

**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-187/15

**Prishtinë/Priština,
21 March 2018**

In the proceedings of:

G. M.

Appellant

vs.

M. P.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission No. KPCC/D/R/253/2014, dated 25 August 2014 (case file registered at the Kosovo Property Agency under No. KPA14092), after deliberation held on 21 March 2018, issues the following:

JUDGMENT

1. The Appeal of G. M, against the Decision of the Kosovo Property Claims Commission no. KPCC/D/R/253/2014, dated 25 August 2014, as far as it concerns the Claim registered with the KPA under No. KPA14092 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission no. KPCC/D/R/253/2014, dated 25 August 2014, as far as it concerns the Claim registered with the KPA under No. KPA14092 is annulled ex officio.
3. The Claim of M. P. no. KPA14092, regarding a use right over the socially-owned apartment, pursuant to Article 198.1 of the Law no. 03/L-006 on Contested Procedure is hereby dismissed because of the lack of KPCC jurisdiction.

Procedural and Factual background:

1. On 31 August 2006, M. P, (hereinafter: the Appellee), filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), seeking repossession and confirmation of the ownership right over the apartment with a surface of 58 m², located at street “Nemanjina 92”, 1st floor no. 13, in Pejë/Peć (hereinafter: the claimed property). According to the Appellee, the loss of possession over the claimed property occurred on 27 June 1999, as a result of circumstances in Kosovo during 1998/1999.
2. To support his Claim the Appellee submitted with the KPA the following documents:
 - The Decision on the Allocation of the Apartment for Use no. 1393 dated 28. March 1975, whereby the Agricultural Industrial Combine in Pejë/Peć allocated for use the claimed property to the Appellee,
 - The Contract on the Use of the Apartment no.153 dated on 05 December 1979, concluded between the Public Housing Enterprise in Pejë/Peć and the Appellee,
 - The Ruling no.153, dated 17 March 1977 issued by the SMCJ on Housing imposing to the Appellee a monthly fee of 240 Dinars regarding the use of claimed property,
 - Certificate No.153 issued by the Public Housing Enterprise in Pejë/Peć to 26 December 1995, whereby it is confirmed that the Appellee is using the claimed property.
 - Contract on the Sale of the Apartment Ov.br.6/2002 concluded 26 January 1996, between the Appellee as buyer and the Socially Owned Enterprise “Birraria Pejës”, as seller of the claimed property. According to this Contract (Article 3), the buyer

was obliged to pay the whole price immediately after the Contract has been certified before the competent Court.

- Power of Attorney dated 22 December 2008 whereby the Appellee authorizes his son P. M. M, to represent him before all international organizations and competent municipal bodies in Kosovo in relation to the claimed property.
3. The Executive Secretariat of KPA, notified the Claim on 19 November 2008 and 13 March 2009. The apartment was found usurped by an unknown person who was not present during the notification.
 4. On 12 December 2008 G. M. (hereinafter: the Appellant) approached the KPA and signed the Notice of Participation. The same alleged that he has a permission from a third party to use the claimed property. To support his right the Appellant submitted with the KPA Executive Secretariat the following documents:
 - The Lawsuit filed with the Municipal Court in Pejë/Peć, on 03 May 2001 by H. M. (the Appellants father), against the Appellee, where it is alleged that he has damaged his property during the conflict, thus seeking compensation from him and other restrictive measures to prevent him from selling the claimed property until there is a decision on the lawsuit.
 - The Decision C.nr. 302/1 of the Municipal Court in Pejë/Peć, dated 23 May 2001, whereby a temporary measure is imposed for preventing the sale of the claimed property until there is a final decision in relation to the lawsuit on the compensation of damages.
 - The Decision C.302/01 of the Municipal Court in Pejë/Peć, dated 23 May 2001, whereby the proceedings on the lawsuit of the father of the Appellant is terminated, because the place of residence of the Appellee was unknown.
 - The temporary occupancy permit TPS/03/0005/PE, dated 17 September 2003, issued by the HPD, in the name of the Appellant's father whereby he was allowed to live in the property of the Respondent for 6 months, from 25 August 2003 until 25 February 2004.
 5. The KPA Executive Secretariat, managed to find and positively verify the documents in which the Appellee based his Claim, namely the Decision on the Allocation of the Apartment nr.1393 dated on 28 March 1973, and Contract on the Use of the Apartment No. 153 dated on 05 December 1979.
 6. The Contract on Sale Ov. Br.6/2002, dated on 26 January 1996, and also the Certificate dated 26 January 1996, issued by the Director of the SOE "Birraria" in Pejë/Peć, showing

that the Appellee has fulfilled his obligations as per the Contract have been negatively verified by the Executive Secretariat.

7. On 25 August 2014 the Kosovo Property Claims Commission, in its Decision KPCC/D/R/253/2014, found that the Appellee had established his Use Right over the claimed property, and the KPCC decided to return the possession over the claimed property to the Claimant M. P, based on the specific reasons mentioned in paragraphs 34-37, of the cover decision of the KPCC.
8. On 02 December 2014 the Decision was served on the Appellant, who filed an appeal before the Supreme Court on 19 December 2014. On 24 November 2014, the KPCC Decision, was served on the Appellee.

Allegations of the Appellant

9. The Appellant alleges that the KPCC Decision contains violations of the provisions of civil procedure, and rests on erroneous and incomplete determination of the factual situation and on violations of material provisions.
10. According to the Appellant, the KPCC findings and manner of deliberation are unsubstantiated, because there is no substantiated evidence regarding the purchase of the apartment by the Claimant, and that due to the circumstances, because his house had been burned down, he was forced to move in the apartment that was empty. According to him, he cannot be treated as an unlawful occupant because the Municipal Court in Pejë/Peć has issued a temporary measure for the claimed apartment to prevent it from being sold and so he could hold it under his possession.
11. Finally, the Appellant proposes the Appeal to be granted as founded, the challenged KPCC's Decision annulled as legally unsubstantiated, and the temporary measure issued by the Municipal Court in Pejë/Peć pursuant to Decision C.nr.302/01, dated 23 May 2001 accepted, or that the case is returned for retrial.
12. The Appellant enclosed with his appeal copies of the same evidence he has provided to support his right before the KPCC first instance proceedings.

Legal reasoning:

Admissibility of the Appeal

13. The Supreme Court of Kosovo reviewed the Appeal pursuant to the provisions of Article 194 of the Law on Contested Procedure Law No. 03/L-006 (hereinafter: the LCP), and following the assessment of the Appellant's allegations established that the Appeal is admissible as it was filed within the deadline provided under Article 12.1 of the Law no. 03/L-079, on the Resolution of Claims related to Private Immovable Property including Agriculture and Commercial Property, which foresees that the party may file an Appeal within thirty (30) days from the day of notification on the Decision.

Merits of the Appeal

14. Following the review of the case file submissions, the challenged Decision, and the allegations of the Appellant, pursuant to Article 194 of the LCP, the Supreme Court found that the KPCC's Decision stands to be annulled not because of its merits as alleged in the Appeal, but rather *ex officio* because the Claim does not fall within the KPCC's jurisdiction.
15. The KPCC in its Decision KPCC/D/R/253/2014, established that Appellee had provided the Allocation Decision showing that the claimed property was allocated to him for use by the Agricultural Industrial Factory in Pejë/Peć, and a Contract of Use concluded in 1973 between the him and the Public Housing Enterprise, which were both positively verified by the Secretariat, and this is not disputed because based on these documents his permanent use right over the claimed property was granted.
16. The Sales Contract regarding the claimed property has been negatively verified by the KPCC and was considered as null and void because it was certified by the parallel Court of Pejë/Peć in 2002, whereas no other document was found with the SOE-“Birraria” from Pejë/Peć, or at the Privatization Agency of Kosovo which would confirm if the Appellee had bought the claimed property.
17. From the annex of the Claim processing with the KPCC, page 167, it appears that the Appellee on 24 June 2014 approached the KPA seeking the confirmation of his use right only, because he would initiate the privatization of the claimed property through the Privatization Agency of Kosovo.
18. According to Article 3.1 of the Law no. 03/L-079, the Claimant has a right to an order from the Commission for repossession of the private immovable property over which he

currently is unable to exercise his property rights because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999. This does not apply for property rights or use rights over the socially/publically owned property.

19. From the evidence presented at the first instance, the claimed property is a socially-owned property, allocated to the Appellee for use. However, it has not been a private immovable property because the Sales Contract for acquiring the property right, as mentioned above was null and void and as such it was negatively verified. Therefore, for the abovementioned reasons, this issue in relation to the property claimed, is outside the scope of procedures before the KPA, as it does not relate to a Claim regarding a private property (argument provided under Article 3.1 of the Law No. 03/L-079).
20. The confirmation and protection of the rights of use over the socially-owned and/or publically-owned property, does not fall within the scope of the KPCC's jurisdiction, respectively the KPA Appeals Panel.
21. The KPCC, should have not decided on the merits of the case but rather should have dismissed it pursuant to Article 11.4 (a) of the Law No. 03/L-079. Given that this was not done, the challenged Decision should be annulled *ex officio*, and the Claim dismissed pursuant to Article 198 paragraph 1 of the LCP, applied *mutatis mutandis* regarding the proceedings before the Appeals Panel of the Supreme Court pursuant to Article 12.2 of Law No. 03/L-079.
22. This judgment has no prejudice regarding any property right over the claimed property; therefore it does not pose an obstacle for the initiation of any legal provisions before any competent body, or for any litigation if parties deem it necessary.

Legal advice:

Pursuant to Article 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

Ragip Namani, Judge

Timo Eljas Torkko , EULEX Registrar