

**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-230/2013

**Prishtinë/Priština,
21 November 2014**

In the proceedings of

L. S.

Serbia

Appellant

vs.

N. B.

Viti/Vitina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 (case file registered at the KPA under No. KPA52172), dated 13 February 2013, after deliberation held on 21 November 2014, issues the following

JUDGMENT

1. The appeal of L. S. against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013, dated 13 February 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013, dated 13 February 2013, is confirmed as far as it regards the claim registered with KPA under No. KPA52172.

Procedural and factual background:

1. On 7 November 2007, the Appellant L.S. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of her ownership right and repossession over the apartment, located in Viti/Vitina, 4 Juli, Apartment no. 28, fourth floor, with a surface 57 m² (hereafter to be referred to as the apartment).
2. Together with the claim, she provided:
 - the copy of the contract on use, dated 4 March 1991 indicating her name as the possessor of the apartment;
 - ruling no. 137/93, rendered by the Municipal Court of Viti/Vitina, on 6 April 1993, deciding that the claimant is entitled to the purchase of the apartment;
 - the Certificate for the Immovable Property Rights no. 701011007, issued by the Municipality of Viti/Vitina, on 19 October 2010 indicating the claimant as owner of the apartment; and
 - decision no. 201-3705/95, issued by the Ministry of Justice of the Republic of Serbia, on 11 October 1995, indicating that she changed her surname (from M. to S.).
3. The Appellant stated that she has left the apartment in 1999 due to circumstances related to the armed conflict, noting that the apartment is currently occupied by N.B.
4. The documents submitted by the Appellant are positively verified by the KPA.
5. On 23 January 2008, KPA officers went to the place where the apartment is located and placed the notification sign on the door of the apartment.

6. On the same date, the Appellee N. B. approached the KPA, signed the notification to the proceeding and claimed a legal right on the apartment. He submitted:

- a written statement in which the Appellee asserted that he purchased the apartment from the Appellant in 1998 and in which he stresses that from the entire sale price he paid the amount of 14.000 DM to the Appellant while the rest (20.000DM) was to be paid in 2000;
- the sale contract of the apartment, dated 12 March 1998, concluded between the Appellant and the Appellee's father S. Sh. This contract was not certified by court.
- payment receipts without date, indicating that the Appellant L. S. (as seller) received an amount of 14.000 DM from the entire amount of the sale price which was 34 000 DM
- a copy of certified PoA dated 30 July 2002 in which the Appellee was authorised by his father to represent him in front of the Housing Property Directorate (hereafter to be referred to as: the HPD);
- a copy of Appellee's law suit filed before the Municipal Court of Viti/Vitina on 13 December 2005, seeking the ownership right over the apartment (after issuance of the decisions by the Housing Property Claims Commission (hereafter to be referred to as: the HPCC) in the first and second instance, by which the claims category B&C of the Appellant and Appellee were rejected and referred to the local courts); and
- judgment C.nr. 294/2005, issued by the Municipal Court of Viti/Vitina, on 10 March 2011 with which the Appellee's claim was granted and he was recognised as the owner of the claimed property)

7. On 13 February 2013, Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its decision KPCC/D/R/191/2013 (hereafter to be referred to as: the KPCC decision) dismissed the claim because of absence of jurisdiction. Justifying its decision, the KPCC underlined that the Appellant had filed prior to 16 October 2006 a lawsuit with a competent court seeking confirmation of property rights over the apartment. The KPCC decision refers to Section 18 of UNMIK/REG/2006/50 as adopted by Law Nr. 03/L-079 (hereafter, Law 03/L079) as the legal basis by which *"(...) the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force (...)".*

8. On 19 July 2013, the KPCC decision was served upon the Appellee, and upon the Appellant on 2 July 2013. Against the KPCC decision the Appellant filed an appeal on 18 July 2013, and the Appellee filed a response to appeal on 8 November 2013.

9. The property right and repossession of the apartment was subject to the adjudication by the HPCC. With the HPCC decision HPCC/D/229/2005/B&C dated 22 October 2005 (hereafter to be referred to as: the HPCC decision), the Commission rejected the B category claim (no.

DS200889) of the Appellee, as well as the C category claim (no. DS200480) of the Appellant, and referred the claims to the local competent court. On 18 October 2006, with its decision HPCC/REC/76/2006 (hereafter to be referred to as: the HPCC reconsideration decision), dated 18 October 2006, the HPCC rejected the reconsideration request filed by the Appellant.

Allegation of the parties

The Appellant:

10. The Appellant requests the Supreme Court of Kosovo to modify the KPCC decision and to issue a decision in which her ownership right over the apartment will be acknowledged.

11. To support her appeal the Appellant refers to the arguments presented in front of the KPA/KPCC. She attached to her appeal the same documents presented previously in the proceeding in front of the KPA/KPCC.

12. The Appellant alleges that the sale contract mentioned by the Appellee, based on which he alleges to have bought the apartment from her, is without legal effect, since it has not been certified before the court. Furthermore, the Appellant alleges that she signed the sale contract under threat and extortion. According to the Appellant there are no witnesses that will testify that she received the part of the agreed amount of money of 14.000 DM, as alleged by the Appellee. Also, the Appellee's allegation that the Appellant has accepted another part of the contracted of money in the amount of 2.000 DM is not true, since the data as: surnames, date of birth, etc., in the alleged receipts are inaccurate

13. The Appellant further alleges that the mentioned sale contract was not concluded in 1998, but in 1999 when the appellee entered into the claimed apartment. She states that if the contract would have been concluded in 1998, than the appellee, his father, brother in law and father in law would have not dared to forcibly enter her apartment.

14. The Appellant added that since she felt dissatisfied with the HPCC decisions, she addressed the Municipal Court of Viti/Vitina in 2009 with the request to prevent alienation of the apartment. After setting the session for 10 March 2011, this court issued a judgment in favour of the appellee, without considering the evidences submitted by the Appellant.

15. The Appellant also states that the KPCC was guided only by the evidences gained *ex officio* by the KPA Executive Secretariat. This showed that the apartment was sold before the conflict to the non-formal sale contract, without taking into account that this contract was concluded under the threat and extortion.

16. Moreover, the Appellant stated that she was never contacted by the officials of the Kosovo Property Agency to clarify the situation. This is why a political decision is made, by enabling third persons to use the apartment illegally.

17. Finally, the Appellant stated that the KPCC decision is not based on evidences and rendered as such, represents the serious violation of the domestic and international law, since she is the sole and exclusive owner over the claimed apartment.

The Appellee:

18. The Appellee in the support of his reply on appeal refers to the arguments he presented in front of the KPA/KPCC. He attached to his reply the same documents presented previously in the proceeding in front of the KPA/KPCC.

19. The Appellee asserts that his now late father S. Sh, in 1998 bought the claimed apartment from Appellant for the total amount of 34.000 DM. The purchase is done on the free will of both parties, without using any pressure. In addition, the appellee states that at the time when the purchase occurs, the Appellant has received 14.000 DM, whereas other amount of 20.000 DM as specified in the contract was to be paid in 2000.

20. The Appellee further states, that when the Appellant came in 2000, she received only 2000 DM, and not the remaining amount. She had told him that she could not take this, because there was fear that the money would be taken by her grandchildren.

21. Furthermore, the Appellee states that Appellant initiated the procedure in front of the HPD by filing the C category claim, while he had filed the B category claim as well. The HPCC decision(s) rejected the claim(s) (first and second instance) and the case is referred to the regular court.

22. In addition, based on the HPCC decision, the Appellant filed law suit in front of the Municipal Court of Viti/Vitina, seeking the recognition of the ownership right over the claimed apartment. On 19 October 2006 the Municipal Court of Viti/Vitina summoned Appellee and Appellant for the hearing which was conducted on 10 March 2011. But the Appellant did not appear, whereas the Court rendered the judgment on the favour of the Appellee. The District Court of Gjilan/Gnjilane with its decision Ac.nr.246/2011 sent the case back to the first instance for reconsideration. The Appellant filed claim with the KPA, the KPCC rejected it.

23. Finally, the appellee states that he is ready to pay the rest of the owed money if the Appellant transferred the ownership over the claimed apartment to him, since the sale contract was concluded willingly.

Legal Reasoning

Admissibility of the appeal

24. The appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 of the Law No. 03/L-079. This is because the decision was served on the Appellant 2 July 2013 and she filed an appeal on 18 July 2013.

Jurisdiction

25. The Supreme Court has jurisdiction.

Merits

26. Since the KPCC has reasoned its decision on Section 18 of Law No. 03/L-079, by which the claim of the Appellant is dismissed, the question to be answered by the Supreme Court is whether the KPCC had jurisdiction or not and if the Appellant's claim is filed before 16 October 2006.

27. The exclusion of the Commission's jurisdiction is set up by Section 18 of Law No.03/L-079, which reads that *"the provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation"*

28. It is not disputed, nor is there any doubt that the Appellant and Appellee filed their claims before the HPD regarding the apartment. In fact the HPCC in its decision, rejected the C category claim filed by the Appellant, with the reasoning that she has voluntarily disposed of the property when selling it to the Appellee. The B category claim filed by the Appellee was rejected with the reasoning that the Appellee failed to demonstrate that he has fulfilled the contractual terms.

29. With its reconsideration decision, the HPCC rejected the Appellant's request for reconsideration, filed against the said HPPC decision. As to the rest of the claim filed by the Appellant, which has to do with the request for revision and annulment of the contract because

of its conclusion under the alleged extortion and pressure, the HPCC, based on the Section 22.11 of UNMIK Regulation 2000/60, referred the claim to a competent local court.

30. In 2005, the Appellee after issuance of the HPCC decisions has pursued the same legal issue at the Municipal Court of Viti/Vitina. The Appellant filed her counterclaim in the same proceeding as well. On 10 March 2011 the Municipal Court of Viti/Vitina rendered its judgment C.nr. 294/2005, by which the Appellee's claim for recognition of the ownership over the apartment is granted. On 18 April 2012, after the Appellant filed her appeal against the said Municipal Court of Viti/Vitina judgment as a first instance decision, the District Court of Gjilan/Gnjilane rendered its Ruling GŽ.br.246/11, by which the first instance judgment is annulled and the case was sent for retrial. These Court's decisions are verified by the KPA. This means that the proceeding regarding this legal issue is still ongoing before the Court of the first instance.

31. This shows that the initial lawsuit which is verified by the KPA, regarding to the apartment is filed prior to 16 October 2006.

Conclusion

32. This leads the Supreme Court to the conclusion that the KPCC has taken a right decision for the right reasons when dismissing the claim of the Appellant and applying Section 18 of Law No. 03/L-079.

33. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1, under (d) of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

34. This judgment has no prejudice to the Appellant's right to refer her case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

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.

Willem Brouwer, Presiding Judge, EULEX

Esma Erterzi, EULEX Judge

Sylejman Nuredini, EULEX Judge

Urs Nufer, EULEX Registrar