

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-284/13

**Prishtinë/Priština,
2 Decemer 2014**

In the proceedings of

M. R. K.

Appellant

vs.

Sh. A.

Istok

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova , Presiding Judge, Willem Brouwer, and Sylejman Nuredini, 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 KPA38687) dated 18 April 2013 after deliberation held on 2 December 2014, issues the following

JUDGMENT

1. **The appeal of M. R. K against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 dated 18 April 2014, with regard to the claim registered with KPA under No. 38687 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 dated 18 April 2013, with regard to the claim registered with KPA under No. 38687 is confirmed.**

Procedural and factual background

1. On 06 July 2007 M. R. K. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right and re possession of business premises with a surface of 48 m² located on parcel nr. 1800/2 at street Varoš, Municipality of Istok/Istog. In the claim it is stated that the business premises were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 14 June 1999 as the date of loss and the same is occupied by Ferid Sadikaj.
2. With the claim he submitted *inter alia* :
 - Possession List no 828 dated 11 October 2002 issued by Department for Cadastre, Geodesy and Property, Municipality of Istok/Istog. According to the Possession List the claimed parcel is socially-owned property and the Municipal Assembly was entitled to it use.
 - Contract on Lease of a Business Premises dated 11 October 2002 concluded in Rožaje/Rozhajë, Montenegro which under Article 2 provides that the lessor, M. R. K. gives the business premises for rent to I.A.as a lessee in duration of five years.
 - Power of Attorney, Ov.Br.2659/2002 dated on 11 October 2002 issued by Municipal Court of Rožaje/Rozhajë through which M. R. K. authorizes I. A. to start court proceedings and represent him before all relevant institutions, regarding the release of the business premises.
3. On 25 September 2008, the KPA notified the claim by putting a sign at the place where the business premises were allegedly located. It turned out to be a commercial property and it was in possession of Sh. A. (henceforth: the Respondent).
4. On 06 October 2008, the Respondent, participating in proceedings before the KPA, denied the claimant's allegations.

5. To support his allegation, he submitted Decision issued by Municipality of Istog/Istok permitting F. S. to construct a pre-fabricated building of a temporary nature and Contract on Sale of the business premises indicating that F.S. has sold the same to the Respondent, however, these documents pertain to a different parcel, number 1800/1 in Istog/Istok, and were considered as irrelevant to the outcome of the claim, hence, the Executive Secretariat of KPA have not verified them.
6. On 18 April 2013 the Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/C/200/2013, refused the claim. In paragraph 38-40 in the cover decision, which according to the certified decision dated 18 April 2013 applies specifically to the claim, it is stated that the documents that the Claimant had submitted, had not been verified by the Executive Secretariat as genuine. The Commission finds the Claimant has failed to establish any property right over the claimed property.
7. On 15 August 2013, the decision was served on M. R. K, and he has filed the appeal before the Supreme Court on 06 September 2013 (henceforth: the appellant). The Respondent received the decision on 30 July 2013 in capacity of appellee and he did not file a response to the appeal.

Allegations of the appellant

8. M. R. K. alleges that the KPCC has erroneously and incompletely established the facts and has made an erroneous application of substantial law.
9. The KPA has stated that the Executive Secretariat could not verify the Contract on Lease attached with the request. K. has requested KPA to be provided with the evidence that the lawyer who drafted the contract and whose seal is on the contract, has submitted a report to the KPA confirming the contract is not authentic. He states that the statement made by the KPCC, which is without concrete reports on verification, is unacceptable.
10. In the appeal K. gives a detailed presentation of the documents that he has submitted in order to confirm his ownership.

Legal reasoning

11. The appeal has been filed within the time limit of 30 days as foreseen by Section 12.1 of Law No. 03/L-079 and is admissible.
12. The KPCC based its decision on the fact that the KPA Executive Secretariat and the KPCC had made a negative verification in the documents, on which Krstić bases his claim of ownership. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported K.

claim. Based on this, the KPCC found that K. had failed to establish any property right over the disputed property.

13. The appeal from K. repeats the same allegations that he made before the KPCC. No new evidence has been submitted with the appeal.
14. The Lease Contract from 2002 by which he rented the business premises to the third party does not prove how he acquired a property right to the claimed business premises. The appellant failed to submit any allocation decision or other evidence proving a user or property right over the business premises despite the fact that the KPA sent him a letter requesting clarification and additional information which was received by him on 27 December 2012.
15. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.
16. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

17. 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar