

**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-84/2015

**Prishtinë/Priština,
11 October 2017**

In the proceedings of:

**D. V.
represented by S.V.**

Republic of Serbia

Appellant

Vs.

**I.B.
Drenas/Glogovac**

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani.. and, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 (the case file registered at the Kosovo Property Agency under the number KPA16034), after the deliberation held on 11 October 2017 issues the following:

JUDGMENT

1. **The Appeal of S. V., filed on behalf of her son D. V., against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 regarding the Claim registered under the number KPA16034, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 regarding the Claim registered under the number KPA16034 is hereby confirmed.**

Procedural and factual background

1. On 4 September 2006, S. V. filed a Claim on behalf of her son D. V. (henceforth “the Appellant”) in the capacity of the family household member of the property right holder, seeking the repossession over a cadastral parcel No 660 with the surface of 3 hectares, 10 ares, 5m2, located in the place called Podishte – Ara Madeni, Cadastral Municipality Sllatinë e Madhe/Velika Slatina, Fushë Kosovë/Kosovo Polje (henceforth “the claimed property”). The Appellant alleged that the properties were illegally occupied by I. B. and that the loss of ownership over the property occurred in 2002 based on an illegal sales contract. She alleged that the loss of possession of the property was a result of the armed conflict in Kosovo that took place between 1998 and 1999. However, she indicated the year 2002 as the year when the property was illegally sold. The Claim was registered at the KPA under the number KPA16034.
2. To support the Claim, S. V. submitted the following documents:
 - A Copy of the Possession List No 19, issued on 3 April 2003 by the Department for Immovable Property, Geodesy and Cadastre of the Municipality of Prishtinë/Priština, Branch in Fushë Kosovë/Kosovo Polje, where M.V. V. is evidenced as the only owner of the claimed property;
 - The copy of the Ruling issued on 29 September 2004 in the case O.br.78/2004 by the dislocated parallel Court of Prishtinë/Priština, through which D. V. was pronounced to be the inheritor of the late M.V.;
 - The copy of the Death Certificate issued on 28 November 2003 by the parallel municipal authorities of Prishtinë/Priština showing that M. V. died on 8 May 1981;
 - The copy of the Death Certificate issued on 3 March 2003 by the authorities of Niš, Republic of Serbia, showing that V. V. died on 24 February 2003;
 - The copy of the letter of the Basic Court in Bijelo Polje, (Republic of Montenegro) explaining that the Power of Attorney, allegedly given by V. V. to I.B. was not certified by that Court on 26 August 2002;
 - The copy of the Sales Contract concluded on 4 December 1982 between V. V.(the Seller) and I. Sh. (the Buyer) transferring the ownership rights to the claimed property;
 - The copy of the Sales Contract concluded on 6 November 2002 between V.V. (as the Seller), represented by B. H., and I. B. (as the Buyer) transferring the ownership rights

to the claimed property. The signatures below the Contract were legalized by the Municipal Court in Prishtinë/Priština under Vr.Nr.6291/2002, on 21 November 2002;

- The copy of the ID of S. V. issued by the parallel authorities of Prishtinë/Priština on 6 June 2004.
3. Initially the claimed properties were visited on 30 July 2008, but the notification was considered inaccurate because of technical issues. On 21 July 2010 notification was performed. On 16 January 2014 it was established that the property was correctly identified based on the Orthophoto and GPS Coordinates. From the Notification Report it appears that the property has been used by I.B. who claimed the legal right to the claimed property and signed the Notice of Participation.
4. On 15 January 2014, I.B.(henceforth “the Appellee”) filed a Reply to the Claim seeking the legal right over the claimed property. He alleged to have bought the property.
5. To support the allegations I. B. submitted the following documents:
- The copy of the Contract on the Sale of Immovable Property, concluded on 4 December 1982 between V. V., represented by B. H. from Carrallukë/Crni Lug village, Municipality of Malishevë/Mališevo, and I. Sh. The subject of the mentioned Contract was the claimed property. The signatures below the Contract were certified on 21 November 2002 by the Municipal Court of Prishtinë/Priština under Vr.Nr.6291/2002;
 - The copy of the Possession List No 3004 issued by the UNMIK Administration in Fushë Kosovë/Kosovo Polje on 26 January 2002, showing that the claimed property was registered under the name of I. B.
 - The copy of the Plan of 26 November 2002;
 - The copy of the Decision No 414, dated 22 November 2002, issued by the Department of Finance of the Municipality of Fushë Kosovë/Kosovo Polje imposing a tax for the transfer of the immovable property, on the basis of which the Appellee was obliged to pay a tax for the registration of property;
 - The copy of the Power of Attorney, signed on 26 August 2002 by V. V., who authorised B. H. to sell the claimed property (certified under the No Ov.Br.2215/02).
6. According to the Consolidated Verification Report, dated 7 March 2014, the KPA positively verified the documents submitted by both parties, apart from the Inheritance Ruling issued by the parallel Court.
7. On 30 April 2014, the Kosovo Property Claims Commission (henceforth “the KPCC”), in its Decision KPCC/D/A/236/2014 (henceforth “the KPCC’s Decision”) dismissed the Claim on the ground that it fell outside its jurisdiction. In the reasoning of the Decision, the KPCC explained that the Appellant failed to establish that the Claim involved circumstances directly related to or resulted from the conflict between 1998-1999.
8. The KPCC Decision was served on the Appellant on 8 October 2014. The Appellee received the Commission’s Decision on 7 October 2014. On 9 October 2014 the Appellant filed an Appeal against the KPCC’s Decision. The Appeal was served on the Appellee on 3 April 2015.

Allegations of the Appellant

9. The Appellant requests the Supreme Court of Kosovo to grant his Appeal and recognize him as the owner of the claimed property. He alleges that the KPCC's Decision rests on erroneous and incomplete determination of the factual situation and on misapplication of the substantive law. The Appellant alleges that neither his father nor he have authorized anyone to sell the claimed properties. The documents have been falsified and that circumstance is proven through the Ruling of the Basic Court of Bijelo Polje, Montenegro.

Legal reasoning

10. The Appeal is ungrounded and therefore it stands to be rejected. According to Section 3.1 of the UNMIK Regulation 2006/50, as amended by Law No 03/L-079, "*The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:*
- (a) *Ownership claims with respect to private immovable property, including agricultural and commercial property, and*
- (b) *Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,*

where the claimant is not now able to exercise such property rights.

11. When receiving the Claim the Appellant has explained that the claimed property has been included in a transaction as a result of which cadastral changes were made. To prove this circumstance he attached copies of two sales contracts which supposedly were concluded in 2001. Therefore, the Appellant has justified his Claim by showing the falsified contracts as a legal basis for the loss of possession over the claimed properties. Additionally, the Appellant attached a copy of the Claim filed with the Basic Court in Prishtinë/Priština on 27 March 2013 for the annulment of the sales contract regarding the claimed property.
12. The Supreme Court, after reviewing the evidence collected in relation to the present case, considers that the Appellant has failed to establish that the loss of possession over the claimed properties is related to the conflict. On the other hand, according to the Consolidated Verification Report, dated 7 March 2014, the KPA Verification Team has positively verified the sales contract, with legalized signatures, under the No. Vr.Nr.6291/2002, dated 21 November 2002. Regardless of conclusions if the contracts

were falsified or not, the dispute is focused on the issue of contracts of 2002, respectively of 1982.

13. This resulted in the Supreme Court conclusion that the KPCC has issued a correct decision based on valid reasons when it dismissed the Claim of the Appellant. The Commission was correct when it established that the Appellant failed to establish the loss of property right over the same property immediately before or during the conflict of 1998/99. The documents submitted with the Appeal, contrary to what the Appellant meant, could not establish the following circumstances: the property right and possession over the claimed property before or during the conflict in Kosovo which occurred in the period between 1998/1999. The Appellant constructed his reasoning on the allegation of falsification of sales contracts of 2001. This assumption may be challenged again before the competent Municipal Court. Therefore, the Supreme Court concludes that the KPCC's Decision was correct and that it is based on the law in force. Therefore, the Appeal is ungrounded and stands to be rejected.
14. It is important to emphasize that the Appellant in 2013 has filed a Claim with the Basic Court in Prishtinë/Priština against I. B. for annulment of the sales contract.
15. This Judgment does neither prejudice any procedure about the validity of the Contract nor does it confirm any right of the current occupant or anyone else over the claimed property.
16. Therefore, the Appeal of the Appellant is rejected as ungrounded and the KPCC's Decision confirmed as correct and which is based on the correctly applied law. In light of the above, pursuant to Section 13.3 (c) of the UNMIK Regulation 2006/50, as amended by Law No.03/L-079, and Article 195, paragraph 1(d) of the Law on Contested Procedure, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, as amended by Law no.03/L-079, this Judgment is final cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Shukri Sylejmani, Judge

Timo Eljas Torkko, EULEX Registrar