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-218/15 **Prishtinë/Priština,**
21 March 2018

In the proceedings of:

M. K.

Appellant

Vs.

N. B., represented through Z. G. with authorisation

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission (hereinafter: the Commission) KPCC/D/R/237/2014 dated 30 April 2014 (case file registered under KPA00805), after deliberation held on 21 March 2018, issues this:

JUDGMENT

1. **The appeal of M. K. against the decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014, dated 30 April 2014, as it regards the claim registered with KPA under KPA00805, is rejected as ungrounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/236/2014, dated 30 April 2014, as it regards the claim registered with KPA under KPA00805, is annulled ex officio.**
3. **Based on Article 198.1 of the Law no.03/L006 on Contested Procedure, the claim of N. B., with number KPA00805, on the right of use over the socially owned apartment, is dismissed due to lack of jurisdiction of the KPCC.**

Procedural and factual background:

1. On 17 May 2007, N.B. (hereinafter: the appellee) filed a claim with Kosovo Property Agency (hereinafter: KPA) seeking confirmation of the right of use over the apartment with surface of 23.97 m^2, located in the former street "Pirotska Prask. Voda" entrance 1, floor VI, flat no.39 (Kurrizi-Kičma), Prishtina Municipality (hereinafter: the claimed property). According to the appellee, his mother N. B., maiden name B., had the right of use over the claimed property and the loss of possession over the claimed property had occurred in 1999 as a result of circumstances during 1998/1999 in Kosovo.
2. To support her claim, the appellee, together with the claim, provided the KPA with the following documents:
    - Decision on allocation of apartment No.463 dated 15 February 1991 by which the "Energobanka" Enterprise allocated the claimed apartment to N. B. for use;
    - Contract on use No 1193/13156 concluded between the Municipal Housing Enterprise and N. B. on 17 May 1991,
    - Birth extract issued by the authorities of former Federal Republic of Yugoslavia (Serbia and Montenegro) dated 2 November 2004 proving that N. B. is the son of N.
    - Birth certificate dated 6 July 2012 issued by the Ministry of Internal Affairs of Kosovo proving that N. B. is the son of N. and M. B.
3. On 2 January 2008, the KPA Executive Secretariat notified the claimed property by placing a sing on the claimed property, which resulted to be an apartment occupied by M. K. (hereinafter: the appellant). She participated in the proceedings and on 5 December 2008 had declared that she disputed the property right of N. B. and stated that the property right holder is N. B., which according to the appellant's assertion gave her the consent to use the property as a way of looking after the apartment.
4. The KPA Executive Secretariat managed to verify positively the documents presented by appellee to support her claim.

5. On 30 April 2014, the Kosovo Property Claims Commission, with its decision KPCC/D/R/236/2014, decided that the Appelee had established that his mother N. B. right of use over the claimed property and is entitled to return of possession, by vacating the property from the appellant under threat of compulsory execution.
6. The decision was served on the appellant on 15 January 2015. On 2 February 2015, the appellant filed an appeal with the Supreme Court. On 5 November 2015, N. B. received a copy of the appeal and through the authorised representative Z. G. filed a response to the appeal.

Allegations of the Appellant

7. The appellant states that the KPCC Decision contains substantial violations of procedural and substantive law as well as erroneous and incomplete determination of the factual situation.
8. According to the Appellant, the loss of property by the appellee did not occur as a consequence of the armed conflict, but as a result of sale of property by the property right holder to the Appellant.
9. In the end of her appeal, the appellant moves the Supreme Court to grant her appeal and to quash the KPCC decision, and to return the case for reconsideration or to issue a new decision ordering the return of residential property to the appellant.

Allegations of the Appellee

10. The Appellee stated that the appellant is using the property unlawfully and that the KPCC decision is correct and should be confirmed.
11. Together with the response to appeal, she also provided:

- Contract on Sale with number LRP Nr.411/2015, (reference No. 138/2015), by which the Kosovo Energy Corporation (the owner) sold the claimed property to N. B. (the user) through the privatization process based on the Law no. 04/l-061 on sale of apartments in which there is tenure
- Various utility bills proving that appellee is listed as user of the claimed property for the period until 2015.

12. Finally, she moves the court to reject the appeal as ungrounded and to uphold the challenged decision of the KPCC.

Merits of the appeal

13. After reviewing the case file submissions and Appellant's allegations pursuant to Sections 12 and 13 of UNMIK Regulation 2006/50, as amended by Law no. 03/L-079 and Article 194

of the Law no.03/L-006 on Contested Procedure, the Court found that the appeal is admissible. It was filed within the 30-day period as foreseen by Section 12.1 of UNMIK Regulation 2006/50, as amended by Law no. 03/L-079.

Legal reasoning:

14. Based on information provided by the appellant and KPA, it can be ascertained indubitably that the claimed property is not private property, but a socially owned property of which the owner was "Energobanka"-Prishtina. The appellee failed to provide any evidence that the claimed property was ever privatised or that otherwise it should be considered a private property. She states this in the appeal too when alleging that through the submitted documents she has proven the right of use over the claimed property. Because of these conclusions, it follows that the alleged right of use over the claimed property is not related to private property, as defined under Section 3.1 of UNMIK Regulation 2005/60, but to a public or socially owned property. Therefore, it follows that KPCC has no jurisdiction to decide on the claim.
15. Based on the documents in the case file submissions, the case pertains to the use of apartment as per the contract concluded between the allocator of apartment "Energobanka" and the user of apartment N. B., and that it was never privatised.
16. KPCC, by exceeding its competencies, had decided to return the claimed property to the appellee. According to Section 3.1 of the Law no.03/L-079, the KPCC has competence resolve claims relating to ownership right over the **private** property and claims relating to the right of use over **private** immovable property.
17. Furthermore, according to Section 2.1 of UNMIK Administrative Direction 2007/5 on implementation 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 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 circumstances directly related to or resulting from the armed conflict that occurred in 1998/1999 or circumstances resulting thereof, is entitled to reinstatement of his/her property rights, in the capacity of possessor of property right**".**
18. The apartment in question was not a private immovable property and as such, it is outside of scope of implementation of procedures by KPCC.

19. Confirmation and protection of rights of use over residential properties under social ownership and/or public property does not fall within the jurisdiction of KPCC, respectively of the KPA Appeals Panel. This issue is regulated by the Law no.04/l-061 on the sale of apartments in which there is tenure, applicable as of 27 January 2012, and the Law no.04/l -

247 on amending and supplementing the Law no.04/l-061 on the sale of apartments in which there is tenure, applicable as of 14 May 2014.

20. The Supreme Court found that the KPCC decision as such is ungrounded and has to be quashed ex officio by dismissing the claim due to lack of jurisdiction. For this reason, the Supreme Court did not further consider the merits of the appeal.
21. This judgment does not prejudice any property right for the current possessors nor does it present an obstacle to initiating proceedings before the competent bod or competent court for the parties that consider it necessary.
22. Based on the above and pursuant to Article 12.2 of the 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 enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko , EULEX Registrar