

**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-157/2014

**Prishtinë/Priština,
14 April 2016**

In the proceedings of:

S. D.

Appellant

vs.

K.R.

Appellee

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 KPCC/D/R/191/2013 (case file registered at the KPA under No. KPA31711), dated 13 February 2013, after deliberation held on 14 April 2016 issues the following

JUDGMENT

1. **The Appeal of S. D. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013, dated 12 February 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013, dated 12 February 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA31711.**

Procedural and factual background:

1. On 7 March 2007, S. D.(hereinafter referred to as: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking the repossession of the apartment of the total surface of 70,48m² located on the first floor in the building constructed in former “Vidovdanska” Street in Klinë/Klina, on a parcel No. 585 (hereinafter referred to as: the claimed property). As the date of the loss of the property he indicated 18 June 1999. The Appellant explained that he was the owner of the apartment, which he re-purchased in 1998, although he is not in possession of the contract, nor was able to obtain a copy of it from the Municipal Court in Leskovac. As the claimed property has been being used by K. R. without his acceptance, the Appellant requested the compensation.
2. Together with the Claim the Appellant submitted to the KPA the Copy of the Allocation Decision of the Apartment (02.No. 360-2 issued in Klinë/Klina on 7 December 1998). The Decision was signed by the Appellant himself acting on behalf of the Municipal Commission for the allocation of Apartments from the Funds of Solidary Housing Construction and Budgetary Funds. Subsequently he also submitted the Contract on sale of the Apartment dated 30 December 1998. Both documents were negatively verified by the KPA
3. The case was registered under the number KPA31711.
4. The Claim was notified on 11 June 2007. According to the Notification Report the claimed property was found to be an apartment. At the time of the visit the premise was found to be occupied by K. R., who was present at the property, signed a notice of participation and declared not to claim the legal right over the property.

5. On 8 October 2012 the Appellee submitted to the KPA the Copy of the Decision 344/99 issued on 18 October 1999 by the Municipality of Klinë/Klina.
6. Recognising the Appellee's user right over the claimed property based on humanitarian needs.
7. On 13 February 2013, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/R/191/2013 (hereafter to be referred to as: the KPCC's Decision) dismissed the Claim. In the reasoning of the Decision (paragraphs 9, 27, 28 and 65), the KPCC underlined that the Appellant had failed to show that his Claim involved circumstances directly related to or resulting from the 1998/99 conflict, as well as to show that he had possession over the apartment.
8. The KPCC's Decision was served upon the Appellant's son on 24 March 2014. On 16 April 2014 the Appellant filed an Appeal against the KPCC's Decision.
9. The same Decision was served on K. R. on 14 January 2014.

Allegation of the parties

10. The Appellant requests the Supreme Court of Kosovo "to quash the Decision and order the KPCC to issue a decision recognising his property rights over the apartment". In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves serious breach of substantive and procedural law. In the Appellant's opinion the violation of the law manifested in non-recognition of his property rights over the apartment, as a starting point. He also questioned the reasoning of the Commission when it stated that the Appellant had not proved the loss of possession had taken place in circumstances related to the conflict. The Appellant indicated he was a refugee in 1999, and was prevented to possess any property.
11. On 12 September 2014 K. R. submitted an unsigned Response to the Appeal.

Legal Reasoning

12. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.

13. The Appellant alleged to have acquired the ownership rights over the claimed property in accordance with the law. The documents he submitted did not prove that circumstance. The Supreme Court contends that the examination of the evidence and its assessment was done correctly by the KPCC.
14. According to Article 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, *“The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:*
- (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and*
- (b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,*
- where the claimant is not now able to exercise such property rights”.*
15. In the opinion of that Court, none of the documents submitted by the Appellant proves the Appellant possessed the claimed property before or during the conflict. As it was established by the KPA in support of his Claim the Appellant submitted the allocation decision and a purchase contract, none of which were positively verified. Moreover the allocation decision was signed by the Appellant himself in the capacity of the Head of Housing Commission of the Municipality of Klinë/Klina. From the documents submitted by the Appellee however (i.a. a contract on construction) it appears, that the claimed property was under construction during the conflict. Furthermore, in the phone conversation held with the KPA’s representative, the Appellant had stated that he had never lived in the claimed property, as it was still unfinished prior to the conflict in 1998 and even had never been displaced from Kosovo.
16. The mandate of the KPA is though, to examine the cases "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. The wording of Section 3.1

“conflict-related claims involving circumstances directly related or resulting from the armed conflict” implies a direct link between the dispossession and the armed conflict or a close link of cause and effect which is missing in the present case. In the view of the Supreme Court there are enough elements in the case file showing that the apartment as such was not finalized yet at the moment the conflict occurred. For that reason the constation of the Appellant referring to the possession of the claimed property prior or during the conflict is to be considered as not matching the reality.

17. This leads the Supreme Court to the conclusion that the subject matter of the Claim failed outside the jurisdiction of the KPCC and the Appellant’s Appeal stands to be rejected as unfounded and the appealed KPCC’s Decision to be confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

18. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

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

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar