

**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-130/13

Prishtinë/Priština,

26 March 2015

In the proceedings of:

Z D M

M M Str. 18/24

11 ... B

Appellant

Vs.

S B

R B No.5

P /P

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Esma Erterzi, judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/168/2012 (case file registered at the KPA under the number KPA14799) dated 5 September 2012, after deliberation held on 26 March 2015, issues the following:

JUDGMENT

1. **The appeal of Z D M against the decision of the Kosovo Property Claims Commission KPCC/D/C/168/2012 dated 5 September 2012 as far as it concerns the claim registered at the KPA under the number 14799 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claim Commission KPCC/D/C/168/2012 dated 5 September 2012, with regards to the claim registered at the KPA under the number 14799 is confirmed.**

Procedural and factual background

1. On 1 December 2006 Z D M (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking the confirmation of the ownership right and re-possession of the premise that has served as an advocacy office, with a surface of 13 m² which was located in the parcel no. 559/1, in Kralja Petra Prvog str. nr.16, Municipality of Peja/Peć. In his claim the Claimant alleges that he cannot exercise his property right in the advocacy office due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99 where he mentions 12 June 1999 as the date of loss and that the same office has been occupied by Selim Berisha.
2. To support his claim he submitted the following documents with the KPA:
 - The Decision 02-Nr.463/157 dated 8 April 1996 issued by the Municipal Assembly of Peja/Peć, Secretariat for Urban Planning, Services and Housing which gives Z M the right to permanently use part of the parcel 559/1 with a surface of 12m², construction land under social ownership in order to establish a construction unit and legalize the advocacy office which was illegally constructed. The decision does not specify if the object is a permanent or provisional character structure.
 - Written statement dated 4 February 2012, where the Claimant alleges that he has purchased the claimed property in 1995 from the deceased lawyer G V . In 1996, based on the Decision 02-br.463/157 issued by the Municipal Assembly of Peja/Peć, Secretariat for

Urban Planning, Services and Housing, his permanent use right was recognized on part of parcel 559/1 which was a construction land under social ownership. Based on the same decision his advocacy office which was constructed on part of the abovementioned parcel was legalized. The Claimant alleges that he was forced to leave Peja/Peć because of the circumstances of conflict and after his displacement S B has moved in the claimed property and uses the same since 2000 without having any legal basis for that. He denies all allegations of S B who has been undertaking a number of actions and has been submitting documents from 2007 onwards to prove that the claimed property does not belong to the Claimant, and the only reason for that was to justify the illegal using of the office.

3. On 22 October 2010, the KPA has made the notification of the property by placing a sign in the location where the advocacy office was located and the same was found to be under the possession of Selim Berisha (hereinafter: Respondent). The notification of the property was checked again in March 2011 based on the GPS coordinates and the orthophoto and was established that it was properly done.
4. On 16 July 2008, the Respondent takes part in the proceedings before the KPA where he denied the allegations of the Claimant.
5. To support his allegation he submitted with the KPA, among others, the following documents:
 - Report on Judicial Expertise as per case Nr.13/07 dated 24 January 2007 in connection to assessment of investments in the office and the determination of the position of the constructed office as an annex by S B .
 - Minutes No. 13/07 dated 26 January 2007, prepared by the Municipal Court of Peja/Peć. With the request of the proposer, S B , the evidence in connection to the cadastral identification of the advocacy office in which he exercises his activities was obtained.
 - Report no : 01-8/11 dated 26 January 2007, prepared by the Municipality of Peja/Peć for the Municipal Court of Peja/Peć. In the report it is established that based on the official evidence of the Service for Legal Property Matters, it has been confirmed that the construction land was not allocated for use to Z M with the purpose of establishing a construction unit and legalization of the constructed object for exercising the activity of advocacy in part of the parcel 559/1. According to the report with No.: 01-8/11, the Decision 02-nr.463/157 dated 8 April 1996 was forged.
 - The copy plan dated 26 January 2007 issued by the Municipal Assembly of Peja/Peć, Department for Cadastre, Geodesy and Property. According to the copy plan, parcel 559/1 is registered as social property in the name of Municipal Assembly of Peja/Peć.

- Criminal charges filed with the Municipal Prosecution Office in Peja/Peć on 31 January 2007 by S B against G L and Z M because of the grounded suspicion of document forgery.
 - Written statement dated 12 February 2007 where the Respondent alleges that the Claimant supports his allegation on forged and untrue evidence. The Respondent initially states that he exercises the activity of the lawyer in the office which was neither constructed in parcel 559/1 nor in street Kralja Petra Pervog no.16 as stated by the Claimant. Moreover, the Respondent states that Decision 02-nr.463/157 dated 8 April 1996, has been forged by the Claimant and former Secretary of the Municipal Assembly of Peja/Peć, G L , and this fact has been confirmed also based on the KPA verification report. According to the Respondent, the decisions which are taken in the session of the Municipal Assembly can be signed only by the President of the Assembly and not the Secretary as the case is here and that the abovementioned Ruling has been stamped with the stamp which the former Secretary of the Municipal Assembly of Peja/Peć, G L has taken with him when he left Kosovo in 1999.
 - Summary indictment PP-nr.273/07 dated 12 September 2008 of Municipal Public Prosecution of Peja/Peć addressed to Municipal Court in Peja/Peć. The summary indictment was filed against G L , Z M and M D . The Claimant is accused for the criminal offence, Falsifying Documents from Article 332, paragraph 3 as read with Article 23 of PCKK.
6. According to the KPA verification report dated 21 May 2012, officials from the Department for Urbanism in the Municipality of Peja/Peć confirmed that Decision 02-nr.463/157 dated 8 April 1996 has neither been registered in their records nor can it be found as a physical document. The stated document has been issued by the former officials of the Serbian interim measures before 1999 whereas parcel 559/1 has been found and is registered as social property in the name of the Municipal Assembly of Peja/Peć.
 7. On 5 September 2012 the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/C/168/2012 rejected the claim. In paragraph 38-40 of the cover decision, which based on the confirmed decision dated 5 September 2012 applies exclusively to the stated claim, it is mentioned that Decision 02-nr.463/157 dated 8 April 1996 issued by the Municipal Assembly of Peja/Peć, according to which the Claimant's permanent use right over the land on which the claimed property was constructed was granted, has been verified negatively by the Executive Secretariat. Because there was no evidence to support the claim, the Commission found that the Claimant has failed to prove the ownership right over the claimed property.

8. On 14 April 2013, the decision was served on Z M and he filed an appeal with the Supreme Court on 26 April 2013 (hereinafter: the Appellant). The Respondent has received the decision on 28 January 2013 in the capacity of the Appellee.

Allegations of the Appellant

9. Z M alleges that the KPCC has made an erroneous and incomplete establishment of the factual situation and misapplication of the material and procedural law.
10. According to the Appellant, the KPA has stated that the Executive Secretariat was unable to verify the Decision 02-nr.463/157 dated 8 April 1996 issued by the Municipal Assembly of Peja/Peć which was attached to the claim. According to the Appellant this conclusion by the KPA has not been justified. The Appellant insists that he has acquired the ownership right over the claimed property based on the Decision 02.Nr. 463/157 issued by the Municipal Assembly of Peja/Peć and the same decision was never suspended or revoked nor was declared invalid. The decision is final and produces legal effect so it is unclear how it cannot be verified. The fact that the Executive Secretariat ex officio found possession list from 2006 where parcel in which the advocacy office was built appears under the name of the Municipality of Peja/Peć has no effect because the Municipality of Peja/Peć with the stated Decision has transferred the use and possession to the Appellant's name. M in his appeal alleges that in his written reply (dated 2 April 2012) to challenge the allegations of the Respondent, before the KPA he has submitted all relevant evidence and proposed hearing of witnesses by which the factual situation would have been established. However, the KPA did not accept to establish the factual situation.
11. In his appeal M has made a detailed presentation of the Decision he has submitted in order to establish his property right and proposes to the Supreme Court to cancel entirely the challenged decision and grant the request for evicting the occupant or return the claim to KPCC for retrial.

Legal reasoning

12. The appeal has been submitted within the time frame of 30 days as envisaged by Article 12.1 of the Law no. 03/L-079 and it is admissible.
13. The KPCC based its decision on the fact that the KPA and the KPCC Executive Secretariat have made a negative verification of Decision 02-nr.463/157 dated 8 April 1996 on which M supported his ownership claim.

14. The KPCC Executive Secretariat could not obtain any evidence *ex officio* which would support M 's claim. Therefore, the KPCC established that M failed to prove any property rights over the contested property.
15. The M's appeal reiterates the same allegations he previously submitted before the KPCC. No new evidence was submitted with the appeal.
16. The Supreme Court concludes that the KPCC has taken a fair and grounded decision in complete and correct proceedings. Therefore, the Supreme Court concludes that there was no violation of the material and procedural rights and also there was no incomplete establishment of the factual situation. The Supreme Court concludes that the appeal is ungrounded.
17. In light of the above and pursuant to Article 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

18. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar