

**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-095/14**

**Prishtinë/Priština**

**10 December 2014**

In the proceedings of:

**D. and B. D.  
Mitrovicë/Mitrovica**

*Appellant*

vs.

**L.M.  
Klinë/Klina**

*Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 (case file registered at the KPA under No. KPA26258), dated 27 November 2013, after deliberation held on 10 December 2014, issues the following:

## JUDGMENT

1. The appeal of D and B. D. is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 dated 27 November 2013 as far as it regards the case registered under no. KPA26258 is confirmed.

### Procedural and factual background

1. On 6 March 2007, D. D. (henceforth: the Claimant) on behalf of her husband B. D. in the capacity of property right holder filed a claim with the Kosovo Property Agency, seeking for repossession of the immovable property located in Municipality of Klinë/Klina, parcel no.1933/2 with a surface of 00.14.29 ha with commercial premises of the surface 480 m<sup>2</sup> located at the property. She claims to have lost the immovable property due to circumstances related to the armed conflict of 1998/99 that occurred in Kosovo.
2. To support her claim, the Appellant provided the KPA *inter alia* :
  - The Marriage Certificate issued by the Social Federal Republic of Yugoslavia, Municipality of Kragujevac, on 14 August 1966 in the name of D. D, which establishes that B. D. is her husband .
  - The Decision No. 04-313-6 issued by Municipal Assembly of Klinë/Klina ,department for Economy Housing and Utilities on 20 February 1979, granting the Claimant permission to open a private craft shop.
  - The Decision 03.No.313-346 issued by Municipal Assembly of Klinë/Klina, department for Industry and Finances on 18 September 1996 confirming the permission for the Claimant to open private commercial premises.

- The Possession List no.552 issued by Republic of Serbia, Centre for Cadastral of Immovable Property of Priština/Prishtinë, Service for Cadastral Immovable Property of Klinë/Klina on 27 November 2002 showing the property in the name of B.D.
  - The Judgment C.nr.149/06 issued by Municipal Court of Klinë/Klina on 22 October 2009 through which the Court approved B. D. lawsuit by declaring the Purchase Contract no. 49/2003 as NULL and VOID.
3. With the Judgment C.nr.149/06 issued by Municipal Court of Klinë/Klina, the Cadastre and Geodesy Office of the Municipality of Klinë/Klina was ordered to alter its Cadastral Books in accordance with this Judgment and to reverse the changes that were made previously. The disputed Contract no. 49/2003 was signed in the name of B. D. as the seller who was represented by M. M. according to the Power of Attorney No. 16/03 and L. M. as buyer. The Court established that the basis for the purchase, the Power of Attorney, was forged, and as such the Purchase Contract was without legal consequence.
  4. Except the Possession List no. 552 which was found updated in the name of L. M. the rest of the documents have been positively verified.
  5. On 13 February 2009, the KPA officers carried out the physical notification and the claimed property was found occupied by L.M. (henceforth: the Respondent), claiming the ownership right and being subject of this claim, hence the claim is contested.
  6. To support his allegations, he provided the following evidence:
    - The Power of Attorney No.16/03, allegedly certified before the Basic Court of Podgorica on 6 January 2003, according to which B. D. authorized M. M. to act on his behalf for concluding the Purchase Contract with regard to the claimed property, alienation of the property right in the name of the buyer as well to undertake all legal measures with the relevant courts and institutions in Klinë/Klina.
    - The Purchase Contract No. 49/2003, certified before Municipal Court of Klinë/Klina on 8 January 2003. The Purchase Contract was concluded between M. M. as the authorized person in a capacity of the seller and the Respondent as buyer of the claimed property.
    - The Bank Transaction dated 8 January 2003 showing that the Respondent has pay 52 Euro in the name of the taxes for the purchase transaction regarding the property included on a Purchase Contract No.49/2003.

- The Certificate for the Immovable Property Rights UL-71010027-00609 issued by Cadastral Agency of Kosovo, Cadastral Office of the Municipality of Klinë/Klina showing the property updated in the name of the Respondent with the cumulative surface 00.30.79 ha.
7. According to the verification report, of 11 February 2011, the head of the verification services of the Basic Court of Podgorica, confirmed that the Power of Attorney was not found nor has it been issued in the abovementioned Court.
  8. The Executive Secretariat of the KPA found *ex officio* the final Judgment Ac.nr.20/2010 issued by District Court of Peja/Peć on 17 July 2013 confirming the Judgment C.Nr.149/06 of the Municipal Court of Klinë/Klina. The Executive Secretariat moreover, found out the Judgment Rev.nr.200/2011 issued by the Supreme Court of Kosovo on 28 February 2013 which refuses the Respondent's request for revision of the Judgment Ac.nr.20/2010 of the District Court of Peja/Peć ,hence, confirming the first instance Judgment C.Nr.149/06.
  9. With decision KPCC/D/C/224/2013 dated 27 November 2013, the claim of Appellant was dismissed on grounds that pursuant to Section 11.4 the Law No. 03/L-079, the claim has previously been considered and decided in a final administrative or judicial decision.
  10. The KPCC decision was served to the Claimant (henceforth: the Appellant) on 19 February 2014. She filed an appeal on 19 February 2014. The Respondent (henceforth: Appellee received the KPCC decision on 28 May 2014 but he did not file a response to appeal. The Appeal was not served to the Appellee, however, the Supreme Court did not find it necessary because this will not change the final outcome of case.

### **Allegations of the appellant**

11. The appellant requested the claim to be reviewed again alleging that the Municipal Court of Klinë/Klina issued a Judgment in her favor. Upon the appeal of the appellee, the District Court in Peja/Peć confirmed the first instance Judgment. She maintains that the appellee filed a revision request which was again decided in her favor, thus, she asks Supreme Court to reverse the decision of the KPCC and to grant repossession in her favour.

### **Legal reasoning:**

12. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.
13. The Supreme Court, after the review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, found that the appeal is ungrounded.
14. Under the principle of *res judicata* a case shall not be examined by a court when the same matter, with the same parties participating in the proceedings, has already been decided by another court. This is the matter in the present case, the same claim was filed before Municipal Court of Klina/Klinë and KPCC, and the participating parties were the same in both proceedings. Also, the facts, the legal grounds as well as the evidentiary issues are exactly the same in both claims filed before Municipal Court of Klina/Klinë, respectively KPCC.
15. The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.
16. Based on the aforementioned and in pursuant to Section 13.3.(b) of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph 2, of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.
17. This judgment is without prejudice of the rights of the appellant to pursue with the competent court, if any.

### **Legal Advice**

18. Pursuant to Section 13.6 of 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.

**Esma Erterzi, EULEX Presiding Judge**

**Willem Brouwer, EULEX Judg**

**Sylejman Nuredini, Judge**

**Urs Nufer, EULEX Registrar**