

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-173/14

Prishtinë/Priština,
23 March 2016

In the proceedings of

V.S.B.

Str. Rendgenova 1 3

Medijana, Niš

Serbia

Appellant

vs.

S.H.

Mushtisht/Muštište

Suharekë/ Suva Reka

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 (case file registered at the KPA under the number KPA31478) dated 13 March 2014, after deliberation held on 23 March 2016, issues the following

JUDGMENT

1. The appeal of V.S.B. against the decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 dated 13 March 2014, with regard to the claim registered with KPA under No. 31478 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 dated 13 March 2014, with regard to the claim registered with KPA under No. 31478 is confirmed.

Procedural and factual background:

1. On 18 July 2007 V.S.B. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of user right and re-possession of an apartment with a surface of 42,22 m² located at street Ulpijana D7, 2nd Entrance, No. 25, Municipality of Prishtinë/Priština (henceforth: the claimed property). The claim was made as a family member of her husband, Z.G.B., who was stated as the Property Right Holder (henceforth: the PRH) of the claimed apartment.

In the claim it is stated that the claimed apartment were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 17 June 1999 as the date of loss and the same is occupied by S.H. .

2. With the claim the Claimant submitted *inter alia*:
 - Marriage Certificate No. 202 dated 25 June 1996 issued by the Republic of Serbia. According to this document the Claimant is the wife of PRH;
 - Rank List of priority for the allocation of “the apartment” No. 01-2094/1 dated 16 July 1996. In the list it is the name of the PRH (this document does not contain sufficient information to determine whether the list referred to the claimed apartment);
 - Overview-Rank List of priority allocation of apartments of Public Housing Enterprise (PHE) No. 01-432/1-4, issued by the Commission of the PHE on 16

February 1999. This document shows the PRH's name and the (address) claimed apartment (under number 4);

- Decision No. 01-432/1-4 dated 18 February 1999 issued by the Commission of the PHE. According to this document the allocation of the apartments can be carried out to the employees of the PHE, in accordance with the established rank list of order of priority;
 - Allocation Decision No. 01-476/1 dated 18 February 1999 issued by the PHE. According to this document the claimed apartment was allegedly allocated to the PRH;
 - Contract on Lease of the claimed apartment dated 19 February 1999. This contract is concluded between the PHE and PRH. The contract indicates that the PRH (as a lessee) will use the apartment along with the members of his family (the Claimant's name appears as the first among other members of family);
 - (Verified) Purchase Contract Ov.br.(VR.nr.)1871/1999 dated 15 March 1999. This contract allegedly is concluded between the PHE and PRH over the claimed property;
 - Claimant's ID card no. 2212968915082 dated 19 July 2001;
 - Housing and Property Claims Commission's Decision HPCC/D/128/2004/C (henceforth HPCC Decision) dated 18 June 2004 [According to this decision the PRH's claim (DS302533) for re-possession over the claimed property (same property as within the claim KPA31478 before the KPA) was rejected];
 - PRH's ID card No. 2209967910043 dated 1 August 2004;
 - Power of Attorney (PoA) OV.br.(VR.nr.)I b 10379/2008 dated 29 December 2008. This document shows that the PRH authorised Legal Advisors S.Z. and M.J., both from Danish Refugee Council (DRC), to undertake all legal actions, among others to represent him before the KPA in regard to the claimed property;
 - Claimant's Birth Certificate No. 200-1-15182/2012-09 dated 4 July 2012 issued by the Republic of Serbia;
3. On 9 January 2008, the KPA notified the claim by putting a sign at the door of the claimed apartment. It turned out that at the time of the notification S.H. (henceforth: the

Respondent) was present at the property. He first had signed a notice of participation and did not claim a legal right to the claimed apartment, but then in the form of reply to the claim and his attached statement, alleges that he is living within the claimed apartment based on the decision of the PHE.

In order to support his allegation, the Respondent submitted *inter alia* the following documents:

- Allocation Decision No. 01-1873/1 dated 6 December 1999, issued by the PHE. According to this document the claimed apartment is allocated to the Respondent for a six (6) months provisional use (starting from 10 December 1999 until 10 June 2000);
 - Housing and Property Claims Commission Decision HPCC/D/128/2004/C (henceforth: HPCC Decision) dated 18 June 2004. In this Decision HPCC refused the category C claim of the Claimant (the PRH before the KPA/KPCC). The claim was about the repossession of same property, which is the subject matter of the claim KPA31478 before the KPA. The HPCC in its decision reasons that the documents presented by the Claimant (PRH) could not be verified.
 - Respondent's statement dated 18 January 2008;
 - Respondent's Passport No. K00560492, issued by the Ministry of the Interim Affairs of the Republic of Kosovo on 16 November 2009;
 - Respondent's statement dated 3 December 2013 (delivered to the KPA on 19 December 2013).
4. According to KPA Verification Report dated 15 October 2008 and Verification Report dated 1 July 2011, the Allocation Decision and Contract on Lease were not found at PHE. The PHE officialy noted that in regard to the claimed apartment there are documents in the name of M.R. (and not in the name of PRH or Claimant).
 5. On 13 March 2014 the Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/C/231/2014, refused the Claimant's claim. In paragraph 93-95 in the cover decision, which according to the certified decision dated 25 April 2014 applies specifically to the claim, it is stated that the Allocation Decision, Contract on Lease and a Purchase Contract submitted by the Claimant have not been verified by the Executive Secretariat as

genuine. Further, the same decision concludes that the Claimant has failed to establish any property right over the claimed property.

6. The decision was served on Claimant (henceforth: the Appellant) on 7 May 2014, while she has filed the appeal before the Supreme Court a day after - on 8 May 2014. The Respondent (henceforth: the Appellee) received the decision on 15 May 2014.

Allegations of the Appellant:

7. The Appellant alleges that the KPCC decision involves a fundamental error or serious misapplication of the applicable material or procedural law.
8. The Appellant states that she disagrees with the entire decision of the KPCC because it was based on the documents dated from 1999 without having considered the 1996 documents which she submitted. She further alleges that the claimed property was allocated to her husband in 1966.
9. The Appellant notes that another person named M.R. previously used to live in the claimed property. This person had been granted an approval for a larger apartment. The Appellant adds that “they” received the claimed property and use to live there for 15 years “until the bombing”.
10. Finally, the Appellant proposes to allow him the purchase of the claimed property so he could pay for it.

Legal reasoning:

11. The appeal has been filed within the time limit of 30 days as foreseen by Section 12.1 of Law No. 03/L-079 and is admissible.
12. The KPCC based its decision on the fact that the KPA Executive Secretariat and the KPCC had made a negative verification in the documents, based on which the Appellant “seeks confirmation of an ownership right and repossession”. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported Appellant’s claim. Based on

this, the KPCC found that the Appellant “has failed to show ownership or any other property right over the claimed property”.

13. The appeal from the Appellant repeats the same allegations that she made before the KPCC. No new evidence has been submitted with the appeal.
14. The same property was a subject matter of the PRH’s (Z.B.) claim for repossession No. DS302533, submitted before the Housing and Property Directorate/Housing and Property Claims Commission Decision (HPD/HPCC). In fact the HPCC with its decision No. HPCC/D/128/2004/C dated 18 June 2004 rejected the PRH’s (the husband of the Appellant before the KPA/KPCC). The HPCC based its decision on the fact that not one of the documents presented by the PRH’s (Claimant before the HPD/HPCC) has a corresponding original or copy or reference in the records of the relevant allocation right holders, the PHE and the competent municipal court or other public office. The Supreme Court considers that as regard to the Appellant’s claim before the KPCC for repossession of the claimed property, the said HPCC decision presents *res judicata*. However, even in the hypothetical case if the PRH’s right of repossession would not be a part of the HPCC decision, the Appellant’s alleged repossession right as well as any other property right over the claimed are not proven with any of the submitted document.
15. Regarding the Appellant’s allegation that the KPCC decision is based only on the documents of 1999 and not on those ones of 1996, the Court finds that this does not stand. This is firstly because the documents in which the Appellant claims to base his alleged rights are documents of 1999 (Allocation Decision, Contract on Lease and Purchase Contract), while secondly the documents of 1996 (Certificate on Marriage and Rank List) presented by her (Appellant) would not be able to serve as basis to support the alleged rights.
16. Regarding the request of the Appellant in his appeal, to enable him the purchase of the claimed property so he could pay for it (although before the KPCC she had submitted the purchase contract based on which the claimed property was allegedly purchased), the Court considers that the answer ca not be positive since this falls outside its mandate (this falls outside the mandate of the KPCC as the first instance decision-making as well).

17. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made, as the Appellant pretends. The Supreme Court finds the appeal unfounded.

18. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov , EULEX Judge

Sandra Gudaityte, EULEX Registrar