings, and not as Appellant alleges in his appeal.
13. In light of the above and pursuant to Article 13.3 under (c) of UNMIK Regulation 2006/50, it was decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar