

**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-233/2013

Prishtinë/Priština,
16 November 2016

In the proceedings of:

S. V.

Appellant

vs.

J. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (KPCC) No KPCC/D/R/175/2012 (case file registered at the KPA under No. KPA47378) dated 22 October 2012, after the deliberation held on 16 November 2016, issues the following:

JUDGMENT

1. **The Appeal of S. V. filed against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/175/2012, dated 22 October 2012 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No KPCC/D/R/175/2012, dated 22 October 2012, as far it concerns the Claim No KPA 47378, is confirmed.**

Procedural and factual background:

1. On 16 November 2007, S. (P.) V. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking the confirmation of the ownership right over a one floor house and a backyard and repossession of the cadastral parcel No 5879, located in Svete Stefanovica Street 5, Possession List No 3370, cadastral zone Prishtinë/Priština, Municipality of Prishtinë/Priština, with the surface of 346 m² (hereinafter: the claimed property). He stated that he was the owner of the claimed property, that he had lost possession of it on 20 June 1999 due to the armed conflict and that the same was now illegally occupied by J.M. The claimant alleged that the building is being used as a private kinder garden.
2. To support his Claim, the Appellant provided the KPA with the following:
 - a sketch of the place where the claimed property was situated,
 - The Possession List no 3370 of the Cadastral Zone and the Municipality of Prishtinë/Priština, dated 23 February 2000, showing that the house and the backyard were registered under his name.
3. In its Notification Report, the KPA confirmed that the claimed property was occupied by J. M. and was being used as a private kinder garden. The Executive Secretariat states that they have served the Claim on J.M., who was present on 22 January 2008, but did not sign the notice of participation in the legal proceedings. On the same day, the Executive Secretariat set up a poster of the Claim. On 10 February 2010, the KPA confirmed that the notification of the Claim property was accurate. No respondent filed a Reply within the 30 days deadline from the publication.
4. In its Verification Report, the KPA stated that the Possession List No 3370 was found and confirmed at the Cadastral Office with an updated Possession List No 3370, issued on 13 February 2008, showing the Appellant as a property right holder.
5. Through its Verification Report dated 22 February 2012, the KPA, showed that the claimed property was found to be registered under the name of J.M. The registration in question was done based on the Purchase Contract No 1292/2000 of 2 April 2000.
6. On 30 April 2008, the KPCC with its Decision No. KPCC/D/R/15/2008, decided that the Appellant had proven that he was the owner of the claimed property and that he was entitled to possession of the same without having knowledge of the Decision of the Housing and Property Claims Commission (HPCC).
7. The KPA, ex officio, found that the case was previously decided by the Housing and Property Claims Commission (HPCC) and the Decision No HPCC/D/189/2005/C

- of 30 April 2005 rendered in the same case by which the Appellant's Claim (the same person: S. V. was a Claimant also before the KPCC) was dismissed because of the lack of jurisdiction and was referred to the competent local court.
8. On 24 August 2011, the KPA Appeals Panel of the Supreme Court of Kosovo by its Judgment GSK-KPA-A-47/11 rendered in the same case decided on the Appeal (filed on 29 March 2011 by J. M.) against the KPCC's Decision, KPCC/D/R/15/2008 dated 30 April 2008. With the abovementioned Judgment the Appeal of J. M. was dismissed as inadmissible without deciding on the merits of the Appeal with the reasoning that the party was not participating in the proceedings before the first instance and he was not entitled to file an Appeal.
 9. On 10 February 2012, the Kosovo Property Agency requested the Supreme Court to return the case files GSK-KPA-A-47/11 on the grounds that new facts were found regarding an earlier Decision.
 10. The Executive Secretariat of the KPA informed the Commission about the existence of the Decision of the Housing and Property Claims Commission (HPCC), and the Commission, with its Decision KPCC/RES/26/2011 of 7 December 2011, decided that the KPCC's Decision KPCC/D/R/15/2008 dated 30 April 2008 be rescinded as far as it concerns the Claim No KPA47378 and the Claim be referred to the Executive Secretariat for further processing, due to processing error that was discovered in a Claim which had previously been decided by the Commission.
 11. On 30 January 2012, the KPA notified the Appellant in the case at hand that the Commission had rescinded its Decision and the Appellant replied to this notice on 14 March 2012.
 12. By its Decision KPCC/D/R/175/2012 dated 22 October 2012, the KPCC rejected the Appellant's Claim with the reasoning that he failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-99 conflict.
 13. The latter Decision states that "the Claim is rejected" with the reasoning contained in paragraphs 38-42 that the property was lost as a result of the transaction and not as a result of the conflict and that Appellant's allegations that he had concluded the contract under duress do not stand, as the contract was signed before the Court in Kursumlija, Republic of Serbia. The KPCC held a hearing session and although the Appellant was summoned, he did not participate. Therefore, the KPCC concluded that the Appellant voluntarily waved his right to the property and failed to show that he had lost the property as a result of the conflict or that he had property rights which he had lost as a result of the conflict.
 14. On 21 June 2013, the KPCC's Decision was served on the Appellant, while on 8 May 2013, the same was served on J. M. (hereinafter: the Appellee).
 15. On 15 July 2013, the Appellant filed an Appeal with the Supreme Court against the aforementioned Decision.
 16. On 19 November 2013, the Appellee replied on the Appeal.

Allegations of the parties:

The Appellant:

17. The Appellant alleges that he does not know the grounds on which the KPCC issued the Decision and that the same was rendered without his attendance at the KPA/KPCC hearing scheduled for 2 October 2012, as well as without any explanation given to him. He also added that Appellee abused his trust and used witnesses for his bad intentions. The statement of the witnesses saying that he was not forced when the Sale Contract was signed is a lie, because someone who was not present cannot state that there was no forced signing.
18. He maintains that the KPCC's Decision was taken upon an erroneous or incomplete determination of the facts and that he used to live in the claimed property until he was forced to leave on 29 July 1999. Facing the risk of his and his family's life, as well as fear that his house will be demolished, the Appellant stated that he had to sign the purchase contract which was not certified by the competent authority, and the same was dated in the year 1998.
19. The Appellant also states that the authorization given to E. M. (the Appellee's brother) was abused by E. M. because he used it for his benefits, hence, the Appellant was damaged, since E. M. sold the claimed property for 160.000 DM, from which the Appellant did not receive anything. According to the Appellant, the power of attorney was given to the Appellee's brother only to take care of the claimed property.
20. The Appellant also states that he and his family were attacked on the road Pristina-Merdare in order to take their documents of the house away. He adds that his wife was killed on 29 July 1999. The Appellant requested the annulment of the KPCC's Decision KPCC/D/R/175/2012 dated 22 October 2012, and the reinstatement of the legal effect of the Decision KPCC/D/R/15/2008 dated 30 April 2009.
21. To support his Appeal, he submitted the Judgment of the KPA Appeals Panel of the Supreme Court GSK-KPA-A-47/11 dated 22 August 2011.

The Appellee:

22. The Appellee states that Appellant's allegation that his life and the life of his family was at risk while signing the contract is not accurate. Signing of the contract (dated 20 December 1998) was done also by the members of the Appellant's family and the Power of Attorney (given to E. M. – the Appellee's brother) to transfer the claimed property was done by the Appellant in Kuršumlija, Republic of Serbia, where he was not under duress. Moreover, the Appellee states that the signature under the power of attorney was put on 2 August 1999, at that time he referred to E. M. as "a friend", while on 29 July 1999 the Appellant alleges that he was threatened by E.
23. Regarding Appellant's allegation that he did not receive money from the sale of the claimed property, the Appellee states that the Appellant in his lawsuit dated 30 May 2003 filed before the Municipal Court of Prishtinë/Priština (C.No 916/03) stated that for the purchase of the claimed property he had received the amount of 80.000DM and not 160.000DM, as it was said in the Sales Contract. Therefore, by the abovementioned lawsuit he requested the annulment of that Contract. The Appellee added that based on this it can be seen that the Appellant has received the purchase price, but he unlawfully wants to get the property by trying to create confusion.

24. The Appellee also states that the Appellant does not mention the fact that the same issue was subject of the HPCC's Decision HPCC/D/189/2005/c dated 30 April 2005, based on which, according to his allegations: "*he (the Appellee) acquired the ownership right over the claimed property*". Based on the HPCC's Decision, HPCC/D/189/2005/c dated 30 April 2005, it was decided to "*dismiss the Claim and refer the case to the competent local court*".
25. The Appellee alleges that the Claim should have been dismissed since the case represents the aspect of *res judicata* and that the KPCC did not have jurisdiction to render a Decision on this matter which was already adjudicated once.
26. The Appellee added that the appealed Decision is fair and as such should be confirmed by the second instance by rejecting the Appellant's Appeal as unfounded.
27. To support his allegation, the Appellee submitted the copy of the Power of Attorney dated 2 August 1999, by which the Appellant authorized E. M. (the Appellee's brother) to transfer and register the claimed property; the Sales Contract dated 20 December 1999 concluded between the Appellant and the Appellee (signed by the Appellant, his wife and father on one side and the Appellee on the other side); the Contract on Sale VR.No1292/2000 concluded on 25 July 2000, between E. M. as authorized person of the Appellant and the Appellee; the lawsuit filed by the Appellant before the Municipal Court of Prishtinë/Priština (in which the Appellant admits that he received the agreed purchase price in the amount of 80.000DM and not the total amount of the price). The Appellee also submitted other documents to the KPA, but they were not considered as relevant in this matter.

Legal reasoning:

Admissibility of the Appeal:

28. The Appeal is admissible. It has been filed within the period of 30 days prescribed for in Section 12.1 of UNMIK Regulation 2006/50, as amended by the Law No 03/L-079.
29. After having reviewed the case file and the Appeal's allegations, pursuant to Article 194 of the Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008), the Court having reviewed the Judgment *ex officio* and for the reasons that were mentioned and not mentioned in the appeal, found that:

The Appeal is unfounded.

30. The appealed KPCC's Decision, No KPCC/D/R/175/2012, dated 22 October 2012, is fair, lawful and was based on complete and proper determination of the factual situation. The Supreme Court notes that the appealed Decision was issued after the hearing session of the KPCC, in which the witnesses proposed by the Appellee were heard and their testimonies were taken. Although properly summoned, the Appellant did not participate in the hearing. The documents on which the Appellee is relying on were found and positively verified.
31. The Supreme Court considers that the final conclusion of the KPCC when stating that the Appellee failed to prove ownership or any other property right over the claimed property immediately prior or during the period 1998-1999, as required by

- Article 3.1 of the UNMIK Regulation 2006/50, as amended by Law No 03/L-079, is fair and grounded.
32. This is because, the Appellant signed a Contract on Sale with the Appellee on 20 December 1999, based on which he sold the claimed property to the Appellee, and that the loss of the claimed property was not as a result of the situation that occurred in 1998-1999. Paragraph 39 of the KPCC's Decision clarifies the facts and circumstances leading to the conclusion that there was no pressure on the Appellant at the time the contract was concluded as the same was concluded in the territory of the Republic of Serbia, in the presence and with the consent of his family members.
 33. However, regarding the Appeal's allegations that he had not signed a Contract of Sale with his free will, as the Appellee and his brother had pressured and forced him to perform this transaction, the Supreme Court accepts the conclusion of the KPCC that the contract in question between the Appellant and Appellee was concluded without the duress or coercion. Moreover, the same Contract was signed by him (the Appellant), his wife and his father.
 34. The fact that the Contract on Sale between the Appellant and the Appellee was concluded with free will is also supported by the testimonies of the witnesses (H.M., N.U., R. F. and E. M.) that were given at the hearing session of the KPCC held on 2 October 2012. In their testimonies, the witnesses stated that the Contract on Sale of the claimed property was concluded and signed by the Appellant, his wife and his father on one side and by the Appellee on the other side, in a normal procedure, without duress or force.
 35. The Power of Attorney dated 2 August 1999, verified by the Municipal Court of Kursumlija in the Republic of Serbia, that was given to the Appellant by E.M.(Appellee's brother), among others authorizing to register and transfer the claimed property is an additional argument that the Appellant sold the claimed property based on free will.
 36. Concerning the Claim, the Court notes that, the KPCC may not have had jurisdiction because the same was decided with a final Decision of the Housing and Property Claims Commission, but found that the Claimant's, now the Appellant's allegations have been examined, regarding the shortcomings of the Contract concluded under "pressure" as prescribed by the provisions of the Article 4.1 of the Administrative Direction No 2007/05 concerning contracts concluded under duress: "*Any contract purporting to dispose of a property right to a private immovable property concluded under duress may be declared void by the Commission, together with any subsequent sale(s) of the property*".
 37. Therefore the Commission acted correctly when it rejected the Claim, but has not considered the matter as *res judicata* and to dismiss the Claim as it has reviewed it and did not find facts that the Contract was concluded without the will of the parties under threat or duress. The Commission had the right to do so under Article 4.1 of the Administrative Direction No 2007/05. The KPCC concluded that the Contract was signed in Kuršumlija and in the presence of the Appellant's family members. The Contract was partially implemented due to the fact that the Appellant had already received the amount of 80,000 DM and there was no evidence that there was duress.
 38. The fact that supports the conclusion of the KPCC consists in that the Appellant in his lawsuit (C.No 916/03) for cancellation of the Contract on Sale, filed before the Municipal Court of Prishtinë/Priština on 30 May 2003, stated that he had received

- the money in the amount of 80.000DM and the remaining amount was to be paid later. This lawsuit was found at the Basic Court of Prishtinë/Priština and the Supreme Court received the copies of the case file which prove that the Appellant filed a lawsuit for annulment of the Contract.
39. Finally, the Supreme Court also shares the opinion of the KPCC when it found that the Appellee's statement delivered through his representative that he had bought the claimed property from the Appellant, is credible.
 40. Regarding the procedural actions of the Commission, and more specifically the Resolution on Restoration to previous position, the Court notes that such a practice of the administrative bodies is admitted and applicable. By its Resolution KPCC/RES/26/2011 dated 7 December 2011, the KPCC's Decision KPCC/D/R/15/2008 dated 30 April 2008, was rescinded as far as it concerned the Claim No KPA47378 and the same was referred to the Executive Secretariat for further processing due to processing error that was discovered in the Claim previously decided by the Commission. This Resolution of the KPCC was not appealed by either party: the Appellant nor the Appellee. The Response of the Appellant after the notification to KPCC/RES/26/2011, dated 7 December 2011 was reviewed by the KPCC.
 41. The Judgment of the Supreme Court – the KPA Appeals Panel is of procedural nature, refers to the KPCC's Decision KPCC/D/R/15/2008 dated 30 April 2008 and the merits of the Appeal or the sustainability of the Commission's Decision were not reviewed, as the Decision was canceled, does not exist and as such has no legal effect.
 42. Finally, in principle, the Supreme Court decides on Appeals against the Decisions of the Commission and subject of review of the Supreme Court in this case is the KPCC's appealed Decision KPCC/D/R/175/2012 dated 22 October 2012, the Court therefore considers that the examination and evaluation of evidence was done properly by the KPCC. For that reason, the Appellant's Appeal is rejected as unfounded and the contested Decision of the KPCC is confirmed as correct and based on the law applied properly.
 43. Based on what was mentioned above and pursuant to Article 13.3 (c) of the UNMIK Regulation 2006/50, as amended by the Law 03/L-079 and Article 195 (d) of the Law on Contested Procedure (LCP), it is decided as in the enacting clause of the present Judgment.

Legal Advice

Pursuant to article 13.6 of the UNMIK Regulation 2006/50, as amended by the 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 Gudaityde, EULEX Registrar