

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

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL

GSK-KPA-A-088/14

**Prishtinë/Priština,
18 November 2015**

In the proceedings of

J.R.

Str. "Avalska" no. 73

Kragujevac

Serbia

Appellant

vs.

heirs of H.M.

Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin, and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013 (case file registered at the KPA under the number KPA15372) dated 21 August 2013 after deliberation held on 18 November 2015, issues the following

JUDGMENT

1. The appeal of J.R. against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, with regard to the claim registered with the KPA under no.15372 is rejected as unfounded.
2. The decision of the Kosovo Property Claims KPCC/D/C/216/2013, dated 21 August 2013, with regard to the claim registered with the KPA under no. 15372 is confirmed.

Procedural and factual background

1. On 28 September 2006, J.R. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (the KPA), seeking ownership right over the business premises located in, Ferizaj/Uroševac at “Lenjingradska” street no. 9, with a surface of 47,76 m² (the claimed property).
2. The Claimant stated that his property rights to the business premises were lost on 12 June 1999 as a result of the circumstances in 1998/1999.
3. To support his claim, the Claimant provided the KPA with the following evidentiary documents:
 - The Purchase Contract no. 550, dated 31 January 1994, which under Article 1 provides that the seller, Joint Stock Company “Yuko Mladost” (legal successor of the Social Enterprise “Station for the advancement of farming”) sold to the Claimant business premises located in Ferizaj/Uroševac, at “Lenjingradska” street no. 9, with a surface of 47.76 m². However, the Contract was not Court certified.
 - The final Judgement P.br.10/01 dated 1 April 2002 issued by the Parallel (Dislocated) Municipal Court of Ferizaj/Uroševac through which the Court recognized the ownership right over the business premises with the surface of 47.76 m² to the Claimant. The basis for recognition of the ownership right in the name of the Claimant was the Purchase Contract no. 550, dated 31 January 1994.
4. On 13 December 2006, the KPA notified the claim by putting a sign at the place where the business premises were located. It turned out to be a commercial property in possession of H.M. (henceforth: the Respondent).
5. On 7 March 2008 the Respondent participated in proceedings before the KPA by submitting :

- The Possession Lists, no. 2885 dated 4 June 1988 and 16 September 2003 issued by the Department for Cadastre Geodesy and Property of the Municipality of Ferizaj/Uroševac showing him as co-owner of parcel no. 2484/1 and parcel no. 2484/2 which are not subject to the claim.
6. According to the KPA Verification Reports of 2006, 2007 and 2013 the results of the verification of evidences submitted by the Claimant are as follow:
 - The Purchase Contract no. 550 was not found in the Joint Stock Company “Mladost”. Moreover, the contract was not certified before the Court; hence, it is negatively verified.
 - The final Judgement P.br.10/01 dated 1 April 2002 was not issued by the Municipal Court of Ferizaj/Uroševac, hence, it is negatively verified.
 - The officer of the Directory for Cadastre in the Municipality of Ferizaj/Uroševac confirmed that the business premises were located on the parcel no. 2484 which is divided into three parts. One part is a parking lot and in the other part of the parcel is built a collective building. The officer stated that as she remembers the property was socially owned. A part of it was sold by the Privatization Agency of Kosovo whereas another part (the parking lot) is under the administration of the Municipality of Ferizaj/Uroševac.
 7. On 21 August 2013 the KPCC with its Decision KPCC/D/C/216/2013, refused the claim. In paragraphs 48 and 49, which according to the certified decision apply specifically to the claim, is stated that the Purchase Contract has not been verified as being genuine by the KPA Executive Secretariat while the Judgment was issued by a parallel court of Ferizaj in 2002 and the KPCC does not consider such Judgment as valid evidence. No further evidence has been submitted by the Claimant or has been obtained ex officio by the Executive Secretariat that would support the Claimant’s claim. In these circumstances the KPCC concludes that the Claimant has failed to show ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
 8. The KPCC decision was served on the Claimant on 23 December 2013. On 22 January 2014 he (henceforth: the Appellant) appealed the decision to the KPA Appeals Panel of the Supreme Court.
 9. The KPA officer’s efforts (of 12 December 2013) for serving the decision to the Respondent have failed. The Respondent was not found at the address presented during the proceedings before the KPA.
 10. The Respondent died. On 15 May 2015 the appeal was served to his sons but they refused to accept the appeal. No successor of the Respondent joined proceedings in the appeal.

Allegations of the appellant

11. The Claimant (henceforth: the Appellant) alleges that the KPCC decision rests on an erroneous or incomplete determination of the facts.
12. Finally, the Appellant requests the Supreme Court, the KPA Appeals Panel, to adopt the appeal and review the decision of the KPCC.

Legal reasoning

13. The appeal has been filed within the time limit of 30 days set out in Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50), and is admissible.
14. The Appellant also in the appeal alleges that he bought the claimed property from the exclusive owner, the Joint Stock Company “Yuko Mladost” (legal successor of the Enterprise “Station for the advancement of farming”) in 1994. However the Appellant did not present valid evidence for his allegation to confirm the ownership right over the business premises.
15. Due to Article 4, paragraphs 2 and 3, of the Law on Transfer of Immovable Property (Official Gazette of Republic of Serbia no: 43/81), the law that was applicable on the alleged purchase in 1994, contracts on the transfer of rights to immovable property between ownership right holders – whether the sale is about socially owned property or private property - shall be concluded in writing; the signatures of the contracting parties shall be certified by the courts, and contracts which do not comply with this do neither produce any legal binding effect nor any real effect. This rule also applies for a business premise as in this case: selling a building without ground. Therefore, certification of signatures is a constitutive element of the validity and effectiveness of the contract. Considering that the immovable property contract of the Appellant, dated 31 January 1994, is not certified by the Municipal Court, the same does not produce any legal effect, and consequently the same is ineffective.
16. The Judgment rendered by the parallel Court of Ferizaj/Uroševac P.br.10/01 dated 1 April 2002 is in contradiction with Article 1 paragraph 2 of the UNMIK Regulation 1999/1, dated 25 July 1999. This legal provision stipulates that all legislative, executive and judiciary authority is vested in UNMIK and is exercised by the Special Representative of the Secretary General of the United Nations. Since this

Judgment in this case is not legalised by the competent court of Ferizaj/Uroševac the same is not legally valid and also provides no evidence for Appellant's claim.

17. The Supreme Court finds that the KPCC has made a correct decision. Accordingly the Supreme Court finds that no erroneous or incomplete determination of the facts has been made. The Supreme Court finds the appeal unfounded.
18. In the light of the foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50, it was decided as in the enacting clause of this judgment.

Legal Advice

19. Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar