

**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-155/2013

**Prishtinë/Priština,
17 December 2014**

In the proceedings of:

J. K.

Serbia

Appellant/Claimant

Vs.

B.SH.

Prishtina

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Member, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA53676) dated 14 December 2012, after deliberation held on 17 December 2014, issues the following:

JUDGMENT

1. The appeal of J. K. against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012, dated 14 December 2012, is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012, regarding the case file registered with KPA under number KPA53676, dated 14 December 2012, is confirmed.

Procedural and factual background:

1. On 7 December 2007, the claimant J. K, in her capacity of wife of R. K, as the alleged property right holder (hereinafter: APRH), filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession of an adapted and annex residential part in the surface of 62.09 m² (hereinafter: claimed property), Str. Goleshi, no. 12/9, Pristina, Municipality of Pristina. In her claim, the claimant alleges that the owner of the claimed property was the APRH, who passed away on 29 March 1999.
2. To support her claim, she provided the following documents:
 - Urban permission no. 351-2211, issued by the Secretariat for Urbanism, Construction and Environmental of the Municipality of Prishtina, dated 4 December 1996;
 - Technical-urban criteria implementation plan 08.nr.250-155, issued from the Directorate for Prishtina Urban Planning on 4 December 1996. This urban-technical planning describes the criteria to be met in case of construction-adaptation of claimed property;
 - Construction permit 02.nr.351-91, issued by the Secretariat for Urbanism, Construction and Environmental of the Municipality of Prishtina, dated 29 January 1997;
 - Permission decision for the use of the claimed property as part of the collective residential building 02.nr.354-7635, issued by the Secretariat for Urbanism, Construction and Environmental of the Municipality of Prishtina, dated 7 May 1997;
 - Contract (without date and number) concluded between the APRH and other owners of apartments within the overall collective building. According to this contract, APRH was allowed to fix-extend the roof of the collective residential building and the arrangement of the claimed property for his and his family living requirements;
 - List of drawings of apartment rooms and of claimed property, no.71914059, dated 14 April 1997;
 - Marriage certificate of claimant and APRH, no. 202, dated 1 March 2001;
 - Death certificate of APRH, no. 203-5999/02-IV, dated 27 March 2002; and
 - Claimant's identification card no. 100883, dated 28 August 2001.

3. All verification reports drafted by the KPA Verification Team concluded that except the marriage certificate, the rest of abovementioned documents have been verified negatively.
4. On 28 January 2008, KPA notified the filed claim for the claimed property. The claimed property was found occupied by B. Sh, who was present at the time of notification. He signed the notice of participation to the proceedings. B. Sh, as respondent has requested the ownership right over the claimed property.
5. To support his response to the claim, the respondent submitted the following documents:
 - Decision on allocation of apartment (in the surface of 54.98m²) no. 360-32/K, dated 18 January 1988, issued by the Provincial Secretariat of Internal Affairs of the SAP of Kosovo;
 - Contract on apartment use (in the surface of 54.98m²) no. 1193/4626, dated 6 July 1989, concluded between the respondent and the Self-governing Community for Housing and Business Premises;
 - Statement by the respondent, dated 20 February 2008; and
 - Identification card of the respondent, no. 1000974885, issued on 16 May 2001.
6. With its decision KPCC/D/R/183/2012, dated 14 December 2012, Kosovo Property Claims Commission (KPCC) rejected the claim. In the reasoning of its decision, the KPCC, emphasizes that claimant has provided various documents to support her claim, although these documents could not be verified positively.
7. The decision was served on the claimant (*hereinafter: appellant*) on 8 May 2013, whereas the decision of the Commission was received by the respondent (*hereinafter: the appellee*) on 16 May 2013.
8. On 31 May 2013, the appellant filed an appeal with the KPA Panel of the Supreme Court. There are no data in the case file that the appellee has filed a response to appeal.

Allegations of parties:

Appellant

9. The appellant alleges that the APRH was the property right holder of the claimed property. She emphasized that together with her family have used the claimed property until they left Kosovo in 1999. The appellant has also alleged that she meets all legal requirements that as the property right holder and for the use of the claimed property, through a decision to return under her possession the lost ownership due to circumstances that occurred during the 1998/1999 armed conflict in Kosovo.
10. The appellant has emphasized that her case is a special case. This, because, according to her, she never claimed any ownership right over the apartment in the surface of 54.98m² whose right for use was acquired by the APRH in 1994 and who purchased the same in 1997, but only for the claimed property in the surface of 62.09m². Furthermore, she added that the claimed property is

located at the same address as the other apartment (in the surface of 54.98m²), over which as abovementioned she did not claim any property right. According to her, the claimed property and the apartment are connected to each other, and that their physical separation shall not pose any problem, if aimed to be used as separate apartments.

11. The appellant further alleges that with a preliminary decision of the Housing and Property Claims Commission (hereinafter: HPCC) HPCC/D/181/2005/A&C, dated 20 April 2005, the respondent was recognized with ownership right over the apartment (in the surface of 54.98m²), for which she does not allege the ownership right, and that this decision has nothing to do with the claimed property in question. Furthermore, she emphasizes to have nothing against if the appellee will acquire the right over the said apartment.
12. The appellant states that herself together with APRH, on the basis of an agreement with the other owners of other apartments, of the same collective residential building, as well as by respecting the prescribed legal procedures, have acquired the ownership right over the collective property-new object. According to her, this was achieved based on work and her joint investments with the APRH by converting the claimed property from non-residential area into residential one.
13. The appellant considers that the appealed decision is based on erroneous and incomplete determination of factual situation, and violation of provisions of material law. She alleges also that the conclusion of the KPCC that the KPA could not verify the documents submitted by her as evidence to support her ownership right over the claimed property is incorrect. This, because according to her the authorities for the verification exist, and as such those have the data based on which the submitted documents by her could be verified as authentic.
14. The appellant alleges that she together with the APRH have acquired the ownership right over the claimed property pursuant to Article 21 of Law on Basic Property Relations of SFRY no. 6/80, which law according to her was in force back then. According to her, the appellee in no possible way could have acquired any ownership right over the claimed property, and in the same way, he could not referred the fact that the claimed property was taken from him as a result of application of legal provisions of discriminatory character.
15. Finally, the appellant requests from the Supreme Court to accept the filed appeal, and to issue a decision under which she would be recognized with the re-possession right over the claimed property.

Appellee

16. The appellee alleges that in 1998, he was granted with a permanent use of an apartment with two rooms, which is located at str. Rexhep Luci, no. 12/9, in the surface of 54.98m² (the same address as the claimed property) and later on he concluded a contract for the use of the same. In

this apartment, he lived since it was allocated to him for use. Furthermore, he states that in August 1994, when the discriminatory measures were implemented, the apartment was taken from him and was transferred to the APRH. He adds that regarding this apartment, he filed a claim with the HPD, which with its decision HPCC/D/181/2005/A&C dated 20 June 2005, has approved the appellee's claim and returned him the said apartment. He contested the claim filed with the KPA, stating that the appellant has no legal ground to claim the ownership right over the claimed property; therefore, he also proposed to reject her claim as impermissible or to reject the same as ungrounded and unlawful.

Legal reasoning:

Admissibility

17. The appeal is admissible. It was filed within the period of 30 days as prescribed under Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, on the resolution of claims relating to agricultural and commercial property (hereinafter: Law no. 03/L-079).

Merits

18. Pursuant to Article 3.1 of Law no. 03/L-079, a claimant is entitled to an order from the Commission for the repossession of the property, if the claimant **proves not only the ownership right or the right to use the private property**, including agricultural and commercial property, but also to prove that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
19. The Supreme Court notes that the Commission's decision KPCC/D/R/183/2012, dated 14 December 2012, relies on the fact that the appellant has not proved her ownership right over the claimed property. In the reasoning of this decision is ascertained that none of the documents submitted with the KPA, wherewith the claimant aimed to prove her alleged ownership right, could be verified. In addition, the Court notes that KPA/KPCC has contacted the claimant and requested from her to submit additional evidence, that she eventually failed to submit previously with the KPA. Nevertheless, the claimant did not respond to this request of KPA, nor presented evidence and other additional documents.
20. The Supreme Court ascertains that the subject of contest in this legal case is an additional adaptation residential area of 62.09m² (claimed property). This type of residential annex-over construction, covered with another extension of overall roof of collective residential building, was established-adapted over an existing surface of collective terrace, as integral part of the same

residential collective building. Such a surface (of 62.09m² - claimed property) over which the appellant claims the ownership right, after the above-mentioned adaptation, was made an annex to apartment (in the surface of 54.98m² - over which the appellee with the aforementioned decision of the HPCC has acquired the ownership right), which together with other apartments as separate residential unit, comprise the entirety of the collective building. The court, also notes that for the claimed property and for the apartment there had always been one common entrance, therefore also the consideration of the Commission as two residential areas of the same apartment is most correct. This is more as also noticed, that the APRH has made the claimed property as the annex to the apartment.

21. Before this case was initiated based on the claim of the appellant with the KPCC, the HPCC with its decision HPCC/D/181/2005/A&C dated 20 June 2005 approved the claim of the appellee (with the HPCC, in the capacity of the claimant A category) and recognized the ownership right over the apartment with the surface of 54.98m². For the Supreme Court, the said decision of the HPCC is not presented as *res judicata*, because the surface of the claimed property, for which the appellant claims the ownership right, was not the subject of consideration and decision-making by the HPCC. However, this is not contested between the parties. Nor there is any matter to be considered by the Supreme Court on what the subject matter of claim is. The issue is whether the claimant provided evidence to prove her alleged right over the property.
22. Based on the case file, allegations of parties and the overall assessment of this respective legal case, the Supreme Court, considers the appealed decision as fair and lawful. This is because in the procedural actions (as abovementioned) undertaken by the appellant, and also in her attempts to prove her alleged ownership right over the claimed property, the legal requirements have not been met as provided for by the Article 3.1 of Law no. 03/L-079. Namely, the claimant has not proved the ownership right or the right to use the claimed property, and her inability to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. The appellant also provided the same allegations and insufficient evidence, when she filed the appeal with the Supreme Court.
23. The Supreme Court considers that hypothetically if the claimed property and the annex were considered as two separate apartments, yet the appellant based on the submitted documents before two instances that were verified negatively, would not be able to prove her ownership right over the claimed property. The allegation of the appellant that KPA did not verify the documents submitted by her, and that the same can be found in the public institutions does not stand. This is because the KPA has made its efforts to do so but the same couldn't be found.

24. Based on this review, analyses, and overall evaluation, the Supreme Court finally concludes that also the appealed decision issued by the Commission does not involve erroneous and incomplete determination of factual situation, and the misapplication of the provisions of material law, as emphasized by the appellant in her appealed allegations.
25. In the light of foregoing and pursuant to Article 13.3 (c) and Article 195.1 (d), it was decided as in the enacting clause of this judgment.

Legal Advice

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

Willem Brouwer, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar