

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-178/15

Prishtinë/Priština,
29 November 2017

In the proceedings of:

F. R.

Appellant

Vs

D. R.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC), KPCC/D/R/253/2014 (case file registered with the KPA under No KPA10440) dated 25 August 2014, after the deliberation held on 29 November 2017, issues the following

JUDGMENT

1. The appeal of F. R. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 dated 25 August 2014 with regard to the claim registered with the KPA under no KPA10440 is rejected as ungrounded.
2. The paragraph (1) sub-paragraph (b) of the Individual Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 dated 25 August 2014, with regard to the claim registered with the KPA under no KPA10440, is hereby amended, as below:
 - 2.1. The existing sub-paragraph, as following:
[(b) Đ. R. is entitled to possession of the said property],
 - 2.2. Is REPLACED by the following sub-paragraph:
[(b) On the day of the destruction of the claimed property Đ. R. has met the legal conditions for return to its possession, but the declaratory order is not issued since the property has already been destroyed].
3. The Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 dated 25 August 2014, with regard to the claim registered with the KPA under no KPA10440 is confirmed.

Procedural and factual background

1. On 30 November 2007, Đ. R. (hereinafter: the Appellee) filed a claim with the Kosovo Property Agency (hereinafter: KPA) seeking re-possession of the house with the surface of 56 m², located at street “Zef Markljusi” 15/a 1, 2”, Municipality of Prishtinë/Priština (hereinafter: the claimed property).
2. In support of her claim the Appellee submitted with the KPA the following evidence:
 - Decision on Allocation No 360-641, issued by Secretary for Urbanism, Municipal and Housing Affairs of Municipality of Prishtinë/Priština through which it was approved the request of the Appellee for extension of the apartment which was used in tenancy relation by F. B,
 - Contract on Lease of the Apartment No 1193/2283, concluded on 16 October 1987 between Self –Governing Community of Interests Prishtinë/Priština as lessor and the Appellee as lessee based on which he receives the claimed property for permanent use,

- Minutes No 361-36, compiled by Municipal Assembly of Prishtinë/Priština on 27 March 1991 regarding the establishment of the compensation for using the Urban Construction Land,
 - Contract on Sale of the Apartment No 7324, concluded on 26 August 1993 between Municipal Assembly of Prishtinë/Priština in capacity of the seller and the Appellee in capacity of the buyer of the claimed property,
 - Decision No 950-3/2491, on performing the changes at the Cadaster issued by Department for Cadaster of Municipality of Prishtinë/Priština on 24 September 1993, whereby, the Appellee was allowed to perform the changes at the cadaster pursuant to the Contract on Sale No 7324,
 - Electricity bills of the years 1999 on the name of the Appellee,
 - Death Certificate No 027-203-33 issued by Dislocated Civil Registration Office of Prishtinë/Priština Municipality on 26 May 2008 showing that the Appellee passed away on 22 May 2008.
 - Power of Attorney legalized before Municipal Court of Prishtinë/Priština, branch of Gračanica/Gračanica, on 24 December 2008 under No 8495/08, whereby, M. and N. R. authorized A. P. that on their behalf she can sign and legalize the Contract on Sale with the buyer N. P. The subject of the sale was the claimed property.
3. On 1 February 2008, the KPA notified the claimed property which was found to be a reconstructed house occupied by Z.R. who claimed legal right. On 23 September 2009 I. R. (hereinafter: the Appellant) approached the KPA by contesting the Appellee's Claim.
4. The Appellant supported his participation within the KPA proceedings with the following evidences:
- Power of Attorney legalized on 12 October 2001 before Municipal Court of Prishtinë/Priština under No 5511/2001 through which F. R. authorized his son I.R. to take all necessary measures in order to gain the construction permission to construct the house at street "Ali Hadri nr. 13", cadastral parcel no 4993, registered at the Possession List No 1605, Municipality of Prishtinë/Priština,
 - Minutes regarding the Court Procedure on the case No 136/2002, compiled by Municipal Court of Prishtinë/Priština on 13 May 2002, whereby, the Court concludes that the object-building which before the conflict was on the name of the Appellee, pursuant to the Ruling of Secretariat for Urbanism of the year 1987 is entirely burned. This object-building was constructed on the property owned by F. R. and according to

Possession List and Copy of Plan dated on 2001 yet the land is registered on the name of F. R,

- Decision No 350-339 issued by Municipal Assembly of Prishtinë/Priština- Directory for Urbanism and Construction on 14 May 2002 approving F. R. the construction of an object pursuant to the conditions listed on the Decision,
 - Copy of Plan No 1607 issued by Directory for Cadaster and Geodesy of Municipality of Prishtinë/Priština on 12 august 2003 showing cadastral parcel no 4995 listed on the name of F. R., Ibrahim, O. F. R., Zetra and Zetra Rrahutë.
5. The Executive Secretariat of KPA verified positively all the documents submitted by the Appellee as well as the Appellant.
 6. On 25 August 2014, the KPCC with its Decision KPCC/D/R/253/2014 decided that the Appellee has established the ownership right over the claimed property and she is entitled to its possession.
 7. On 30 March 2014 the Decision was served on the Appellee.
 8. The Appellee's son M. R. received the KPCC's Decision on 25 November 2014 due to the fact that the Appellee passed away.
 9. The Appellant's wife F. R. received the Decision 1 December 2014 while the appeal was filed on 17 December 2014.

Allegations of the Appellant

10. The Appellant alleges that the KPCC's Decision erroneous and incomplete determination of the factual situation.
11. According to the Appellant the claimed property was Socially Owned Property (property of the Municipality) that was used by the Appellee as a tenant and the object/building does not exist since 1999.

Allegations of the Appellee

12. The Appellee received the appeal on 13 July 2015 while he response to the appeal on 9 November 2015 by submitting the Contract on Sale legalized before Municipal Court of Prishtinë/Priština on 10 July 2009 under the No. 5224/2009. The contract was conducted between N., M., Slobodan and M. R. and L. (R.) J. all in capacity of the Seller (represented by

A.P. and N. P. on the other hand in a capacity of the buyer. The subject of the sale transaction was the claimed property.

Legal reasoning

Admissibility of the appeal

13. The Supreme Court reviewed the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after the assessment of the Appellants allegations found that:
14. The appeal is admissible because it has been filed within the legal deadline pursuant to Section 12.1 of the Law No. 03/L-079 which provides that the party may file an appeal against the Commission's Decision within thirty (30) days from the notification of parties about the Decision.

Merits of the appeal

15. However, after reviewing and assessing the case file submissions and Appellant's allegations, the Supreme Court notes that the appeal is ungrounded.
16. The KPCC Decision is correct. The Court could not find an incomplete determination of facts or misapplication of the substantive and procedural laws.
17. According to Section 3.1 of the Law No 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established her ownership right over the private property but also that she now is unable to exercise such property rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
18. The KPCC indicated that the Appellee has submitted various documents in support of his claim, including Decision on Allocation No 360-641, Contract on Lease of the Apartment No 1193/2283 dated on 16 October 1987, Contract on Sale of the Apartment No 7324 dated on 26 August 1993 for confirming the purchase of the claimed property from the Municipality of Prishtinë/Priština and utility bills proving pre-conflict possession over the claimed property.
19. The Executive Secretariat of KPA has been able to verify positively all above mentioned documents bearing the Commission to the conclusion that the Appellee fulfilled the

requirement for a valid occupancy right as well as valid ownership right according to the Law on Housing Relations OG SAPK 42/86), hereunder Allocation Decision, Lease Agreement, Contract on Sale and Possession.

20. On the other hand the Appellant alleged that he is the owner of the underlying land on which the claimed property (object-building) was located and that the object-building does not exist anymore. To support his allegation he submitted among other documents, the Minutes regarding the Court Procedure on the Case No 136/2002 compiled by Municipal Court of Prishtinë/Priština on 13 May 2002. Based on the minutes it is confirmed that the claimed property was totally destroyed during the conflict. Further, it was confirmed that based on the Ruling of the Secretariat for Urbanism of 1987, the object-building was on the name of the Appellee but it was constructed on the property which is owned by the Appellant.
21. Nevertheless, at this stage the allegations of the Appellant are not assessed by Supreme Court because, the subject of the Claim was the building-object and not the land that allegedly belong to the Appellant.
22. The Supreme Court considers that the Appellee provided sufficient evidences proving the ownership right over the claimed property on the date of its destruction.
23. From the abovementioned facts results that the factual situation in relation to this legal case has been correctly and fully established and that the KPCC Decision has not been contested by any valid evidence.
24. In light of the above and pursuant to Section 13.3 (c) of the Law no. 03/L-079, the Court decided as in the enacting clause.
25. This Judgment has no prejudice to the right of the parties in the procedure to purpose their rights for compensation before the ordinary courts in Kosovo.

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

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar