

**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-193/2014

**Prishtinë/Priština,
8 September 2016**

In the proceedings of:

D.B.

Represented by V. O.

Appellant

Vs.

R. B.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/215/2013 (case file registered at the KPA under the No KPA10609), dated 21 August 2013, after the deliberation held on 8 September 2016 issues the following:

JUDGMENT

1. The Appeal of D. B. against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/215/2013, dated 21 August 2013 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission No KPCC/D/R/215/2013, dated 21 August 2013 as far as it regards the Claim registered with the KPA under the No KPA10609 is confirmed.

Procedural and factual background:

1. On 22 May 2006, D. B., (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking the repossession of the house with the surface of 30 m² (hereinafter: the claimed property) located in Prishtinë/Priština. She stated that she had acquired the ownership right over the claimed property through a purchase transaction. The claimed property initially was a barrack with a surface of 9.8m². This barrack was reconstructed into a house with the surface of 30m². The Appellant claimed to have lost the possession over it on 1 June 1999.
2. To support her Claim she provided the KPA with:
 - The copy of the Purchase Contract No 259/2-149 concluded on 30 August 1993 between the SOE “Ramiz Sadiku” in Prishtinë/Priština, represented by the liquidation manager V. P. as the seller and the Appellant as the buyer of “the object (a barrack) located on the left side from the entrance gate to the laboratory of the SOE Ramiz Sadiku in Prishtinë/Priština, with the entrance towards the gable of the laboratory” with the total surface of 9.80 m². Paragraph 5 of the Contract indicated that it would enter into force “on the day of its signature by both contracted parties and its conclusion would be verified by the Municipal Court in Prishtinë/Priština”.
 - A copy of an invoice No 39/20, bearing the date of 8 November 1993 “for the execution of the works for the adaption” of the barrack described in the Contract No 259/2 of 30.08.1993. The invoice was issued by the SOE;
 - The copy of the Certificate Bp.Nr.168/2, dated 20 September 1993 issued by the Industrial Construction Enterprise in Prishtinë/Priština stating that the Appellant paid all the obligations pursuant to the Contract No 259/2-149 dated 30 August 1993.

3. The case was registered under the number KPA10609.
4. From the Consolidated Verification Report dated 10 September 2012, it resulted that the documents submitted by the Appellant were negatively verified by the KPA.
5. The notification of the Claim was carried out on 27 July 2007. The property was found to be a casino occupied by R. B. (hereinafter: the Appellee), who was present at the property. He claimed a legal right over it and signed the notice of participation on the same day.
6. On 15 September 2011 the Respondent filed the Response to the Claim and “requested the legal right over the claimed property”. He alleged to be the owner of it as he had purchased it from the Kosovo Tax Authority in a public tender. As the evidence he submitted the following documents:
 - The payment receipt No 20032 issued on 26 October 2006 by the Directorate of Finances and Property in Municipality of Prishtinë/Priština which confirms that the Appellee has paid the taxes for the years 2002, 2003, 2004, 2005 and the first installment of 2006 in Municipality of Prishtinë/Priština;
 - The copy of the Sale Certificate issued by the Ministry of Economy and Finance/Tax Administration of Kosovo which states that the Appellee has purchased the immovable property with the surface of 119 m², described as the cadastral parcel No 7232/2 located in the Cadastral Zone 71914059 Prishtinë/Priština, which had been previously confiscated due to non-payment of taxes and sold in a public tender by the owner SOE “KAP. Përparimi” - Prishtinë/Priština. The Certificate moreover indicated that: “From this point onward the legitimate owner of the property with full rights is the buyer R. B. (...) who may register the property as his own at the cadastral office”;
 - The copy of the announcement in the newspaper about the opening of the bidding procedure of the property confiscated due to the tax non-payment. The property to be sold was described as premise with the surface of 119 m² in Robert Doll Street in Prishtinë/Priština, across the restaurant “Fjala”;
 - The Certificate for the immovable property rights No 71914059-07232-2, dated 28 September 2006 issued by the Municipal Cadastral Office in Prishtinë/Priština in which the SOE “Napredak” is listed as the owner/possessor of the land parcel No 7232/2.

7. The KPA verified the documents submitted by the Appellee positively and confirmed that the claimed property was located on the parcel No 7232/2.
8. On 21 August 2013, the Kosovo Property Claims Commission (hereafter: the KPCC), through its Decision KPCC/D/R/215/2013 (hereafter: the KPCC's Decision) refused the Claim. In the reasoning of the Decision (paragraph 32), the KPCC underlined 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 enjoyed any property right over the claimed property.
9. The KPCC's Decision was served upon the Appellant on 14 May 2014. The same Decision was served on the Appellee on 14 November 2013.
10. On 13 June 2014 the Appellant through her representative V. O. filed an Appeal against the KPCC's Decision. A copy of the Appeal was served on the Appellee on 10 February 2015.

Allegation of the Appellant

11. The Appellant requests the Supreme Court of Kosovo to quash the KPCC's Decision and to grant the Appeal. She indicated that the KPCC's Decision involves fundamental errors and serious breach of procedural and substantive law.
12. The Appellant indicated that "the KPCC did not clarify nor gave sufficient reasons to the fact that the Privatisation Agency of Kosovo conducted a tendering procedure on 01.09.2006 and sold something that was of private ownership".

Legal Reasoning

13. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
14. The Appellant claims that she has acquired the ownership rights over the claimed property through a Contract concluded between herself and the SOE "Ramiz Sadiku" in Prishtinë/Priština. Moreover, according to the Appellant, after having concluded the Contract, she has made some construction works which resulted in structure used for residential purposes with the total surface of 30 m². The Appellee instead claimed do have

acquired the ownership rights of the commercial premise located on the same land parcel No 7232/2 through a public tender from the Kosovo Tax Authority. From the Verification Report dated 4 January 2007 it appears that that the Contract allegedly signed by the Appellant was negatively verified by the Executive Secretariat due to the fact that the SOE from which the barrack was allegedly bought did not possess the copy of the Contract, it was not verified by the court, neither it was found in the public and administrative organs.

15. First of all it should be noticed that the legal basis according to the Appellant for acquiring the ownership rights over the immovable property: house of the surface of 30 m² was the Contract which defined the subject of it as: “a barrack” with the surface of 9 m². Requesting the repossession of the mentioned house the Appellant attached the calculation for the construction works. However, the Supreme Court is of the opinion that there is no proof in the case file that the Appellant has ever possessed or was the owner of the house with the surface of 30 m². The calculation and the Contract on sale of the barrack may not be considered as sufficient evidence for that circumstance.

16. Furthermore, the Supreme Court considers that the Contract mentioned by the Appellant was not concluded in accordance with the law in force at that time. According to Article 4 § 2 of the Law on Trade of Immovable Property (Official Gazette of the Socialist Republic of Serbia No 43/81 of 1 August 1981) “*Contracts on the transfer of the rights to immovable property between ownership right holders.....shall be concluded in writing; the signatures of the contracting parties shall be certified by the courts*”. Therefore the documents submitted by the Appellant do not prove the ownership over the barrack. The only written contract concluded without fulfilling the requirements of the law has no legal effect on the transfer of the ownership of the immovable property. Additionally, it needs to be pointed out that the contract on transfer of the ownership rights over the immovable property should contain the provisions with regard to the land parcel on which the construction is placed.

17. Actually at the land parcel No 7232/2 there is a commercial premise with the total premise of 119 m²: there is no barrack, neither the residential building with the surface of 30 m². In order to be granted the repossession of the latter two premises, the Appellant should have proven to have ever possessed the mentioned premises. The evidence gathered in the case file does not prove though those circumstances. As a consequence the Claim could not have been granted. For that reason the Decision of the KPCC is to be considered as a correct one.

18. The Supreme Court wishes to underline out that the fact that the Appellee took part in the tender and allegedly bought the commercial premise in public tender remains without any effect on the situation of the Appellant, as without proving the ownership over the premises she requested the repossession of, the Court could not examine further allegations of the parties. The outcome of the analysis of those allegations could not affect the content of the Judgment. Additionally, if the intention of the Appellant was to challenge the actions of the Privatisation Agency of Kosovo, her Claim should have been addressed to the Special Chamber of the Supreme Court of Kosovo on PAK related matters.

19. Concluding, the Supreme Court **assess** that the examination of the evidence and its assessment was done correctly by the KPCC and none of the documents submitted by the Appellant prove his ownership rights over the claimed property.

20. Therefore, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50.

Conclusion

21. Pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

22. The Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar