

**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-210/14

**Prishtinë/Priština,
21 September 2016**

In the proceedings of:

F.M.M.

Str. Mbretëresha Teuta 305
Mitrovicë/Mitrovica

Represented by
F.K. (the Appellant's sister)

Appellant

Vs.

Z.T.R.

Str. Kralja Petra
Mitrovicë/Mitrovica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 (the case file registered at the KPA under No KPA00161), dated 13 March 2014, after the deliberation held on 21 September 2016 issues the following:

JUDGMENT

1. **The Appeal of F.M. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 dated 13 March 2014 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014, dated 13 March 2014 as far as it regards the Claim registered with the KPA under the No KPA00161 is confirmed.**

Procedural and factual background:

1. On 23 November 2006, F.M. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) as a family household member of the alleged property right holder, namely her husband M.M. (hereinafter “the PRH”), seeking the repossession over the business premises, located in street Kralja Petra I in Mitrovicë/Mitrovica, with the surface of 36.77 m² (hereinafter “the claimed property”). The Appellant stated that the loss of possession took place on 24 March 1999. According to her, at the moment the premise is being occupied by A.T. .
2. Together with the Claim the Appellant submitted to the KPA *inter alia*:
 - The copy of the Appellant’s Birth Certificate No 07-200-2/4181 issued on 12 June 1990.
 - The copy of the Lawsuit for the recognition of the ownership right over the claimed property, filed by the alleged PRH against A.T. on 17 February 1992.
 - The copy of the Administrative Decision No 313-158 issued by the Department of Economy and Utilities of the Municipality of Mitrovica e Kosovës/ Kosovska Mitrovica on 23 September 1998, based on which the Appellant is granted the permission to permanently use the claimed property starting from 23 September 1998.
 - The copy of the Payment Receipt dated 23 March 1983, confirming that the alleged PRH had paid 1,000.000 dinars.
 - The copies of the Receipts (3) showing that the alleged PRH paid in total 100 Dinars of property taxes (not stipulating any property right) dated 26 and 28 January 1993, and 26 March 1993.
 - The copies of the Utility bills (3) in the name of the alleged PRH for the claimed property dated 13 March 1992, 25 June 1992 and 2 November 1993.
 - The copy of the List of Expenses presented by the alleged PRH as supporting evidence in the court case P.br. 304/92.
 - The copy of the non-certified Statement given by 5 witnesses (including the lawyer who compiled the Contract on Temporary Alienation of Shop) who declared that the alleged PRH had purchased the claimed property from B.T. on 10 March 1982 and had paid the purchase price in the amount of 150.000.000 Dinars.
 - The copy of the Judgment rendered in the case P.br. 304/92 by the Municipal Court of Mitrovica e Kosovës/Kosovska Mitrovica on 22 March 1994, based on which the Court approved the lawsuit of the alleged PRH against A.T. and concluded that the alleged PRH had purchased the claimed property from B.T. on 10 March 1982.

- The copy of the Administrative Decision No 313-277 issued by the Municipality of Mitrovicë/Mitrovica on 20 September 1983, based on which the alleged PRH was permitted to run a business in the claimed property.
- The copy of the Annex of Primary Contract (No 256/1 dated 12 February 1982) No 572 concluded on 5 April 1983 between B.T. as a buyer and the public Housing Enterprise (PHE) Mitrovicë/Mitrovica as a seller, for the determination of the final purchase price of the claimed property consisting of 741.180,00 dinars.
- The copies of the Payment receipts (dated 15 May 1983, 14 March, 22 June 1984 and 6 July 1984, 13 May, 28 November 1985 and 26 July 1987) in the name of the alleged PRH for tax payment.
- The copy of the Judgment rendered by the Municipal Court of Mitrovicë/Mitrovica, in the case number P.br. (C.nr.) 452/90 which approves the lawsuit of A.T. against the alleged PRH, based on which the alleged PRH was ordered to vacate the claimed property within 15 days and to hand it over to her.
- The copies of the Payment receipts in the name of the alleged PRH for tax payment (not indicating any property address) dated 2 October 1987, 13 December 1991 and 14 December 1991.
- The copy of the Notice to the alleged PRH for payment of a monthly amount to the Fund for Land Construction for the use of the urban construction land on which the claimed property is located, dated 28 January 1992.
- The copies of the pages from the Minutes of court proceedings in the case between the alleged PRH and A.T. in relation to the claimed property. The minutes contain the testimony of several witnesses.
- The copies of the Utility Bills (3) issued by the Water Supply Company in the name of the alleged PRH for the claimed property dated 12 November 1993 and 11 December 1997.
- The copy of the Decision Rev.1884/95 issued by the Supreme Court of Belgrade on 3 May 1995 based on which the Revision of the alleged PRH against the Judgment Gž.br. (Ac.nr) 423/94 dated 31 January 1995 was dismissed as inadmissible.
- The copy of the Expertise ordered by the Court case C.nr. (P.br.95/96) dated 2 September 1996, which concludes that 150 M Ddinars of 1982 and 1983 are equivalent to 117.477, 00 Dinars on 31 August 1996.
- The copy of the uncertified Lease Contract for the claimed property concluded between the Appellant as a lessor and M.I. as a lessee on 14 January 1998.
- The Copy of the non-certified Lease Contract for 18m² of the claimed property concluded between the Appellant as a lessor and S.C. as a lessee on 25 November 1998.
- The copy of the Judgment Ac.nr.(Gž.br.) 485/90 issued by the District Court of Mitrovicë/Mitrovica on 18 December 1990, based on which the appeal of the alleged PRH against the Judgment C.nr.(P.br). 452/90 dated 15 June 1990 was accepted and the challenged Judgment was quashed.
- The copy of the uncertified Lease Contract concluded on 14 January 1998 between the Appellant as a lessor and Z.M. as a lessee for the indefinite time period starting from 1 February 1998.
- The Copy of the Statement of F.K. (dated 23 January 2009) in which she explains that the dispute over the claimed property between the Appellant and A.T. has never been finalized. She further explains that the case number C.nr. (P.br.) 95/96, which is also the last one regarding the claimed property in strange circumstances disappeared after few hearing sessions were conducted until 7 October 1996 and it was never finalised. She confirms that the Appellant has been continuously using the claimed property until 1999

and afterwards by renting it. The last time the property was rented on 20 January 2008 to Z.M..

- The copy of the Statement of F.K. in which she reiterates the same as in the previous statement of 23 January 2009.
- The copy of the ID card of the Appellant issued 24 October 2006.
- The copy of the Power of Attorney (hereinafter: “the PoA”) No 4021/06 granted on 24 November 2006, based on which the Appellant authorised her sister, F.K., to represent her before the institutions not in relation to the claimed property.

3. The case was registered under the number KPA00161.
4. The Claim was notified on 20 May 2008. According to the Notification Report the claimed property was found to be a shop. At the time of the visit the premise was found to be occupied by Z.M., who was present at the property, signed a notice of participation and declared not to claim the legal right over the property.
5. On 10 October 2008, the Z.T.R. (hereinafter “the Appellee”) approached the KPA claiming that the alleged PRH is not the holder of the property, but the third party. Further, the Appellee stated that her mother, A.T. (hereinafter “the Appellee’s mother”) is the property right holder of the claimed property. In order to support her allegation, the Appellee submitted to the KPA:

- The copy of the Contract on Joint Means No 1213/1 concluded on 6 June 1980 between the PHE in Mitrovicë/Mitrovica as the seller and B.T. (hereinafter “the Appellee’s father”) as the buyer, for the construction of the claimed property.
- The copy of the uncertified Contract on Temporary Transfer of the Shop on Private Ownership concluded on 10 March 1982 between the Appellee’s father as the transferor and the alleged PRH as the transferee, for the indefinite period of time. According to this document the price to be paid for the temporary use was 500.000 Dinars.
- The copy Annex to the Primary Contract (No 256/1 dated 1982) No 572 entered into on 5 April 1983 between the Appellee’s father as a buyer and PHE Mitrovicë/Mitrovica as a seller, for the determination of the final purchase price of the claimed property consisting of 741.180,00 dinars.
- The copy of Payment Receipt dated 24 March 1983, showing that the Appellee’s father made the payment of 741.180,00 dinars to Public Housing Enterprise (hereinafter “the PHE”) Mitrovicë/Mitrovica set with the Annex Contract 572 dated 5 April 1983.
- The copy of the Inheritance Decision O.br. (Tr.nr.) 197/87 dated 22 November 1989, complementing the previous Inheritance Decision (O.br. (Tr.nr.) 197/87), based on which the Appellee’s mother was declared to be a sole successor of the claimed property after her deceased husband.
- The copy of the Notice to the Appellee’s father for payment of a monthly amount to the Fund for Land Construction for the use of the urban construction land on which the claimed property was located, dated 11 February 1992.
- The copy of the Judgment Ac.nr.(Gž.br.) 423/94 rendered by the District Court of Mitrovicë/Mitrovica on 31 January 1995, based on which the Judgment C.nr.(P.br.) 304/92 dated 22 March 1994 was modified and the lawsuit of the alleged PRH was dismissed as unfounded.
- The copy of the Birth Certificate of the Appellee No 03-200-2 issued on 26 May 1998.

- The copy of the Uncertified Lease Contract referring to the claimed property concluded on 9 March 2001 between the Appellee's mother as a lessor and Z.M. as a lessee for 1 year.
 - The copy of the Statement of the Appellee's mother in which she indicates that her husband was the original owner of the claimed property which he had purchased from the PHE Mitrovicë/Mitrovica and that fact was confirmed by the Judgment Ac.nr.(Gž.br.) 423/94 of 31 January 1995. The Appellee's mother further points out that her husband did not sell the property to the alleged PRH, but only rented it out.
 - The copy of the motion of 29 October 2008 of the Appellee's mother demanding that the KPA restores the claimed property in her favour.
 - The Copy of the ID card No 1005275551 in the name of the Appellee issued on 6 June 2001.
6. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter "the KPCC"), through its Decision KPCC/D/C/232/2014 (hereinafter "the KPCC's Decision") dismissed the Claim. In the reasoning of the Decision (paragraph 38), the KPCC underlined that the evidence submitted by the Appellant, verified by the Executive Secretariat showed that in 1990 the Appellant filed a lawsuit before the Municipal Court of Mitrovicë/Mitrovica against the Appellee, seeking the confirmation of the property right over the claimed property and indicated that the court proceedings were still ongoing with no final decision taken yet by the local Court. Finally, the KPCC (paragraph 40) stated that pursuant to Article 18 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 (hereafter "the Law No 03/L-079"), the Commission's jurisdiction is excluded because of judicial proceedings in respect of the Claim have commenced prior to 16 October 2006, the date on which UNMIK Regulation 2006/50 entered into force.
 7. The KPCC's Decision was served upon the Appellant on 4 August 2014 and on the Appellee on 11 August 2014. On 18 August 2014 the Appellant filed an Appeal against the KPCC's Decision. On 21 October 2014 the Appeal was served on Appellee, however she did not reply to it.

Allegation of the Appellant:

8. The Appellant indicates that the KPCC's Decision is unlawful. The Appellant requests the Supreme Court of Kosovo to accept the Appeal and to "reinstate the situation of before the conflict", as the loss of possession over the claimed property took place due to the armed conflict.
9. The Appellant mentions also that she used the claimed property until 24 March 1999, when she and her family were forced to leave Kosovo. The Appellee has never been using the claimed property before 1999 and is not being using it now. Currently, according to the Appellant the claimed property is occupied by other persons taking advantage of the situation.

Legal Reasoning

10. 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.
11. The Appellant in his Appeal alleges that the loss of the possession over the claimed property occurred due to the armed conflict. She requests the Supreme Court of Kosovo "to reinstate the situation from before the conflict" – meaning the repossession of the claimed property, and not to dismiss the Claim, as the procedural grounds for dismissing it do not exist.
12. The Supreme Court notes that the appealed KPCC's Decision is based on the Article 18 of the Law No 03/L-079, which states: *"The provisions of the present Regulation apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation"*. The provision of the quoted Article thus should be understood that the jurisdiction of the KPA is excluded in case a party submitted a claim to the competent court before 16 October 2010 (the date of entry into force of the UNMIK Regulation 2006/50. As the Commission made it clear in its Decision *"the evidence provided by the Claimant and verified by the Executive Secretariat, shows that the Claimant has filed a lawsuit in 1990 before the Municipal Court of Mitrovicë/Mitrovica against the Respondent (the Appellee) seeking confirmation of ownership right to the claimed property"*. As it appears from the case file, the Municipal Court rendered for the first time a Judgment in the dispute between the parties on 15 June 1990. The circumstance that the proceedings before the local court were not finalised until now was not disputed between the parties. Consequently, the case at hand falls outside the jurisdiction of the KPA and the KPA Appeals Panel, as well.
13. It is important to underline here, that the dispute between the parties relates to the question of assessment of the legal effects of the Contract concluded on 10 March 1982. The source of the dispute between the parties appeared long before the conflict that occurred in Kosovo in 1998 and 1999. The role of the KPA is not however to substitute the courts in Kosovo in adjudicating cases that belong to their competence. The Appellant and the Appellee should though address their requests to the court of competent jurisdiction.
14. Additionally, the Supreme Court wishes to point out that the Appellant indicated herself that around 2 years after filing of the Claim to the KPA, meaning in the year 2008, the claimed property was subject to lease to the third party. That would mean that even though M.M. might have lost the possession of the claimed property during and due to the conflict, after the conflict he had disposed of it. That element brings to conclusion that the requirement of the Article 3.1 of the Law saying: "where the claimant is not now able to exercise such property rights" is not met. Concluding: entering into lease contract is one of the ways of manifesting the ability of disposing of the property and as such may not be considered as inability to exercise property use rights.

15. For all the reasons mentioned above and pursuant to Article 13.3.(c) of the Law No 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure (LCP), it is decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Article 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

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar