

**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-213/15

Prishtinë/Priština,
28 February 2018

In the proceedings of:

N. A.,

Represented by G. H., lawyer from Prishtinë/Priština

Appellant

Vs.

I. H.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/263/2014 (case file registered at the KPA under the number KPA01102), dated 21 October 2014, after the deliberation held on 28 February 2018, issues the following:

JUDGMENT

1. **The Appeal filed by N. A. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/263/2014, dated 21 October 2014, as far as it regards the Claim registered with Kosovo Property Agency under the number KPA01102, is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014, dated 21 October 2014, as far as it regards the Claim registered under the number KPA01102, is confirmed.**

Procedural and factual background

1. On 31 August 2007, N. A. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession of a house with a surface of 37 m² and a yard of 66 m², located at the cadastral parcel number 6098/1, in the cadastral municipality of Prishtinë/Priština (hereinafter: the claimed property).
2. Together with the Claim, he provided the KPA *inter alia* with the following documents:
 - An Informal Contract on Sale concluded on 29 January 1997 between S. M. as seller and N. A. as buyer of the claimed property. The Article II of the Contract states that the seller, S. M. previously has had purchased the property from M. D.
 - The Power of Attorney given by the Appellant to the lawyer G. H. from Prishtinë/Priština, certified in the Municipal Court of Prishtinë/Priština-Graçanica branch with the number Ov.Br. ... on 17 July 2008.
 - The Lawsuit C.Nr.1371/08 for confirmation of the ownership right over the claimed property, filed by the Appellant against S. M. on 11 February 2008.
 - A Statement given on 6 August 2009 by A. R. whereby he testifies that he had been present when the informal Contract on Sale was concluded.
 - A request addressed to the Prishtinë/Priština Municipal Court filed by the Appellant's authorised representative whereby he requests to be provided with the submissions of the case C.Nr.1712/2001.
 - A Criminal Report against I. H. written by the Appellant.
 - The Lawsuit C.Nr.361/10 filed by the Appellant on 23 June 2010 to the Municipal Court of Prishtinë/Priština whereby the Appellant requests the Contract on Sale be annulled.
 - Minutes of the main trial in the case C.Nr/1371/2008 held on 23 June 2010.
3. The notification of the claimed property was performed on 1 July 2008 and on 9 March 2010 and it was found that the claimed property was occupied and a newly constructed house was found on it.
4. I. H. signed the notice of participation in the proceedings on 18 July 2008 and stated that he had purchased the claimed property from S. D.

5. To support his allegations, he submitted a Contract on Sale with the number Vr.Nr.2411/2001 at the Municipal Court of Prishtinë/Priština. The Contract was concluded between the Appellee as buyer and S. D. represented by the lawyer B. R. as a seller.
6. According to the Verification Team of the Executive Secretariat of the KPA on 2 September 2014, the Contract on Sale was positively verified. Moreover, the Executive Secretariat of the KPA had found the Certificate for Immovable Property Rights on 3 April 2010 showing the claimed property registered under the name of I. H.
7. On 21 October 2014, the KPCC with its Decision KPCC/D/R/263/2014 (hereinafter: the "KPCC Decision", "Decision") dismissed the claim because it fell outside the jurisdiction of the Commission, since the possession of the claimed property was not lost as a result of the armed conflict that had occurred in Kosovo during 1998-1999.
8. The Appellant received the KPCC's Decision on 16 January 2015 and he filed an Appeal on 19 January 2015. The Appellee received a copy of the Appeal on 21 September 2015, but had not filed a response to it.

Allegations of the Appellant

9. The Appellant made a mistake with the address and had filed the Appeal to the Special Chamber of the Supreme Court, however from the content it was clear that it was addressed to the KPA Appeals Panel of the Supreme Court. In the Appeal, he claims that he purchased the claimed property from S. M. in 1997 for the purchase price of DEM 43,000, whereas S. M. had purchased it from M. D. in 1978.
10. The Appellant considers that the KPCC's Decision was rendered on the basis of erroneous determination of the factual situation, in violation of human rights and the KPA Regulation. According to the Appellant, the current occupant I. H. purchased the property with forged documents after the forced abandonment by the Appellant, because S. D. was never the owner of this land. To prove the truthfulness of the allegations, he also presented a compact disc (CD) with images proving that he lived in the claimed property prior to 1999.
11. The Appellant informs the Court that he has initiated proceedings for confirmation of ownership and nullification of contract before the competent court.
12. Based on these documents, he motions the Court to approve the Appeal, to annul the KPCC's Decision and to recognize his ownership over the property.

Legal reasoning

13. The Appeal is filed within the time limit of 30 days set in Article 12.1 of the Law No. 03/L-079 and is admissible.

Merits of the Appeal

14. The Supreme Court of Kosovo reviewed the Appeal pursuant to provisions of Article 194 of LCP, and after the assessment of the allegations of the Appeal it found that the Appeal is ungrounded.

15. Pursuant to Article 3.1 of the Law No. 03/L-079, the KPCC has the competence to resolve property claims and property right claims, "directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999 or resulting from the circumstances related to the conflict". The claimed property was lost as a result of a transaction of 2001, even though the Appellant claims that this happened without his knowledge. If the Commission finds that the possession of the claimed property was lost before or after the dates mentioned 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 the Law No. 03/L-079.
16. There is evidence in the case file that the claimed property underwent the changes, namely the D. family initially owned the cadastral parcel number 6098 with the surface of 0.01.53 ha. In 1979 from the cadastral parcel number 6098 there was created the cadastral parcel number 6098/1. Since the year 2001 the cadastral parcel number 6098/1 was registered as a property of I. H.
17. This renders the property dispute outside the time period foreseen by Article 1 of the Law No. 03/L-079 and that the loss of possession cannot be related to the circumstances of the conflict. Therefore, the KPCC and the Supreme Court have no competence to examine other elements that refer to the issue of the validity of the Contract on Sale or the procedure for the registration of claimed property in public registers.
18. This leads the Supreme Court to the conclusion that the KPCC has rendered the Decision on fair grounds when it rejected the Appellant's Claim. The Commission was right when it considered that the Appellant failed to prove the loss of property right over that property immediately before or during the 1998/99 conflict. The circumstances and the assessment of the potential validity of Contract on Sale fall outside the jurisdiction of the KPCC.
19. With respect to the Appellant's request to hold a session and summon the Appellant, the Supreme Court notes the following: Section 5.3 of Annex III of UNMIK/AD/2007/5 Implementing UNMIK Regulation No.2006/50 on 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, where the interest of justice so requires, the oral hearing". In view of Section 11.2 of UNMIK Regulation No.2006/50, the claims shall be decided on the basis of submissions by the parties, including documentary evidence ". In addition, the Supreme Court is of the opinion that in accordance with the Article 19.2 of Administrative Direction 2007/5 which provides that: "*The Supreme Court may hold an oral hearing on a specific contested issue relating to facts and evidence addressed before the Commission when it considered the claim*", in the case at hand there is no need for an oral hearing and additional clarification because there are no issues requiring consideration at this stage of proceedings.
20. This Judgment does not confirm any right of any party over the property and does not prejudice the Appellant's right to seek his rights before the competent court if he sees it necessary.
21. Based on the above, in accordance with Section 13.3 (c) of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, as amended by the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar