

**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-158/2015

**Prishtinë/Priština
8 November 2017**

In the proceedings of:

J. J.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges, Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC’s Decision”), No. KPCC/D/C/264/2014 (the case file registered at the Kosovo Property Agency under the number KPA16300) dated 21 October 2014, after the deliberation held on 8 November 2017, issues the following:

JUDGMENT

- 1. The Appeal of J. J. filed against the Decision of the Kosovo Property Claims Commission No. KPCC/D/C/264/2014 dated 18 June 2014, concerning the Claim KPA16300, is rejected as unfounded.**
- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/264/2014, dated 21 October 2014, with regard to the Claim registered under the number KPA16300 is confirmed.**

Procedural and factual background:

1. On 20 October 2006, J. J. (hereinafter “the Appellant”) filed a Claim before the Kosovo Property Agency (hereinafter “the KPA”) seeking confirmation of the ownership rights and repossession of the business premises with the surface of 20.57 m², located in Culjan Street, Lamella 2, shop No. 12, located in the Municipality of Prizren/Prizren (hereinafter “the claimed property”). He alleges to have purchased the premises from the Socially-Owned Enterprise “Stan”, he had fulfilled most of his obligations towards the seller and that he had lost the possession over it in June 1999.
2. To support his Claim, the Appellant submitted the following documents to the KPA:
 - A copy of the Protocol on Construction Conditions and Payments dated 19 June 1996 with the No. 154/2-96 signed by the Appellant and Socially-owned Enterprise "Stan" from Prizren which stipulates that the Appellant is obliged to pay 50% of the total amount of the contractual price the Enterprise within 4 days, whereas the remaining amount of 50% shall be paid by the Appellant upon handover of the premises and depending on the market price.
 - A copy of the Contract on Joinder of Labor and Means concluded between the Appellant and the Socially-Owned Enterprise “Stan” from Prizren/Prizren registered in the books of the “Grading” Enterprise with number 154/3-96 on 19 June 1996, but the signatures were not verified by the Court.
 - A copy of the Appellant’s ID card issued by the competent authorities on 20 March 1998.
 - A copy of the receipt of payment by the Appellant to the Enterprise related to one part of the purchasing price.
3. An attempt of notification of the Claim was done on 5 May 2008, but it was unsuccessful. However it was confirmed that the property is a shop which was not being used by anyone at the time of the visit. No one responded to the Claim.
4. As it appears from the Consolidated Verification Report dated 26 May 2014, the KPA’s Executive Secretariat, was able to verify the documents presented by the Appellant as the protocol, the Contract on Joinder of Labor and Assets and the proof of payment of one part of the purchase price.
5. On 21 October 2014, the KPCC by its Decision KPCC/D/C/248/2014 refused the Appellant’s Claim with the reasoning in the paragraphs 37 and 38 that the Appellant proved that he only paid 47.5% of the contracted price even though the Contract on Joint Labor and Means, as well as the receipt of the part of the amount that was paid were found and positively verified, the Appellant failed to provide new evidence and therefore failed to prove that he has acquired property right and lost possession as a result of the conflict during the 1998-1999.
6. The KPCC’s Decision was served on the Appellant on 27 January 2015, and he filed an Appeal on 5 February 2015.

Admissibility of the Appeal

7. The Appeal was filed within the time limit of 30 days as prescribed by the Article 12.1 of the Law No. 03/L-079, and is admissible.

Allegations of the Appellant

8. The Appellant challenged the KPCC's Decision stating that the Decision is based on erroneous and incomplete determination of the factual situation and involves misapplication of the material and procedural laws.
9. According to the Appellant, he is the owner of the claimed property on the basis of the evidence submitted. He does not know why the Claim was refused even though the KPA Executive Secretariat could have verified the documents proving his property right despite the fact that he has submitted evidence that shows the purchase contract was partially fulfilled with regard to the payment of the purchase price.
10. The Appellant repeated the same allegations as in the first instance by presenting again the same documents which were already taken into consideration by the KPCC.

Legal reasoning:

11. The Supreme Court reviewed the challenged Decision pursuant to provisions of article 194 of the Law on Contested Procedure No. 03 L-006 (hereinafter "the LCP") and after evaluating the Appellant's allegations found that the Appeal is unfounded.
12. Pursuant to Article 3.1 of the Law No. 03/L-079, the Claimant is entitled to an order from the KPCC on re-possession of the property, provided that the Claimant "proves" his property of use right over the private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such rights due to the circumstances directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999 or due to the circumstances resulting from this conflict.
13. According to this legal provision, the Appellant should have submitted evidence in support of his Claim to prove his ownership right or use right over the private immovable property.
14. The Supreme Court finds that the KPCC rendered a fair Decision when refusing the Claim, arguing that the Appellant failed to prove any property right before or during the conflict despite the fact that he had paid 47.5% of the total amount of the purchase price. That is due to the fact that the contract was neither verified from the procedural point of view as required, nor fulfilled in its entirety.
15. The KPCC based its Decision on the fact that the Appellant was contacted and additional evidence was requested, however he did not submit any evidence that could have been verified by the KPA, and the Executive Secretariat *ex officio* did not find any other evidence.
16. The only evidence that refers to the Appellant as an alleged owner is an unverified in the court Contract, which as such, does not constitute the prove of the alleged ownership right because of the non-fulfillment of the terms of Contract. Article 20 of the Law on Basic Property Relations Official Gazette of SFRY No. 6/80, 36/90) provides that "*The ownership right shall be acquired according to the law itself, on the basis of legal action and inheritance. The ownership right shall be acquired also on basis of the decision of the state body in the conditions and manner prescribed by law*" - which means the written form, authentication of the authority and registration of the property in public registers are required. Also the Law No. 03/L-154 on Property and Other Real Rights currently in force in the Article 36 provides 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.*"

17. No evidence has been found in the public records that the property is registered under the name of the Appellant and he re-submits the same allegations he had brought before the KPCC.
18. Based on the abovementioned reasons, the Supreme Court finds that the KPCC rendered a fair and grounded decision following a correct procedure. Consequently, the Court finds that there was no violation of substantive law or incomplete determination of the factual situation.
19. Based on the abovementioned reasons, pursuant to Article 13.3 (c) of the Law No. 03/L-079, it is decided as in the enacting clause of the this Judgment.
20. The present Judgment is without prejudice to the Appellant's right to seek any relief that may be available before the local court.

Legal Advice

Pursuant to Article 13.6 of the UNMIK Regulation 2006/50, as amended by 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

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar