

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-138/2014

Prishtinë/Priština, 12 February 2016

In the proceedings of:

Z.R.

Sočanica 38217

Leposavig/Leposavic

Appellant

Vs.

1. H.B.

Zeleznicka 8, apartament 6

Mitrovicë/Mitrovica

Appellee 1

and

2. Public Enterprise "I."-Prishtinë/Priština

Fushë Kosovë/Kosovo Polje

Appellee 2

The KPA Appeals Panel of the Supreme Court of Kosovo composed of the judge Sylejman Nuredini, Presiding Judge, Beshir Islami and Rolandus Bruin, members, on the appeal against the Decision of the Kosovo Property Claims Commission no. KPCC/D/R/223/2013 dated 27 November 2013 (case file registered at KPA under no. KPA01141), after deliberation held on 12 February 2016, issues the following

JUDGMENT:

1. **The appeal of Z.R. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/223/2013, dated 27 November 2013, is rejected as unfounded as far as it concerns the claim number KPA01141.**
2. **The Decision of the Kosovo Property Claims Commission no. KPCC/D/R/212/2013 dated 27 November 2013 is confirmed as far as it concerns the claim registered at KPA under the number KPA01141.**

Procedural and factual background

1. On 10 October 2007, Z.R. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his right on use over an apartment in a residential building with a surface of 67 square meters, located in "Zeleznička" no.8 in Mitrovicë/Mitrovica (henceforth: the claimed apartment). He alleges that regarding the claimed apartment he had a joint right on use with J.R. , who filed a claim with the Housing and Property Directorate under the number DS309953. The Housing and Property Claims Commission recognized her right of using the apartment. Actually the property is under the administration of KPA through a rental scheme. In the claim the Appellant further stated that from the total surface of the apartment, half of the 67 square meters were in use of him while 23 square meters were in use of J.R. . He did not mention the exact date when the loss of property occurred but he alleges that the loss is related to the armed conflict that occurred in 1998/1999.
2. In order to support the claim, the appellant submitted to KPA the following documents:
 - A Contract on lease for using the claimed apartment for official purposes no. 15/97-101 /8 dated 3 April 1997 and concluded between the Railway Transport Enterprise "Belgrade" (lessor of the apartment) and the Appellant. Article 9 of the contract provides that the duration of use is related to his performance and the contract is conditioned with his labour relation to the Enterprise.
 - Decision of the Railway Transport Enterprise "Belgrade" with number 10/94-520 dated 17 October 1994 on allocation for use of the claimed apartment with a surface of

67 square meters.

- Proof on payment of the utility bills from 1998/1999 (on the rent of the apartment, electricity, water, etc.) to prove that the property has been used by the Appellant.
3. On 19 March 2008, the KPA visited the claimed apartment and put a notice regarding the property claim. The property was found in use of H.B. (henceforth: Appellee 1) who by a temporary permit was included in the rental scheme through Kosovo Property Agency by the decision of Housing Property Claims Commission HPCC/87/2003C dated 29 August 2003 related to the claim DS309953. H.B. through the Agency paid the rent to J.R. . Appellee 1 claimed to have a legal right on use of the property and signed a notice of participation in the proceedings before KPA/KPCC.
 4. On 17 February 2011 the Appellant addressed the Kosovo Property Agency in writing asking for his inclusion in the rental scheme and the rent paid by the Appellee 1 to be paid to him. He alleged that he, like J.R. , also had filed a claim with the former Housing and Property Directorate under the number DS008562 for his part of the claimed apartment and that the Housing and Property Claims Commission has not decided on this claim. In a response, dated 8 June 2011, KPA informed the Appellant that the part of the apartment, subject of the granted HPD claim of J.R. in surface of 23 m², is included in the rental scheme and that Appellant's claim KPA 011141 is being processed. In the meantime the KPA will include the other part of the claimed apartment also in the rental scheme and, if the current occupant agrees to rent all the apartment, the payment for this part is preserved in the trust fund until the claim KPA01141 is finally decided.
 5. On 11 October 2013, the Public Enterprise of Kosovo Railways "I." Prishtinë/Priština (henceforth: Appellee 2) submitted a reply to the claim entitled 'Objection' against the claim KPA01141. The Enterprise challenged the housing right for the apartments owned by this enterprise and which are related to official business. It denied that the Appellant has any rights on using the claimed apartment.
 6. The Appellant sent to KPA a letter, received by KPA on 15 November 2013, in addition to his claim and submitted several documents. Also a statement of the Public Enterprise "Zeleznice Srbije", dated 13 June 2013, submitted to UNHCR Office in Belgrade with

documentation for giving in use the claimed apartment by proving that the Claimant is working now for the Railways of Serbia but in the location of Leshak.

7. According to the KPA Verification Report dated 17 June 2013, the Contract on lease, the Decision on allocation and the utility bills submitted by the Appellant are positively verified by KPA.
8. On 27 November 2013, the Kosovo Property Claims Commission (hereinafter: KPCC), through decision KPCC / D / C / 223/2013 (hereinafter: the KPCC decision) dismissed the claim. In the reasoning of the decision (paragraph 29), the KPCC emphasized that the alleged temporary use right of the claimed property does not fulfil the conditions for a right on use under 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 (henceforth: UNMIK Regulation 2006/50 as amended by Law 03/L-079).
9. The KPCC decision was served on Appellant on 5 March 2014 and on Appellee 1 on 11 March 2014 and on Appellee 2 on 20 March 2014. On 3 April 2014, the Appellant filed an appeal against the KPCC decision.
10. The appeal was served on Appellee 1 on 5 August 2014 and on Appellee 2 on 4 August 2014.
11. The Appellee 1 and Appellee 2 did not respond to the appeal.

Allegations of the parties

12. The Appellant requests from the Supreme Court to amend the KPCC decision, to review it and recognize the right on using the claimed apartment because he meets the requirements for using it while he is still being in labour relations with the lessor of the apartment. He further states that the KPCC decision is discriminatory and requests to recognize his tenancy right over the claimed apartment. He expresses his surprise as to how it is possible for the user of the part of 23 square meters, J.R. , to receive through the rental scheme a rent while he as a user of 67 square meters is not included in this scheme. Moreover, the Appellant requests from

the Supreme Court a fair decision to enable him to use the apartment as long as he is in labour relation with the lessor of the apartment.

Legal reasoning:

13. The appeal is admissible. It has been filed within a period of 30 days as provided by the Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

14. With regard to the allegations of the Appellant, who states that by the decision on allocation of the apartment in 1994 to him was allocated the apartment for use and taking into account the contract on lease in 1997 regarding this apartment, the Supreme Court finds that this right on use was not related to a private property but to a socially owned apartment. From the documents submitted by the Appellant it results that the Railway Transport Enterprise Belgrade was a social enterprise and this Enterprise allocated to him an official residence which was under the condition of use during his work for the enterprise. In the allocation decision it is determined that the contract is related to the duration of certain works in a given location.

15. According to Section 3.1 of UNMIK Regulation 2006/50 – as far as relevant here - the KPCC has only competence to resolve conflict-related claim involving property use rights on *private* immovable property. Taking into account that the claim is not related to use rights on private immovable property but on socially owned property, the KPCC had no jurisdiction to decide on this claim. From this applied provision, it derives that the KPCC rightfully decided to dismiss the claim as it is outside its jurisdiction.

16. The Supreme Court took into consideration the allegation of the Appellant regarding non-inclusion in the rental scheme by KPA. This allegation cannot lead to another decision on the appeal, because the former decision of HPD/HPCC to put the claimed apartment (partly) in the rental scheme does not change the fact that the apartment is a socially owned/public property and not a private property. As far as the Appellant is complaining about decisions to put the claimed apartment under the administration of abandoned residential properties and properties under the administration by the confirmed property right holders by KPA inherited by the former Housing and Property Directorate pursuant to Section 12 of UNMIK Regulation 2000/60 and transferred to Kosovo Property Agency under Section 17 of UNMIK Regulation 2006/50 as amended by Law No. 03 /L-079 that decision is outside the scope of

jurisdiction of the KPCC in these proceedings and consequently also outside the scope of the appeal before the Supreme Court.

17. Consequently in accordance with Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 it was decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by 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

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar