

**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-144/2015**

**Prishtinë/Priština,  
25 October 2017**

In the proceedings of:

**B. B.**

**Appellant**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 (the case file registered with the Kosovo Property Agency under the number KPA44333) dated 18 June 2014, after the deliberation held on 25 October 2017 issues this:

## JUDGMENT

1. The Appeal of B. B. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 dated 18 June 2014, regarding the Claim registered with the KPA under the number KPA44333, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 dated 18 June 2014; regarding the Claim registered under the number KPA44333 is confirmed.

### Procedural and factual background

1. On 22 June 2007, B. B. (hereinafter “the Appellant”) filed a Claim with Kosovo Property Agency (hereinafter “the KPA”) seeking the re-possession of the business premise with a surface area of 13.12 m<sup>2</sup>, located in “Kralja Petra” (artisan shops center), premise No.1, in Prishtinë/Priština Municipality (hereinafter “the claimed property”). He claims to have purchased the premise from the “Grading” construction enterprise from Prishtinë/Priština and to have lost possession of it in June of 1999.
2. To support his Claim, the Appellant provided the KPA with the following documents:
  - Contract on Sale and Purchase of Business Premise concluded between the Appellant and the Industrial Constructions Enterprise “Grading” from Prishtinë/Priština a, registered in the Books of “Grading” Enterprise under the number 2817 on 23 July 1992 ( it was not certified in court).
  - Decision No. 8 on Granting of an Approval for Connection to the Power Grid. dated 3 January 1996
  - Appellant’s identification card issued by the parallel authorities of Prishtinë/Priština on 1 February 2002.
  - Receipt of payment of a part of the purchase price by the Appellant to the “Grading” Enterprise.
3. On 11 January 2008 the KPA visited the claimed property and confirmed it was a shop being used by an unknown person.
4. On 8 February 2008, A. Ç. from Prishtinë/Priština (hereinafter “the Appellee”) signed a Notice of Participation stating he did not claim any legal rights to the claimed property. On 20 November he filed Response declaring that he had an agreement with the Appellant allowing him to use the claimed property, whereas the Appellant was entitled to use his business premise in northern part of Mitrovicë/Mitrovica. The Appellee did not submit documents to support his allegations.
5. According to the Consolidated Verification Report dated 26 May 2014 the KPA’s Executive Secretariat, , was unable to verify any of the documents presented by the Appellant.
6. On 30 April 2014, the KPCC with its Decision KPCC/D/C/248/2014 rejected the Appellant’s Claim with the reasoning (in paragraphs 40 and 41) that the submitted documents could not be verified in any public institution where the documents were apparently issued, whereas the party, upon the request of the Secretariat, failed to bring new pieces of evidence and consequently the Appellant failed to prove that he had lost possession as a result of the conflict, as he did not prove ownership or any other property right over the claimed property immediately prior to or during the conflict of 1998-1999.

7. Decision was served on the Appellant on 27 November 2014, whereas he filed an Appeal on 26 December 2014.

### **Admissibility of the Appeal**

8. The Appeal was filed within 30 days as foreseen by Article 12.1 of the Law No. 03/L-079 and is admissible.

### **Allegations of the Appellant**

9. The Appellant challenged the KPCC's Decision stating that it was based on erroneous and incomplete determination of the factual situation and involves misapplication of material and procedural law. According to the Appellant, he is the owner of the claimed property based on submitted evidence. It is not clear to him why the Claim was rejected and why the KPA's Executive Secretariat could not verify documents that prove his property right despite the fact that according to him, he submitted the evidence from which it can be seen that the sale and purchase contract was fulfilled almost in entirety with regard to the payment of the purchase price.
10. The Appellant repeated the same allegations as in the first instance, presenting the same documents that were subject of the analysis of the KPCC.

### **Legal reasoning**

11. The Supreme Court reviewed the challenged Decision pursuant to provisions of the Article 194 of the Law on Contested Procedure No. 03/L-006 (hereinafter "the LCP") and after evaluating the Appellant's allegations concluded that the Appeal is unfounded.
12. The Supreme Court ascertains that the KPCC issued a correct Decision when it rejected the Claim with the reasoning that the Appellant failed to prove any property rights before or during the conflict.
13. Pursuant to Article 3.1 of the Law 03/L-079 Amending UNMIK Regulation 2006/50 On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, the Claimant is entitled to an order from the KPCC for re-possession of the property, if the claimant proves his property right or his right to use to a private property, including agricultural and commercial property, and also proves that he/she was not able to exercise such rights due to the circumstances directly related to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 or because of circumstances resulting from this conflict.
14. According to this legal provision, the Appellant should have submitted the evidence to support his Claim in order to prove the ownership right or the right to use of the immovable property.
15. The KPCC based its Decision on the fact that Appellant did not submit any evidence that could be verified by the KPA that he, as a property right holder, enjoys any ownership rights over the property, as well as on the fact that the Executive Secretariat *ex officio* did not find such evidence.
16. The only piece of evidence that refers to the Appellant as the owner is the contract, which was not certified in the court, and as a consequence as such does not constitute the alleged property right. Article 20 of the Law on Basic Property Relations (OG SFRY No 6/80, 36/90) foresees that "*The property right can be acquired by law itself, based on legal affairs*

*and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law”- which implies the written form, certification by authorities and registration of property in the public registries. The Law currently in force No. 03/L-154 on Property and other Real Rights under Article 36 foresees that “1. The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.*

17. The KPA found no evidence in public records that the property was registered under the Appellant’s name and the Appeal repeated the same allegations he had made before the KPCC.
18. Taking into consideration the above, the Supreme Court concludes that the KPCC issued a right and grounded Decision based on a correctly applied procedure. Consequently, the Court finds that there was no violation of the material law or incomplete determination of the factual situation.
19. Considering what was mentioned above and pursuant to Article 13.3, (c) of the Law No. 03/L-079, it was decided as in the enacting clause of this Judgment.

### **Legal advice**

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

**Beshir Islami, Presiding Judge**

**Anna Bednarek, EULEX Judge**

**Shukri Sylejmani, Judge**

**Bjorn Olof Brautigam, Acting EULEX Registrar**