

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË (AKP) AGJENCISE KOSOVARE TR PRONAVE
ŽALBENO VEĆE (KAI) KOSOVSKE AGENCIJE ZA IMOVINU

GSK-KPA-A-110/2014

Prishtinë/Pristina,

19 October 2016

In the proceedings of:

N. D.on behalf of his brother M. D.

Appellant

Vs.

A. G.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges, Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission no (hereinafter: KPCC) KPCC/D/R/231/2014 (case files registered at the KPA under the number KPA25072) dated 13 March 2014 (hereinafter: KPCC Decision), after the deliberation held on 19 October 2016, issues the following:

JUDGMENT

The Appeal of M. D. filed through N. D. against the Decision of the Kosovo Property Claims Commission no KPCC/D/R/231/2014, dated 13 March 2014, with regards to the case file KPA25072, is dismissed as inadmissible.

Procedural and factual background:

1. On 14 February 2007, M. M. D., (hereinafter as: Claimant) filed a Claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right over the basement/apartment in surface of 70 m² located in the street “Naselje Braće Aksić”, second block, Prishtinë/Pristina (hereinafter : “claimed property”). He stated that he had adapted the claimed property from the basement surface which was jointly used by all the tenants of the building and with their consent he had converted it into apartment.
2. To support his Claim, the Claimant submitted at the KPA ,the following documents:
 - The Contract on Use No 1194/44 legalized under the No 4403/93, dated 17 June 1993, concluded between Public Housing Enterprise in Prishtinë/Priština and M.D. (Claimant’s father) who is referred to as superintendent of the specific parts of the building in relation to the user of the apartment no. 8, entrance IV Aktash area 3 Block II with surface of 33.09 m²;
 - The Ruling 110 No. 464-08-12339/93 dated 5 May 1993, referring to a permission to privatize a different apartment;
 - A handwritten map showing the location of the claimed property;
3. On 24 April 2008, the KPA Team notified the Claim by posting signs on the claimed property. From the notification the claimed property was found to be a basement adapted for housing, and at the time of the visit it was occupied by A. G. (Appellee).
4. He was present during the notification and signed the notice of participation by claiming legal right over the claimed property.
5. To support his allegations, the Appellee presented the following:
 - The Contract on Sale without a date concluded between A. C. and T. G., Appellee’s daughter. The contract was not verified at the Court.
 - ID card with illegible date and number.

6. On 13 March 2014, KPCC by its Decision KPCC/D/R/2231/2014, rejected the Claim stating (paragraph 47) that the Claimant failed to prove any property rights over the claimed property and that the KPA Executive Secretariat *ex officio* could not provide any evidence in favor of the Claimant's allegation.
7. The KPCC Decision was served on the Claimant on 15 May 2014 and on 2 June 2014 on N.D., Claimant's brother (hereinafter as Appellant) filed an appeal against the Decision of the Commission.
8. The Appellee received the appeal and responded on 25 June 2014.
9. On 15 June 2016, the Supreme Court ordered the Appellant to provide evidence that he could file an appeal on behalf of his brother and to respond to the allegations of the Appellee given in the response, however he did not respond.

Allegations of the parties

10. The Appellant alleges that it was his brother's property that they are displaced in Krusevac in Serbia and that the property is occupied and they cannot use it. He attached to the Appeal only a copy of an ID card.
11. The Appellee objected allegations of the Appellant stating that the appeal does not meet the conditions foreseen and that it is unclear, emphasizing that he does not have the capacity of the party to the proceedings. He proposed to dismiss the Appeal and confirm the Decision of the KPCC.

Legal reasoning

Admissibility of the appeal

12. The Court noted that the Appeal was filed by the Appellant acting on behalf of his brother, but without a valid power of attorney. For this reason the Appeal is impermissible.
13. The Court found that the Appeal is impermissible based on article 186.3 and 186.3 of the Law no. 03/L-006 on contested procedure (Official Gazette of the Republic of Kosovo No. 38/2008) (hereinafter as: LCP) which prescribe that "*An appeal shall be impermissible if it was filed by a person not entitled to file an appeal,*".

14. Also, based on the provisions of the article 5 of the Administrative Direction no. 2007/05 implementing UNMIK Regulation UNMIK/REG/2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, the Claimant does not meet the requirements. This because the Claimant does not have neither the capacity of the party nor the power of attorney to represent the property right holder, respectively his brother. He is not a close member of the family based on the provisions of the article 1 paragraph 12 of the Direction, regarding the definition of the “*Member of the family household*” means the spouse, children (born in wedlock or adopted) and other persons, whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law,
15. Consequently, as a result of the lack of the valid power of attorney, the Court could not find any reason as to why the Appellant should be entitled to file an appeal, as a party for his own interest or as a representative of the Claimant.
16. Considering the appeal as impermissible, the Court did not address the merits but found that the Decision of the Commission was issued in compliance with procedural and substantive law.
17. Based on the above and pursuant to article 13.3 subpar. b of the UNMIK Regulation 2006/50 as amended by Law 03 /L-079, the Court decided as in the enacting clause.

Legal Advice

18. Pursuant to article 13.6 of the UNMIK Regulation 2006/50, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar