

**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-149/2014

**Prishtinë/Priština,
9 March 2016**

In the proceedings of:

B. D.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/225/2013 (case file registered at the KPA under the numbers KPA24066) dated 27 November 2013, after the deliberation held on 9 March 2016, issues the following

JUDGMENT

1. The Appeal filed by B. Dj. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/225/2013 dated 27 November 2013 as far as it regards the Claim registered at the KPA under number KPA24066 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/225/2013 dated 27 November 2013 as far as it regards the Claim registered at the KPA under number KPA24066 is confirmed.

Procedural and factual background:

1. On 5 February 2007, B. Dj. (hereafter: the Appellant) filed a Claim at the Kosovo Property Agency (KPA) seeking the repossession of the garage constructed in the year 1998 of the surface 18m², in street Vojvode Putnika No. 2, in Prizren/Prizren (hereafter: the claimed property), as well as for the compensation for the use without the consent of the owner. The Appellant alleged that the claimed property was lost on 16 June 1999 and that the loss was as a result of circumstances 1998/1999 in Kosovo.
2. The Appellant alleged that his wife was the owner of the claimed property. He indicated that the garage has been used by family S.
3. In order to support his allegation, the Appellant provided the KPA with:
 - The copy of the Marriage Certificate No. 61 of the year 1971 issued by the Municipality in Kragujevac;
 - The copies of the receipts for the payments of taxes and contribution made in 1997. In some of the receipts it was indicated that the title for payment was “fee for the use of land, for the residential building”.
4. On 21 June 2007, the KPA located the land property: the garage does not exist anymore, as it was removed by the Municipality. The same day the KPA put a poster at the spot of the claimed property. It was found not occupied. No other party joined proceedings before the KPA.

5. According to the KPA Verification Report dated 21 May 2207, the receipts were positively verified.
6. The Kosovo Property Claims Commission (KPCC) through its Decision KPCC/D/C/225/2013 dated 27 November 2013 refused the Claim based on the fact that the claimant failed to submit sufficient evidence in support of the Claim.
7. The Decision was served on the Appellant on 7 March 2014. He filed an Appeal on 4 April 2014.

Allegations of the Appellant:

8. The Appellant requests the Supreme Court of Kosovo to modify the KPCC's Decision and to accept his Appeal. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves an error in the application of the substantive law. In the Appellant's opinion the authority before which the verification of the facts could have taken place still exists and the KPA should have done so. He explained that he had built the garage in the land parcel which was socially owned and obtained the use rights over the land parcel. He asked the witnesses to be heard to confirm his allegations, as well as to be heard himself to give all the necessary data.

Legal reasoning:

9. According to Section 3.1 of Law 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.
10. The question though to be answered in the case at hand is whether the Appellant was during the conflict and until now is the owner of the claimed property. The Appellant did not provide any evidence that would prove his allegations of having

the ownership rights over the garage and for the construction of it according to the permission issued by the competent authorities. The only documentary evidence submitted by the Appellant was the receipts for the tax payments, but they may not be considered as the evidence for the circumstances of constructing the garage following the permission to use the socially owned land. According to Art. 319.1 and 2 of the Law on Contested Procedure each party to the proceedings is obliged to prove its request, the claims and all the relevant facts necessary for the court to take a decision. It was the duty of the Appellant – and not of the KPA or the Supreme Court – to submit the evidence proving the circumstances he claimed were necessary to establish according to his Claim. Failing to do so it had to result in refusing the Claim, as the KPCC did.

11. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when refusing the Claim of the Appellant. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.
12. It is important to indicate here, that according to Art. 12.11 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 new facts and material evidence presented by any party to the Appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not have been known to the party. The Appellant asked in the Appeal to hear the witnesses and himself. The Supreme Court considers the request as belated, in the light of what is mentioned above.
13. The Supreme Court concludes that the Appellant did not fulfill the legal conditions set out in Section 3.1 of the Law 03/L-079, because he did not prove his ownership over the claimed property.
14. On the basis of the above and in accordance with Section 13.3 (c) of Law No. 03/L-079 and Article 195.1(d) of LCP the Appeal has to be rejected as in the enacting clause.

Legal Advice:

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar