

**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- 208/14

Prishtinë/Priština,

25 January 2017

In the proceedings of:

D.S.T.

Street Bastovanska 49
18260 Niš
Republic of Serbia

Appellant

Vs.

M.R.

Lagjja “Ramiz Sadiku”, 110
Prishtinë

Appellee I

E.R.

Rruga “Jonuz Zejnullahu”
Prishtinë

Appellee II

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPPC/D/R/215/2013 (the case file registered at the KPA under the number KPA37134), dated 21 August 2013, after the deliberation held on 25 January 2017, issues the following:

JUDGMENT

1. **The Appeal of the Appellant D.S.T. against the Decision of the Kosovo Property Claims Commission KPPC/D/C/215/2013, dated 21 August 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPPC/D/C/215/2013, dated 21 August 2013, regarding the Claim registered at the KPA under the number KPA37134, is confirmed.**

Procedural and factual background:

1. On 22 May 2007, D.S.T. (hereinafter “the Appellant”) filed a Claim to the Kosovo Property Agency (hereinafter “the KPA”) asking for the repossession of an apartment with the surface of 35 m², located in Street “Kapetan Mišina” in Prishtinë/Priština (hereinafter “the claimed property”). He alleged that he was the owner of the claimed property and he had lost the possession of the same on 13 June 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
2. In order to support his Claim, the Appellant provided the following documents:
 - The copy of the Allocation Decision No 362 issued by the Gradjevinsko Industrijsko Produzeće (GIP) “Grading” Deonicarsko Društvo (D.D) from Prishtinë/Priština (henceforth “the Enterprise ‘Granding’”) issued on 30 March 1998 on the basis of which to the Appellant it was allocated the permanent use of the apartment with the surface of 12 m² with the common sanitary facilities, located at the Street “Kapetan Mišina” in Priština/ Prishtinë. According to that Decision the Appellant was obliged to conclude the lease contract with regard to the apartment.
 - The copy of the Contract on Sale No 539 concluded on 30 March 1998 between the Enterprise “Grading” from Prishtinë/Priština as the disposal right holder in the capacity of the Seller and the Appellant as a tenant in the capacity of the Buyer of the apartment No 7/6 with the surface of 34 m² located at the Street “Kapetan Mišina” in Priština/Prishtinë. The signatures of the parties were legalised by the Municipal Court of Priština/Prishtinë (No 537/99) on 05 April 1999.
 - The Confirmation Letter No 539/1 issued by the Enterprise “Grading” in Prishtinë/Priština on 30 March 1998 with which it is confirmed that the Appellant had paid the contracted amount of 38.352 Dinars with regard to the apartment located at the Street “Kapetan Mišina” in Prishtinë/Priština, as per the Contract on Sale concluded on 30 March 1998.
 - The Compliance No 543 issued by the Enterprise “Grading” from Prishtinë/Priština on 30 March 1998 through which the Enterprise “Grading” “gives its consent for the Appellant to adopt and reconstruct the apartment which was allocated to him on the basis of the Allocation Decision No 362.
 - The Power of Attorney legalised before the Municipal Court of Priština/Prishtinë, branch of Gračanica/Graçanicë under the No 2099/07, on the basis of which the Appellant authorized M.F. to find a potential buyer for his apartment, as well as, to act on his behalf before the Kosovo Property Agency.

3. The KPA Verification Reports show that the documents submitted by the Appellant could not have been positively verified, because they were not found in the respective institutions.
4. On 1 April 2008, the KPA notified physically the Claim and it was found out that the claimed property was occupied by M.R. (hereinafter “the Appellee I”) who signed the Notice of Participation, claiming a legal right to the property.
5. On 21 October 2008 M.R. filed a Response to the Claim and alleged that the claimed property was allocated to him as a residence solution immediately after the conflict as his own house was burned. He explained moreover that “the building the claimant states that he has the property rights over started to be constructed in 1998 (based on existing barracks). The premise was a temporary warehouse and it has never been inhabited by any inhabitants. In June of 1999 he would be living in a shelter without a roof”. He added as well, that “regarding these apartments there were also other claims before the HPCC” (...) which were rejected at the same time by the Municipal Court in Prishtinë/Priština”. The Appellant I requested to reject the Claim as ungrounded and to “leave the verification of the ownership of the premise to Kosovo Trust Agency or to the Special Chamber of the Supreme Court of Kosovo as competent (...) since the lawful owner of the premise is NSH KNI “Ramiz Sadiku”, which has been privatised and under liquidation”.
6. Supporting his allegations, the Appellee I presented:
 - The copy of the Decision No 647 dated 25 June 1999 through which to the Appellee I it was allocated an apartment located at the Street “Kapetan Mišina”, without indicating more details about the address and the surface of it.
 - The copy of the Certified Decision on Reconsideration Request of the Housing and Property Claims Commission with which the request for the reconsideration of the claim filed by the Appellee I was refused.
 - The copy of the Submission dated on 24 September 2007 of the Plaintiff Z.H. filed before the Municipal Court of Prishtinë/Priština in the case C.Nr. 2721/06 indicating the he extended the Claim for eviction from business premises also against M.R. .
7. The second notification of the Claim was performed on 15 April 2013 and the claimed property was found to be occupied by E.R. (hereinafter “the Appellee II”) who was present during the notification and alleged that she had an oral permission from the Appellant to use the claimed property.
8. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter “the KPCC”) rejected the Claim with its Decision KPCC/D/R/215/2013 considering that the Appellant failed to show his ownership or any other property right over the claimed property immediately prior to or during the 1998/1999 conflict.
9. The Decision of the KPCC was served on the Appellant on 25 November 2013. He submitted an Appeal against it on 23 December 2013.
10. The Decision of the KPCC was served on the Appellee I on 13 November 2013 and on the Appellee II on 14 November 2013.

Allegations of the Appellant:

11. The Appellant asserts that the KPCC's Decision is based on an erroneous and incomplete determination of facts and on misapplication of the property law. In his opinion the reasoning of the Decision of the KPCC that the KPA's Executive Secretariat was unable to verify any of the documents attached to the Claim is inaccurate. According to the Appellant the Executive Secretariat of the KPA was provided with the certified copies of the documents that support his allegation with regard to the claimed property, as well as, the original versions of the documents were verified *prima facie* by the Executive Secretariat of the KPA. For that reason he requests the Supreme Court of Kosovo to quash the rendered Decision and to refer the same for reconsideration by the KPA.

Legal reasoning:

12. The Appellant requested the confirmation of his ownership rights over the claimed property and the order for repossession of it. The Appellee I denied the Appellant's legal title to the claimed property mentioning the wrong numbering and by submitting several documents confirming his alleged rights to the claimed property. In the view of the Supreme Court, the Appeal is unfounded. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 (henceforth "the Law No 03/L-079" or "the Law"), a Claimant is entitled to an order from the KPCC for repossession of the property if the Claimant not only proves ownership of a private immovable property, but also that he or she is not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
13. The KPCC based its Decision on the fact that the KPA had made a negative verification of the documents on which the Appellant bases his Claim, including the Contract on Sale No 539 concluded on 30 March 1998. The KPA had not been able to obtain *ex officio* any evidence that supported the Appellant's Claim. Based on this, the KPCC found that the Appellant had failed to establish any property rights over the claimed property.
14. Moreover, considering that the Claim was served on two persons who occupy allegedly the claimed property and one submitted the Response to the Claim, the Appellant should have submitted further documentation in case he considered that the submission of the Appellee I was incorrect. For that reason, as the Claim was contested, it was the burden of the Appellant to prove his legal title to the claimed property. However, he failed to prove his rights. Moreover, in the Appeal, the Appellant repeats the same allegations as he has made before the KPCC. No relevant evidence was submitted.
15. From the KPA's Verification Reports it can be seen that the KPA made several efforts to verify the mentioned documents in the records of the institutions within the territory of Kosovo.
16. Consequently, the Supreme Court finds that the KPCC has made a correct Decision, based on a thorough and correct procedure. Accordingly, the Supreme Court contends that no violation of the substantial law took place and the factual situation was

established correctly on the basis of the documents gathered in the case file. For that reason, the Appeal has to be considered unfounded.

17. In the light of the foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of the 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

Sandra Gudaityte, EULEX Registrar