

**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-034/2014

Prishtinë/Priština, 31 March 2016

In the proceedings of:

G.R.

Village Smaq/Smac
Municipality of Gjakovë/Đakovica

Appellant

vs.

V.T.

Dositejeva 154/9
Krajlevo
Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/C/208/2013 dated 11 June 2013 (case file registered at the Kosovo Property Agency (henceforth: the KPA) under No. KPA15162), henceforth also: the KPCC Decision, after deliberation held on 31 March 2016, issues the following

JUDGMENT:

1. **The appeal of G.R. against the Decision of the KPCC no. KPCC/D/C/208/2013, dated 11 June 2013, is rejected as unfounded.**
2. **The decision of the KPCC no. KPCC/D/C/208/2013 is confirmed as far as it concerns claim no. 15162.**

Procedural and Factual background

1. On 7 September 2006 V.T. (henceforth: the Appellee) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of ownership right over a part of a building – an office space/business unit - located within the office building (Dairy Market) in former Street Mlecna Pijaca, now Street Abedin Terbeshi, in Gjakovë/Đakovica, business premise no. 26 with a surface of 33.37 m² (henceforth: the claimed property) and compensation. The business unit is now registered in the Cadaster under no. 0-70705029-01771-1-66-0-26-0. The Appellee stated that he lost the claimed property as a result of the circumstances in Kosovo in 1998/1999 on 12 June 1999.

2. The Appellee submitted *inter alia* to KPA:

- The record of the Court Settlement, no. 379/98, made before the Municipal Court in Gjakovë/Đakovica on 3 August 1998 between the Municipality of Gjakovë/Đakovica and the Appellee (henceforth: the Court Settlement). According to this settlement the Municipality cedes the claimed property to the Appellee and the Appellee becomes the exclusive owner of the claimed property;
- A Certificate from the Immovable property cadastral service of Gjakovë/Đakovica, no. 952-01-1-261/98, dated 20 October 1998 (henceforth: the 1998 Cadastral Certificate) the Cadastral service declares that it has been established that the Appellee has submitted a request for implementation of the Court Settlement; the Cadastral service further declares that not is formed a condominium cadaster and therefore it cannot issue a copy of a plan or a

possession list regarding the claimed property, whereas this certificate shall serve as evidence for registration of the rights over the claimed property which will be executed once the conditions are met for registration into the immovable property cadaster;

- A Certificate of the Directorate of Cadaster, Geodesy and Property, dated 4 March 2011, no. 952-01-202/11 (henceforth: the Appellee's 2011 Cadastral Certificate); the Director states that the Appellee is the owner of the claimed property and he gained it based on the Court Settlement; he further states that the certificate is issued as the Directorate does not possess in the Cadaster the base and stories of multistory buildings;
- The Certificate for the immovable property rights from the Kosovo Cadastral Agency, dated 19 April 2011, number 707050029-05248; according to this certificate the Appellee is possessor of the unit 0-70705029-01771-1-66-0-26-0, i.e. the claimed property.

3. KPA notified the claim on 16 October 2012 by putting a poster about the claim at the building.

4. P.R. participated in the proceedings before KPA/KPCC and submitted a reply to the claim, alleging that he is the property right holder of the claimed property and that he purchased it on 27 January 2006 from Pjeter Makaj and submitted *inter alia* to KPA:

- A Contract on sale of immovable properties, dated 25 January 2006, certified by the Municipal Court of Gjakovë/Đakovica on 27 January 2006, no. 210/06, concluded between P.P.M. as seller and P.D.R. as buyer (henceforth: the Contract on sale); according to this contract P.R. bought the business shop no. 26, located in the business building Lamela B in Gjakovë/Đakovica at Abedin Terbeshi Street with a surface of 33.37 m²;
- A Certificate of the Directorate of Cadaster, Geodesy and Property, dated 27 July 2009, no. 952-013-29/09; the Director states that P.R. is the owner of the business shop located in Gjakovë/Đakovica at Abedin Terbeshi Street. Lamela B, business shop no. 26, of the area 33.37 m²; he further states that the

certificate is issued as the Directorate does not possess in the Cadaster the base and stories of multystory buildings.

5. KPA processed the claim and verified the documents submitted by the parties. KPA verified the Court Settlement and the 1998 Cadastral Certificate positively on 10 December 2008 and the Appellee's 2011 Cadastral Certificate positively on 22 February 2013. KPA added *ex officio* to the file the Certificate for the immovable property rights from the Kosovo Cadastral Agency, dated 22 February 2011, number 707050029-05248, that relates to Cadastral parcel no. 1771-1; according to this certificate the Appellee is (still) possessor of the unit 0-70705029-01771-1-66-0-26-0, i.e. the claimed property.

On 27 March 2013 the KPA also verified the Contract on sale submitted by the Appellant. According to the report, dated 27 March 2013, the Basic Court of Gjakovë/Đakovica confirmed that the Contract on sale was in order, but according to the Department of Cadaster the claimed property, as subject of the Contract on sale, is registered in the name of the Appellee. KPA therefore verified the Contract on sale negative.

During the processing of the claim the KPA also found an added *ex officio* to the file:

- A Contract on joint venture of own financial assets for construction of an owned business premise, no. 539/1, dated 6 August 1996, certified at the Municipal Court of Gjakovë/Đakovica on 9 July 2001, no. 830/2001, concluded between the Public Housing Enterprise of Gjakovë/Đakovica and P.P.M. (henceforth: the Contract on joining of means); according to this contract M. joins the Public Housing Enterprise with his own financial means for construction of the business premise no. 26, located in the trading building Lamela B in Gjakovë/Đakovica at A. Terbeshi Street with a total surface of 33.37 m²; according to Article 6 of the contract M. will become owner of the business premise;
- A Contract on gift, dated 8 June 2012, certified by the competent court on 11 June 2012, no. 2263/2012; according to this contract P.R. transferred the claimed property to his son, Appellant;

- Drawings related to Cadastral parcel no. 1771-1; on this drawings is shown where the unit nos. 11 and 26 in the building are situated.
6. In its recommendation to the KPCC, dated 18 May 2013, KPA stated that the Cadaster Agency explained that there are two different office spaces in the same building, one registered in the name of the Appellee and the other in the name of the Appellant, but that the two different properties were registered under the same number 26. The Appellants property should be registered under the number 11.
 7. The KPCC accepted Appellant after the Contract on gift as party instead of his father P.R., granted the claim and decided in the KPCC Decision that the Appellee had established that he is the owner of the claimed property and is entitled to possession and that the Appellant had to vacate the claimed property. KPCC dismissed the claim for compensation, as that claim is outside its jurisdiction. In its reasoning (paragraphs 18, 19 and 28), as far as relevant, KPCC states that the Appellee submitted a Certificate for the immovable properties identifying him as owner of the claimed property. The defense of the Appellant did not relate to the claimed property. Based on the evidence of the Appellee the KPCC found the claim to be granted.
 8. The decision was served upon the Appellee on 14 August 2013 and on the Appellee on 5 November 2013.
 9. The Appellant filed an appeal against the KPCC decision on 5 December 2013. With his appeal he submitted *inter alia* a document 'History', dated 12 November 2013, no. 952-03-62/2013, from the Directorate for Cadaster, Geodesy and Property. De director states that the business premise located in Gjakovë/Đakovica at Abedin Terbeshi Street, Lamela B, with the surface of 33.37 m² was owned by the Public Housing Enterprise of Gjakovë/Đakovica until 2008 and in 2008 with the Contract on joining of means transferred under the ownership of M. and after that transferred to P.R. and in 2012 to the Appellant.
 10. The appeal was served on the Appellee on 9 March 2014. He did not send in a response to the appeal.

11. The Supreme Court sent a Court Order, dated 10 November 2015, to the Appellee and to KPA. The Appellee was asked to clarify if and when he entered in possession of the claimed property. The Supreme Court asked KPA with reference to the Certificates of the Directorate of Cadaster, Geodesy and Property in the file, to clarify how can be concluded that the Appellant in his reply to the claim and in appeal refers to another business premise then the claimed property.
12. With its answer dated 26 November 2015 the KPA, after questioning the Municipal Cadastral Office and receiving some documents, advised the Supreme Court that none of the submitted documents provide the clarification asked for by the Supreme Court. The KPA shows that different documents point to either the Appellee or the Appellant as owner of the claimed property. KPA recommends a field visit to the claimed property to ascertain the discrepancies. With its answer KPA submitted some documents mentioned here for, memoranda from KPA to Cadaster and from Cadaster to KPA. Also is submitted a copy of the handwritten records in the Cadastral Books that show that both the Court Settlement – under entry 16 - and the Contract on joining of means – under entry 55 - are registered at the Cadaster.
13. In his answer to the Court Order the Appellee stated that he until 17 June 1999 was regularly visiting the claimed property, that was finished except the water connection. He left Gjakovë/Đakovica due to the war circumstances.
14. By Court Order dated 8 January 2016 the Supreme Court gave the Appellant the opportunity to comment on the answer of KPA, dated 26 November 2015, to the previous Court Order. The Appellant in his answer evades that the Public Housing Enterprise owned the claimed property from before the armed conflict till 2008 and that not the Appellee was the owner. He further recalls that based on the Contract on joining of means the claimed property was transferred to his predecessor M..

Allegations of the Appellant

15. The Appellant alleges that the KPCC does not have jurisdiction to decide on the claim as the Public Housing Enterprise of Gjakovë/Đakovica was the owner of the claimed

property from a long time before the war in Kosovo until 2008 and now the Appellant is the legal owner.

Legal reasoning:

Admissibility of the appeal

16. The appeal is admissible as it was filed within the 30 days time limit prescribed 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).

Merits of the appeal

17. Other than the KPCC, the Supreme Court concludes that both the Appellee and the Appellant pretend property right to the (same) claimed property. Although, some drawings that KPA copied from documents from the Cadaster show besides business premise no. 26, the claimed property, also other premises e.g. business premise no. 11 in the same building, from the documents submitted from both sides and ex officio added to the file by KPA follows that both parties point at the same business premise no. 26.
18. There for the first question to be answered in this case is whether the Appellee gained a property right to the claimed property on the basis of the Court Settlement. The second question is whether this property right is effectively disputed by the allegation of the Appellant that M. gained a stronger property right on the basis of the Contract of joining of means.
19. The Appellee was able to gain a property right in 1998 on the claimed property by the Court Settlement, because this acquiring of a property right is based on a legal affair – the settlement before the Municipal Court - as meant in Article 20 of the Law on Basic Property Relations (Official Gazette SFRY, No. 6/80), that was in force at that time. The Court Settlement was executed by filing the request to the Cadaster to have the property right registered. The Appellee also undisputedly started using the claimed property until he left Kosovo in 1999.

20. The Contract on joining of means concluded between the alleged predecessor of the Appellant and the Public Housing Enterprise was concluded in 1996 before the Court Settlement of 1998. However, this Contract was just certified by a Court in 2001. There for this contract on transfer cannot have legal effect against third parties before that date. This means that the Appellee gained an older property right that predominates over the later right of the (predecessor of the) Appellant.
21. The allegation from the Appellant in appeal that the property rights to the claimed property were only established in 2008, when the Cadaster registered the property rights to the business premise in the register, is not based on the facts. The transfer of ownership of an immovable property right on a business unit in a building was in 1998, when the Appellee gained his rights, not depending on registration in the Cadaster. Besides, the request for registration of the property right of the Appellee was already confirmed by the Cadaster in 1998.

Conclusion

22. Consequently, pursuant to Section 13.3 sub c) of UNMIK Regulation 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

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

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Sandra Gudaityte, EULEX Registrar