

**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-148/2015

**Prishtinë/Priština,
25 October 2017**

In the proceedings of:

S. P. M.

On behalf of her husband

D. M.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani , Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC / D/C/240/2014 (case file registered with KPA under 34342) dated 30 April 2014, after deliberation held on 25 October 2017, issues this

JUDGMENT

1. The appeal of S. P. M., filed against the Decision of Kosovo Property Claims Commission KPCC/D/C/240/2014, dated 30 April 2014, as far as the Claim registered under KPA34342 is concerned, is rejected as ungrounded.
2. The Decision of Kosovo Property Claims Commission KPCC/D/C/240/2014, dated 30 April 2014, as far as the Claim registered with Kosovo Property Agency under KPA34342 is concerned, is upheld.

Procedural and factual background:

1. On 9 May 2007, S. P. M (hereinafter “Appellant”), filed a claim with KPA registered under KPA34342, claiming a property right on behalf of her husband D. M. and requests the return of possession over business premises located in street “Kosmetskih Brigada” n.n in Prishtina; premises 8,9 and 16 with a surface of 89.62 square metres. She states that the property of former SOE, public enterprise for military and civil clothing “22 Decembar” Nish/Niš, was purchased through privatisation in 2003 by privatisation authority of Serbia in Belgrade and that she lost the possession in June of 1999.
2. In order to support her claim, she provided the KPA with the following documents:
 - A contract concluded between the Mining and Energy Combine “Kosovo” from Prishtina and the Public Enterprise for Military and Civil Clothing “22 Decembar” Nish/Niš on 5 October 1968 for construction of residential and business premises in Prishtina, in “Kosmetskih Brigada” street.
 - A contract on sale and purchase of socially owned capital through auction concluded between the Privatisation Agency of Serbia in Belgrade and the claimant’s husband, certified in the First Basic Court in Belgrade under I/ov.nr.4354/03 dated 11 October 2003.
 - A marriage certificate issued by Nish Municipality in Serbia on 27 March 2008, which proves that the appellant is married to D. M.
3. KPA notification team, based on verification report dated 3 September 2009, ascertained that the claimed property could not be identified based on the claimant’s data and for this reason it contacted the claimant for supplementary data regarding the address of the claimed property. On 11 March 2009, the appellant told the KPA officials that she was the company director but she does not know where the property is.
4. According to the consolidated verification report dated 21 October 2011, the contract on property privatisation was found and positively verified in the First Basic Court of Belgrade.

5. The Kosovo Property Claims Commission (KPCC), in relation to the claimed properties, through its decision KPCC/240/2014, referring to the case file registered in KPA under KPA34342 dated 30 April 2014, decided to reject the claim with the reasoning that claimant had initially declared that she lost possession as consequence of the armed conflict, but based on submitted documents and “ex officio” inquiries by the Secretariat, it resulted that she was not able to present any valid evidence and neither did the Secretariat find any evidence that before the war she had property rights over the claimed property which she lost because of the conflict.
6. S.M, in the capacity of appellant, on behalf of her husband, received the Commission decision on 30 October 2014, while she filed an appeal on 21 November 2014.

Admissibility of the appeal:

7. Following examination of case file submissions and appeal allegations pursuant to Article 194 of the Law no. 03/L-006 on the Contested Procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter: LCP), the Court in relation to the examination of judgment ex officio and for mentioned and unmentioned reasons in the appeal, found that the appeal is admissible and timely pursuant to Article 186, paragraph 1 as read with Article 196 of LCP, because the appellant received the Commission decision on 30 October 2014, whereas she filed the appeal on 21 November 2014. Based on this, it can be ascertained that she filed the appeal within the 30-day deadline foreseen by the provision of Article 12, paragraph 1, of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-79. This legal provision foresees that “*an appeal against the KPCC decision can be appealed within 30 days of its receipt*”.

Appeal allegations:

8. The appellant alleges that the KPCC decision was rendered through violation because of incomplete determination of the factual situation and erroneous application of the material law. She further challenges the KPCC reasoning that the property was not lost as a result of the conflict stating that submitted documents prove the ownership over the claimed property was acquired by the enterprise “22 Decembar” through the Judgment of Prishtina Commercial Court with number III II.Br. 2121/94 dated 7 October 1994 through which, as co-constructor, it acquired ownership over the business premises which are the claimed property. The appellant also enclosed contracts for leasing these premises. By privatisation of 2003, the appellant alleges that the property belongs to her husband as privatizer. She alleges that premises had been leased to various subjects until the conflict broke out, and now they are in illegal possession so the KPCC should recognize the ownership and return the possession over the claimed property.

Merits of the appeal:

The court found that the appeal filed against the Commission decision is ungrounded because the claimant and the appellant did not prove that they had a property right registered in public records, which they lost as a result of armed conflict and conflict-related circumstances. Documents submitted by the appellant prove that until 2003 the claimed property was socially-owned property of the “22 December” Enterprise from Nis and that only in 2003 it was privatised by a privatisation authority in Serbia which had no jurisdiction in Kosovo, because the socially-owned enterprises in Kosovo were being administered by the Kosovo Trust Agency (now privatisation agency).

Jurisdiction:

9. Pursuant to Section 3.1 of the UNMIK Regulation 2006/50, as amended by the Law 03/L-079, the KPCC has the competence to resolve the following categories of conflict-related claims, including circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: (a) ownership claims concerning private immovable property, including agricultural and commercial property, and (b) claims related to property use rights over private immovable property, where the claimant is unable to exercise such property rights.
10. In this case, it is necessary to determine whether the Appellant had proofs that he/she was the owner of the claimed property, that he/she used it and lost it as a consequence of the conflict. Cadastral records indicate that during the conflict the property was registered as socially owned. Article 20 of the Law on Basic Property Relations (Official Gazette of SFRY no.6/80, 36/90 foresees that *“the property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law”*- which means in writing, certification by authorities and registration of property in public books. The current law as well no. 03/l-154 on Ownership and other Real Rights under Article 36 foresees that *“1. The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register.*
11. The appellee did not prove that before the conflict it had executed the property right and possession over the claimed property which was lost as a result of conflict, and this ascertainment of KPCC was not challenged by any new evidence according to the appeal. This is proven also by submissions attached to the appeal such as the possession list no.2471, issued by the cadastral authority of Prishtina, displaced in Serbia, which proves that one of the premises-claimed properties is listed as socially owned property of “Kosovo” Combine.

12. The Supreme Court of Kosovo – Appeals Panel found that the appeal is ungrounded and that the appellant failed to prove that she had a property right prior to or during the conflict, and that it was lost as a consequence of conflict or circumstances related to it. The court did not examine the merits of privatisation contract in 2003 in Serbia because this field is regulated firstly by UNMIK Regulation 2002/12 on the establishment of the Kosovo Trust Agency, with its amendments and supplements, and currently by the Law no.03/L-067 on Kosovo Privatisation Agency, as sole privatisation authority in Kosovo. If we take into account the time-limited mandate of KPCC, which is between 27 February 1998 and 20 June 1999, the Supreme Court ascertains that during that period neither the appellant nor her husband had ownership rights and consequently the KPCC decision is right and rendered through proper application of procedural and material law.
13. This judgment does not prejudice any confirmed property rights for the current user and presents no impediments to confirmation of property rights in regular proceedings.
14. Based on the above, the Supreme Court decided as in the enacting clause of this judgment.

Legal advice:

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

Beshir Islami, Presiding Judge,

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar