

**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-095/15

**Prishtinë/Priština,
13 September 2017**

In the proceedings of:

S. L.

Appellant

vs

M. B.

Istok i Poshtëm

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Isa Kelmendi, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 dated 30 April 2014 (the case file registered at the Kosovo Property Agency under the number KPA14020) after the deliberation held on 13 September 2017, issues the following:

JUDGMENT

1. **The Appeal of S. L. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 dated 30 April 2014 with regard to the Claim registered under the number KPA14020 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 dated 30 April 2014 with regard to the Claim registered at the Kosovo Property Agency with the number KPA14020 is confirmed.**

Procedural and factual background:

1. On 9 August 2006, S. L. (henceforth “the Appellant”) filed a Claim with the Kosovo Property Agency (henceforth “the KPA”) seeking the ownership right over the business premises located at the cadastral parcels No 1705 and 1706, at Trg Kralja Petra I Street in Istog/Istok, composed of the ground floor and the first floor, with the total surface of 185 m² (henceforth “the claimed property”). The Appellant stated that he was the owner of the claimed property and that the loss of the possession is related to the armed conflict that occurred in Kosovo in 1998/99, indicating 14 June 1999 as the date of loss.
2. To support his Claim, the Appellant provided the KPA with the following documents:
 - The copy of the Decision on Allocation with the No 07-184 issued by the Municipal Assembly of Istok/Istog on 25 April 1996 whereby the Appellant was allocated for use the urban construction land: the cadastral parcels No 1705 and 1706 with the total surface of 00.00.81 ha, registered at Possession List No 85 and Possession List No 828. The purpose of the allocation of the urban construction land was construction of the business premise.
 - The copy of the Contract on Allocation of the Construction Land for Use concluded on 2 February 1999 between the Department for Economy, Finance, Urbanism and Municipal Affairs of the Municipality of Istok/Istog and the Appellant whereby the latter one was allocated the urban construction land with the surface of 00.00.81 ha, registered in the Possession Lists No 850 and 828, for construction of residential building in accordance with the Decision on Allocation No 07-184 dated on 25 August 1996.
3. The Notification of the Claim was performed on 20 March 2013. According to the Notification Report, the cadastral parcel No 1705 was found to be a city park, while on the cadastral parcel No 1706 there was found to be commercial building (barber shop), occupied by M. B. (hereinafter “the Appellee”) who claimed the legal right over the property and signed a Notice of Participation. The Appellee explained to have been using the parcel since 1965 on the basis of the permission of the Municipality.
4. The Appellee submitted the following documents:
 - The Copy of the Decision No 1970 issued by the Municipal Assembly of Istok/Istog, Department for Economy and Finance on 27 February 1970 through which the Appellee was given the consent for establishing a private business premises (hairdresser). No detail about the property was specified.
 - The copy of the Decision No 31/2002 issued by the Municipal Assembly of Istok/Istok, Directorate for Economy and Finance on 21 May 2002 obliging the Appellee to pay tax in the amount of 50 Euro for using the municipal land, for the period between 1 January until 31 December 2002.

5. According to the Verification Reports of the Executive Secretariat of the KPA none of the documents submitted by the Appellant have been verified as being genuine. The Officer of the Department of Urbanism of the Municipality of Istok/Istog confirmed that the Decision on Allocation No 07-184 was issued only for a temporary use, even though the Department for Urbanism is currently not in possession of the Decision. The Contract on Allocation of the Construction Land for Use concluded on 2 February 1999 instead was issued during the 1998-1999 conflict, thus, it was not found. The Department for Cadastre of the Municipality of Isog/Istok presented a Possession List No 828, which shows the cadastral parcel No 1705 being a socially-owned property registered under the name of the Municipal Assembly of Istok/Istog and a Possession List No 850 showing the cadastral parcel No 1706 being a socially-owned property registered under the name “Rrugë Publike” (Public Roads).
6. Considering that the Appellant used to live in Norway, on 4 February 2014, the Appellant’s sister L. Đ. was contacted by the Executive Secretariat of the KPA and informed that the claimed structure did not exist anymore and requested that the Appellant provided of additional documents demonstrating the ownership right over the claimed property (page 193 of the case file).
7. With the letter dated 11 February 2014, the Appellee informed the KPA that he has not been using the claimed properties, but the adjacent shop. Consequently he did not question the right of the Appellant.
8. On 24 April 2014 the Executive Secretariat of the KPA delivered to the Appellant’s sister a written notice of potential inadmissibility of his Claim and provided a 15 days deadline to submit documents. The Appellant did not submit new documentation.
9. The Kosovo Property Claims Commission through its Decision KPCC/D/C/240/2014 of 30 April 2014 decided to refuse the Claim explaining that the Appellant has failed to show a property right over the claimed property immediately prior to or during the 1998-1999 conflict. The Commission clarified that the administrative Decision of 25 April 1996 issued by the Municipality of Isog/Istok, submitted by the Appellant was of a temporary character. Moreover, the certificate for immovable property obtained ex officio by the KPA shows the land being registered under the name of the “P.Sh. K.K. Isog/Istok”.
10. The Decision was served on the Appellant on 8 September 2014. He filed an Appeal on 9 September 2014. The Appellee received the Decision on 17 September 2014 and subsequently refused to receive the copy of the Appeal.

Allegations of the Appellant

11. The Appellant alleges that the KPCC’s Decision is based on an erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. He states that from the reasoning of the KPCC’s Decision one cannot understand what the subject of the Claim was. He repeated that he had requested the confirmation of the ownership right over the business premise located at the cadastral parcels No 1705 and 1706 with the surface of 00.81.00 ha, registered in the Possession Lists No 850 and 828. As the business premise was constructed on the above mentioned parcels he requested also the confirmation of the right of use over them. Furthermore, the Appellant declared that from the reasoning of the challenged Decision it can be seen that the right to assess and interpret the documents he filed was given to the officer of

the Municipality of Istok/Istog, instead of evidence being assessed by members of the Commission. The Appellant insist that the paragraph No 1 of Ruling on Allocation with the No 07-184 states: *“Construction land allocated for use”*. Paragraph No 2 states: *“Specified Cadastral Parcels are allocated for construction of business premise. Construction land is allocated with compensation, according to provisions of the Decision of the Municipal Assembly of Istok/Istog”*. Nowhere in the Ruling was it specified that it was allocated for constructing of the building of neither the temporary nature nor that were the cadastral parcels allocated for temporary period of time. The Appellant referred to the Articles of the Law on Construction Land (Official Gazette of the FRS, No 20/79, 16/83, 38/84, 14/80-amended 53/93, 67/93 and 48/94) to support his Appeal.

12. The Appellant requested the Supreme Court of Kosovo to schedule a hearing in order to enable him to explain and confirm the allegations of the Appeal. Finally, he motions the Supreme Court to approve his Appeal and grant the Claim.

Legal reasoning:

13. The Appellant challenges the Decision claiming that he was the owner and possessor of the permanent construction before the conflict, and the possession of it he had lost due to the circumstances related to the events that took place in Kosovo between 1998/1999.

14. After the review and the assessment of the documents and submissions contained in the case file, the appealed Decision and the allegations of the Appellant, the Supreme Court found that the Appeal is ungrounded, as the factual situation was established correctly by the KPCC. That conclusion had to lead to the rejection of the Appeal.

15. According to the Ruling on Allocation with the No 07-184 issued on 25 April 1996, the Appellant was allocated the socially-owned construction land (the cadastral parcels No 1705 and 1706) with the purpose of construction of a business premise. Following the Decision on Allocation, the Appellant concluded the Contract on Allocation of the Construction Land for Use with the Department for Economy, Finance, Urbanism and Municipal Affairs of Municipality of Istok/Istog on 2 February 1999. The Contract however, described the purpose of the allocation as: *“to construct a residential building on the land allocated for use, in accordance with the urban plan”*.

16. Paragraph No 2 of the abovementioned Contract lists the conditions under which the land was allocated to the Appellant. Those conditions are as below:

- The construction permission shall be obtained within 30 days from the day of entry in to force the Contract on Allocation.
- The business premise shall be completed within 3 years from the date when the Contract on Allocation is concluded.
- The user of the urban construction land shall pay the appropriate fee for regulation of the urban construction land before he gets the permission for construction of the premise.
- The user of urban construction land may construct other auxiliary building only once got the permission of the authority of the Department for Economy, Finance and Urbanism Municipal Affairs of the Municipality of Istok/Istog.

17. First of all, it has to be noted that the Contract signed in February 1999 indicated the deadline for construction as 3 years from the date it was concluded. That means that the Appellant claims that already during the conflict in Kosovo he has started the

construction. However, at the same time he mentions that 14 June 1999 he already left Kosovo. In absence of any documentary evidence proving the existence and the possession of that premise before the conflict, a thorough analysis of the content of the documents submitted by the Appellant together with the statement given by him, leads to a conclusion that the circumstance of being in possession and having the title to the premise and the land below it, was not proven during the proceedings before the Commission. Thus the Decision of the KPCC was correct. On the other hand the discrepancy between the Decision and the Contract with regard to the purpose of construction (residential or commercial) could not lead to different assessment of the Claim.

18. Moreover, the Executive Secretariat of the KPA made a negative verification of the Contract on Allocation of the Construction Land for Use allegedly concluded on 2 February 1999 and that is the main document on which the Appellant based his Claim for ownership and re-possession over the business premise.
19. The Supreme Court also evaluated the Appellant's motion to schedule a hearing and considered that all circumstances necessary to adjudicate the case needed no more clarification. Thus the interest of justice did not require holding an oral hearing.
20. 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. This Judgement remains without prejudice to the right of the Appellant to pursue his claims before the competent court, if he considers it necessary.

Legal Advice

Pursuant to Section 13.6 of Law No 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Sylejmani, Presiding Judge

Isa Kelmendi, Judge

Anna Bednarek, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar