

**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-223/13

Prishtinë/Priština,

9 June 2015

In the proceedings of:

**G. D.**

Serbia

**Appellant**

v.s

**M. K.**

Prizren

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA137071), dated 18 April 2013, after the deliberation held on 9 June 2015, issues the following:

## JUDGMENT

1. The appeal of G. D. against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013, dated 18 April 2013, is accepted as grounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 dated 18 April 2013, regarding the claim registered at the KPA under the number KPA13071, is annulled.
3. The claim of the Claimant registered at the KPA under number KPA13071 is dismissed as inadmissible because the claim is not within the jurisdiction of KPA.

### Procedural and factual background

1. On 13 July 2006, D. B. (henceforth: the Claimant) in the capacity of the family household member and on behalf of his mother J. B. (henceforth: the Property Right Holder (PRH)) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of ownership right and re-possession of a parcel and a shop with a surface of 50 m<sup>2</sup> in Marshal Tita Street, no. 16, Prizren, Parcel no. 3334, Certificate on the Immovable Property Rights (ÇDPP) UL-71813068-05348 dated 29 December 2009, Municipal Cadastral Office, Municipality of Prizren (henceforth: the claimed property). Additionally, the Claimant is seeking compensation.

He stated that she lost possession over the claimed property on 13 June 1999 because of the circumstances in Kosovo in the years 1998/99 during the armed conflict.

2. In support of his claim, the Claimant, among others, presented the following documentation:
  - Death certificate no. 04-201-1-7 issued by the Registry Office of the Municipality of Prizren on 17 January 1997. This document confirms the fact of death of S. B., who died on 28 January 1957;
  - Possession List no. 5348 issued by the Municipal Geodesy Office of the Municipal Assembly on 17 November 1988. According to this document the claimed property was registered under the name of PRH;
  - Claimant's Birth Certificate issued by the Municipality of Prizren, Republic of Serbia, SFRY on 2 December 1998;
  - Claimant's ID Card no. 702540700181, issued on 13 March 2000 in Ćukarica, Republic of

Serbia;

- Possession List no. 5348 issued by the Department for Cadastre and Property of the Municipality of Prizren on 27 July 2005. According to this document the claimed property was registered under the name of PRH;
- Claim (C.nr. 685/05) filed on 4 August 2005 by G. D. – Claimant’s sister (henceforth: the Appellant), with the Municipal Court in Prizren. This claim has been filed against Gj. K. – Claimant’s brother (henceforth: Gj. K.) because of his unlawful benefit: using the claimed property and failure to pay the rent from 1 July 1999 onwards;
- Claim (C.nr.187/06) filed on 14 February 2006 by the Appellant with the Municipal Court in Prizren. This claim has been filed against Gj. K. for the eviction of the claimed property;
- Ruling C.nr. 685/05 dated 10 March 2009 issued by the Municipal Court in Prizren. According to this Ruling the legal procedure in relation to the case C.nr. 685/05 has been suspended because of the death of Gj. K.;
- Appellant’s ID Card no. 000678969 issued on 26 May 2009 by the Republic of Serbia;
- Inheritance Ruling T.nr.66/09 issued by the Municipal Court in Prizren on 17 June 2009. According to this Ruling the following parties have been declared heirs and have rights over the claimed property: Appellant [G. D. (Maiden name B.)] and L. G. (Maiden name Be.) each of them with 1/3 of the claimed property whereas D. V. and D.I. (Maiden name V.) each of them with 1/6 of the claimed property – respectively sisters, nephew and niece of the Claimant;
- Certificate on the Rights of the Immovable Property UL-71813068-05348 dated 29 December 2009, issued by the Municipal Cadastral Office, Municipality of Prizren. According to this document the claimed property has been registered in the name of the Appellant and L. G. (Maiden name B.), each with 1/3 of the claimed property, and D.V.and D. I. (Maiden name V.) each with 1/6 of the claimed property – respectively sisters, nephew and niece of the Claimant;
- Appellant’s request dated 8 February 2010 (submitted with the KPA on 9 February 2010), where she is seeking from the KPA to specify the claim (KPA13071) filed by the Claimant (her brother) as her claim and claim of L. G., D.V. and D.I.;
- Ruling C.nr. 187/06 dated 15 February 2010. According to this Ruling, the Municipal Court in Prizren had suspended the legal procedure in relation to case C.no.187/06 because of the death of Gj.K.;
- Appellant’s request dated 18 July 2010 (submitted with the KPA on 14 July 2010), in which she was again requesting from the KPA to specify the claim (KPA13071) filed by the Claimant (her brother) as hers and the claim of L. G., D. V. and D. I.because on 17 June

2009 the inheritance procedure was over and that the requested property was now their property (as per the abovementioned Inheritance Ruling T.nr. 66/09);

- Appellant's Notification letter dated 27 July 2011 on the change of address (according to this document the new address was: Remetinska 19D, Kumodraž, Belgrade, Serbia);
  - Appellant's undated proposal on the expedition of the procedure in case C.nr. 187/06 of the Municipal Court in Prizren (submitted with the KPA on 5 March 2013);
  - Statement of J. (J.) B. dated 11 April 2013. In this statement J. B. denies having concluded a contract with Gj. K., [(henceforth: J. (J.) B.)], and states that he did not sign any sale contract with Gj. K. in relation to the claimed property.
3. From the KPA verification reports of 30 November, 6 and 18 December 2006, 6 and 13 October 2011, it is clear that the first possession list nr. 5348, second possession list nr. 5348, Inheritance Decision T.nr. 66/2009 and Certificate UL-71813068-05348, have been found and were positively verified.
  4. On 30 December 2010, the KPA Executive Secretariat has informed the potential third parties in relation to the claim by placing a notification on the claimed property. On 5 January 2011, based on the orthophoto, GPS coordinates and the notification expert, the KPA Executive Secretariat has confirmed that the notification of the claimed property was properly done.
  5. On 28 September 2012, M. K. (henceforth: the Respondent) filed a response on the claim. The Respondent alleges that the claimed property was bought by his two brothers K. and Gj. K. in 1991.

In support of his allegation, the Respondent submitted the following documents:

- An uncertified purchase contract on the immovable property dated 20 May 1991. According to this uncertified contract, the claimed property was sold by J. (J.) B. to Gj.K.;
- Ruling no.313-281 dated 1 June 1991. According to this Ruling Gj. K. was allowed to open a jewelry shop;
- Statement no.5746/2003 certified on 30 December 2003. According to this statement the witnesses: J. B., H.Th. and P. S., allege to prove the fact that the claimed property was bought by Gj. K. from J. (J.) B. on 20 May 1991;
- Respondent's driving license no. 17275 issued on 13 December 1995;
- Gj. K.hand written statement dated 21 August 2003. In this statement he alleges that he has bought the claimed property on 20 May 1991 from J. (J.) B.;
- Statement nr.5747/2003 certified on 30 December 2003. According to this statement Gj. K. bought the claimed property in 1991 from J. (J.) B. in the presence of three witnesses and from 1991 did not have any problem with the previous owner;

- Lawyer O. R. ID Card no. 1003102064 issued on 13 March 2009 by the Ministry of Internal Affairs of the Republic of Kosovo;
  - Submission dated 1 August 2012 filed by the Respondent. In this submission the Respondent explains that he has bought the claimed property from the Claimant;
  - Power of Attorney dated 21 September 2012. According to this document the Respondent has authorized the lawyer O.R. to represent him before the Kosovo Property Agency;
6. The Housing and Property Claims Commission (henceforth: HPCC) in its Decision HPCC/D/217/2005/C dated 20 August 2005, for the same property (the claimed property) rejected a C Category claim filed by the Claimant [(also before the KPA /KPCC the same person (D. B.) is the Claimant)] with regard to the possession right, with the justification that the Claimant did not present any certified documents as evidence to establish that he had the possession over the claimed property.
  7. In its Decision KPCC/D/C/200/2013 dated 18 April 2013, the Kosovo Property Claims Commission (KPCC) has rejected the claim filed by the Claimant. The reasoning of the KPCC Decision, under item 44, provides: *“[the Claimant denies the fact that the claimed property was ever sold, nevertheless, he admitted that his family was not in possession of the claimed property since 1972....]”*. The same Decision in item 45 of the reasoning challenges the Inheritance Ruling (T.nr. 66/09 dated 17 June 2009), according to which the sisters, the nephew and the niece of the Claimant have been declared heirs to the claimed property. This because: *“[...the Inheritance Decision may have been erroneously reviewed because it disregards the existence of the purchase contract concluded between the family of the Claimant and the family of the Respondent, according to which the family of the Respondent has acquired the claimed ownership”*. Additionally, the Commission’s Decision deems as valid the informal contract on the sale of the claimed property (dated 20 May 1991), which was not certified in the Court because at the time when it was concluded the discriminatory law was in force which prevented the parties (belonging to different ethnicity groups) to have their contracts certified. Furthermore, the Commission in its decision states: *The purchase contract creates an assumption of ownership in favor of the Respondent*”, and that: *“The Claimant’s unsupported submission on challenging the existence of the purchase contract is insufficient to challenge this assumption”*. Finally, the Commission in the reasoning of its Decision concludes: *“[...the Claimant has failed to establish the ownership right over the claimed property. Therefore, the claim stands to be rejected]”*.
  8. The KPCC Decision KPCC/D/C/200/2013 dated 18 April 2013, was served on O.R., lawyer of the Respondent (henceforth: Appellee) on 22 July 2013. On 23 July 2013, the same decision (after a phone conversation that the KPA had with the Claimant) was served on T. D. – Claimant’s cousin.

9. On 30 July 2013, the Appellant, as one of the alleged co-owners of the claimed property, filed an appeal against the abovementioned KPCC Decision. On 31 October 2013, the Appellee received a translated version of the filed appeal. However, from the case file it results that he did not file a response on the appeal.

**Allegations of the parties**

*The Claimant*

10. The Claimant in the proceedings before the KPA/KPCC alleges that PRH was owner of the claimed property, and that the same property was usurped by Gj. K. He stated that other interested persons are behind the claim and those persons are the heirs to the PRH. Later he alleged that he has filed the claim on behalf of his two sisters and children of his deceased sister and for them because according to him the claimed property was inherited by them and that he did not want anything from it.

*The Appellant*

11. The Appellant in her appeal disputes the decision of the KPCC on the grounds of erroneous and incomplete determination of the factual situation and misapplication of the material law.
12. The Appellant alleges that he shas inherited the claimed property, together with other heirs, from the PRH and that it was rented out by J. [(J.) B. (Appellant's cousin) (Appellant uncle's son)] until 1999, and the same was usurped by the family of the Appellee.
13. The Appellant alleges that the purchase contract over the claimed property was not concluded between "the Claimants and the family of the Respondents", as indicated in the KPCC Decision but it was rather signed by Gj. K. and J. (J.) B. According to her the family is not a legal entity and the conclusion in the Commission's Decision that the contract has been signed by the family is senseless. Therefore the Appellant considers that the Decision was issued in a negligent manner.
14. The Appellant considers that the alleged purchase contract presented by the Appellee is false. Furthermore she states that J. (J.) B. was not even heir of the PRH, therefore even on the basis of this he could never be in possession of the claimed property.
15. The Appellant alleges that "they" in the proceedings before the KPCC have proposed the scheduling of a hearing in which J. (J.) B. would be examined, because it is alleged that he has signed the contract. However, according to her the KPA did not consider this as one of

- the ways to eliminate the dilemma if the contract was falsified or not. J. (J.) B., according to the Appellant did never sign such a contract and according to her this may be evidenced also by his statement (dated 11 April 2013) certified and enclosed to the appeal. Furthermore the Appellant states that if the statement and hearing of [(J.) B.] would not be sufficient, he proposes the calling of a graphologic expert for signatures and manuscripts, which would determine if the drafted contract was signed by J. (J.) B. His name was also incorrectly indicated as “J.” instead of “J.”
16. Furthermore the Appellant alleges that the allegation that the claimed property has been sold by J. (J.) B. or the Claimant does not stand because of the fact that none of these persons was owner of the claimed property. According to the Appellant, owner of the claimed property is not the mother of J. (J.) B. but rather his aunt from the mother’s side, the PRH, and that the authorization was given to him by his mother rather than from the PRH. This also because of the fact that the PRH had died six years before the claimed contract was even concluded and that even if such authorization existed, it would have not been valid after the death of the person who has issued it.
  17. The Appellant states that the existence of discriminatory laws does not justify the recognition of an invalid contract, because the Appellee would not be able to acquire the property right on the basis of the purchase of the claimed property from the persons who were not owners and on the basis of a falsified contract.
  18. Finally, the Appellant proposes the Supreme Court of Kosovo to accept her appeal and to issue a decision based on which it would confirm her ownership right and possession over the claimed property.

*Appellee*

19. The Appellee stated before KPCC that he and his two brothers (Gj. and K.K.) have bought the claimed property in a legitimate manner on 20 May 1991 from J. (J.) B, who presented himself as owner of the stated property and they have paid him the amount of DM 110,000. Furthermore, he alleges that this contract was concluded in the presence of three (3) witnesses (H. Th., J. B. and P. S.) and “in the name of the buyer Gj. K.”. The Appellee alleges that the claimed property, after the death of his two brothers (Gj. and K. K.), is used by him. In support of his allegations the Appellee before the KPA /KPCC has presented the uncertified purchase contract and the statements of witnesses who are alleged to have been present during the conclusion of the alleged contract and the statement of the deceased Gj.

K. himself. The Appellee alleged also that “they have been using the claimed property since 1991”, when the alleged transaction had taken place.

### **Legal reasoning**

#### **Admissibility of the appeal**

20. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the UNMIK Regulation 2006/50 on the resolution of claims relating to Private Immovable Property, Including Agricultural and Commercial Property as amended by Law No. 03/L-079 (henceforth: Law 03/L-079).

#### **Jurisdiction**

21. According to Section 3.1 of Law no. 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established his/her ownership right over the property but also that he/she now is unable to exercise his/her rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
22. After reviewing the case file, allegations by the parties before the KPA/KPCC and those presented in the appeal, and after analyzing the challenged decision, the Supreme Court concludes that the KPCC erroneously acted and had no subject matter jurisdiction to reject the claim filed by the Claimant. Therefore, the Supreme Court concludes that the challenged KPCC decision stands to be cancelled and the claim filed by the Claimant stands to be dismissed as inadmissible. KPCC lacks jurisdiction to decide on the claim because Appellant and her predecessors did not lose possession due to circumstances related to the conflict, but to circumstance some time before the conflict.
23. The Court bases its conclusion initially on the statement of the Appellant who in her communication with the KPA on 7 March 2013 stated: *“we did not live in the property since 1972”*. The same follows from the Ruling no. 313-281 dated 1 June 1991, based on which Gj. K. was allowed to open a jewelry shop on the claimed property.
24. The fact that loss of possession over the property is not a result of circumstances related to the war in 1998/1999, is also indicated in the previous decision of the House and Property Claims Commission (HPCC) HPCC/D/217/2005/C dated 20 August 2005 for the same property. The C Category claim filed by the Claimant (the same person is Claimant before

- the KPA/KPCC) with regard to the possession right has been rejected with the justification that he, the Claimant, did not provide any certified document as evidence to establish that he had possession over the claimed property during the conflict.
25. The Supreme Court can leave aside whether Claimant and Appellant have presented enough evidence for their allegations that they are still owner of the claimed property, since the KPCC does not have jurisdiction to and therefore cannot decide on the merits of the claim in this case.
  26. In light of the abovementioned reasons and pursuant to Article 12.2 of the Law no. 03/L-079 and Article 198 paragraph 1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this Judgment.

**Legal Advice**

Pursuant to Section 13.6 of the 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.

**Sylejman Nuredini, Presiding Judge**

**Willem Brouwer, EULEX Judge**

**Rolandus Bruin, EULEX Judge**

**Urs Nufer, EULEX Registrar**