

**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-038/2014

Prishtinë/Priština, 21 January 2016

In the proceedings of:

V.S.V.

Street Dragiše Cvetkovića br. 31E

Nis

Serbia

Appellant

N.Z.

Dardani SU 7/7 entrance L-A, floor I, apartment no. 9

Pristinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. KPA34593) (henceforth: the KPCC Decision), after deliberation held on 21 January 2016, issues the following:

JUDGMENT

1. **The appeal of V.S.V. , filed against the Decision of KPCC no. KPCC/D/R/199/2013, dated 18 April 2013, is rejected as unfounded.**
2. **The Cover decision of the Kosovo Property Claims Commission no. KPCC/D/R/199/2013 dated 18 April 2013, is confirmed, as far as it concerns claim no. KPA34593.**

Procedural and factual background:

1. On 28 November 2007, V.S.V., henceforth: the Appellant, filed a claim at the Kosovo Property Agency (KPA) seeking for the repossession and recognition of his ownership right over an apartment with surface 84.28m² with address Dardanija SU 7/7, entrance L-A, floor I, apartment no. 9 in Prishtinë/Priština (henceforth: the claimed apartment). He stated that he lost the possession over the property due to the armed conflict, indicating 20 June 1999 as the date of loss, and that subsequently the claimed property was usurped.
2. The Appellant, provided the KPA with the following documents to support his claim:
 - A Contract no. 01-5468/1, dated 22 December 1983, on allocation of the claimed apartment on usage, concluded between the Community for Housing and Business premises in Prishtinë/Priština as apartment giver and claimant's mother V.R. , as tenancy right holder;
 - A Contract no. 1193/11957 on use of the apartment concluded between Public Housing Enterprise and claimant's mother V.R. on 13 September 1984. According to the contract the claimant's mother was given the use right over the claimed apartment for an indefinite period of time. Appellant is according to the contract using the claimed apartment as a family household member, son, of V.R. ;
 - A Contract no. 06-366-882/92-68, dated 15 March 1993, concluded between Prishtinë/Priština Municipal Assembly as seller and the Appellant as buyer. Attached to the document is a document allegedly on the certification of the contract by the Municipal Court of Prishtinë/Priština under number 9683/93, dated 7 October 1993. The object of the contract was the purchase of the claimed property by the Appellant;
 - A Cadastral Decision no. br.lo.950-3/3010 dated 14 October 1993 on the implementation of changes in Cadastre, issued by the Office of Service for Cadastre of Immovable Properties in

Prishtinë/Priština. With this decision is approved the request of the claimant to implement the changes in the cadastre register pursuant to the purchase contract no. 9683/93, dated 7 October 1993.

3. As documented in the Consolidated Verification Report dated 29 March 2011, all these documents were positively verified, except for the Purchase contract no. 06-366-882/92-68, dated 15 March 1993, which was negatively verified, because it could not be found in the court register.
4. The claim on the claimed apartment was physically notified on 5 February 2008 by putting a poster about the claim at the apartment. From the notification was found that the claimed apartment was occupied.
5. N.Z. through his representative R.S. contested the claim and approached KPA as a responding party. He claimed a legal right over the claimed apartment and declared that he had been using the property for residential purposes. On 5 March 2008 he signed the notice of participation. In support to his response to the claim he provided an uncertified purchase contract concluded between the Appellant and N.Z. on 25 July 1999 and testified by 6 witnesses.
6. The KPA found *ex-officio* that a previous procedure concerning the claimed property was conducted before the Housing and Property Directorate (HPD). According to a Certified Decision the Housing and Property Claims Commission (HPCC) decided in Cover Decision no. HPCC/D/70/2003/C, dated 14 February 2003, (henceforth: the HPCC Decision 2003) to refuse the – uncontested - Category C claim (repossession of the claimed apartment) of the Appellant. The reasoning reads as far as relevant – in this quote “Claimant” refers to the Appellant and “the property” to the claimed apartment -:

“6. The Claimant alleges that he lost possession of the property in the circumstances surrounding the NATO air campaign, but he also complains that he subsequently sold the property concerned for less than its market value. The Claimant seeks revision of the sale agreement with a view to a market value purchase price being set. The claim accordingly stands to be dismissed. (...) The Commission considers it appropriate that this claim be referred to the competent local court in so far as the Claimant seeks a revision of the purchase price.”
7. The KPA confronted the Appellant on 31 January 2013 with this information from the HPD procedure, wherein he had admitted that he sold the claimed apartment, but under the market

value, and with the fact that he in the proceedings before KPA did not refer to this sale. In reaction he stated that he did not want to cooperate with KPA.

8. KPCC with the Cover Decision KPCC/D/R/199/2013 dated 18 April 2013 decided to dismiss the claim with the reasoning that the claimant in the previous proceeding before HPCC concerning the same apartment acknowledged that he voluntarily sold the claimed apartment to the respondent in July 1999. Accordingly KPCC concluded that the claim falls outside the KPCC's jurisdiction.
9. In the Certified Decision on the claim, dated 22 July 2013, that is meant to be extracted from the Cover Decision, the Head of KPCC Office states, as far as relevant here. that the KPCC has decided that: "(a) The claim be refused."
10. The Decision is served on the Appellant on 27 August 2013 and on Appellee on 8 September 2013. On 16 September 2013 the Appellant filed an appeal against the KPCC Decision. The appeal is served on Appellee on 11 February 2014. He did not reply to the appeal.

The allegations of the Appellant:

11. The Appellant challenged the KPCC's decision invoking a severe violation of the applicable and procedural law and an incomplete determination of the facts. In his appeal he states that he purchased the claimed apartment from the Municipal Assembly of Priština/Prishtinë. He states that the claimed property was in use by his family until June 1999 when they left Kosovo due to the conflict and after that the Appellee forcefully entered into the claimed apartment without any legal ground. He asserts that he never signed any contract with the Appellee and that he never confirmed that he sold the property.

Legal reasoning:

Admissibility of the appeal

12. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the UNMIK Regulation 2005/60 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).

On the merits

13. As the KPCC dismissed the claim with the reason that the claim is outside his jurisdiction because the Appellant voluntarily sold the claimed apartment and the Appellant denies this sale, the Supreme Court has to assess whether this conclusion of the KPCC is valid.
14. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, the KPCC has the competence to resolve claims related to the conflict of 1998/1999, which concern property rights that cannot be exercised due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. From this provision follows, that in the situation that a property right holder after that period voluntarily exercises a right over the property, e.g. by selling it, the loss of the (possession of the) property and therefore the claim is not related – anymore - to the conflict. The KPCC does in such a situation not have jurisdiction on a claim for repossession or establishing ownership right to that property.
15. The Appellant denies the accord that the Appellee alleged to being concluded between them in July 1999 on sale of the claimed apartment.
16. The KPCC established as a fact that this allegation of Appellee is true and that the Appellant engaged in July 1999 with Appellee and concluded the (uncertified) contract on sale. KPCC based this conclusion on the *ex-officio* obtained HPCC decision 2003 concerning the same apartment. This conclusion is convincing. In that decision the HPCC explained that during the proceeding before HPCC the Appellant admitted that he sold the property. In the current proceedings Appellant denies the allegation of Appellee but does not further substantiate this denial. He does not explain why he asked in the proceedings before HPCC for a revision of the agreed purchase price and now only denies any agreement with Appellee without any convincing explanation or prove.
17. The Supreme Court concludes that the KPCC has made a correct decision, when deciding that the Appellant's claim on his (alleged) ownership to the claimed apartment is not related to the conflict as meant in Section 3.1 of UNMIK Regulation 2006/50. 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.

18. In its Decision KPCC/D/A/199/2013 dated 18 April 2013, the Kosovo Property Claim Commission (KPCC) decided to dismiss the claim due to the lack of jurisdiction as far as it regards the claimed property. On the other side in its Certified Decision it is written that “the claim stands to be **refused**”.

19. The Supreme Court notes that there is an evident textual error made by the Head of the KPCC when he wrote in the Certified Decision, which is based on the KPCC Cover Decision, that ‘the claim has to be refused’ instead of having written that ‘the claim is dismissed’ because of lack of jurisdiction, as it was correctly noted in the KPCC Cover Decision. The Supreme Court *ex officio* stipulates that the Certified Decision has to be read as ‘the KPCC has decided that the claim is dismissed’.

20. In the light of foregoing, pursuant to Section 13.3 under (c) of Law UNMIK 2006/50, the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Sandra Gudaityte, EULEX Registrar