

**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- 170/15

**Prishtinë/Priština,
22 November 2017**

In the proceedings of:

R. L.

Appellant

vs.

K. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 (case file registered at the KPA under the number KPA25328), dated 18 June 2014, after deliberation held on 22 November 2017, issues the following:

JUDGMENT

1. The appeal of R. L. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014, dated 18 June 2014, is rejected as unfounded.
2. The Decision of Kosovo Property Claims Commission KPCC/D/R/247/2014, dated 18 June 2014 as far as it is regarding the claim registered at the KPA under the number KPA25328, is confirmed.

Procedural and factual background:

1. On 28 March 2007, R. L. (hereinafter: the Appellant) filed a claim on behalf of his late husband Z. L. asking confirmation of the property right and repossession over the apartment located at Municipality of Gjilan/Gnjilan, street “Kralj Petar I, Karađorđevića TD-806, entrance no 1, floor V (attic), apartment no 18, surface of 43.29 m² (hereinafter: the claimed property).
2. During the processing of the Claim, she submitted the following evidences before the Executive Secretariat of KPA:
 - Decision on Allocation of the Apartment No 1026 issued by the Enterprise “Morava e Binqës/Binačka Morava”, whereby, Z. L. was allocated for Use the claimed property. The Decision became final on 29 May 1992,
 - Contract on Use of the Apartment No 01-360-1698 conducted between Self-Governing Community of Interests from Gjilan/Gnjilane and Z. L. The subject of the Contract was apartment located at street “M.Tita” , building TD-806, floor no 4 (attic) apartment no 18-19 with the surface 71 m²,
 - Decision No 464-58247/93 issued by Ministry of Finance of R. Serbia on 17 January 1994, whereby, the said Ministry gives its consent for Sale transaction between the Enterprise “Morava e Binqës/Binačka Morava” and Z. L.
 - Contract on Sale of the Apartment concluded on 15 December 1993 between the Enterprise “Morava e Binqës/Binačka Morava” in a capacity of the seller and Z. L. in a capacity of the buyer of the claimed property. The Contract was legalized before Parallel/Dislocated Court of Gjilan/Gnjilane on 8 September 2005 under the reference number 349/2005,
 - Receipt showing that Z. L. has paid an amount of 12.678 dinars (Serbian currency) at the account that appears at the Contact on Sale but the receipt contains no data of issuance,
 - Death Certificate No 203 1811/2006 issued by Civil Registration Office of Vranje on 25 July 2006, showing, Z.L. passed away on 28 June 2006 at Vranje,
3. From the evidences on the case file it is noted that S. I. (hereinafter: the Interested Party) show the interest for the claimed property. She declared that the property subject to the Claim at hand was allocated to her and afterwards she bought it. She was living at the property until 1999 and during the year 2000 she sold the property.
4. To support her allegations, the Interested Party submitted to the Executive Secretariat of KPA the evidences as follows:
 - Decision on Allocation of the Apartment No 1235 issued by the Enterprise “Morava e Binqës/Binačka Morava” on 30 August 1990, whereby, S. I. was allocated for Use the

apartment located at street “M. Tita”, Zgrada TD No 806, floor no 4, apartment no 18, surface 37m2 . The Decision became final on 18 September 1990,

- Decision No 03-360-544 issued on 17 February 1997 by Public Housing Enterprise of Gjilan/Gnjilane, whereby, S.I. in a capacity of the lessee was obliged to pay lease to the Public Housing Enterprise related to the apartment that was allocated to her,
- Contract on Sale of the Socially Owned Apartment No 1767/15 concluded on 19 Maj 1998 between the Enterprise “Morava e Binçës/Binačka Morava” in a capacity of the seller and S. I. in a capacity of the buyer of the Apartment no 18, floor no 5, TD 806, street “ Kralja Petra I, Karađoredjevića, surface 37 m2. The Contract was legalized before Municipal Court of Gjilan/Gnjilane on 19 March 1999 under the reference number 46/99,
- Decision No 464-08-44488/99 issued by Ministry of Finance of R. Serbia on 24 November 1999 , whereby, the said Ministry gives its consent for Sale transaction between the Enterprise “Morava e Binçës/Binačka Morava” and S. I,

5. The Court notes that the Appellant’s husband had previously filed a category “C” claim with the Housing and Property Directorate (hereinafter: the HPD-claim number DS200697) seeking repossession over the same property. The HPD, though its Decision HPCC/D/158/2004/A dated on 22 October 2004, established that the Appellant’s husband was allocated another apartment at the same building in which the claimed property is located, consequently the Appellant’s husband failed to show that he had a lawful possession of the claimed property before 24 March 1999, hence, the Claim was dismissed.
6. The request for reconsideration filed by the Appellant’s husband was rejected by the HPCC through its Decision HPCC/REC/78/2006 dated 16 November 2006 by confirming first Decision.
7. The notification of the claim was carried out on 1 April 2014 by founding the claimed property occupied by K. M. (hereinafter: the Appellee) who has claimed legal right by alleging that she bought the claimed property.
8. The Appellee supported her allegation with the following evidences:
 - Contract on Sale concluded on 8 May 2000 between S. I. as the seller and K. M. as the buyer of the apartment located at street “Kralja Petra I, apartment no 18 surface 37 m2. The Contract was not court certified,
 - Judgment No C.Nr.245/2000 issued by Municipal Court of Gjilan/Gnjilane on 2 June 2006 through which the lawsuit of the Claimant (K. M.) was granted by confirming her ownership right over the apartment located at street ”Kral Petri I“, entrance no I, floor No V, apartment no 18, object TD/806, the surface of 37 m2. The Respondent

(S. I) was obliged to recognize the Claimants (K. M.) ownership right and allow her to register the property right at the competent cadastral office. The Judgment became final on 9 February 2007,

- Certificate for Immovable Property Rights No 3901-2014 issued by Municipal Cadastral Office of Gjilanë/Gnjilane on 2 April 2014 showing that K.M. registered the ownership right over the Apartment that was subject of the Judgment No C.Nr.245/2000.

9. According to the KPA verification report, the Contract on Use of the Apartment No 01-360-1698, Decision on Allocation of the Apartment No 1026 were positively verified, while the Contract on Sale of the Apartment was not found before the competent institutions
10. The Executive Secretariat of the KPA contacted the Appellant in 7 May 2014 (page no 207 of the case file) to inform her regarding the Claim. She stated being aware that the Interested Party sold the claimed property to the Appellee. However, she insisted that her husband paid the total price of the purchase of the claimed property to the Allocation Right Holder. Although she does not know why the Contract on Sale was not court certified during the year 1993-1994.
11. KPCC through the Decision KPCC/D/R/247/2014 dated on 18 June 2014 decided that the claim is to be dismissed as being outside the jurisdiction of the KPCC on the ground that the Appellant has failed to show that her claim involves circumstances directly related to or resulting from the 1998-1998 conflict.
12. The Decision of the KPCC was served to the Appellant on 22 October 2014. She filed an appeal on 12 November 2014.

Allegations of the Appellant

13. The Appellant states the Decision made by KPCC is based on violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation.
14. The Appellant insisted that the claimed property was allocated to her husband in a legal manner and this can be proven by documents that she already submits before KPA. After the well-known circumstances of 1999, the property was usurped by the Appellee, who yet is living at the claimed property.
15. In the appeal L gives a detailed presentation of the documents that she has submitted in order to confirm his ownership

Legal reasoning:

Admissibility of the appeal

16. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

17. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is ungrounded.
18. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim.
19. According to Section 3.1 of the Law No. 03/L-079, the Claimant is entitled a Commission order on repossession of property if the Claimant not only proves the ownership over that property but also that he or she is not able to exercise the rights over such property due to circumstances directly related or resulting from the armed conflict that **occurred in Kosovo between 27 February 1998 and 20 June 1999**.
20. The KPCC dismissed the claim on the bases that it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
21. In this regard, the Supreme Court established that the Appellant's claim was considered and decided by the final administrative or judicial Decision of HPCC, HPCC/D/158/2004/A dated on 22 October 2004.
22. It is not disputable that the Appellant was clearly seeking to get repossession of the same apartment before HPCC. However, in order to validly file a claim in the first procedure, Section 2.6 of UNMIK Regulation 2000/60 and Section 1.2 (c) of UNMIK Regulation No.1999/23 which is referred to by Section 7.1 of UNMIK Regulation 2000/60 required that the Appellant be the possessor of claimed property prior to 24 March 1999. To prove her possession right, the Appellant submitted with the HPCC the same documents described in the part of this Judgment related to the procedural and factual background.
23. The Appellant did not bring any new evidence before the KPCC, therefore, the factual situation presented subsequently to the Commissions by the Appellant was the same one; however the ownership right over the apartment was not examined by HPD, thus, allowing the Appellant to meet the requirements in procedure before KPA whereas she claimed the ownership right and repossession over the apartment.
24. However, the fact that the Interested Party declared that she is the owner of the claimed property by supporting her statement with the evidences, moreover, the fact that the Appellant was informed of the Interested Party and she confirmed that the Interested Party sold the claimed property to the Appellee lead the Court to the conclusion that the dispute regarding the ownership right over the property in question has started before the outbreak of the armed conflict of 1998/1999.
25. The Appellant alleges that her husband bought the claimed property in 1993; she however did not submit any legal evidence in support of her allegation as the Contract on Sale submitted by

her was not legalized by competent institution; hence, the dispute was neither caused nor influenced by the 1998-1999 conflict.

26. Therefore, the Supreme Court finds that the KPCC 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. The Supreme Court finds the appeal unfounded.
27. 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 Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Timo Eljas Torkko, Acting EULEX Registrar