

**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-051/2014

**Prishtinë/Priština,
19 October 2016**

In the proceedings of:

The Municipality of K.

Represented by A.Sh. with authorization

Appellant/Respondent

vs.

D.V. on behalf of Z.V.

Represented by Lawyer Z.M.

New Shopping Centre

Klinë/Klina

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/214/2013 (case file registered at the KPA under the number KPA33925), dated 21 August 2013, after the deliberation held on 19 October 2016, issues the following:

JUDGMENT

1. **The appeal of the Municipality of K. filed through A.Sh. lawyer from Klinë/Klina, against the Decision of the Kosovo Property Claims Commission KPCC/D/R/214/2013, dated 21 August 2013, is rejected as unfounded;**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/214/2013, dated 21 August 2013, in its part, in which it refers to the case registered under the number KPA33925 in point 1 under a and b is annulled as it exceeded the Claim, whereas in point 2 under b, with regards to compensation of the damage or loss of the use of the claimed property, is confirmed.**

Factual and Procedural background:

1. On 30 May 2007 D.V. (hereinafter: the Appellee) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking the compensation for destruction of his apartment located on “Vuk Karadzic” Street, NN, on the cadastral parcel No 520/2, Municipality of Klinë/Klina, with a surface of 48 m² (hereinafter: the claimed property). He alleged that his mother Z.V. was the owner of the claimed property and that the ownership was acquired in 1994 through a Decision which replaced the Purchase Contract. He had information that the property had been destroyed and sought compensation of damage as an alternative.
2. In support of his claim the Claimant, among others, submitted the following documents:
 - The Ruling of the Municipal Court of Klina R.Nr.5/94 , dated 25 April 1994, which became final on 13 July 1994, on the basis of which the Purchase Contract was replaced and whereby the Court recognized Z.V. ’s ownership right over the apartment;
 - The Identification Card issued by the authorities in Klina. on 23 July 2004, indicating the residential address of the holder in Klina village;
 - The Birth Certificate issued on 7 May 2007 by the Kosovo Institutions administered by the UNMIK indicating that D.V. is the son of the Property Right Holder, and the Claimant Z.V.-R;

- The Certificate No 11 Nr.1508, dated 14 April 2011, issued by the Department of Geodesy and Cadaster indicating that the Claimant - Appellee is the owner of the apartment with a surface of 48 m²;
 - The Ruling No 04. Br.351-9, dated 8 February 1996, of the Municipality of Klina, approving the transformation of the residential building into a commercial building;
 - Utility bills proving that the alleged property right holder was in possession of the property before the armed conflict.
3. According to the consolidated Verification Report dated 3 June 2013, the KPA has positively verified the documents submitted by the Claimant. The KPA has found ex officio that the land on which the residential building was constructed is socially - owned by the Municipality of Klinë/Klina.
 4. In 2011, the KPA has placed a notification of the claim and confirmed that the last notification of 19 March 2014 was correct and was based on the GPS coordinates. The claimed property was found completely demolished and in its place a multi-story residential and commercial building was constructed by the Municipality of Klinë/Klina.
 5. On 24 February 2009, the Municipality of Klina responded with regard to a number of claims related to the properties involved in this construction including the claimed property. In order to object the claim, the Municipality of Klina/Klinë submitted, among others, the following documents:
 - The Certificate on Immovable Property Rights, dated 7 October 2008, proving that cadastral parcel No 520/2 is registered as a socially-owned property;
 - The extract from the Possession List No 768 issued by UNMIK authorities on 10 November 2008, proving that the cadastral parcel No 520/2 is registered as a socially-owned property;
 - The Decision of the Municipal Assembly of Klina on Revision of the Urban Plan 01 Nr.350-107/03, dated 18 April 2003;
 - The Decision on the Revocation of the previous Construction Permits for the Properties Located on Socially-Owned Land belonging to the Municipality, dated 14 March 2005;
 - The Decision on Allocation of the Socially-Owned property for long-term use, including the parcel No 520/2, issued by the Municipal Assembly of Klina on 15 November 2005;

- The Judgment of the Supreme Court of Kosovo Rev.286/2007, dated 06 May 2010, dismissing revision for other parties with similar Claims that are referring to the similar cases.
6. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter: the KPCC) by its Decision KPCC/D/R/214/2013 established that Z.D.V., the mother of the Appellee, had proven that she was the owner of the claimed apartment and that she had the right to repossession over the claimed apartment. In paragraph 1 of the Commission's Decision, the owner of the apartment was not also owner of the land but on the day that the property was demolished she met the requirements to be confirmed as owner of the apartment.
 7. In the reasoning of the Decision, in paragraphs 24-26, the Commission stated that the Appellee has proven through a Court's Decision that the stated property has been transferred from socially-owned apartment into a private property. Given that the property was destroyed and did not exist any longer, the KPCC did not issue an order for repossession, but under paragraph 2, item b, it concluded that the claims for compensation of damages fall outside the jurisdiction of the KPCC.
 8. The KPCC's Decision was served on the Claimant on 12 November 2013, whereas and on the Appellant on 22 October 2013. On 18 November 2013, the Respondent (hereinafter: Appellant) challenged this Decision before the KPA Appeals Panel of the Supreme Court. The Supreme Court received the case file on 24 March 2014.

Allegations of the parties

Appellant/Respondent

9. The Appellant alleges that the KPCC's Decision contains a substantial error; respectively non-application of the procedural law and it is based on erroneous and incomplete determination of the factual situation.
10. The Appellant alleges that the Claimant and several other natural persons have had the occupancy right over the properties that have been allocated for use by the former Combine "Malizhgan" and that pursuant to the Kosovo Law on Housing Relations, individuals cannot become the owners of the socially-owned apartments, whereas the Law on Housing of Serbia of 1992 was not applicable in Kosovo, according to the Appellant.

11. In the proceedings before the KPA/KPCC the Appellant alleged that in cases when the Appellee has had the use right over the socially-owned land the Commission dismissed the claims and the Supreme Court confirmed the KPCC's Decisions such as GSK-KPA-A-72/2012 etc. In addition, he alleges that the documents submitted by the Appellant are not related to the destroyed property, but to another property; and that are not valid. The Appellant replied with the letters sent to the KPA in 2009 and 2011.
12. In its Appeal filed before the Supreme Court, the Appellant reiterated almost the same allegations it presented before the KPA/KPCC, stating that the Appellee does not have any valid documents, such as the Decision on allocation and the Contract on use in order to have a valid occupancy right. Therefore, the Appellant proposed the Supreme Court of Kosovo to review his Appeal, annul the challenged Decision and dismiss the claim as unjust.

Appellee/Claimant

13. The Appellee, as in the first instance proceedings stated that he had a use right over the apartment and pursuant to the Law in force he signed a Purchase Contract for the socially-owned apartment and paid the purchase price in full. After delays on the part of the apartment giver, he addressed the Court and the same issued a Ruling which replaced the Sales Contract and this Ruling established that she was the owner of the apartment. The claimed property was later demolished without the Appellee's consent or compensation and a multi-story building was constructed as allegedly the Appellee did not provide any document confirming his ownership over the land parcel and knew that the building was demolished by the municipal authorities in order to construct a new building, and he sought compensation for the damage for the demolished property.

Legal reasoning

14. After having reviewed the case file and appeal's allegations, pursuant to article 194 of the LCP, the Court found that the KPCC's Decision, in paragraph 1 (a) and (b), is rendered in violation of the article 182.2. (o) of the LCP because it exceeds the Claim.
15. The KPCC concluded that the Appellant failed to show that his Claim involves circumstances directly related to or resulting from the armed conflict of 1998-1999, as the

loss was actually the result of demolition of the property by local authorities. Since the land on which the claimed property was located was socially - owned property of the municipality of Klinë/Klina, the KPCC could not have restored the possession of it to the Appellant although they confirmed that on the day of the demolition of the property the Appellee was the owner of the apartment, but was not the owner of the land on which the apartment was located.

16. It should be noted that the Appellant mentioned in his Claim when he lost possession and it was related to the armed conflict, but at the same time there was information that the claimed property was demolished without his consent by the Municipality of Klinë/Klina, in order to construct a new commercial/residential building.
17. The KPCC by issuing a Declaratory Order and stating that the Appellant on the day of demolition was the owner and is entitled to possession of it, but Appellant in the Claim decisively sought compensation of the damage, the KPCC exceeded the party's Claim as the same sought physical compensation of the damage.
18. Therefore, the Supreme Court found that the appealed Decision of the KPCC rejecting the Claim for compensation of the damage is correct and lawful. This because Article 11.4 (b), of the Law No 03/L-079 provides that "*The Commission shall dismiss the whole or part of the claim where the claim is not within the scope of jurisdiction of the Kosovo Property Agency*".
19. In light of the above and pursuant to Article 13.3 item (a) of the UNMIK Regulation 2006/50 and article 201 paragraph 1 (e) of the Law on contested procedure, it was decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of the Law no. 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar