

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-001/13
Prishtinë/Priština,

10 December 2013

In the proceedings of

K.M

Appellant

vs.

Z. Ž

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/74/2010 (case file registered at the KPA under the number KPA 17552) dated 21 April 2012, after deliberation held on 10 December 2013, issues the following

JUDGMENT

The decision of the KPCC/D/C/74/2010 regarding case files registered at the KPA under the number KPA17552 is annulled and sent back to the KPCC for reconsideration.

Procedural and factual background

1. On 13 November 2006 Z.Ž filed a claim with the Kosovo Property Agency (KPA), seeking ownership of a 13 square meter commercial property, which had been used a shoemaker's shop, in Beli Drin Street in Klinë/Klina. With the claim he submitted a contract between the public utility company "Tikvesh" and Z.Ž dated 2 July 1997, according to which he bought the property for 46 800 new dinars.
2. In the claim it was stated that property was occupied by D.D.
3. On 2 February 2009 the KPA made a notification of the claim at the property, which had been converted into a cafeteria. The person present refused to identify himself and also refused to sign a notice of participation. No response was made to the claim.
4. On 21 April 2010 the KPCC granted the claim of ownership and possession, and ordered any person occupying the property to vacate the property within 30 days.
5. K.M appealed the KPCC decision on 1 November 2012. In the appeal it is stated that the municipality received notice of the KPCC decision on 29 October 2012. The appeal was served on Z.Ž on 6 March 2013. He has responded to the appeal within the time limit of 30 days on 25 March 2013.

Arguments of the parties

6. Klinë/Klina Municipality claims that the KPCC has made a procedural mistake because it did not look into the relevant public cadastral records, and because it did not allow municipality to act as a party in the proceedings. This has in turn led to an erroneous and incomplete determination of the

facts of the case. Klinë/Klina Municipality was not aware of the case or of the decision made by the KPCC decision before 29 October 2012.

7. The building is constructed on the cadastral parcel nr. 537/1, which is registered as socially owned property of the Municipal Assembly of Klinë/Klina.
8. The Publicly Owned Enterprise Tikvesh was the successor of the former SGCI of Residence in Klinë/Klina, which had the competence of intermediating the right of use, and not ownership, as all the similar SGCI in Kosovo. A company cannot sell property that it does not own.
9. Under any circumstance the transfer would have been forbidden according to the legislation which was in force in 1989: Art. 3 paragraph 2 nr. 1 and 2 of the Law on Contested Procedure “Official Gazette of SFRY nr. 4/77, Art. 3 of the Law on Contracts and Torts “Official Gazette of SFRY nr. 29/78, both of which state that it was forbidden to transfer municipal public property to a private citizen.
10. According to the Art. 29 of Law on Basic Property Relations “Official Gazette of SFRY no. 6/80, objects that are under public property could not be acquired by adverse possession.
11. Klinë/Klina Municipality has leased the property to A.Gj from Klinë/Klina. He now has legal possession of the property.
12. Z.Ž states that the decision of the KPCC is correct and is in accordance with Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079 (UNMIK 06).
13. Z.Ž is the exclusive property rights holder to the disputed structure. This is proven by the contract dated 2 September 1997 between Z.Ž and the Private Utility Company “Tikvesh”. This was a sales contract whereby Z.Ž bought the structure for 46 800 new dinars, which is the equivalent of DM 22 000. The purchase price has been paid in full. The signatures on the contract were certified by the Municipal Court of Klinë/Klina on 26 December 2012.
14. Z.Ž lost possession of the property due to the armed conflict that occurred between 27 February 1998 and 20 June 1999.

15. The sale has not been registered in the cadastral books because the building, like several buildings around, lacked permission for moving in. It was therefore not possible to register Z.Ž as the owner in the cadastral books.
16. Z.Ž claims he is the owner of the property, and demands to have property right restored. If the Supreme Court fails to reinstate his ownership rights, he will try the case before the European Court of Human Rights in Strasbourg.

Legal reasoning

17. K.M was not a party in the proceedings before the KPCC. According to Art. 12.1 a decision by the KPCC can be appealed by a “party” before the KPCC. However, the Supreme Court has stated in numerous cases, *inter alia* in case nr. GKS-KPA-A-109-2012 that this circumstance cannot go to the detriment of an appellant with a legal interest who has not been correctly notified of the claim.
18. In the present case the possessor of the property, who was designated as occupant, was notified of the claim. He refused to identify himself and also refused to sign a notice of participation. No further attempt of notification was made. No sign was put up on the premises or in another location, and there is no indication in the case file that an announcement was made in the Notification Gazette of the KPA or the UNHCR Bulletin. The KPA has not made a “reasonable efforts” to notify of the claim as required by section 10.1. Accordingly the municipality, which has a legal interest in the case, was not aware of the claim, and did not have a possibility to respond to the claim. The Supreme Court notes that the present case is not parallel to case nr. GSK-KPA-A-62-12, where an announcement was made in the Notification Gazette of the KPA and the UNHCR Bulletin.
19. Klinë/Klina Municipality appealed the KPCC decision within 30 days after it was made aware of the case and the decision. The Supreme Court finds the appeal admissible.
20. At the time the KPCC made its decision, the claim was uncontested. Accordingly the KPCC had no opportunity to assess the arguments of the municipality, that:
 - the property was socially owned property, and that
 - according to legislation the property could not be sold to a private person, and that

- the publicly owned company Tikvesh was not the owner and could not sell the property.

21. The Supreme Court has in several cases, where the claim was treated as uncontested and the appellant was unaware of the claim, found it necessary to annul the decision of the KPCC and return the case for reconsideration. The Court refers to case nr. GSK-KPA-A-14-2012. This procedure allows the appellant to take part in the proceedings before the first instance, and allows the losing party to appeal a decision that has been made after a full review of all relevant aspects of the case.

22. In the present case the Supreme Court finds this procedure necessary in order to obtain a fair trial. The decision of the KPCC is annulled and sent back for reconsideration. When reconsidering the case, the KPCC must decide whether

- the KPCC has jurisdiction over the case in accordance with Section 3.1 of UNMIK 06, and

- If yes, assess the merits of the case, taking into account the arguments of the municipality.

Legal Advice

23. Pursuant to Section 13.6 of UNMIK 06, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar