

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-172/15

Prishtinë/Priština,
14 March 2018

In the proceedings of:

Z. K.

Represented by lawyers M. M. K.
and A. V.

Appellant

Vs

Municipality of Obiliq/Obilič

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islam, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 (case file registered under KPA38337), after deliberation held on 14 March 2018, issues this:

JUDGMENT

1. The appeal of Z. K. against the Decision of Kosovo Property Claims Commission KPCC/D/R/247/2014, dated 18 June 2014, as far as the claim registered in KPA under KPA38337 is concerned, is rejected as ungrounded.
2. The Decision of Kosovo Property Claims Commission KPCC/D/R/247/2014, dated 18 June 2014, as far as the claim registered in KPA under KPA38337 is concerned, is annulled.
3. The claim of Z. K. with number KPA38337 on the Right of Use of the Socially Owned apartment is dismissed due to lack of KPCC's jurisdiction.

Procedural and factual background:

1. On 3 December 2007, Z. K.(hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (hereinafter: the KPA) seeking confirmation of the ownership right over the house with the surface from 66.96 m², located in street "Miloš Obilica 2", Municipality of Obiliq/Obilić (hereinafter: the claimed property). According to the Appellant, the loss of possession over the claimed property occurred in June 1999 as a result of the circumstances during 1998/1999 in Kosovo.
2. To support his claim, the Appellant together with the claim submitted the following documents at the KPA:
 - A Lease Contract No 203/75 concluded on 8 May 1992 between M. K. (the Appellant's mother) in a capacity of the Occupancy Right Holder and Municipal Public Enterprise-Obiliq/Obilić. The subject of the Contract was the lease of the claimed property for unlimited period of time. The legal basis for the Contract was the Decision No 06-597/69 issued by Municipal Assembly of Obiliq/Obilić on 20 January 1969,
 - The Birth Certificate No 200-519-03-IV of Appellant, issued by Civil Registration Office of Municipality of Obiliq/Obilić on 18 March 2003.

- The Death Certificate No 124 issued by Civil Registration Office of Municipality of Obilqi/Obilić of M. K. (Appellant's mother)
3. On 17 January 2008, the Executive Secretariat of KPA performed the notification of the Claim by placing a sign on the claimed property, which was found to be occupied by Municipality of Obiliq/Obilić.
 4. R. H, the officer of Municipality of Obiliq/Obilić (hereinafter: the Appellee) claimed legal right over the claimed property.
 5. The KPA Executive Secretariat could not positively verify the document which the Appellant provided in support of his Claim.
 6. On 18 June 2014, the Kosovo Property Claims Commission, by its Decision KPCC/D/R/247/2014, decided to refuse the claim. According to the reasoning in paragraph 25, it was stated that “the Appellant has failed to present any evidence and the Executive Secretariat *ex officio* could not find any evidence in the public records that support the allegations of the Appellant's property right”.
 7. The Decision was served on the Appellant on 20 October 2014. On 26 November 2014, the Appellant filed an Appeal with the Supreme Court.

Appellant's allegations

8. The Appellant states that the KPCC Decision contains substantial violations of substantive law as well as erroneous and incomplete determination of the factual situation.
9. According to the Appellant, the submitted documents prove that he had legitimate possession through lease. The Appellant states that he had the right of use with lease because at that time there was no private ownership with unlimited time.
10. At the end of his appeal, the Appellant requests from the Supreme Court to grant his appeal and to quash the Decision of the KPCC, and to return the case for reconsideration or to issue a new decision ordering the return of the residential property to the appellant.

Legal reasoning:

11. The appeal was filed within the time limit of 30 days, as foreseen by Article 12.1 of the Law no. 03/L-079 and is admissible.

Merits of the appeal

12. After reviewing the case file submissions, the challenged Decision and the Appellant's allegations, pursuant to Article 194 of LCP, the Supreme Court found that the Decision of the KPCC should be annulled not on the merits of the appeal but *ex officio* as the claim does not fall within its jurisdiction.
13. From the evidence provided by the Appellant in the case file submissions, it can certainly be concluded that the claimed property is not a private property but of a Public Socially Owned nature and that the owner was the Municipality of Obiliq/Obilić (Municipalities according to the legislation were Social-Political Communities). The Appellant did not provide any evidence that the claimed property was ever privatized or that otherwise it should be considered a private property. This is also stated in the appeal when he alleges that with the submitted documents he has proven the right of use over the claimed property. Due to these findings, it follows that the alleged Right of Use of property over the claimed apartment does not relate to private property as defined by Section 3.1 of UNMIK Regulation 2005/60, but to a public or socially-owned property. Therefore, it follows that the KPCC has no jurisdiction to decide on this claim.
14. The request relates to the leasing of an apartment of the Municipality of Obiliq/Obilić. The KPCC refused the Claim with the justification that there was lack of evidence that would prove the property right even though in the Claim and in the Appellant's statement at the Appeal, the right of use on the basis of the lease for the apartment owned by the Municipality of Obiliq/Obilić was sought.
15. According to Article 3.1 of Law no. 03/L-079, the KPCC has the competence to resolve the claims relating to the right of ownership over private property and the claims relating to the right to use private immovable property.
16. Furthermore, under Section 2.1 of UNMIK Administrative Direction 2007/5 on the implementation of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property Including Agricultural and Commercial Property, as amended with Law no. 03/L-079, hereinafter the Administrative Direction (AI) "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

filings a claim is not able to exercise his/her property right due to 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”.

17. The apartment in question was not a privately owned property and therefore is outside the scope of application of the KPCC procedures.
18. The confirmation and protection of use rights over socially owned property and/or public property does not fall within the jurisdiction of the KPCC, respectively the KPA Appeals Panel.
19. The Supreme Court found that the KPCC Decision as such was ungrounded and had to be quashed *ex officio* by dismissing the claim due to lack of jurisdiction and therefore the Supreme Court did not consider the merits of the claim.
20. This Judgment does not prejudice any property right for the current possessors nor is it an obstacle to initiating proceedings before the competent body or competent court for the parties that consider it necessary.
21. Based on the above and in accordance with 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 the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary circumstances.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, Acting EULEX Registrar