

**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-142/2015

**Prishtinë/Priština
17 January 2018**

In the proceedings of:

S. S. T.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges: 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’s Decision”) No KPCC/D/R/223/2013 (the case file registered at the Kosovo Property Agency under the number KPA25346) dated 27 November 2013, after the deliberation held on 17 January 2017, issues the following:

JUDGMENT

1. **The Appeal of S. S. T. filed against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/223/2013 dated 27 November 2013, concerning the Claim KPA25346, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 dated 27 November 2013; with regard to the Claim registered under the number KPA25346 is confirmed.**

Procedural and factual background:

1. On 30 March 2007, S. S. T. (hereinafter “the Appellant”) filed a Claim before the Kosovo Property Agency (hereinafter “the KPA”) seeking confirmation of the ownership rights of the apartment with the surface of 54.21 m², located in Vidovdanska Street, 38/5 in Prizren/Prizren (hereinafter “the claimed property”). He alleges to have been allocated the premise by the Municipality of Prizren/Prizren and that he had lost the possession over it on 15 June 1999.
2. To support his Claim, the Appellant submitted the following documents to the KPA:
 - A copy of the Decision on Allocation of the Apartment for Use issued by the Municipal Assembly of Prizren/Prizren, on the basis of which the claimed property was allocated to the Appellant and his family.
 - A copy of the Contract on Use of the Apartment with the number 236-10/98 concluded on 15 October 1998 between the Public Housing Enterprise and S. T., on the basis of which the claimed property was given to the Appellant for use for an indefinite time.
 - A copy of the Appellant’s ID card issued by the competent authorities on 16 March 2006.
3. An attempt of notification of the Claim was performed on 18 September 2008. The claimed property appeared to be an empty, not occupied apartment.
4. As it may be read from the Consolidated Verification Report dated 11 February 2011, both the Contract and the Decision on Allocation were negatively verified.
5. On 27 November 2013, the KPCC by its Decision KPCC/D/R/223/2013 refused the Appellant’s Claim with the reasoning in paragraph 32 that the Appellant had failed to submit any evidence at all, or any evidence that could be verified by the Executive Secretariat, that the alleged property right holder enjoys any property rights over the claimed property, nor has the Executive Secretariat obtained *ex officio* any such evidence. Accordingly, in the opinion of the Commission, the Claim stood to be refused.
6. The KPCC’s Decision was served on the Appellant on unspecified date. The authorized lawyer filed an Appeal on behalf of the Appellant on 25 November 2015.

Allegations of the Appellant

7. The Appellant requested to dismiss the Decision of the KPCC as ungrounded and to approve his Appeal stating he has been the legitimate user of the claimed property. He explained that “the flat was allocated to him for use in the year 1998 and since then he continued to use it, even today, sixteen years after”. The copy of the Contract and of the Decision was attached to the Appeal.

Legal reasoning:

8. The Supreme Court reviewed the challenged Decision pursuant to provisions of the Article 194 of the Law on Contested Procedure No. 03 L-006 (hereinafter “the LCP”) and after evaluating the Appellant’s allegations concluded that the Appeal is unfounded.
9. 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 or 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.
10. 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.
11. The Supreme Court finds that the KPCC rendered a fair Decision when refusing the Claim, arguing that the Appellant failed to prove he enjoyed any property rights over the claimed property. None of the two documents submitted by the Appellant could be positively verified by the Executive Secretariat, which means that the Claim was not supported by any evidence at all to prove the title to the claimed property.
12. 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.
13. The documents that were negatively verified do not constitute a proof of the alleged ownership right. As no evidence has been found in the public records that the property is being registered under the name of the Appellant, his allegations could not lead to the acceptance of the Claim.
14. It should be underlined here, that the Appellant alleged that “the flat was allocated to him for use in the year 1998 and since then he continued to use it, even today, sixteen years after”. If that is the case, the Claim of the Appellant stood to be dismissed also because the requirement of the Article 3.1 of the Law of the inability to exercise property rights due to the circumstances directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999. The Claim of a person declaring s/he is still using the immovable property is inadmissible due to lack of legal interest in pursuing of the Claim, but also due to lack of jurisdiction of the KPA.
15. 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.
16. Thus, pursuant to Article 13.3 (c) of the Law No. 03/L-079, it is decided as in the enacting clause of this Judgment.
17. 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