

**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-035/14

**Prishtinë/Priština,
13 May 2015**

In the proceedings of

P.S.

Str. Lola Ribara 52
Mitrovicë/Mitrovica

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi, and Willem Brouwer, Judges, deciding upon the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013 (case file registered at the KPA under the number KPA01095), dated 21 August 2013, after deliberation held on 13 May 2015, issues the following

JUDGMENT

1. The appeal of P.S., filed against the decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013, with regard to the claim registered with KPA under No. 01095, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013, with regard to the claim registered with KPA under No. 01095, is confirmed.

Procedural and factual background

1. On 22 August 2007 P.S. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right and repossession of an apartment with a surface of 64m², located in street, Kralja Petra I bb 3/8 , Municipality of Ferizaj/Uroševac (henceforth: the claimed property).
2. To support his claim, he provided the KPA with the following documents:
 - Decision on Allocation of Apartment No.71, dated 24 December 1998, based on which, the Municipal Assembly of Ferizaj/Uroševac allocated an apartment, located in street “Kralja Petra I” 3/8 with the surface of 62m² to Municipal Committee of Socialist Party of Serbia (SPS).
 - Lease Agreement Nr.117, concluded between Public Enterprise for Construction, Development and Use of Construction Land of Municipality of Ferizaj/Uroševac as lessor and P.S. as lessee based on which P.S. receives an apartment for permanent use, pursuant to the decision No.360-653, dated 10 December 1998, issued by Commission for Resolution of Housing Needs of citizens of Municipality of Ferizaj/Uroševac
 - Purchase Contract Vr.br. 006/99, dated 15 march 1999, which under article 1 provides that the seller, Municipality of Ferziaj/Uroševac, sold to P.S. an apartment located in Ferizaj/Uroševac, at street Kralja Perta I bb .
 - Witness Statement, legalized before Municipal Court of Mitorvicë/Mitrovica Leg. Nr.3436/2005 on 27 September 2005, according to which, both M.D and M.D. confirmed that P.S. lived with his family in the claimed property since January 1999 until 14th June

1999, when due to well-known circumstances and security reasons he was forced to leave the claimed property.

- Witness Statement, legalized before Municipal Court of Mitorvicë/Mitrovica Leg. Nr.3447/2006 on 26 September 2006, based on which B.R. confirmed that P.S. lived with his family in the claimed property since January 1999 until 14th June 1999 when due to well-known circumstances and security reasons he was forced to leave the claimed property
 - Certificate Nr. 51/07, issued by Parallel Court of Ferizaj/Uroševac on 16 March 2007, indicating that the Purchase Contract Ov.br.006/99, dated on 15 March 1999 was certified before Municipal Court of Ferizaj/Uroševac.
 - The Statement dated 22 September 2009, through which, the Claimant confirmed that none of those who had moved in the building, where the claimed property is located, has received the water or electricity bills because they moved right before the war started.
 - Power of Attorney, Ov.Br.238/2012, dated 12 January 2012, issued by Municipal Court of Prishtina/Priština, branch of Gračanicë/Gračanica, through which, P.S. authorizes D.A. to initiate court proceedings and represent him before all relevant institutions, regarding the sale of the apartment, which is located at Ferizaj/Uroševac, street Kralja Petra I bb, 3/8, with the surface 62m².
3. On 30 January 2008, the KPA notified the claimed property. It turned out to be occupied by Z.M. but she did not claim any right over the claimed property.
 4. Because no party filed a response to claim within the legal deadline of 30 days pursuant to Article 10.2 of Law No. 03/L-079, the claim was considered as uncontested.
 5. According to the verification report of 15 February 2008, the Decision on Allocation of Apartment No.71 dated on 24 December 1998, as well as the Purchase Contract Vr.br. 006/99, dated 15 March 1999 were not found at the competent institutions, thus, verification of these documents was negative.
 6. KPA established that the apartment was previously subject to the adjudication of HPCC upon the application of P.S. . The claim was dismissed by the HPCC in its decision no. HPCC/D/189/2005/C, dated 30 April 2005. According to paragraphs 12, 13, 26 and 27 of the cover decision applies especially to the claim S. failed to produce any verified documentary evidence to prove that he had possession of the property concerned or any proof of a property right, which conferred the right to take a possession of the claimed property. A request for reconsideration was rejected by the HPCC in its decision HPCC/REC/66/2006, dated 15 July 2006. In paragraph 50 in the cover decision, which, according to certified decision, applies specially to the claim, it is stated that C category Claimant in the respective first instance proceedings submitted purchase contract

which could not be verified in the competent court in Kosovo. HPCC further concluded that the verification undertaken in the dislocated archive in Serbia, on the other hand, purportedly confirms that the purchase contract was verified in court which was inadequate as the verification was based on entries in the registers at the archive, but not on comparison of the document with an original or copy stored in the archive. The C category Claimant also presented witness statements, but these could not be relied on as there was no way of assessing their credibility. The reconsideration request was rejected for the reasons stated above.

7. KPA contacted with the Claimant several times and requested further documents to prove his alleged ownership title over the claimed property. According to the notes in the KPA file, he was informed that the documents he submitted in this concern were not found in the public records and a notice of potential inadmissibility was sent asking him for the requested documents. He sent the same documents as to ownership title which were already examined by the HPCC previously and found out to be not genuine. He confirmed that he had no other document to submit.
8. On 21 August 2013, the Kosovo Property Claims Commission (KPCC), with its Decision KPCC/D/R/215/2013, refused the claim. In paragraph 10 and 33 in the cover decision, which according to the certified decision 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 Claimant further submitted written statements, given by three witnesses, confirming that he had lived in the claimed property in 1999. In the Commission's view, these statements, in absence of any corroborative documentary evidence, are not sufficient evidence to establish the ownership over the claimed property. Consequently the claim stands to be refused.
9. On 15 November 2013, the decision was served on P.S. , and he has filed the appeal before the Supreme Court on 9 December 2013 (henceforth: the appellant).

Allegations of the appellant

10. In the claim it is stated that the possession over the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 1 June 1999 as the date of loss, while the same was occupied by A.A.. In addition, the Claimant stated that he filed a claim for repossession of the said apartment with the Housing and Property Claims Commission (henceforth: HPCC). He claimed that the Apartment was allocated to him on 24 December 1998 and he acquired possession over it in January 1999, but the HPCC decided differently, although there are absolutely identical cases (DS003510 and DS603418), with the same date of obtaining the possession where HPCC had decided in the favor of the claimants.

11. P.S. alleges that the KPCC has violated UNMIK Regulation 2006/50 and Law 03/L-079 to his detriment. The KPA has stated that the Executive Secretariat could not verify the submitted documents. By this decision, the Secretariat has violated the right of private property and caused a huge material and nonmaterial damage to his family.
12. The appellant alleges that among other documents, he presented statements of witnesses who lived in the same building and gained apartments from the Municipal Assembly of Ferizaj/Uroševac at the same time as he did. They filed claims with the HPCC (absolutely identical cases) and the HPCC had confirmed to them the ownership right (cases DS003510 and DS603418).
13. In the appeal, Krstić gave a detailed presentation of the documents that he had submitted in order to confirm his ownership.
14. Finally, S. considers that the KPCC decision is wrong due to erroneously and incompletely determined facts and he expects Supreme Court to correct the mistake and issues the right decision.

Legal reasoning

15. 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.
16. The Supreme Court, after the review of the submissions in the case file, the appealed decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is ungrounded.
17. First of all, the appellant in his appeal refers to the previous decision issued by HPCC with regard to the apartment. As a matter of fact, P.S. previously applied to HPCC asking for re-possession of the apartment, which was allegedly lost during the conflict. HPCC in its decision of 30 April 2005, HPCC/D/189/2005/C, dismissed the claim because S. failed to produce any verified documentary evidence to prove that he ever had possession of the property concerned.
18. Nevertheless, to assess whether the subject matter of a case has already been adjudicated, not only the aim of the claimant has to be taken into account but rather the whole legal and factual situation which is presented.
19. It is not disputable that the claimant was clearly seeking to get repossession of the same apartment before HPCC. However, in order to validly file a claim in the first procedure, Section 2.6 of UNMIK Regulation 2000/60 and Section 1.2 (c) of UNMIK Regulation No.1999/23 which is referred to by Section 7.1 of UNMIK Regulation 2000/60 required that the claimant be the possessor of claimed property prior to 24 March 1999. To prove his possession right, the appellant submitted with the HPCC the same documents described in the part of this Judgment related to the procedural and

factual background. These documents could not be verified by HPCC in the competent court in Kosovo.

20. The appellant did not bring any new evidence leading the KPCC to deny this verification, therefore, the factual situation presented subsequently to the Commissions by the Appellant was the same one; however the ownership right over the apartment was not examined by HPD, thus, allowing the Appellant to meet the requirements in procedure before KPA whereas he claimed the ownership right and repossession over the apartment.
21. Moreover, the Appellant alleged that the HPCC decided differently on his case, although there are absolutely identical cases (DS003510 and DS603418), with the same date of obtaining the possession and in those cases HPCC decided favorably. The appellant refers to an HPCC decision-HPCC/D/189/2005/C from 30 April 2005 and another HPCC decision, namely decision HPCC/REC/66/2006 from 15 July 2006 (with which, a request for reconsideration of the first one - HPCC/D/189/2005/C was rejected). He claimed that despite same kind of documents were submitted by other claimants in those cases, the HPCC took such documents into account in some whereas it did not in his case.
22. As to above allegation, the KPA Appeals Panel of Supreme Court cannot take a position. The KPCC and KPA Appeals Panel of the Supreme Court do not have the jurisdiction over the cases of HPCC or to review the reasoning of HPCC decisions or examine their correctness. The above mentioned decisions were issued under UNMIK Regulation 2000/60 (hereafter the Regulation). With decision HPCC/REC/66/2006, a request for reconsideration against decision HPCC/D/189/2005/C, filed by appellant was rejected. This means that decision HPCC/REC/189/2005/C is final and cannot be appealed. The provisions of the Regulation do not preview any legal remedies (appeals or extraordinary legal remedies) against the final decisions of the Housing and Property Claims Commission (HPCC) – argument ex. Sections 22 and 25 *ibid*. In this respect is also the jurisprudence of the Constitutional Court of Kosovo – see Case No. KI104/10, para 64 and 74.
23. Regarding the case at hand filed with KPA, the KPCC based its decision on the fact that the KPA Executive Secretariat and the KPCC had again made a negative verification of the documents, on which S. bases his claim of ownership. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported S. 's claim. Based on this, the KPCC found that S. had failed to establish any property right over the claimed property.
24. The appeal from S. repeats the same allegations that he made before the HPCC and KPCC. Furthermore, no new evidence which were not considered previously by HPCC and subsequently by KPCC has been submitted with the appeal.
25. The Supreme Court finds that the KPCC 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.

26. 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

27. 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

Esmá Erterzi, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar