

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

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

GSK-KPA-A-202/2014

**Prishtinë/Priština,
21 September 2016**

In the proceedings of:

M. P.

Appellant

vs.

R. A.

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 (henceforth: the KPCC) No. KPCC/D/R/223/2013 dated 27 November 2013 (the case file registered at the KPA under the number KPA37395), after the deliberation held on 21 September 2016, issues the following:

JUDGMENT

1. **The Appeal of M. P. is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No KPCC/D/R/221/2014 (regarding the case file registered at the KPA under the number KPA37395), dated 13 March 2014 is confirmed.**

Procedural and factual background:

1. On 28 September 2009, M. P. S. filed a Claim with the Kosovo Property Agency (henceforth: the KPA), seeking the confirmation of his ownership right over business premises located in Drenovac/ Drenoc in Municipality of Klinë/Klina on the land parcel No 204/1, with the surface of 85m² (henceforth: the claimed property). The mentioned property according to M. S., was destroyed after he left the village.
2. To support his Claim, M. S. submitted *inter alia* the following documents to the KPA:
 - The copies of the Rulings of the Tax Authority of the Municipality of Kline/Klina No 03-431-3/25 of 10 March 1977, No 03-431-8/17 of 9 February 1978, No. 03-431-23/9 of 24 April 1980 establishing the basis for the calculation of the taxes for unspecified business premises.
 - The copy of the statement made by M. S. on 29 September 2009 that he had never sold the claimed property to R. A.
 - The copy of the Possession List No 36 listing the land parcels located in cadastral Municipality of Drenovac/Drenoc under the name of M. S. The business premises are not mentioned to be located on none of the land parcels.
 - The copy of the Contract on Lifelong Support entered into on 28 August 2009 between M. S. and M. P., on the basis of which the latter person in exchange of the support for M. S. and his wife J. will inherit the cadastral parcels listed in Possession List No 36.

3. On 30 August 2013 the Executive Secretariat undertook a field visit and identified the person occupying the land parcel. R. A. signed the Noticed of Participation and claimed the legal rights over the claimed property. He maintained to have bought the claimed parcel in 2005 from M. S.
4. On 30 August 2013 R. A. filed a Response to the Claim and stated that the land parcels with the numbers 204/1, 205/1 and 206/1 with the total surface of 0.23.21 ha located in Cadastral Zone Drenovac/Drenoc were bought by his father H. A. on the basis of the Purchase Contract Vr. No 1172/05 dated 27 July 2005.
5. To support his allegations the Appellee submitted the following documents to the KPA:
 - The copy of the Contract on Purchase of Real Estate concluded in Klinë/Kilna on 26 July 2005 between M. S., represented by V. A. as the seller and H. A. as the buyer of the land parcels with the numbers 204/1, 205/1 and 206/1, with the total surface of 0.23.21 ha located in Cadastral Zone Drenovac/Drenoc, described in Possession List No 36. The signatures of the persons who signed the Contract were legalised in the Municipal Court in Klinë/Klina on 27 July 2005 under the number Vr. 1172/05.
 - The copy of the Power of Attorney signed on 25 July 2005 by M. S. granting to V. A. the authority to sign on his behalf a Contract on Sale of the immovable property. The signature of M. S. was legalised in the Municipal Court in Mitrovicë/Mitrovica on 26 July 2005 under the number Vr. 2729/05.
 - The copy of cadastral documents being the basis for the amendments in the cadastral data due to the content of the Contract on Sale of 26 July 2005.
6. According to the Verification Report the Contract on Purchase and the Power of Attorney were positively verified by the KPA.
7. M. S. died on 21 October 2009.
8. With the Cover Decision No KPCC/D/R/221/2014 (the case file registered at the KPA under the number KPA37395) dated 13 March 2014, the KPCC dismissed the Claim as the Appellant failed to show that his Claim involves the circumstances directly related to or resulting from 1998/99 conflict. According to the Commission the loss of possession was a result of a voluntary disposal of the claimed property by selling it to a third party after the conflict.

9. The Decision was served on the Appellant on 23 May 2014. He filed an Appeal against the KPCC's Decision on 5 June 2014.
10. The Decision was also served on the Appellee on 15 May 2014. The Appeal was served on him on 10 April 2010. He did not submit any written response to it.

The allegations of the Appellant:

11. The Appellant requests the Supreme Court of Kosovo to grant the Appeal and to modify the KPCC's Decision acknowledging his rights over the claimed property. In the Appeal she indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves erroneous application of substantive law. In the Appellant's opinion the documents submitted proved that her late uncle M. S. had never sold the claimed property. According to the Appellant the signature of M. S. was forged and the mere comparison of his signature under the Power of Attorney and the other documents signed by him clearly shows that fact. The Appellant requested the expert to be appointed in order to establish if the signature was made by the late uncle. Moreover she underlined that the questioned Contract on Sale mentions "the house" while it was a business premise and the premise was destroyed during the conflict.

Legal reasoning:

12. The Appellant challenges the Decision claiming that her uncle M. Sa. was the owner of the business premises. The Appellee instead argued that his father H. A. bought the claimed property from M. S. in 2005. The Appellee alleged that the latter one had never sold the claimed property and the Power of Attorney was forged.
13. The Supreme Court contends that, contrary to the Appellant's statement, 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 request of the Appellant may not be granted.
14. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict related ownership claims and property right claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999." That

means that the scope of the examination of the KPA is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. If the Commission verifies that the possession of the claimed property was lost before or after the dates indicated above, or that the loss of the possession was not related to the conflict, it shall dismiss the Claim on the basis of the Section 11.4(b) of the Law No. 03/L-079. The examination of the other elements that refer to the question of validity of the Contract on Purchase dated 26 July 2005 and the alleged forgery of the Power of Attorney signed by M. S. fall outside the competence of the KPA. That argument may only be proven during the proceedings before the competent Municipal Court. Therefore, the request to appoint the expert to examine the signature under the Power of Attorney belongs to the competence of the Municipal Court. As long though, as the Supreme Court is not in possession of any official document confirming the fact that the Power of Attorney granting the authority to sell the immovable property was not signed by the uncle of the Appellant and as such the Contract would remain without legal effect may not consider the verified documents as invalid ones.

15. For those reasons the Supreme Court observes that indeed the contest in the case at hand refers to the transfer of the property rights that took place after the conflict. On the other hand, disposing of the property rights through the Contract signed in the year 2005 would mean that even though the uncle of the appellant might have lost the possession of the claimed property during and due to the conflict, after the conflict he had disposed of it. That presumption may be challenged again, before the competent Municipal Court. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is unfounded and has to be rejected.
16. Considering what was mentioned above, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law 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 Law 03/L-079, this Judgment is final 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