

**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-049/14

Prishtinë/Priština, 23 March 2016

In the proceedings of:

D.T.

Lazarevački Drum 19

Čukarička Padina

11000 Belgrade

Serbia

Appellant

vs.

L.K.

Street Milosa Obilica/Miloš Obelić, Lamela D, 2nd floor, apartment C

Obiliq/Obilić

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/215/2013 dated 21 August 2013 (case file registered at the Kosovo Property Agency (henceforth: KPA) under no. KPA01325), after deliberation held on 23 March 2016, issues the following

JUDGMENT:

1. **The appeal of D.T. is accepted as grounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013, dated 21 August 2013, is annulled as far as it concerns claim no. KPA01325.**
3. **The claim no. KPA01325 of D.T. is dismissed whereas the claim is not within the scope of jurisdiction of the Kosovo Property Claims Commission.**

Procedural and factual background

1. On 3 December 2007, D.T. (hereinafter: the Appellant) filed a claim with the KPA seeking confirmation of his use right over and repossession of an apartment with a surface of 87.55 m², located in the Street Miloš Obilić, Lamela D, 2nd floor, apartment C, in Obiliq/Obilić (hereinafter: the claimed apartment). He alleges that he lost the possession of the claimed apartment on 1 June 1999 as a result of the circumstances of 1998/1999 in Kosovo.
2. To support his claim, he provided the KPA *inter alia* with the following documents:
 - A Decision on Allocation of Solidarity Apartments, issued by the Commission for apartment allocation, established by the Fund for Solidarity Construction, from a not further specified date in 1999 and without a number (hereinafter: the Allocation Decision). According to this Decision the claimed apartment, as solidarity apartment, is allocated to MA Obilic;
 - A document ‘Contract on apartment usage on lease’, dated 16 December 1998, No. 12871/1 (hereinafter: the Contract on Use). According to the document the Contract on use is based on the decision on the allocation of solidarity apartments no. 12871, dated 16 December 1998, and concluded between the Appellant and “Elektroprivreda Srbije”, Public Enterprise for Production, Processing and Transport of Coal on 16 December 1998. According to this Contract on Use the claimed apartment is given for use to the Appellant and his family.
3. On 15 January 2008, the KPA notified the claim by putting a poster at the door of the claimed apartment. The claimed apartment turned out to be occupied by L.K. (hereinafter: the Appellee). On the same date the Appellee signed a Declaration from the responding party and claimed a legal right to the claimed apartment by stating that he has a permission to stay in the claimed apartment.
4. To support his reply, the Appellee *inter alia* provided the KPA with the following documents:

- An Allocation Decision No. 01-459/04, dated 25 August 2004, issued by the Municipality of Obiliq/Obilić, UNMIK Administration, Administrative Board. According to this decision the Commission on institutional allocation of apartments allocated the claimed apartment to the Appellee;
 - Two Partial Possession lists, nos. 1142 and 829, dated 17 December 2003 and updated respectively in 1996 and 2002. According to this possession lists the parcels 1358/1, 1353/6, 1356/2 and 1358/3 in Cadastral zone Obiliq/Obilić are social properties in the name of the Municipality of Obiliq/Obilić.
5. According to the KPA verification report dated 21 February 2008 the Contract on Use was not found upon verification at the public companies. The KPA concluded that the verification of the document was negative.
 6. On 21 August 2013 the KPCC by its decision KPCC/D/R/215/2013 (henceforth: the KPCC decision) rejected the claim of the Appellant over the claimed apartment. The KPCC in its reasoning (paragraphs 9 and 35 of the Cover Decision) reasoned that the KPA was unable to verify the Contract on Use as genuine. The KPCC further noted that the Appellant, when contacted by the KPA, acknowledged that he had never taken possession of the claimed apartment. The KPCC concludes that the Appellant had failed to produce sufficient evidences to show that he meets the relevant statutory requirements as set out in the Law on Housing Relations (42/86) as amended by the Law on Housing (50/92) to gain a use right on the claimed apartment.
 7. The KPCC decision was served on the Appellee on 12 November 2013 and on the Appellant on 22 November 2013.
 8. The Appellant submitted the appeal on 20 December 2013.
 9. On 26 March 2014, the appeal was served on the Appellee. He did not submit a response to the appeal.

The allegations of the Appellant

10. The Appellant alleges that the KPCC decision involves a fundamental error, serious misapplication of the applicable material and procedural law and rests upon an erroneous and incomplete determination of the facts.
11. The Appellant asserts that he acquired the right to use the claimed apartment via renting. He refers to the Allocation Decision and the Contract on Use.

12. The Appellant alleges that the conclusion of the KPCC that the KPA could not verify the submitted documents is unfounded. He challenges the competence of the KPA and the KPCC to examine whether a public document is original.
13. The Appellant states further that the reasoning in the KPCC decision is not in accordance with the Law on Administrative Procedure (Law No. 02/L-28) and does not contain a reference where the law is published on which the KPCC Decision is grounded.
14. The Appellant agrees with the conclusion of the KPCC that he did not get possession over the claimed apartment, because the apartment was still under construction during the armed conflict in the period from 27 February 1998 to 20 June 1999.
15. In the end of his appeal the Appellant proposes that the Supreme Court approves his appeal and annuls the KPCC decision and returns the case to the KPA for a new decision.
16. The Appellant together with his appeal submitted Allocation Decision No. 12871, dated 16 December 1998, issued by the “Electric Power Industry of Serbia - Public Company for the Production, Processing and Transport of Coal – Surface Mines Kosovo – Obiliq/Obilić” (hereinafter: the Second Allocation Decision).

Legal reasoning:

Admissibility of the appeal

17. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of the 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 (hereinafter: UNMIK Regulation 2006/50).

Jurisdiction

18. According to Section 3.1 of the UNMIK Regulation 2006/50 the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.
19. With respect to this legal provision and article 194 in connection with article 182.2 sub b of the Law on Contested Procedure, Law No. 03/L-006, (henceforth: LCP) the Supreme Court has to assess *ex officio* whether the KPCC has jurisdiction in this case.

20. For this case, in this respect it is necessary to determine whether the alleged use right to the claimed apartment refers to a right with respect to a private property or to a publicly (or socially) owned property.
21. The Appellant alleges with reference to the Allocation Decision, the Second Allocation Decision and the Contract on Use, that the claimed apartment is a solidarity apartment that was allocated by the Commission of the Fund for Solidarity Construction and that he concluded a contract on use of the claimed apartment with the Public Enterprise Electric Power Industry. From these allegations follows that the claimed apartment is not a private property as meant in Section 3.1 of UNMIK Regulation 2005/60 but a publicly or socially owned property. There is no evidence in the file that refutes this allegation of the Appellant. The documents that the Appellee submitted, although only relating to sometime after the conflict, also indicate that the claimed apartment is not private, but publicly or socially owned.
22. From this establishment follows that the claimed use right is not related to a private property and therefore the KPCC does not have jurisdiction to decide on the claim. The other allegations of the Appellant – and the Appellee – therefore cannot be examined in these proceedings.
23. In the light of foregoing, the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2005/60, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir islami, Presiding Judge,

Anders Cedhagen, EULEX Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar