

**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-029/14

Prishtinë/Priština, 11 November 2015

In the proceedings of:

D.M.

Pozeska 158 325

11030 Cukarica, Beograd

Serbia

Appellant

vs.

M.S.

Bill Clinton C H-1 7-8

Prishtinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA56710), dated 14 December 2012, after deliberation held on 11 November 2015, issues the following:

JUDGMENT

1. The appeal of D.M. against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012, dated 14 December 2012, as far as it concerns the claim registered at the KPA under the number KPA56710 is rejected as unfounded.
2. The decision of the Kosovo Property Claim Commission KPCC/D/R/183/2012, dated 14 December 2012 with regards to the claim registered at the KPA under the number KPA56710 is confirmed.

Procedural and factual background:

1. On 26 November 2007, D.M. (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of his ownership right and re-possession of an apartment No. 7, with a surface of 106 m², which is located in street “Kralja Petra i Oslobodioca”, building “C”, 1st entrance, 3rd floor, Municipality of Prishtinë/Priština (henceforth: the claimed property).

In his claim the Claimant alleges that he lost the possession over the claimed property due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, where he mentions 28 June 1999 as the date of loss.

2. To support his claim he submitted the following documents with the KPA:
 - Decision No. 02-831, issued by the Socially Owned Enterprise (SOE) “Bus Station” on 29 December 1995 [(henceforth: Allocation Property Right Holder (APRH)], showing that the claimed property was allocated to the Claimant;
 - Utility Bills nos. 209918 7/97, issued by the Water Supply and Sewage Regional Service on 31 July 1997; 03000011000004, issued by Public Enterprise for Heating “Termokos” on 1 August 1998; 123166, issued by the Public Enterprise “Elektrokosmet” on 8 August 1998; 3090242/04, issued by the Public Enterprise

“Komunalac” 30 October 1998; 999999, issued by the Telekom Serbia, Prishtinë/Priština, Serbia, on 8 April 1999 (henceforth: utility bills);

- Copy of a Purchase contract (without date) certified under OV.br. (VR.nr) 02.br. (nr.) 415/581 at the Municipal Court of Prishtinë/Priština on 2 April 1999; the contract is concluded between APRH and the Claimant;
 - Copy of Claimant’s ID card, number 1201948910054, dated 11 May 2000.
3. The KPA Verification Unit in its report dated 3 June 2008, as well as the consolidated verification report dated 26 October 2011, established as far as relevant, that the submitted decision and utility bills were positively verified in the archive of the Public Housing Enterprise (PHE), respectively in the records of Public Companies (PC). The same reports also indicate that the submitted Purchase contract was not positively verified in the archive of the Municipal Court of Prishtinë/Priština.
4. On 15 April 2008, the claim was notified and M.S. (henceforth: the Respondent) was found occupying the claimed property. He signed a notice of participation on the same date (15 April 2008) stating that he claims a legal right to the claimed property. Another notice of participation is signed by the Respondent on 13 May 2008, repeating the same allegation that he claims legal right to the claimed property. He further alleged that the Claimant is not a property right holder but he is holder of this right.
5. In order to support his reply, the Respondent submitted *inter alia* the following documents:
- Copy of a Decision Nr. (Br.) 02-14, issued by APRH on 27 July 1999; this document alleges to present the situation that the APRH had taken the claimed property from the Claimant (after issuing the Decision No. 02-831, dated 29 December 1995, based on which the claimed property was allocated to the Claimant);
 - The Contract on Compensation for Building Maintenance concluded on 6 April 2001, under number 1193/256; the contract is concluded between APRH and the Respondent; the contract shows that the Respondent is obliged to take part in financing of the maintenance of the building where the claimed property is located;

- Copy of the Certificate, no. 02/57, issued by APRH on 10 April 2001; this document purporting to certify the fact that the Respondent has completed all his obligation of the payment regarding the purchase of the claimed property to the APRH;
 - Copy of a Purchase Contract concluded on 9 April 2001, no. 02-56, certified under number VR.nr. (OV.br.)1923/2001 at the Municipal Court Prishtinë/Priština; the contract is concluded between the Respondent and APRH;
 - Copy of the Utility Bills nos. C38 548-992, issued by Post Telecom of Kosovo on 19 November 2001; 08563242/09, issued by the Public Enterprise “Higijena-Teknika” on 7 September 2002; 123159/017, issued by KEC – Company Elektrokosova, without date; 0474272 and 0051860, issued by Water Supply Service “Prishtina” on 3 November 2004, respectfully on 14 April 2005 (henceforth for all: Utility Bills);
 - Written statement of Respondent, dated 12 May 2008; the Respondent alleges that he is the owner of the claimed property based on the above mentioned purchase contract;
 - Copy of Respondent’s ID card, number 1014903310, dated 11 March 2009;
 - The submission named “reply on the submitted claim before the KPA” of the Respondent dated 1 March 2012; in this submission Respondent is alleging that the Claimant’s claim is unfounded and impermissible.
6. Previously, the possession over the claimed property was subject to the adjudication of the Housing and Property Claims Commission (HPCC). The same persons who are parties in the case at hand before the KPA/KPCC (D.M. – Claimant and M.S. – Respondent), were parties in the same capacity to the proceedings before the HPD/HPCC. With its decision HPCC/D/128/2004/C, dated 18 June 2004, the HPCC dismissed the (C) category claim of D.M. in the claim DS304161. The reconsideration request filed by D.M. is rejected on 9 December 2004 by the HPCC decision HPCC/REC/41/2004.
7. On 14 December 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/R/183/2012 rejected the Claimant’s claim. In paragraph 43 of the cover decision, which based on the confirmed decision dated 14 December 2012 applies exclusively to the stated claim, it is mentioned that “[The Claimant submitted in support of his claim *inter alia* an allocation decision issued by the socially owned enterprise “Bus Station” in respect of the

claimed property. However, the Commission notes that the allocation decision has subsequently been revoked by a decision of the socially owned enterprise "Bus Station"]". Further the decision of the KPCC explained that the decision allocating the claimed property to the Claimant is revoked with another decision which allocated the claimed property to the Respondent. This decision submitted by the Respondent has been verified as being genuine by the Executive Secretariat. Moreover, the KPCC decision states that the Claimant did not presented "satisfactory evidence of the existence of any property right, or possession" over the claimed property.

8. On 16 May 2013, the KPCC decision was served on Respondent (hereinafter: the Appellee) and on 29 August 2013 on Claimant (hereinafter: the Appellant). The Appellant filed an appeal with the Supreme Court on 27 September 2013. On 10 February 2014, the Appellee replied on the appeal.

Allegations of the parties:

The Appellant:

9. The Appellant alleges that the KPCC decision contains fundamental error, it seriously breaches the existing material and procedural right, and it is based on wrongful and incompletely determined factual situation.
10. The Appellant alleges that the KPCC decision neglects submitted copies of paid utility bills, for electricity, water supply, heating etc...which to according him show that the claimed property was in his possession.
11. The Appellant states that it is uncontestable that the apartment has been allocated to him on 8 December 1995 based on the Worker's Council decision No. 08-824. He adds that at that time there was no any appeal or objection submitted against the said decision by interested parties and no legal irregularities have been noticed. The Appellant alleges that based on the allocation decision he concluded a Contract on Lease with the APRH on 28 December 1995. The fact that the KPCC is giving preference to the decision on revocation of the previous decision on allocation, points out to enormous illogically, irrationality and

arbitrariness. This is because with the decision on revocation of the decision on allocation clearly breached his right. He adds that the KPCC is only ascertaining this decision, without giving an explanation and without taking into consideration all aforementioned disputable issues.

12. The Appellant considers that the Supreme Court of Kosovo should reach a decision based on which it will be determined that without doubt he is entitled to have the apartment, based on his property rights, and that he was deprived of that option due to the circumstances derived from armed conflict.
13. The Appellant states also that besides his claim related to the property right deriving from the evidences which were presented during the first instance procedure, he alleges that he purchased the claimed property from APRH. He adds that he presents (now) the copy of “the contract” in order the same be assessed as justified, since the same previously could not be submitted.
14. The Appellant together with his appeal submitted Lease Contract No. 02-824, dated 28 December 1995, the document which was not presented before the KPA/KPCC. However, this document is without relevance in this concrete proceeding.

The appellee:

15. The Appellee alleges that the claim of the Appellant is unfounded and not allowed. This is because that with the HPCC decision HPCC/D/128/2004/C dated 18 June 2004 the Appellant’s claim for repossession of the claimed property was rejected and that the reconsideration request against such decision is rejected, too. The Appellee considers that these two decisions constitute the fact that the issue is adjudicated already and that the Appellant does not fulfil the criteria for submitting the claim.
16. The Appellee alleges that the Appellant in his appeal is avoiding presentation of the real factual situation, even though within the case file there are evidences regarding the possession, privatization and selling of the other apartment, which was allocated to the

Appellant from the same APRH. The Appellee adds that based on the Kosovo Law on Housing Relations and Serbia Law on Housing it was foreseen that the employee could be allocated and acquired the occupancy right over a sole apartment which could have been purchased-privatized after 1999. The appellee explains that the Appellant is the Property Right Holder (PRH) of the (another) apartment containing of three rooms, based on the allocation decision no. 103 dated 5 October 1983 and Use Contract concluded between him and Public Housing Enterprise.

17. The Appellee alleges that the Appellant by misusing his position as Director of SOE “Bus Station” succeeded to have illegal allocation decision no. 02-831 dated 24 December 1995 regarding the claimed property, even though he has under his possession and ownership of the other apartment allocated previously to him. The Appellee explaining further that because of that Prishtinë/Priština Public Prosecutor reacted with its request for the investigation Kt.nr.1250/97, and Prishtinë/Priština Municipality Court rendered a decision KI.566/97, dated 18 December 1997, against the Appellant and others for the implementation of the investigations.
18. The Appellee alleged that he had undertaken legal actions such is annulment of all illegal decisions regarding the residential and labor issues, as well as regarding the allocation decision no. 02-13 and 02-14 dated 29 July 1999 for the claimed property. The Appellee alleges that the Appellant on 28 July 1999 has given the consent that the claimed property is allocated to him.
19. The Appellee finally considers that the Appellant did not have any right, and if he had it before, he lost due to the illegal decision undertaken during the allocation of the claimed property and not due to the circumstances related to the conflict, therefore the set criteria within 3.1 of Regulation regarding the claim and appeal have not been met.

Legal reasoning:

Admissibility:

20. The appeal is admissible. It has been filed within the 30 days period as prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the resolution of claims relating to private immovable property, including agricultural and commercial property (hereinafter: Law No. 03/L-079).

Merits of the appeal:

21. The Supreme Court has to answer two questions: (1) Whether the Appellant's claim for re-possession right over the claimed property in the case at hand presents *res judicata*, as the Appellee states in his reply to the appeal? And (2) Whether the Appellant acquired the ownership right over the claimed property based on the Purchase contract of 1999, as he alleges in his appeal?
22. These questions are based on the Section 3.1 of Law No. 03/L-079, which stipulates that the KPCC has the competence to resolve conflict-related claims involving circumstances directly relate to or result from the armed conflict which occurred in Kosovo between 27 February 1998 and 20 June 1999.
23. The Appellant provided before the KPA/KPCC and in front of the Supreme Court the allocation decision from 1995 (No. 02-831) on allocation of the claimed property to him and the Purchase Contract from 1999 [(VR.Nr.(OV.br.)458 1999)].
24. The said allocation decision of 1995 and purchase contract concluded of 1999 can serve as the legal basis for acquiring the property rights of the Appellant as set out in the Section 3.1 of Law No. 03/L-079, if these legal acts are in accordance with the law.
25. With regard to the Appellant's right of possession claimed before the KPCC, the Supreme Court of Kosovo notes that the Appellant had previously submitted claim DS304161 before the Housing and Property Claims Commission (HPCC) seeking re-possession over the same claimed property. The HPCC with its decision HPCC/D/128/2004 dated 18 June 2004 rejected the Appellant's claim (before the KPA/HPCC the Claimant) with the reasoning that he did not provide evidence of a possession right over the claimed property.

Moreover, the same HPCC decision in paragraph 9 reasoned that “*the Claimant states he was not even allocated the property until after 24 March 1999*”. The Court also notes that the HPCC with its decision dated 9 December 2004 HPCC/REC/41/2004 rejected the Appellant’s reconsideration request submitted against the said HPCC decision with reasoning that the Requesting Party (the Appellant/Claimant) has not produced any legal relevant evidences not considered by the Commission. Therefore, the HPCC decisions (HPCC/D/128/2004 and HPCC/REC/41/2004) in the case at hand present *res judicata* as far as concern the re-possession right over the claimed apartment.

26. Regarding the answer to the second question, whether the Appellant acquired the ownership right over the claimed property based on the Purchase contract of 1999, the Supreme Court notes that for the transfer of the ownership over the immovable property, as is the case with the claimed property, it is needed the written form contract and verification of the signatures, as the constitutive elements of the Purchase contract (the legal criteria as set out in the Section 4 paragraph 2 of the Law on Trade of Immovable Property, Official Gazette of RS, no.43 of 1981). In fact based on the verification report presented by the KPA verification unit (see paragraph 3 of this judgment) it can be seen that the alleged Purchase contract could not be positively verified. That is mean that indirectly or directly the second condition - verification of the signatures of the contractual parties, stipulated with the legal provision applicable at the time of the conclusion of the Purchase contract, is not legally fulfilled. Therefore, the Supreme Court finds that the Appellant could not established that he is the owner of the claimed property [(Section 3 paragraph 3.1 (a) of the Law No. 03/L-079)].
27. Regarding the Lease Contract No. 02-824, dated 28 December 1995 submitted by the Appellant together with his appeal (the contract was not submitted before the KPA/KPCC), the Supreme Court considers that it is unnecessary and irrelevant to give any comment or to discuss it. This is because it has neither any impact on the claimed property rights by Appellant nor an outcome of this adjudicated matter.

28. The Supreme Court concludes that the KPCC has taken a fair and grounded decision in complete and correct proceedings. The appealed decision does not contain any violation of the material and procedural law and also there was no incomplete establishment of the factual situation, as alleged by the Appellant. The Supreme Court concludes that the appeal is unfounded.
29. In light of the above and pursuant to Article 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

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.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar