

**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-136/15

**Prishtinë/Priština,
22 November 2017**

In the proceedings of:

A. H.

Address ...

Viti/Vitina

Appellant

vs.

V. P.ć

Vitia/Vitina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC”) No KPCC/D/R/245/2014 of 18 June 2014 (the case file registered at the Kosovo Property Agency under the number KPA27520) after the deliberation held on 22 November 2017 issues the following:

JUDGMENT

- 1. The Appeal of A. H. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/245/2014 dated 18 June 2014 with regard to the**

Claim registered with the Kosovo Property Agency under the No KPA27520 is rejected as unfounded.

- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/245/2014 dated 18 June 2014, with regard to the Claim registered with the Kosovo Property Agency under the No KPA27520 is confirmed.**

Procedural and factual background

1. On 9 February 2007, V.P. (hereinafter “the Appellee”) filed a Claim to the Kosovo Property Agency (hereinafter “the KPA”) seeking the re-possession of the III store house (not evidenced in the cadastral registry), constructed in 1988 on a cadastral parcel No 2570, with the surface 200m² and business premises with the total surface of 00.04.31 ha, located at place called *name of the place ...*, Municipality of Vitia/Vitina (hereinafter “the claimed property”). She alleged that her husband was the owner of the claimed property which, at the moment” is being used by the family K. As the date of loss of the possession V.P. indicated 14 August 1999.
2. In support of her Claim the Appellee submitted the following evidence to the KPA:
 - A copy of the Contract on Long Life Support dated 30 May 1985 and concluded between D. P. in a capacity of the care giver and his father B. P.1 in a capacity of care receiver. The Contract was legalized before the Municipal Court of Vitia /Vitina under the number 381/85,
 - A copy of the Decision No 3-351-204 issued by the Secretariat of Economy of the Municipality of Vitia/Vitina on 7 October 1988 allowing D. P. to build a residential object on the cadastral parcel No 2570,
 - A copy of the Death Certificate No 203-207-V issued by the Civil Registration Office of Vranje, showing that D. P. passed away on 4 August 1999,
 - A copy of the Possession List No 236 issued by the Displaced Cadaster of Municipality of Vitia/Vitina on 24 January 2007 and showing the cadastral parcel No 2570 with the surface of 00.04.31 ha registered under the name of the late husband of the Appellant: D. P.,
 - A copy of the Ruling on Inheritance rendered by the Municipal Court in Šabac in the case No 140/7 on 19 March 2007 whereby V. and B. P.1 inherited the claimed property after the deceased D. P.
3. On 22 June 2007 the KPA identified the claimed property and it was found to be a house occupied by A. H. (hereinafter “the Appellant”). The Claim was served on the Appellant who signed a Notice of Participation. On 4 July 2007 the Appellant filed a Response to the Claim questioning active legitimacy of the Appellee and declared he did not claim any legal right to the claimed property.
4. In support of his allegation the Appellant he submitted the following evidence:
 - A copy of the Possession List No 236 issued on 22 June 2007 by the Department for Cadaster and Geodesy of the Municipality of Vitia/Vitina, showing the claimed property being registered under the name of B. P.1,

- A copy of the Certificate for Immovable Property Rights No 1-1041 issued by the Department for Cadaster and Geodesy of the Municipality of Vítia/Vitina on 4 February 2014, listing the claimed property under the name of B. P.1
5. A written Statement dated 5 February 2014 in which A. H. pointing out that V. P. indicated M. K. as the user of the claimed property , while his father name is M. H. Moreover, not the father but A. H. himself has been using only one part of the business premises which belongs to the house located at the claimed property. According to A. H., V. P. is not the owner of the claimed property. The legitimate owner of the claimed property is B. P.1 who passed away. The legal inheritors (yet alive) of B. P.1 are S. P. (wife of B.1), B. P.2 (son of B.1) and two daughters of B.1 while D. P. passed away. According to A. H., V. P. was not entitled to file a Claim as she lacks the active legitimacy.
 6. The Executive Secretariat of the KPA verified positively the Contract on Long Life Support, as well as the copy of the Possession List submitted by the Appellee.
 7. On 18 June 2014, the KPCC with its Decision KPCC/D/R/245/2014 decided that the Appellee has established the ownership right of D. P. over the claimed property and ordered a return of the claimed property into the possession of the Appellee.
 8. On 7 July 2014 the Decision was served on the Appellee. The Appellant received the Decision on 30 September 2014. The Appeal was filed on 10 October 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision contains essential violation of the substantive and procedural law and restes upon erroneous and incomplete determination of the factual situation. According to him the Appellee had no legitimacy to file a Claim to the KPA as her late husband was not the owner of the claimed property. According to the Appellant, the Appellee seeks the repossession over the claimed property by relaying on the documents issued by parallel institutions of the Republic of Serbia. The claimed property still appears to be registered under the name of B. P.1 (father of D. – her late husband). The Appellant insisted that, the legal inheritors of B. P.1 are S. P. (the wife of B.1), B. P.2 (the son of B.1) and two daughters of B.1, while D. P. passed away and not V. P.

Legal reasoning

10. The Appellee requested to confirm his ownership rights over the claimed property and to order its repossession. The Appellant however, currently using the immovable property, questioned her active legitimacy to be a party to the proceedings.
11. After having reviewed the evidence gathered during the proceedings before the KPA and the content of the Appeal, the Supreme Court contends that the allegations of the Appellant are not grounded. As it appears from the documents submitted by the Appellee, V. P. was a wife of now late D. P., who entered into Contract of Life Long Support with his father B. P.1 – the owner and possessor of the claimed property. To

this extend the Appellee submitted a copy of the Contract and of the Inheritance Ruling issued by the court competent for her place of residence in the Republic of Serbia. According to the Contract – not questioned by the Appellant – the father B. P.1 transferred his property rights to the claimed property already in 1985 to the late husband of the Appellee in exchange of the care and support until the very last day of his life. The document was positively verified by the KPA.

12. According to Section 3.1 of the Law No 03/L-079, Claimant is entitled to an order from the Commission for repossession of the property if the he proves ownership over the private immovable property, or the right of using over the private immovable property, including agricultural and commercial property, and that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. In view of this provision, it follows that the jurisdiction of the Property Claims Commission of the KPA, hence of the Supreme Court, is limited exclusively to resolving of and deciding on property claims for private immovable properties, including agricultural and commercial property.
13. Article 1 of the Administrative Direction No 2007/5 on Implementing UNMIK Regulation 2006/50 on the Resolution of Claims Relating to a Private Immovable Property, including Agricultural and Commercial Property” defines a “Member of the Family Household” as following: *“The spouse, children (born in and out of wedlock of adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder. Persons who fall under the definition of the “Member of the Family Household” are entitled to submit the claim.*
14. The Appellee was a member of the family household at the time the owner of the claimed property died in 1999. In the 2007 she addressed the court in the Republic of Serbia requesting the Inheritance decision.
15. On the other hand, the Appellant, while alleging legal right over the claimed property, failed to present any documentation to support his allegations leading to a conclusion that he had the title to it neither at the time when the property was notified nor during the proceeding before the first instance.
16. Considering what was mentioned above, the Court concludes that the factual situation was established properly by the KPCC and its Decision in relation to this legal case has been correctly and fully established and that the KPCC Decision contains essential violation of the substantive and procedural law.
17. In light of the foregoing and pursuant to Section 13.3 (c) of the Law No. 03/L-079, the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of the Law 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

Timo Eljas Torkko, Acting EULEX Registrar