

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

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

GSK-KPA-A-141/15

**Prishtinë/Priština
29 November 2017**

In the proceedings of:

N. A.

Appellant

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 KPCC/D/C/224/2013 (the case file registered at the Kosovo Property Agency under the number KPA01409), dated 27 November 2013, after the deliberation held on 29 November 2017, issues the following:

JUDGMENT

1. The Appeal of N. A. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 dated 27 November 2013 with regard to the Claim registered under the number KPA01409 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 dated 27 November 2013 with regard to the Claim registered at the Kosovo Property Agency with the number KPA01409 is confirmed.

Procedural and factual background:

1. On 5 December 2007 N. A. (hereinafter “the Appellant”), filed a Claim to the Kosovo Property Agency (hereinafter “the KPA”) on behalf of B.R. seeking a repossession of the garage with the surface of 18 m², located in ~~00730~~ Street No ~~00~~, on cadastral parcel No 6219/9, in the Municipality of Prishtinë/Priština (hereinafter “the claimed property”).
2. To support her Claim, the Appellant provided the KPA with the following documents:
 - A copy of the Contract on Use of the Urban Construction Land concluded on 5 May 1967 between the Municipal Assembly of Prishtinë/Priština and J. V, on the latter on was allocated the urban construction land, cadastral parcel No 6229 with the surface of 16m2, for permanent use with the purpose of construction of the garage No 4,
 - A copy of the Decision No 06-323 issued by the Municipal Assembly of Prishtinë/Priština, Secretariat for Economy on 12 April 1968 granting the permission to J. V. to construct a garage No 4 in ~~00730~~ Street in Prishtinë/Priština,
 - A copy of the Possession List No 7734 issued by the Directory of Cadaster of Prishtinë/Priština Municipality on 24 July 1975, listing the land parcel No 6219/9 under the name of J. V,
 - A copy of the Confirmation Letter with the No 07-464-122/75 issued by the Municipal Assembly of Prishtinë/Priština, Secretariat for Finance on 1 August 1975 through which Municipal Assembly of Prishtinë/Priština declared no interest in buying the garage located at the cadastral parcel No 6219/9 with the surface of 18 m2, ~~00730~~ Street, described in the Possession List No 7734 under the name of J. V,
 - A copy of the Contract on Sale of the real estate concluded on 28 July 1975 between J. V. in the capacity of the seller and B. R. in the capacity of the buyer of the garage with the surface of 18 m2, located in ~~00730~~ Street No ~~00~~, in the Municipality of Prishtinë/Priština. The Contract was legalized before the Municipal Court of Prishtinë/Priština on 24 September 1975 under the number 1913/75,

- A copy of the Marriage Certificate No 07 of N. A, issued by the Civil Registration Office of Prishtinë/Priština on 13 May 1993,
 - A copy of the Power of Attorney signed by B.R. authorizing N. A. to sell and to conclude the Contract on Sale related to his garage, located in ~~00000~~ Street No ~~00~~ in Prishtinë/Priština. The Power of Attorney was legalized on 11 May 2001 before the Municipal Court of Mitrovicë/Mitrovica under the number 663/2001,
 - A copy of the Birth Certificate No 200-433 of N. A., issued by the Civil Registration Office of Prishtinë/Priština on 14 April 2003,
 - A copy of the Death Certificate No 203/2004 issued by the Civil Registration Office of Grocka on 11 May 2004 showing that B. R. passed away on 10 May 2004,
 - A copy of the Inheritance Ruling issued by the Fifth (5th) Municipal Court of Belgarde on 19 October 2005 in the cases No 193/05 stating that M. (wife), Đ. and N. R. (children) were pronounced as the heirs of B.R. (the claimed property was mentioned as “unregistered ownership right of a garage”).
3. The Notification of the Claim was performed 24 September 2010 by publishing the claim in the KPA Notification Gazette No 9 and the UNHCR Property Office Bulletin. The Gazette and the List were left with the Municipality of Prishtinë/Priština which accepted to make it available for interested persons. The same publications were made in the Municipality of Prishtinë/Priština, the Cadastral Office of the Municipality of Prishtinë/Priština, the Municipal Court of Prishtinë/Priština and the Prishtinë/Priština Regional Office of the KPA. In addition, the List and Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency, the Danish Refugee Council (DCR) and the UNMIK Office in Graçanicë/Gračanica.
 4. Given that no party filed a Response on the Claim within the legal deadline of 30 days, pursuant to Article 10.2 of the Law No. 03/L-079, the Claim was considered as uncontested.
 5. The Executive Secretariat of the KPA could not locate the claimed property. According to the cadastral officials, the land parcel No. 6219/9 does not exist at all, instead, a cadastral parcel No 6219/7 was found registered in the Possession List No 7736 under the name of J. V.
 6. The Power of Attorney legalized before the Municipal Court of Mitrovicë/Mitrovica under the number 663/2001 on 11 May 2001 was verified positively, however, according to it the Appellant was only authorized to sell the claimed property and to conclude the contract on sale on behalf of B. R.
 7. The Executive Secretariat of the KPA informed the Appellant about the necessity of submitting of the Power of Attorney through which the heirs of B. R. explicitly declare that the Appellant is authorized to file a Claim to the KPA (page 094 of the case file). Moreover, on 5 February 2013 the Executive Secretariat of the KPA served a letter to the Appellant informing about potential dismissal of the Claim in case the authorization is not submitted. No further document was however submitted by the Appellant.
 8. The Kosovo Property Claims Commission through its Decision KPCC/D/C/224/2013 of 27 November 2013 decided to dismiss the Claim explaining that the Appellant is not a family member (as defined in Articles 1 and 5

of Administrative Direction 2007/5, as adopted by the Law No 03/L-079), in order to be able to file a claim on behalf of the alleged property right holder. Nor does the Appellant hold a valid and duly executed power of attorney authorizing him to act on behalf of the alleged property right holder. The Appellant moreover, according to the KPCC, has not provided any evidence that he himself enjoys any property right over the claimed property, nor has the Executive Secretariat obtained *ex officio* any such evidence.

9. The Decision was served on the Appellant on 21 November 2014. He filed an Appeal on 11 December 2014.

Allegations of the Appellant

10. The Appellant alleged that the Decision made by the KPCC is based on incomplete determination of the factual situation and on misapplication of the substantial law. He stated that his wife N. A. is the legal heir of B.R. According to the Appellant, B. R. gained the claimed property on the basis of the Contract on Sale concluded on 24 September 1975 and had possession over the claimed property until the year 1999.
11. The Appellant explained that the Executive Secretariat of the KPA did not request him to submit a Power of Attorney signed by his wife and only to present a marriage certificate of his wife, the inheritance decision and death certificate of B. R. as sufficient evidence. In conclusion, the Appellant requested the Supreme Court of Kosovo to grant his Appeal as grounded and to establish that he is entitled to possession over the claimed property.

Legal Reasoning

12. The Supreme Court, after having reviewed the allegations of the Appeal and the content of the case file, concludes that the Decision of the KPCC does not involve any fundamental error or serious misapplication of the applicable substantial law, nor it rests upon an erroneous or incomplete determination of the facts. Hence, the Appeal may not be granted.
13. It is not disputed that the Appellant filed the Claim “on behalf of B. R. claiming repossession right on his behalf. It is not disputed as well that B.R. passed away in 2004 and his successors were wife, M. R. and his children: Đ. R. and N. A- R.
14. As to the representation of a party, Article 5.2 of Administrative Direction 2007/5 reads: *“In proceedings before the Commission, where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person. A claimant may be represented by an authorized natural person with a valid and duly executed power of attorney. In exceptional cases, where the provision of a power of attorney is problematic the Executive Secretariat may certify an alternative document authorizing representation of a claimant.”*
15. According to Section 1 of the same Administrative Direction, *“member of the family household” means the spouse, the children 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”.*

16. N. A. is B. R. son in law and he does not belong to any of the above mentioned category of the members of the family. Therefore, he is not a member of the family household in the meaning of the quoted Law. As a consequence, he is not entitled to act on behalf of the alleged property right holder. It is important to underline however, that it is not possible to act on behalf of deceased person. Only natural persons are entitled to be a party to any judicial proceedings. Considering that the alleged property right holder passed away before the Claim was filed, only the heirs could request the repossession of the immovable property on the basis of Article 3.1 of the Law No. 03/L-079.
17. The Appellant was contacted by the Executive Secretariat several times and was advised to submit a valid Power of Attorney given by the heirs of B.R. authorizing him to act on their behalf during the proceedings before the KPA. Moreover, the written request attracting his attention to the consequences of a failure to comply with such request was provided to him on 5 February 2013. The Appellant remained passive.
18. For all the above mentioned reasons, the Supreme Court considers that the Appeal stands to be rejected as unfounded. Accordingly, the Decision of the KPCC is to be confirmed pursuant to the Article 13.3 (c) as read in conjunction with the Article 11.4 (a) of the Law No. 03.L-079.

Legal Advice:

Pursuant to Section 13.6 of Law 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