

**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-086/15

**Prishtinë/Priština,
11 October 2017**

In the proceedings of:

A. B.

Pejë/Peč

Appellant

vs.

S. B.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/254/2014 (the case file registered at the KPA under the No 95005) of 18 June 2014, after the deliberation held on 11 October 2017, issues the following:

JUDGMENT

1. **The Appeal of A. B. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/245/2014 dated 18 June 2014 with regard to the Claim registered under the number KPA95005 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/245/2014 dated 18 June 2014 with regard to the Claim registered at the Kosovo Property Agency with the number KPA95005 is confirmed.**

Procedural and factual background

1. On 3 December 2007, S. B. (hereinafter “the Appellee”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”), seeking the confirmation of the ownership right over the apartment located in Pejë/Peč, “Kralja Petra (Moše Pijade) I Street, No 41, entrance No 1, 2 floor, apartment No 9 with the surface of 55 m² (hereinafter “the claimed property”). He stated to be the owner of the claimed property and that the loss of its possession was related to the armed conflict that occurred in Kosovo in 1998/99, indicating 1 June 1999 as the date of loss.
2. To support his Claim, the Appellee provided the KPA with the following documents:
 - The Copy of the Contract on Sale No 1044716 concluded on 17 May 1995 between the Public Railway Transport Enterprise “Beograd” from Belgrade (Republic of Serbia) in capacity of the Seller and S. M. in capacity of the Buyer of the claimed property. The signatures below the Contract were legalised before the Municipal Court of Pejë/Peč on 17 May 1995 under the No Ov. 2597/95.
 - The copy of the Certificate No 263-87/95 issued on 22 May 1995 by the Public Railway Transport Enterprise “Beograd” from Belgrade certifying that S. M. has fulfilled all his obligations set out in the Contract on Sale concluded on 17 May 1995.
 - The copy of the Power of Attorney given by S. M. to his son S. M. authorising the latter one to sell the claimed property, sign the contract on sale and to certify the Contract before the Municipal Court of Pejë/Peč. The signature of the Appellee was legalised before the Municipal Court of Belgrade with the Ref 227/98 on 14 January 1998.
 - The copy of the Contract on Sale concluded on 17 January 1998 between S.M.in the capacity of the Seller and S. B. in the capacity of the Buyer. The subject of the sale was the claimed property.
 - The copy of the Decision with the No 464-08-10614/98 issued on 6 April 1998 by the Ministry of Finance of the Republic of Serbia whereby the request of S. M. for the approval of the permit to sell the claimed property to S.B. was granted.
3. The notification of the Claim was performed on 9 June 2011. The claimed property was found to be occupied by A. B. (hereinafter “the Appellant”). He alleged to be in possession of the permission to use the property issued by the Railway Station of Pejë/Peč granted to him on 1 August 2011 and signed the Notice of Participation.
4. On 15 September 2011 the Appellant filed the Response to the Claim. In support of his allegations, the Appellant presented the Executive Secretariat of the KPA the copy of the

Contract on Lease No 1250/2 concluded on 1 August 2011, between the Railways of Kosovo J.S.C. as the Lessor and the Appellant as the Lessee. The subject of the Contract was a temporary lease of the apartment located at street “Bill Clinton” (ex Moshe/Mošë Pijada) No 41, apartment no 9, Municipality of Peja/Peč (the claimed property).

5. The Executive Secretariat of the KPA positively verified all the documents submitted by the Appellee.
6. With the Decision KPCC/D/R/245/2014 of 18 June 2014, the Commission recognized the property right of the Appellee over the claimed property and declared the Appellee be entitled to possession of the same. The Commission found that the provisions of the Law on Transfer of Immovable Property (Official Gazette of RS 42/98) were fulfilled in the case. Thus, based on the evidence and in absence of a valid defense, the KPCC granted the Claim.
7. On 3 November 2014, the KPCC’s Decision was served on Appellee’s son V. B.. The Appellant received the KPCC’s Decision on 1 October 2014 and filed an Appeal on 17 October 2014.
8. The Appeal was served to the Appellee on 30 March 2015. He replied on 29 April 2015.

Allegations of the Appellant

9. The Appellant challenges the KPCC’s Decisions as it rests upon an erroneous and incomplete determination of the facts and involves misapplication of substantive law. In the opinion of the Appellant the findings of the Commission are based on invalid evidence and erroneous application of the provisions of the Law on Transfer of the Immovable Property, applicable at the time the Contract was concluded, as it stipulated that the contract should have been stipulated in writing and the signatures of the parties be legalized before the competent court and the property should have been registered at the public registries of the competent Municipality. According to the Appellant, the former owner S. M. had only a daughter and no other heirs, thus there is a grounded suspicion with regard to the validity of the contract concluded between the son of the former owner as it was found in the Commission’s Decision. Due to the aforementioned reasons the Appellant requests the Supreme Court to quash the Decision and reconsider the case.

Response to the Appeal

10. The Appellee claims that the Appeal of the Appellant is ungrounded. He reaffirms that he is the rightful owner of the claimed property. According to the Appellee the Contract on Sale was concluded by the son of the previous owner through valid Power of Attorney that was given to him by the previous owner. After concluding the Contract, the purchase price was paid in total. The Contract was not verified before the Court because at the time of concluding it, the consent of the Ministry of Finance was missing but it was obtained afterwards. The Contract was made in a written form and it was fully implemented, so, it is fully clear that he gained the ownership over the claimed property in a legal manner. Together with the Appeal the Appellant submitted some of the documents previously submitted by the Appellee.

Legal reasoning

11. The Supreme Court, after having reviewed the documents gathered in the case file and having assessed the appealed Decision and the submissions of both parties, found that the Appeal is grounded. In the opinion of the Supreme Court of Kosovo the appealed KPCC's Decision was issued in full and fair determination of the factual situation, but on such ground the procedural law was not properly applied. Therefore, the Appeal has to be granted, the KPCC's Decision quashed and the Claim dismissed pursuant to Section 13.3(a) of the Law No 03/L-079 and Article 195.1 (e) of the Law No 03/L-006 on Contested Procedure, for the following reasons.
12. The Appellant alleges that the Contract on Sale should have been concluded in writing, the signatures of the parties should have been legalized before the competent court and the property should have been registered within the public registries of the competent Municipality. Those requirements are not meet in the case at hand.
13. The Supreme Court of Kosovo notes that pursuant to the Article 4, paragraph 1 and 2 of the Law on Transfer of Immovable Property (Official Gazette of Republic of Serbia No 43/81 – hereinafter “the LTIP”), “...*the Contracts on the transfer of rights to immovable property between ownership right holders shall be concluded in writing, the signatures of the contracting parties shall be certified by the courts...*”. However, paragraph 4 of the same Article foresees that “... *the court may recognize the legal effect of a contract on transfer of immovable property title between holders of property title, if there is no ban of the transfer, which is concluded in writing but the signatures of the contracting parties have not been authenticated before the court provided that the contract has been fulfilled in its entirety or its major part, that the immovable property was acquired within the parameters of law...*”
14. First of all it should be underlined that the Appellee indicated in the Claim that he was in possession of the claimed property before the conflict in Kosovo occurred and that circumstance was not contested by the Appellant. The Appellee also indicated that he had to leave the premises due to security and safety reasons in the year 1999. Neither this circumstance was contested by the opposing party. Additionally, the Appellant described in his Response to the Claim that he had been using the apartment on the basis of the lease contract concluded with the Railway Company in 2011 (or in 2008). That would mean that his alleged title to occupy the premises arose after the conflict. As a consequence the Claim of the Appellee should be granted as the dispute between the parties does not refer to the conflict of 1998/1999.
15. Secondly, the Supreme Court agrees with the conclusion of the Commission that the documentary evidence gathered in the cases shows that contractual parties have fulfilled their obligations described in the Contract. The documents submitted by the Appellee were positively verified by the Executive Secretariat of the KPA. Consequently, the Commission correctly assessed the factual situation and correctly applied the paragraph 4 of the Article 4 of the “LTIP”.
16. Moreover, the Appellee should understand that even considering that the second Contract on Sale could not have legal effects due to the conditions described by him in the Appeal, the first contract on sale: concluded between the Public Railway Transport Enterprise “Beograd” from Belgrade (Republic of Serbia) in capacity of the Seller and S. M. in capacity of the Buyer met all the requirements of the Law in force at that time. In this case anyhow the Railways of Kosovo J.S.C. could not dispose of the claimed property neither in 2008 or 2011 for his benefit.
17. For all the above mentioned reasons pursuant to Section 13.3.(c) of the Law No 03/L-079 and Article 195.1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal advice

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Shukri Sylejmani, Judge

Timo Eljas Torkko, Acting EULEX Registrar