

**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-262/15

**Prishtinë/Priština
25 April 2018**

In the legal proceedings of:

G. B.

Appellant

vs.

Sh. E.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, members of the Panel, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/263/2014, dated 21 October 2014 (the case file registered under the number KPA06714), after deliberation held on 25 April 2018, issued the following:

JUDGMENT

1. **The Appeal of G.B. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/263/2014, dated 21 October 2014, with regard to the Claim registered at the KPA under the number KPA06714 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/263/2014, dated 21 October 2014, with regard to Claim registered at the KPA under the number KPA06714 is quashed.**
3. **Based on Article 198.1 of Law No.03/L006 on Contested Procedure, the Claim of G.B. with the number KPA06714 is dismissed for the lack of the KPCC's jurisdiction.**

Factual and Procedural Background

1. On 26 February 2007, G. B. (hereinafter: the Appellant), filed a Claim with the Kosovo Property Agency (hereinafter: KPA) seeking the use right and repossession over a two-room apartment located in Lipjan/Lipljan, "Vëllezërit Aksic" St., No. 12, fourth floor, with a surface of 67,80 m² (hereinafter: the claimed property). According to the Appellant, the loss of possession over the claimed property occurred on 12 June 1999, as a result of the circumstances in Kosovo during 1998/1999.
2. To support her Claim, the Appellant submitted with the KPA the following documents:
 - The Judgment No. GZ.No.99/95, dated 24 February 1995, by which the District Court upheld the Judgment of the first instance Court where the Respondent I. E. was obliged to vacate the claimed property. The Claimant was the Factory "Stanoje Aksic", as the holder of the right over the apartment;
 - The Decision No. 232 on Allocation on Temporary Use, dated 17 May 1995, by which the claimed property was allocated to the Appellant for temporary use by the Steering Council of the Factory "Stanoje Aksic" in Lipjan/Lipljan;
 - Minutes of 03 June 1995, by which the Allocation Right Holder (ARH) evicted I. E. by handing over the claimed property under Appellant's possession;
 - Electricity Bill no. 041324, dated 25 (month and year illegible) which confirmed partial payment of electricity bill for 1999-2001 period, on behalf of the Appellant.
3. On 06 August 2007, the KPA Executive Secretariat made the identification of the claimed property and at the time of the visit the property was found to be usurped by Sh. E. (hereinafter: the Appellee). She signed a Notice of Participation claiming legal rights over the disputed property. She claims to be the holder of the property right acquired on the basis of her husband's employment with the ARH. The claimed property was allocated for permanent use in 1979 and the same property was used until 1995.
4. To support her right, the Appellee filed the following documents:
 - The Decision No.1545 issued on 10 September 1979 by "Stanoje Aksic" Paper and Packaging Factory" in Lipjan/Lipljan, by which the Workers' Council of the

abovementioned factory allocated for use the claimed property to I.E., in capacity of the Technical Director;

- The Contract on Use No.1186, dated 20 December 1979, entered between the Public Housing Enterprise and I. E.;
 - The Statement of the Director of ARH, dated 10 February 2001, confirming that the claimed property was allocated to I. E., husband of the Appellant, for permanent use with the right of privatization;
 - The Marriage Certificate No. 31/78, dated 01 August 2001, which proves that the Appellee is the wife of I.E.;
 - The Judgment C.nr. 116/03, dated 12 May 2003, by which I.E. had been granted the right of use and ownership over the claimed property.
5. According to the KPA Executive Secretariat Verification Report, Decision No. 232, dated 17 May 1995, on which the Appellant based her Claim, could not be positively verified.
 6. On 21 October 2014, the Kosovo Property Claims Commission, by its decision KPCC/D/R/263/2014, decided that the Claim should be rejected, based on the reasoning in paragraph 29, where it is stated that "the Claimant based her right on the temporary accommodation over the claimed property on the basis of the Administrative Decision of 1995. Neither the Claimant nor the Executive Secretariat *ex officio* have been able to provide evidence that the right to temporary use was renewed or extended by the competent bodies.
 7. The Decision was served on the Appellant on 29 January 2015. On 27 February 2015, the Appellant filed an Appeal with the Supreme Court.
 8. The Appellee received the Appellant's appeal on 04 December 2015. On 29 December 2015 she responded on the Appeal within the legal deadline of 30 days.

Allegations of the Appellant

9. The Appellant alleges that the KPCC Decision contains essential violations of the substantive and procedural law and rests on erroneous and incomplete determination of the factual situation.
10. According to the Appellant, she has the right of the holder of the property right because she has been living in the stated apartment from 1995 to June 1999, and because of the well-known circumstances she was forced to leave the apartment and Kosovo. The Appellant alleges that she has never sought the property right over the claimed apartment but only the use right and that she was planning to buy the claimed property.
11. Finally, the Appellant seeks the Supreme Court to grant her Appeal, quash the KPCC's Decision, and recognize her use right over the apartment.

Allegations of the Appellee

12. The Appellee mainly reiterates its allegations as in the first instance before the KPCC, and challenges the allegations of the Appellant as unsubstantiated, stating that after the unlawful dismissal of her husband from work, the Appellant has usurped her apartment, which was

allocated to her husband in 1979 by the “Stanoje Aksic” Paper and Packaging Factory. She proposes that the Appeal of the Appellant be rejected as ungrounded, and the challenged KPCC Decision be confirmed.

Legal Reasoning

13. The Appeal was filed within a period of 30 days, as provided by Article 12.1 of Law No. 03/L-079, and is admissible.

Merits of the Appeal

14. After reviewing case file submissions, the challenged Decision and allegations of the Appellant pursuant to Article 194 of the LCP, the Supreme Court found that the KPCC Decision should be annulled not for the merits of the Appeal which is rejected as ungrounded, but rather *ex officio* because the Claim does not fall within the KPCC’s jurisdiction.
15. From the content of the KPCC Decision, allegations of the Appellant as well as from other case file submissions, it is undoubtedly confirmed that the claimed property was not a private property but it was rather a socially-owned property under the ownership of the “Stanoje Aksic” Paper and Packaging Factory with its seat in Lipjan/Lipljan. In her Appeal the Appellant has neither alleged nor submitted any documents to prove that the claimed property was privatized. She sought the return of possession and use right over the apartment.
16. In its Decision, the KPCC rejected the Claim of the Appellant based on the reasoning that she failed to submit any Decision which would prove the renewal or extension of the temporary Decision on the use of the apartment which was allocated for use with a temporary Decision.
17. From the abovementioned facts it is confirmed that the alleged right on using the claimed property does not relate to private property as provided under Article 3.1 of Law No. 03/L-079. Pursuant to the same Article, the KPCC has the authority to resolve the claims over the property rights related to private property and Claims relating to the right of use over private immovable property.
18. Furthermore, pursuant to Section 2.1 of the UNMIK Administrative Direction 2007/5 Implementing 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 the Administrative Direction (AD) "any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, including agricultural and commercial property, who at the time of filing a claim is not able to exercise his/her property right due to the circumstances directly related to or

resulting from the armed conflict of 1998/1999, is entitled to reinstatement as the property rights holder in of his/her property right.

19. Therefore, the KPCC Decision is unsubstantiated and the same is *ex officio* quashed, given that the case does not fall within the scope of the KPCC's jurisdiction. The KPCC should have not decided on the merits of this case but rather dismiss the Claim pursuant to Article 11.4 (a) of Law No. 03/L-079. Given that the KPCC failed to act in this manner, the challenged Decision is *ex officio* quashed by the Panel and the Claim dismissed (argument pursuant to Article 198.1 of the Law on Contested Procedure), which is applied *mutatis mutandis* to proceedings before the Appeals Panel of the Supreme Court, pursuant to Article 12.2 of Law No. 03/L-079.
20. This judgment does not prejudice any property rights of the Claimant or the current holder of the claimed property, nor does it present an obstacle to initiating proceedings before the competent body or competent Court for any party it deems necessary.
21. In light of the above, and pursuant to Article 12.2 of Law No. 03/L-079, and Article 198.1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Article 13.6 of 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

Bjorn Olof Brautigam, EULEX Registrar