

**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- 025/14

Prishtinë/Priština,

Xx xx xxxx

In the proceedings of:

D.S.T.

Street Bastovanska 49

18260 Niš

Serbia

Appellant /Claimant

Vs

M.R.

Lagjja “Ramiz Sadiku” nr. 110

Prishtinë

The First Respondent /Appellee

E.R.

Rruga “Jonuz Zejnullahu”

Prishtinë

The Second Respondent /Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anders Cedhagen and xxx xxxx, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/215/2013 (case file registered at the KPA under the number KPA 37134), dated 21 August 2013, after deliberation held on xx xx xxxx, issues the following:

JUDGMENT

- 1. The appeal of the appellant against the decision of the Kosovo Property Claims Commission KPPC/D/C/215/2013, dated 21 August 2013, is rejected as unfounded.**

- 2. The decision of Kosovo Property Claims Commission KPPC/D/C/215/2013, dated 21 August 2013, regarding the claim registered at the KPA under the number KPA37134, is confirmed.**

Procedural and factual background:

1. On 22 May 2007, D.S.T. (hereinafter: the Appellant) filed a claim asking for the repossession of an apartment with the surface of 35 m² (hereinafter: the claimed property), located in street “Kapetan Mišina”, in Prishtinë/Priština.
2. He alleges that he is the owner of the claimed property and he had lost possession of same on 13 June 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
3. In order to support his claim, the Claimant provided these documents:
 - Allocation Decision No. 362 issued by Gradjevinsko Industrijsko Produzeće (GIP) “Grading” Deonicarsko Društvo (D.D), (henceforth: the Enterprise “Granding”) on 30 March 1998 through what the Appellant was allocated the apartment of the surface 12 m² located on street “Kapetan Mišina” in Priština/Prishtinë.(Negative)

- Contract on Sale No. 539 concluded on 30 March 1998 between Enterprise “Grading” as the disposal right holder in the capacity of the seller and the Appellant as a tenant in the capacity of the buyer of the apartment no. 7/6 of the surface 34 m² located on street “Kapetan Mišina” in Priština/Prishtinë. The contract was certified before Municipal Court of Priština/Prishtinë (No.537/99) on 05 April 1999. (Negative)
 - Confirmation Letter No.539/1 issued by Enterprise “Grading” on 30 March 1998 through which it is confirmed that the Appellant has paid the contracted amount of 38.352 dinars (Serbian Currency) for the apartment located on street “Kapetan Mišina”, Priština/Prishtinë as per Contract on Sale concluded on 30 March 1998
 - Compliance No. 543 issued by Enterprise “Grading” on 30 March 1998 through which the Enterprise “Grading” gives its consent for the Appellant to adopt and reconstruct the apartment which was allocated to him according to Allocation Decision No.362.
 - Power of Attorney No. 2099/07, certified before Municipal Court of Priština/Prishtinë, branch of Gračanica/Graçanicë through what the Appellant authorized M.F. to find a potential buyer for his apartment as well as to act on his behalf before Kosovo Property Agency. (Positive)
4. The KPA verification reports done at the competent institutions shows that the documents submitted by the Appellant could not be positively verified because they were not found in the respective institutions.
 5. On 1 April 2008, KPA notified physically the claim and it was found out that the claimed property was occupied by M.R. (hereinafter: the first Appellee) who signed the Notice of Participation by claiming a legal right to the property.
 6. He alleged that the claimed property was allocated to him as a residence solution immediately after the conflict as his own house was burned.
 7. Supporting his allegation the first Appellee presented:
 - Decision No. 647 dated on 25 June 1999 through which to the first Appellee was allocated apartment located on street “Kapetan Mišina” Priština /Prishtinë. **The decision does not contain the specific elements of the apartment (address, surface).**
 - Decision of Housing and Property Claims Commission HPCC/REC/40/2004 dated on 22 October 2004 through which the request for reconsideration of the

claim filed by the first Appellee was refused. **The decision was not related to the claimed property.**

- Submission of the Plaintiff Z.H, C.Nr. 2721/06 dated on 24 September 2007 filed before Municipal Court of Priština /Prishtinë. The plaintiff seeks that among respondents as well as M.R. release the apartment that it is used by him without any legal ground.
8. The second notification of the claimed property was done on 15 April 2013 by finding the claimed property occupied by E.R. (hereinafter: the second Appellee) who was present during the notification and alleges that she has an oral permission from the Appellant to use the claimed property but the Appellant denied the second Appellee's allegations.
 9. On 21 August 2013, the KPCC with its Decision KPCC/D/R/215/2013 rejected the claim considering that the Appellant failed to show ownership or any other property right over the claimed property immediately prior to or during the 1998/1999 conflict.
 10. The Decision of the KPCC was served on the Appellant on 25 November 2013. He submitted an appeal against it on 23 December 2013.
 11. The Decision of the KPCC was served on the First Appellee on 13 November 2013 and to Second Appellee on 14 November 2013. They did not react in regard to the KPCC Decision not to the Appeal of the Appellant.

Allegations of the Appellant:

12. The Appellant asserts that the KPCC decision is based on an erroneous and incomplete determination of facts and on misapplication of the substantive law.
13. The Appellant notes that the reasoning of the decision of the KPCC that the KPA Executive Secretariat was unable to verify any of the documents attached to the claim is inaccurate. According to the Appellant the Executive Secretariat of KPA was provided with the certified copies of the documents that supports his allegation in regard to the claimed property as well as the original version of the documents were verified prima facie by the Executive Secretariat of KPA.
14. The Appellant proposes to Supreme Court of Kosovo to annul the rendered decision and to refer the same for reconsideration before KPA.

Legal reasoning:**Admissibility of the appeal:**

15. The appeal is admissible. It has been filed within the 30 day period as prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the resolution of claims relating to private immovable property, including agricultural and commercial property (hereinafter: Law No. 03/L-079).

Merits of the appeal:

16. However, the appeal is unfounded. According to Section 3.1 of Law No. 03/L-079, a Claimant is entitled to an order from the KPCC for repossession of the property if the Claimant not only **proves ownership of a private immovable property**, but also that he or she is not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. The KPCC based its decision on the fact that the KPA had made a negative verification of the documents on which the Appellant bases his claim, including the Contract on Sale No. 539 concluded on 30 March 1998. The KPA had not been able to obtain *ex officio* any evidence that supported the Appellant's claim. Based on this, the KPCC found that the Appellant had failed to establish any property right over the claimed property.
18. The Appellant's in appeal repeats the same allegations that he made before the KPCC. No new evidence of significance has been submitted with the appeal.
19. From the KPA verification reports can be seen that the KPA made serious efforts to verify the mentioned documents in the records of the institutions within the territory of Kosovo.
20. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly, the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made, as Appellant alleges on his appeal. The Supreme Court finds the appeal unfounded.
21. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anders Cedhagen, EULEX Judge

XXX XXXX, EULEX Judge

Sandra Gudaityte , EULEX Registrar