

**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-096/2014

**Prishtinë/Priština,
16 December 2015**

In the proceedings of:

H. B.

Appellant

vs.

The heirs of **M. M.**

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013 (case file registered at the KPA under the number KPA15457), dated 27 November 2013, (henceforth: the KPCC Decision) after deliberation held on 16 December 2015, issues the following:

JUDGMENT

1. The appeal of H. B. against the decision of Kosovo Property Claims Commission KPPC/D/R/221/2013, dated 27 November 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission no. KPPC/D/R/221/2013, dated 27 November 2013 regarding the claim registered at the KPA under the number KPA15457, is confirmed.

Procedural and factual background:

1. On 4 October 2007, M. M., father of Appellee, (henceforth: Claimant) filed a claim at the Kosovo Property Agency (KPA), seeking ownership right over an apartment of 49 m², street Trajko Grković, no. 4/4, in Ferizaj/Uroševac (henceforth: the claimed apartment).
2. With his claim Claimant provided a purchase contract on the claimed apartment between him and the Health Centre in Ferizaj/Uroševac confirmed by the Municipal Court of Ferizaj/Uroševac on 17 June 1993. In the contract Claimant is the buyer. In the contract is as legal basis referred to the Law on Housing (Official Gazette Republic Serbia no. 50/92). Claimant added to his claim a statement in which he states that he had used the claimed apartment since 1968 as tenant right holder and concluded the purchase contract on 10 June 1993.
3. When KPA notified the claim, the Appellant was found occupying the claimed apartment.
4. Appellant joined proceedings before the Kosovo Property Claims Commission (KPCC) and sent in a response.
5. By the KPCC Decision, the KPCC decided that the claimant had established that he is the owner of 1/1 of the claimed apartment, that he is entitled to possession over this property and that Appellee and any other person occupying the property has to vacate it within 30 (thirty) days of the delivery of the decision. KPCC reasons that based on the purchase contract, meant before in paragraph 2, the claim stands to be granted.
6. Claimant deceased 26 February 2014. Appellee is the son of Claimant and as such heir of claimant.
7. The KPCC Decision was received by D. M., the claimant's widow, on 2 April 2014.
8. Appellant received the KPCC Decision on 12 February 2014. He filed an appeal on 27 February 2014.
9. Appellee filed a reply on Appellant's appeal on 5 June 2014.

Allegation of the parties:

10. Appellant alleges that he has been living with his family in the claimed apartment since June 1999 because his house was burned during the armed conflict. The apartment was allocated to him as

a war veteran by the Kosovo Interim Government – municipal authorities of Ferizaj/Uroševac. He lives on a small pension. Appellant expresses his interest to buy the claimed apartment or get a use right on lease basis.

11. Appellee alleges in appeal that Claimant is the legitimate owner of the claimed apartment and that the KPCC Decision is right. In support of this he mentions that the appellant does not contest the ownership of Claimant and that he does not claim any property right over the apartment.

Legal reasoning:

12. The appeal is admissible.
13. Appellee can join the proceedings in Appeal as Member of heir of the deceased Claimant.
14. According to Section 3.1 of 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: Law No. 03/L-079) – as far as relevant here - KPCC has the competence to resolve conflict-related ownership claims with respect to private immovable property, involving circumstances directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999, where the claimant is not now able to exercise such property rights.
15. KPCC decided that the claimant had established his property right over the claimed apartment.
16. Appellant does not contest the ownership right of Claimant over the claimed apartment. There is no ground that the Supreme Court should otherwise conclude that claimant is not the owner of the claimed apartment. Also is not in dispute that Claimant lost possession of the claimed apartment due to the armed conflict in 1998/1999. Therefore the KPCC Decision is grounded on a complete and correct determination of the factual situation and the law.
17. The allegations from Appellee taken all together that he needs the use of the claimed apartment for his family because his house was burnt during the conflict and that he wants to buy or rent it, cannot be detrimental to the KPCC Decision, because these arguments cannot lead to the conclusion that Claimant is not – or now neither his heirs are – the owner of the claimed apartment
18. To reach a settlement on purchase or lease Appellant has to get in negotiations with the heirs of Claimant.
19. On the basis of the above and in accordance with section 13.3 (c) of Law No. 03/L-079 the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, Judge

Urs Nufer, EULEX Registrar