

**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-080/2014

**Prishtinë/Priština,
14 April 2016**

In the proceedings of:

UK DOO

Represented by Avokat A.V.

Prishtinë/Priština

Appellant

Vs

I.G.

Str.Artim Jashari, no.12

Mitrovicë/Mitrovica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anders Cedhagen and Krassimir Mazgalov, 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 No. KPA13394), dated 21 August 2013, after deliberation held on 14 April 2016 issues the following

JUDGMENT

1. **The appeal of UK DOO against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, is rejected as unfounded.**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, is confirmed as far as it regards the claim registered with the KPA under No. KPA13394.**

Procedural and factual background:

1. On 7 September 2006, M.R. , in the capacity of the representative of the legal entity “UK DOO” (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (henceforth: the KPA), seeking the confirmation of the ownership right, repossession and compensation for the unlawful use of an warehouse with surface 330m² situated in the street Marsala Tita BB, in Mitrovicë/Mitrovica (henceforth: the claimed property). The Appellant stated that the date of the loss of the property was 12 June 1999.

2. To support his claim the Appellant provided the KPA with:
 - A contract concluded on 20 July 1998 between “Raj-Banka” a.d.Peć and SOE “Pećka Pivara”. Based on their agreement SOE “Pećka Pivara” owed a debt to “Raj-Banka” a.d.Peć and as a compensation for this debt the company handed over the claimed property to “Raj-Banka” a.d.Peć. The contract was not verified by the court.
 - A decision no.17774/2005 dated 4 August 2005, issued by Business Register Agency, showing a request for registration of UK DOO Company which was approved and that the Appellant is listed as one of the founders of this company.
 - A Court decision no.FI-403/97 dated 15 May 1997 on the registration of the company “UK” d.o.o. This decision was issued by the Commercial Court of Pristina.

3. From the Consolidated Verification Report on 5 April 2012 only the Court decision no.FI-403/97 dated 15 May 1997 issued by the Commercial Court of Pristina, was positively verified.
4. The notification of the claim was carried out on 25 June 2013. The property was found occupied by I.G. (henceforth: the Appellee), who was present at the property. The Appellee claimed a legal right over the property and signed the notice of participation on 28 June 2013. The Appellee submitted a response to the claim on 3 July 2013. To support his response the Appellee provided the KPA with contracts for sale and transfer of properties situated in other places in Mitrovicë/Mitrovica and with surfaces which differs from the claimed property. These documents are not related to the case, but to other properties.
5. On 21 August 2013, the Kosovo Property Claims Commission (henceforth: the KPCC), through its decision KPCC/D/C/216/2013 refused the claim. In the reasoning of the decision (paragraph 37), the KPCC underlined that the Appellant had failed to submit any evidence that could be verified by the Executive Secretariat, that the claimed property right holder enjoys any property right over the claimed property.
6. The KPCC's decision was served upon the Appellant on 20 December 2013. The same decision was served on the Appellee on 6 December 2013. On 17 January 2014 the Appellant filed an appeal against the KPCC's decision. A copy of the appeal was served on the Appellee on 28 April 2014. The Appellee did not submit any response.

Allegation of the Appellant

7. The Appellant requests the Supreme Court of Kosovo to quash the KPCC's decision, and to acknowledge the property rights of the Appellant over the claimed property. In the appeal the Appellant indicated that the KPCC's decision is based on erroneous and incomplete verification of the factual state, as well as, involves fundamental error as it contradicts with the material and procedural law. The Appellant explained that his request is based on the transaction contract concluded between Raj Bank and former owner of the claimed property, Beer Factory in Pejë/Pec. Through this contract the Beer Factory

in Pejë/Pec accepted to grant the claimed property to Raj Bank in exchange of the debt it had to pay. The Appellant further explained that the founder of Raj Bank was the company UK itself. That is why the Appellant alleges that it was the owner of the claimed property.

Legal Reasoning

Admissibility of the appeal

8. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of the 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 (hereinafter: UNMIK Regulation 2006/50).

Merits of the appeal

9. The Supreme Court of Kosovo found that the appealed KPCC's decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the appeal is rejected as unfounded.
10. The Appellant alleged to have acquired the ownership rights over the claimed property according an agreement. The relevant documents submitted by the Appellant were negatively verified. As the contract was negatively verified, this document will not be considered as proving the legal rights of the Appellant and to substantiate the claim for the repossession.
11. Consequently, the Supreme Court assess that the examination of the evidence and their assessment was done correctly by the KPCC and none of the documents submitted by the Appellant prove its ownership rights over the claimed property.
12. Therefore, the Appellant's appeal is rejected as unfounded and the appealed KPCC's decision is confirmed as correct and based on properly applied law.

Conclusion

13. Pursuant to Section 13.3.(c) of UNMIK Regulation 2006/50 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

14. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of UNMIK Regulation 2006/50.

Legal Advice

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

Anders Cedhagen, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar