

**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- 251/13

**Prishtinë/Priština,
19 May 2015**

In the proceedings of:

S. S.

Appellant /Respondent 1

G. R.

Respondent 2

Vs.

Z. (P.) M.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/200/2013 (case file registered at the KPA under the number KPA 44995), dated 18 April 2013, after deliberation held on 19 May 2015, issues the following:

JUDGMENT

1. **The appeal of the appellant against the decision of the Kosovo Property Claims Commission KPPC/D/C/200/2013, dated 18 April 2013, is rejected as unfounded.**
2. **The decision of Kosovo Property Claims Commission KPPC/D/C/200/2013, dated 18 April 2013, regarding the claim registered at the KPA under the number KPA44995, is confirmed.**

Procedural and factual background:

1. On 26 September 2007, the Claimant Z. M. filed a claim asking for the repossession of a shop with the surface of 50 m² (hereinafter: the claimed property), located in cadastral parcel no 158/3 in the place called Sopina, in Suharekë/Suvareka .
2. Together with the claim, he provided the copy of the possession list no 419 issued by the Republic of Serbia, Geodesy Office, Centre for Immovable Property, in the Municipality of Pristina, Cadastre Suva Reka, on 8 October 2002, indicating the name of the possessor of the cadastral parcel nr 158/3 as Z. (P.) M. The possession list submitted by the claimant is positively verified by the KPA. The Certificate issued by Kosovo Cadastral Agency of Kosovo on 3 June 2008, certificate number UL-72116043-00419, indicates that the cadastral parcel 158-3 in the Municipality of Suharekë/Suva Reka, cadastral zone Sopijë/Sopina, in the place Shiroko/Pllaci Shtepis is registered under the name of the claimant Z. M.(P).
3. The claimed property was notified to the occupants, who were present during the notification, to Xh. S. on 31 January 2008 and to G. R. on 1 February 2008. The publication took place on 4 March 2008.
4. During the notification, Xh. S. did not claim any legal right over the claimed property but stated that he presumed having the consent of the claimant to build the premises. Later on S. S. himself visited the KPA office and filed a notice of participation (Respondent 1). G. R.(Respondent 2) filed a notice of participation on 1 February 2008. None of them submitted any supporting documents to prove or justify their occupying the property. No evidence is presented as to their statements.
5. On 18 April 2013, the KPCC granted the claim considering that the claimed property is registered under the name of the claimant and none of the Respondents filed any documents to prove on the contrary.
6. The Decision of the KPCC was served on both Respondents on 22 July 2013. The service on S. S. was effected to his brother S.S. (bother) without the written notice as required by article 110 paragraph 2,3,4 of the LCP. Only S. S. (hereinafter the appellant) submitted an appeal against it on 22 August 2013.
7. The appeal was served on the claimant on 29 November 2013 and on the Respondent 2 on 3 December 2013, respectively. The claimant filed a response to the appeal on 24 December 2013 whereas the Respondent 2 did not file a response.

Allegations of the parties

Appellant/Respondent 1

8. Appellant admits that he has possessed the building; however, he does not contest the claimant is the owner of the claimed property. He alleges that he cleaned the place and property of the claimant and based on his agreement and law on use in account of construction and investments made in that building, he constructed a new building. He further argues that the value of the premise he constructed on the land is higher than the land itself. He states that he had been in contact with the claimant after the conflict and he is still ready to purchase the claimed property. He states that he built the premise with the intention to purchase it and since then they have been negotiating to conclude the sale contract.

Claimant/Appellee

9. The claimant alleges that he is the owner of the claimed property for which he provided evidence. He claims that he lost the possession of it due to the conditions deriving from the armed conflict. He denies the allegations of the appellant. He states that he never agreed on the sale of the property and never gave his permission to S.S. to build anything on his parcel.

Legal reasoning:

Admissibility of the appeal

10. The appeal was not filed outside the 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079- hereinafter Law 03/L-079). The service on the Appellant was not carried out in full compliance with the provision of the LCP as set in article 110 paragraphs 2, 3, 4 and then following the procedure in article 111 of the LCP. So the term did not start at 22 July 2013. Accordingly the Appeal filed 31 days after the decision is served at the brother of the appellant is to consider timely as there is no prove in the file when the appellant became aware of the decision which should have been served personally on him. The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal

11. The appellant admit claimant was the owner of the claimed property but claimed to have built premises with the consent of the claimant allegedly given in person. He did not provide any evidence in this regard. Furthermore, he admits that no purchase contract has been concluded up to now while he expresses that he is still ready to buy it.
12. More importantly, the Supreme Court notes that the appellant's allegations are based on constructing premises on a land which is not registered under his name. Accordingly, his allegations are based on either Article 24 or 25 of the Law on Basic Property Relations (Official Gazette of SFRY, No 6/80) as applicable law of then as to the legal grounds.
13. Regardless of whether the appellant has acquired the consent of the claimant to build the premises on it; whether he is in good faith or not; and at last, whether the value of the premises built on the claimed property is higher than the value of the land itself, such alleged rights based on building a house/premises in good faith on a land over which somebody else holds the property on such legal grounds is out of jurisdiction and competence of the KPA Appeals Panel of the Supreme Court.
14. This is because, the KPCC, accordingly the KPA Appeals Panel can only examine any claim involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

15. The appeal is, therefore, rejected as unfounded. Accordingly, the decision of the KPCC is to be confirmed pursuant to Section 13.3 (c) of the UNMIK Regulation No 2006/50, as amended by Law No 03L-079.

Legal Advice

Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies. This judgment is without prejudice of the appellant to pursue his rights, if exist, before the competent courts for other legal grounds.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar