

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-106/15

Prishtinë/Priština,
18 October 2017

In the proceedings of:

D.R.

Represented by:

V. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 (the case file registered at the KPA under the number KPA47349) dated 18 June 2014, after the deliberation held on 18 October 2017, issues the following

JUDGMENT

1. **The Appeal of V.J, filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014, with regard to the Claim registered with the Kosovo Property Agency under the No KPA47349, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014, with regard to the Claim registered with Kosovo Property Agency under the No KPA47349, is confirmed.**

Procedural and factual background

1. On 5 December 2007, D. B. R, represented by her daughter V. J. (henceforth “the Appellant”) filed a Claim with the Kosovo Property Agency (henceforth “the KPA”), seeking a confirmation of the ownership right and the repossession over an apartment with a surface of 25 m², located in Rade Popović Street, P+6+pk, Entrance No I, VI floor, No 45, in the Municipality of Gjilan/Gnjilane (henceforth “the claimed property”). According to the Appellant the loss of possession took place on 12 June 1999 due to the circumstances related to the conflict in Kosovo that occurred between the year 1998 and 1999.
2. To support her Claim, the Appellant provided the KPA with the following documents:
 - The copy of the Decision No 1768/11 issued by the Board of the Socially-Owned Enterprise “Morava e Binqës/Binačka Morava” on 17 May 1998 based on which the request of the staff member D. R, was approved and the Appellant was allocated with the claimed property “for use, with all the rights from the Law on Housing, including the right to purchase the mentioned apartment”;
 - The copy of the Decision with the No 1768/12 on Allocation of the Apartment, issued by the Socially-Owned Enterprise “Morava e Binqës/Binačka Morava” on 18 May 1998, according to which D. R. was allocated the claimed property for use, on the basis of the provisions of the Law on Housing;
 - The copy of the Receipt dated on 17 May 1998 showing that D. R. had paid the amount of 22.616 Dinars for the purchase of the claimed property;
 - The copy of the Contract on Sale of the Socially-Owned Apartment concluded on 19 May 1998 between the Socially Owned Enterprise “Morava e Binqës/Binačka Morava” from Gjilan/Gnjilane as the Seller and D. R. as the Buyer of the claimed property. The signatures of the parties to the Contract were legalized on 19 March 1999 before the Municipal Court of Gjilan/Gnjilane with the reference number under 38/99;
 - The copy of the Power of Attorney certified before the Municipal Court of Niš on 30 May 2014 with the reference No 6557/2014, through which D. R. authorizes her daughter V. J. to represent her before the KPA and all other competent institutions regarding the claimed property.
3. On 25 January 2008, the KPA notified the Claim. The claimed property appeared to be occupied by M. A, who did not claim any right over the claimed property.
4. As nobody filed a Response to the Claim within the legal deadline of 30 days pursuant to the Article 10.2 of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 Amending UNMIK Regulation 2006/50 on the Resolution of the Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property (henceforth “the Law No 03/L-079”), the Claim was considered as uncontested.
5. According to the Verification Reports of the Executive Secretariat of the KPA, the Decision on Allocation of the Apartment No 1768/12 was not found neither at the competent institutions in Kosovo, nor at the displaced ones at Serbia. Regarding the Contract on Sale of the Socially-Owned

Apartment No 38/99, the Registrar of the Municipal Court of Gjilan/Gnjilane stated that the said Contract was forged, as the person who legalised the signatures of the parties to the Contract was personal Secretary of the President of the Court and not the Registrar, who was authorized to legalize them. The Registrar at that time was Mr M. P. Thus the Contract was negatively verified by the KPA.

6. With its Decision KPCC/D/A/247/2014 dated 18 June 2014, the Kosovo Property Claims Commission (hereinafter “the KPCC”) refused the Claim. In its reasoning, the KPCC explained that the documents the Claimant had submitted had not been verified by the Executive Secretariat as genuine. Moreover, the Commission concluded that in the absence of any other corroborative evidence, the mere utility bills were not sufficient to prove the alleged property right. Consequently, it refused the Claim, as the Claimant failed to show ownership or any other property right over the claimed property.
7. On 7 October 2014, the Decision was served on Appellant and she filed an Appeal to the Supreme Court on 30 October 2014.

Allegations of the Appellant

8. The Appellant declared that the KPCC’s Decision contains fundamental errors and serious violation of the substantive law and it rests on erroneous and incomplete determination of facts. He argued with the statement of the Commission about the impossibility to verify the documents submitted by her. She insisted only the certified copies of the documents were submitted, which according to the Appellant were valid and nothing indicated they were not original. Furthermore, the Appellant stated that the conclusion of the Commission that she had not submitted any other evidence proving the right over the claimed property was not true, as she submitted the letter from Telecom Serbia confirming she was a subscriber of the telephone line number in Gjilan/Gnjilane at the address of the claimed property.
9. D. R. requested the Supreme Court to grant the Appeal and to establish her property rights over the claimed property.

Legal reasoning

10. The KPCC based its Decision on the conclusion that the Appellant failed to provide any evidence that could be verified by the KPA conforming the Appellant’s ownership right over the property. The Executive Secretariat was neither able to obtain *ex officio* such evidence. The Appellant instead claimed that she had submitted the certified copies of the Decision on Allocation No 1768/12, as well as of the Contract on Sale of the Socially-Owned Apartment No 39/99 - both valid and original. However, those documents have been verified negatively by the Executive Secretariat of the KPA, as they were not found neither at the competent institutions in Kosovo, nor at the displaced authorities in the Republic of Serbia, as well as there were doubts with regard to legalisation of the signatures below the Contract.
11. The Supreme Court reviewed the submissions contained in the case file, the appealed Decision and the allegations of the Appeal pursuant to Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth “the LCP”) and found that the Appeal is ungrounded.
12. Pursuant to Section 3.1 of the Law 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. According to this legal provision, the Appellant was to submit the evidence to prove her allegations of the ownership right to, or the right to use the claimed property.
13. The party to the proceedings before the KPA and the Supreme Court though is obliged to prove her legal title to request the re-possession of the claimed property. The documents it submits are being verified by the Executive Secretariat of the KPA. Concluding, that the documents presented by the party, cannot be positively verified has to lead to refusal of the Claim, as in the present case. The fact,

that it could not be proven beyond any doubt that the Decision and the Contract were genuine, may not result in granting of the Claim. Moreover, the receipts of the payments for certain services provided to the claimed property may not substitute the evidence confirming the ownership over the apartment.

14. For those reasons, the Supreme Court finds that the KPCC made a correct Decision, based on a thorough and correct procedure. Accordingly, the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.
15. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law No 03/L-079, 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.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar