

**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-278/13

Prishtinë/Priština, 14 October 2015

In the proceedings of:

N. B.

Serbia

Appellant

Representative: M. J., legal advisor

vs.

D. GJ.

Prishtinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/191/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA23384), henceforth also: the KPCC Decision, after deliberation held on 14 October 2015, issues the following

JUDGMENT:

1. **The appeal of N. B. against the Decision of the KPCC no. KPCC/D/R/191/2013, dated 13 February 2013, is rejected as unfounded.**
2. **The decision of the KPCC no. KPCC/D/R/191/2013 is confirmed as far as it concerns claim no. KPA23384.**

Procedural background

1. On 27 July 2007 N. B. (henceforth: Appellant) in her capacity of member of the family and spouse of the (alleged) property right holder I.B. (henceforth: prh) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession of the apartment Kralja Petra I Oslobodioca, Lamela 4 (Dardania), Prishtinë/Priština, with surface of 57.88 m² (henceforth: the claimed apartment). Appellant stated that she and her husband left the claimed apartment due to security reasons on 11 June 1999 and that the apartment is usurped by Z. B.Z., who rents it. The usurper did not pay any utility bill.
2. She states prh deceased on 22 August 2004. She submitted a death certificate on him, dated 22 July 2010.
3. Appellant submitted to substantiate her claim *inter alia* to KPA:
 - A marriage certificate, dated 24 July 2007. According to this certificate she married prh in Gjilan/Gnjilane on 2 July 1983;
 - A contract on purchase of the claimed apartment, nr. 452-635/93 and dated 7 April 1993 and verified on 15 June 1993, between the Republic of Serbia and prh.
 KPA verified the marriage certificate and the purchase contract positively.
4. KPA notified the claim at 1 March 2008 and found the claimed apartment occupied by D.Gj. henceforth Appellee. Appellee participated in the proceedings before KPCC and stated that she did not claim any legal rights to the claimed apartment and that she has permission to stay in the apartment.
5. In contacts by telephone Appellee stated on 28 December 2012 to KPA, that she is using the claimed apartment with verbal permission of prh until she and her brother end their studies, that she did not have to pay rent and that Appellant can come and use the claimed apartment freely if she wants. On the same date Appellant stated by phone to KPA, that Appellee is the niece of prh and that she did not have permission to use the claimed property and that prh had given

verbal permission to Appellee somewhere in 2003 to use the claimed apartment against payment of rent, but she never did.

6. The KPCC decided in the KPCC Decision to dismiss the claim. In its reasoning (paragraphs 9, 27 and 28), as far as relevant, KPCC considers that Appellant failed to show that her claim involves circumstances related to or resulting from the 1998-1999 conflict. Therefore, so KPCC concludes, the claim falls outside the jurisdiction of KPCC
7. The decision was served upon Appellant on 23 July 2013 and on Appellee on 30 July 2013.
8. Appellant filed an appeal against the KPCC decision on 21 August 2013 at the UNHCR Property Office.
9. The appeal was served on Appellee, but she did not participate in the appeal procedure before the Supreme Court and did not send a reply.
10. By Court Order, dated 1 December 2014, Appellant was ordered to substantiate and provide convincing evidence that the owner of the claimed apartment at the time of filing the claim was and now is not able to exercise the property rights to the claimed apartment and that this inability to exercise these rights is directly related to or resulting from the armed conflict.
11. Appellant answered by letter, dated 16 January 2015, to the Court Order, inter alia and as far as relevant, as follows. Shortly after the exile of prh, Appellee moved into the claimed apartment. In 2003 Appellee, her mother Z. B. Gj. and I., N., R. and R. B. met in Serbia with prh. They reached an oral agreement: Appellee was allowed to reside in the claimed apartment until termination of her studies and was obliged to give the rental fee to prh and pay utility bills. Appellee allowed even her brother to stay there and did not pay anything. She finished her studies, so there are no grounds anymore for her to stay in the apartment. In 2006 Appellant contacted Z. B. Gj., sister of prh, and asked for the rent. She answered to Appellant that all money was spent on the funeral of prh and that prh left the claimed apartment to Appellee.

Allegations of the parties

12. Appellant alleged in her claim in 2007 that she and prh had to abandon the claimed apartment in 1999 due to security reasons and that the claimed apartment was usurped by Z. B. Z. In appeal she disputes the KPCC Decision and states that prh lost the claimed apartment due to the fact that he had to leave Kosovo at the end of the war of 1998/1999 because of his position as police officer and that the claimed apartment is usurped by Appellee.

Legal reasoning:

Merits of the appeal

13. According to Section 3.1 UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law UNMIK 2006/50), as far as relevant for this case, KPCC has the competence to resolve conflict-related ownership claims involving circumstances directly related to or resulting from the armed conflict that occurred between 21 February 1998 and 20 June 1999 where the claimant is not now able to exercise such property rights.
14. The question to be answered in this case is whether KPCC concluded rightfully that the (alleged) loss of ownership right of prh on the claimed apartment is not related to the armed conflict.
15. Although undisputable in this case is that prh was owner of the claimed apartment and that prh and Appellant left the claimed apartment as a result of the war in 1998/1999, there is not now a situation of an ownership claim that is related to that same war. As KPCC established in the KPCC decision and as follows from the information and statements given by the parties, a relative of prh and Appellant is now using the claimed apartment based on an (oral) agreement made between them in 2003. The allegation that Appellee is not paying the concerted rent and other payments in relation to the claimed property and the allegation that Appellee should, based on the agreement, quit the apartment now, do not implicate an ownership claim that is related to the conflict as meant in Section 3.1 of Law UNMIK 2006/50.
16. This leads to the conclusion that KPCC rightfully decided that KPCC does not have competence to resolve the claim.

Conclusion

17. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

18. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar