

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-166/15

**Prishtinë/Priština
22 November 2017**

In the proceedings of:

R. V.

Appellant

vs.

F. H.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No. KPCC/D/A/236/2014 of 30 April 2014 (the case files registered at the Kosovo Property Agency under the number KPA14188), after the deliberation held on 22 November 2017 issues:

JUDGMENT

1. **The Appeal filed by R. V. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/236/2014, dated 30 April 2014, regarding the case registered at the Kosovo Property Agency under the number KPA14188, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014, dated 30 April 2014, as far as it concerns the Claim registered under the number KPA14188, is confirmed.**

Procedural and factual background

1. On September 2006 2006, M. V. (hereinafter “the Claimant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) seeking a repossession of the cadastral parcel No. 1024 with the surface of 0.32.20 ha, located in the place called “Maticki Zabran”, Matican, Municipality of Prishtinë/Pristina (hereinafter “the claimed property”), which he stated he had owned and had lost as a result of the circumstances related to the armed conflict, and now the property is occupied. Later on, in a supplementary statement, he explained that his property was sold without his permission by Sh. U. and that by falsifying the documents, the property was registered in the cadaster under her name.
2. Along with the Claim, he submitted to the KPA *inter alia* the following documents:
 - A copy of the Possession List No. 46 issued by the Municipal Directorate of Geodesy in Prishtinë/Pristina on 8 April 1986, which shows that the Claimant was the owner of the claimed property.
 - A copy of the Contract on Sale concluded on 2 December 2000 between D. (D.) A. (represented by S. A.) in the capacity of the Seller and the Appellant in the capacity of the Buyer. Paragraph one (1) of the Contract specifies that the claimed property is the subject of the sale.
 - A motion addressed to the Municipal Court of Prishtinë/Pristina on 24 May 2006, requesting a copy of the Contract in order to initiate proceedings through the lawsuit for annulment of the contract.
 - A copy of the Possession List No. 1780 issued by the Municipality of Prishtinë/Pristina on 25 May 2006, indicating that Sh. U. is the owner of the claimed property according to the updated records No. 85/2004.
 - A copy of the Description of the Possession List issued on 22 November 2005 by the Department for Cadaster of Municipality of Prishtinë/Pristina displaced in Serbia which shows that the claimed property is registered under the name of the Claimant.

- A copy of the Death Certificate issued by the administration authority of the city of Belgrade on 22 January 2014 which shows that M. V. passed away on 30 July 2011 in Belgrade.
 - A copy of the Birth Certificate issued by the Municipality of Prishtinë/Pristina on 27 January 1998 which shows that R. V. (hereinafter “the Appellant”) is the son of the late M. V.
 - A copy of the Ruling on Inheritance rendered in the case II 2 Br.4098/12 on 16 January 2013 by the Second Municipal Court of Belgrade, through which the Appellant was declared heir of the claimed property.
3. The Executive Secretariat of the KPA visited the property on 10 August 2007 and 3 April 2010, and after having responded on 8 October 2007 F.H. from Stanoci i Epërm signed the notice of participation in the response to the Claim. He argued that he has bought the claimed property from M. V. and according to him he had paid the purchasing price. To support his allegation, the Appellee submitted the following documents:
- A copy of the Contract on Sale concluded between Sh. U. represented by A. A. with the power of attorney legalized by the Court and F. H. Vr. Nr/8952/2009 dated 9 November 2009;
 - A copy of the Power of Attorney given by Sh. U. to A. A, legalized by the Municipal Court of Prishtinë/Pristina – Branch in Graçanicë/Gracanica under the number Ov.Br.8811/09 on 19 October 2009;
 - A copy of the Certificate of Ownership dated 25 August 2009 which shows that the claimed property is registered under the name of Sh. U.
4. The Executive Secretariat obtained *ex officio* a copy of the Contract on Sale concluded between M. V. represented by B. I. as per the Power of Attorney (certified under No. 898/2004 on 22 April 2004) and Sh. U. The signatures below the Contract were confirmed by the Municipal Court of Prishtinë/Pristina under the number Vr. Nr.2249/2004 on 18 April 2004.
5. According to the Verification Reports of the 2011, the documents were found and the claimed property was found to be registered in the Cadaster under the name of Sh. U.
6. On 30 April 2014, the KPCC through its Decision KPCC/D/A/236/2014 (hereinafter “the KPCC’s Decision”) dismissed the Claim due to the fact that it fell outside the jurisdiction of the Commission, as the possession of the claimed property was not lost as a result of the armed conflict which occurred in Kosovo in 1998-1999.
7. M. V. passed away on 30 July 2011 in Belgrade. A copy of the Decision of the KPCC was served on the Claimant’s son R. V., on 22 October 2014. He filed an Appeal on 21 November 2014
8. F. H. received the Appeal on 21 September 2015, however he did not respond to it.

Allegations of the Appellant

9. The Appellant states that the Contract on Sale was concluded with the use of forged Power of Attorney, because according to him the property was not sold. He accepts the fact that the property was alienated and registered under the name of Sh. U. and that is why he requested from the Court a copy of the Contract on Sale in order to initiate proceedings through a lawsuit for annulment of the contract. He requested the Supreme Court to quash the decision of the KPCC and to decide in favor of returning the claimed property to him.

He also opined that the Decision was taken without his presence and requested to be heard by the Supreme Court in the capacity of the party – witness.

10. The Appellee did not respond to the Appeal.

Legal reasoning

11. The Supreme Court, after having reviewed the allegations contained in the Appeal and the content of the documents gathered in the case file found that the KPCC's Decision does not contain any essential violation or erroneous application of the material law and it does not rest on erroneous and incomplete determination of the facts. Therefore, the Appeal may not be granted.
12. Pursuant to Article 3.1 of the Law No. 03/L-079 Amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, the KPCC shall have jurisdiction to resolve conflict related property claims and ownership claims "which are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999". The claimed property in the case at hand was lost as a result of transaction that took place in 2004, even though the Appellant claims that this was done without the consent of the owner. If the Commission finds that the possession of the claimed property was lost before or after the dates indicated in Article 3.1 quoted above or that the loss of possession was not related to the conflict, it shall reject the claim on the basis of Article 11.4 (b) of Law No. 03 / L-079. The review of other elements that refer to the issue of the validity of the Purchase Contract fall outside of the jurisdiction of the KPCC and the Appellate Panel
13. As it appears from the case file, the property was a subject of sale of at least two different persons and that the cadastral records indicate it was registered under the name of another person. That circumstance is confirmed also by the Appellant; however he claims that the transaction was concluded on the basis of the forged Power of Attorney.
14. Upon receipt of the Claim, the Appellant indicated that he had lost a possession of the claimed property because Sh. U. has falsified the power of attorney. Additionally, the Appellant attached a copy of the request filed to the Municipal Court in Prishtinë/Pristina, in which he had requested copies of the Contract with the intention to initiate proceedings for annulment of it.
15. After having reviewed the evidence gathered in this case, the Supreme Court considers that the Appellant did not prove that the loss of possession of the claimed property is related to the conflict. On the other hand, according to the Consolidated Verification Report, the KPA Verification Team positively verified the Contract on Sale with the legalized signatures. Notwithstanding the circumstance whether the Contracts were falsified or not, the dispute focuses on the issue of the Contracts of 2004 and 2009.
16. This leads the Supreme Court to the conclusion that the KPCC has rendered a fair Decision based on right reasons when it dismissed the Appellant's Claim. The Commission rightfully found that the Appellant failed to prove the loss of property right over that property immediately before or during the conflict of 1998/99. Those circumstances and the assessment of the potential validity of these Contracts, nonetheless falls outside the jurisdiction of the KPCC. On the other hand, the challenging of the Contracts signed in 2004 means that it is not related to the possession during or after the conflict. This assumption may be challenged again before the competent Municipal Court. Consequently,

the Supreme Court finds that the KPCC's Decision was fair and is based on the applicable law. Therefore, the Appeal is unfounded and should be rejected.

17. Regarding Appellant's allegation that the Decision on the Claim was taken without his presence and the request that the Commission should have opened a hearing and invited the Appellant, the Supreme Court notes as follows: Article 5.3 of Annex III to Administrative Direction 2007/5 Implementing UNMIK Regulation No. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property states that: "*The proceedings before the Commission are based on verbal submissions and documents, if the interest of justice so require, oral hearing. Pursuant to Section 11.2 of UNMIK Regulation No. 2006/50, Claims shall be decided on the basis of the submissions by the parties, including documentary evidence*". Also, the Supreme Court is of the opinion that the present case does not require additional clarification and therefore it is not necessary to apply Section 12.10 of UNMIK Regulation 2006/50, as amended by the Law No.03/L-079 and hold a hearing.
18. In light of the above, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079, it is decided as in the enacting clause of the present Judgment.
19. This Judgment does not prejudice the Appellant's right to seek his rights before the competent court, if he deems necessary.

Legal advice

Pursuant to Section 13.6 of 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

Erdogan Haxhibeqiri, Judge

Anna Bednarek, EULEX Judge

Timo Eljas Torkko, Acting EULEX Registrar