

**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-226/2013

**Prishtinë/Priština,
29 September 2015**

In the proceedings of:

F.J.

Niš
Serbia

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/201/2013 (case file registered at the KPA under the numbers KPA34520) dated 18 April 2013, after deliberation held on 29 September 2015, issues the following

JUDGMENT

1. The appeal filed by F. J. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/201/2013 dated 18 April 2013 as far as it regards the claim registered at the KPA under number KPA34520 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/201/2013 dated 18 April 2013 as far as it regards the claim registered at the KPA under number KPA34520, is confirmed.

Procedural and factual background:

1. On 23 November 2007, F. J. (hereafter: the claimant) filed a claim at the Kosovo Property Agency (KPA) seeking confirmation of his ownership right of the garage no.12, with the surface 15m², in street Maršala Tita no. n/a (Kralja Petra I Karadjordjeva Street), in Gjilan/Gnjilane (hereafter: the claimed property). The claimant alleged that the claimed property was lost on 18 June 1999 and that the loss was as a result of circumstances 1998/1999 in Kosovo.
2. The claimant alleged that he is the owner of the claimed property and that he bought it from the Socially Owned Enterprise (SOE) B. M. from Gjilan/Gnjilane. The appellant stated that he used the claimed property until 18 June 1999, when he was forcibly expelled from Gjilan/Gnjilane.
3. In order to support his allegation, the claimant provided *inter alia* these documents:
 - A document 'Contract on purchase of garage'. The document carries as handwritten number: 689 and as date: 16 November 1983. According to the document it was verified before the Municipal Court of Gjilan/Gnjilane on 19 March 1999 under no. OV.Br. (VR.Nr) 19/99. This document reads that the claimed property was purchased by the claimant from 'HGIRO B. M. RZZP' in Gjilan/Gnjilane;
 - Report of WO 'Elektrokosovo Pristina' on technical inspection of electric installation at the claimed property dated 7 January 1991;

- ID card of the claimant no. 109713 issued by the Serbian authorities on 29 December 1994.
4. On 28 January 2008, the KPA notified the claim by putting a poster at the spot of the claimed property. The claimed property was found not occupied except for a parked car. At the time of the notification the garage at that spot was destroyed. No other party joined proceedings before KPA/KPCC.
 5. According to the KPA verification report dated 14 March 2008, the purchase contract no. OV.Br. (VR.Nr) 19/99 dated 19 March 1999 could not be found at the Municipal Court of Gjilan/Gnjilane and therefore not positively verified. The Secretariat of KPA also found out there was another document with number 689, but that did not relate to a purchase contract.
 6. *Ex officio* KPA added to the file a Certificate for the immovable property rights. According to this Certificate parcel no. P-704030-04511-1, on which according to KPA the garage was located, is property of the Municipality of Gjilan/Gnjilane (P.SH. Kuvendi Komunës Gjilan/Gnjilane) and registered as Urban Construction Land.
 7. Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/C/201/2013 dated 18 April 2013 refused the claim based on the fact that the claimant failed to submit any documentary evidence in support of the claim. The KPCC in its decision (nrs. 22 en 23) reasoned also that the Executive Secretariat was unable to obtain *ex officio* any evidence that would support the claimant's claim. Moreover, the KPCC in its same decision stated that “[...the Commission finds that the claimant has failed to establish any property right over the claimed property immediately prior to or during the 1998-1999...]”
 8. The decision was served on the claimant (hereafter: the appellant) on 1 July 2013. He filed an appeal on 2 July 2013.

Allegations of the appellant:

9. The appellant states that he challenges the KPCC decision due to an undetermined factual situation, serious violation of the provisions of the administrative procedure and a fundamental error and violation of the substantive rights.

10. Before the KPA/KPCC, the appellant alleged that he is the owner of the claimed property based on the purchase contract he concluded on 16 November 1983 with Socially Owned Enterprise (SOE)/Construction Company B. M. from Gjilan/Gnjilane, that he performed additional works to the garage and that he used it until 18 June 1999 when he was expelled from Gjilan/Gnjilane and forced to go to Niš, Serbia. He said that the claimed property was demolished in 2007 and the value of the same was € 15.000.
11. The appellant explains in his appeal the whole correspondence that he had with the KPA and recalls his statements about gaining the property rights on the garage by the purchase contract.
12. The appellant asks how the claimed property can be demolished without having the decision of the competent authorities. According to him if the competent authorities had been aware of the demolishing of the property, they should have made an assessment of the claimed property with the owner and to decide about the value of the garage.
13. The appellant proposes to the Supreme Court of Kosovo that the KPCC decision be reversed and resolve the case based on merits and relevant evidences.

Legal reasoning:

Admissibility of the appeal

14. The appeal is admissible because it was filed within the limits pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 (hereinafter Law No. 03/L-079) on the resolution of claims relating to private immovable property, including agricultural and commercial property which provides that *“within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”*.

Merits

15. 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.

16. The question to be answered in this case is whether Appellant during the conflict was and until now is owner of the claimed property.
17. Appellant did not provide any new evidence which was not submitted with his claim before the KPA/KPCC.
18. The Supreme Court concludes that the ascertainment of the KPCC to refuse the appellant's claim due to the lack of documentary evidence in support of the claim is right and does not include an undetermined factual situation or serious violation of the provisions of the administrative procedure and fundamental error, as appellant alleges.
19. Appellant has to provide enough convincing evidence that he gained the property right over the garage, the claimed property. He provided for that the purchase contract, dated 16 November 1983, allegedly verified by the Municipal Court on 19 March 1999 under OV.br (VR.nr) 19/99.
20. According to Article 4 of the Law on transfer/trade of immovable property (Official Gazette SRS 43/81), applicable at the alleged time of concluding the purchase contract, and also nowadays according to Article 36 of Law No. 03/L-154 on Property and other real rights – as far as relevant – for gaining an ownership right on an immovable property is required a purchase contract in writing certified by the competent court. The document, on which Appellant bases his alleged property right, could not be verified positively by KPA at the Municipal Court. That means there is not a certified contract and Appellant did not provide the minimum required evidence in this procedure to ground his claim for ownership.
21. The Supreme Court also notes that the Executive Secretariat of the KPA had made efforts to obtain *ex officio* any evidence that would support the appellant's claim but unsuccessfully.
22. The Supreme Court is of the same opinion with the KPCC that the appellant failed to establish any property right over the claimed property immediately prior to or during the 1998-1999 conflict and until now.
23. 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 ownership over the claimed property.

24. 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

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar