

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-207/15

**Prishtinë/Priština,
21 February 2018**

In the proceedings of

J. S.

Appellant

Vs

D. D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Ragip Namani Judge and Krassimir Mazgalov, EULEX Judge, deciding on the appeal against the Decision of the Kosovo Property Claims Commission, KPCC/D/R/253/2014 (case file registered at the Kosovo Property Agency under the number KPA52438) dated 25 August 2014, after deliberation held on 21 February 2018 issues the following:

JUDGMENT

1. The appeal of J. S. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014, dated 25 August 2014, as far as the claim registered in KPA under KPA52438 is concerned, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014, dated 25 August 2014, as far as it regards the case registered under KPA52438 is annulled.
3. The claim of D. D., registered under KPA52438 is dismissed as falling outside of the jurisdiction of the KPA.

Procedural and factual background

1. On 17 December 2007, D. D. (henceforth: the Appellee) acting on behalf of father of his son in law N. D., filed a claim with the KPA, seeking confirmation of user right and repossession of an apartment with the surface of 55.54 m², situated in Prishtinë/Pristina, *address* ... (henceforth: the claimed property). The Appellee stated that N. D. is the owner of the claimed property and he lost the possession of the claimed property on 15 June 1999 as a result of circumstances of 1998/1999 in Kosovo.
2. To support his claim, the Appellee provided the KPA with:
 - Ruling No 4-1696/98 issued on 26 February 1998 by the Heating Company “Termokos Prishtinë/Priština” referred to the Municipal Court of Prishtinë/Priština on 18 March 1998, whereby the Heating Company gives its consent for the proposed execution of debts that N. D. owns to the Company “Termokos Prishtinë/Priština”.
 - Power of Attorney issued on 14 December 2007, whereby S. D.1 (son of N. D.) from Prishtinë/Priština authorizes D. D. to receive the rent. The Power of Attorney was certified at Dorsten, Germany under the reference number 61/2007,
 - Statement issued on 20 June 2012 where by S. D.1, R. D., M. H., S. D.2, B.A., all gave their consent that the claimed property can be sold to J. S. The Statement is certified at Germany under the reference number 39/2012.

3. On 6 February 2008 the Executive Secretariat of KPA performed the notification of the Claim. The apartment was found occupied by J. S. (henceforth: the Appellant). He claimed that he has bought the claimed property from the rightful owner. To support his allegation the Appellant provided the Executive Secretariat of KPA with the following evidences:
 - Testimony dated on 4 March 2008 whereby, J. S. declared that he has bought the claimed property from N. D. on 1999. Because immediately after the conflict the Court does not worked we agreed that the total transaction price (25.000 DM) of the claimed property be paid after the seller completes all the necessary documents for conducting the Contract on Sale. In meanwhile, the seller of the claimed property passed away, however, the J. S. declared that he is on regularly contact with the family members of the seller and he is asking from them to proceed with the Inheritance procedure in order to conduct a valid Contract on Sale of the claimed property. The Appellant alleges that the Power of Attorney presented by D. D. is forged.
 - Bills issued by Kosovo Energy Corporation on 28 January 2008 showing the claimed property on the name of the Appellant's son, N. S.
4. The Executive Secretariat of KPA ex office found the following evidences:
 - Decision on Allocation of the Apartment for Use No 364 issued on 26 February 1975 whereby the Public Housing Enterprise allocated to N. D. the apartment for use,
 - Lease Agreement No 1193/8063 conducted on 30 May 1977 between Public Housing Enterprise in Prishtinë/Priština and the Appellee in the capacity of the tenant. The claimed property allocated to N. D. for permanent use.
5. From the evidences above can be proven that the Appellee possessed only the tenancy right over the claimed property which appears to be a Socially Owned Property.
6. On 25 August 2014, the KPCC with its Decision KPCC/D/R/253/2014 decided that the Appellee has established the Use Right of N. D. over the claimed property and decided to return the possession of the claimed property to family D.
7. The Decision was served on the Appellant on 1 December 2014. The appeal was filed on 29 December 2014.

Allegations of the Appellant:

8. The Appellant states that the KPCC decision contains essential violations and wrongful application of the material and procedural law.

9. The Appellant alleges that the Claim of the Appellee was belated because he filed the Claim on November 2007 while the KPA's mandate is resolving the claims which are conflict related of the period 1998-1999; moreover, the Power of Attorney through which the Appellee represented N. D. was not valid.
10. The Appellant again expended that he has bought the claimed property from N. D. immediately after the conflict.
11. Supporting his appeal the Appellant provided the Supreme Court with the following evidences:
 - Decision on Allocation of the Apartment for Use No 364 issued on 26 February 1975 whereby the Public Housing Enterprise allocated to N. D. the apartment for using purpose,
 - Decision No 03-2366/1 issued by Public Housing Enterprise on 18 March 1985 through which the Public Housing Enterprise confirms the right of N. D. of compensation of the rent.

Legal reasoning

Admissibility of the appeal

12. The Supreme Court of Kosovo examined the appeal pursuant to provisions of Article 194 of the Law No. 03/L-006 on Contested Procedure (henceforth: the LCP) and after evaluation of the Appellants allegations found that:
13. The appeal is admissible because it was filed within the legal time limit according to Section 12.1 of the Law no. 03/L-079 which foresees that a party may file an appeal against a Commission Decision within thirty (30) days from the day parties are notified of the Decision.
14. However, the Decision of the KPCC has to be annulled *ex officio* as the case does not fall within its jurisdiction.
15. First of all, the Claim was submitted by D. D. acting on behalf of father of his son in law, N. D. D. presented a Power of Attorney issued on 14 December 2007, whereby S. D.1 (son of N. D.) from Prishtinë/Priština authorizes D. D. **to receive the rent**. The Power of Attorney as such does not have any legal effect as does not relate to the representation.
16. From the evidences on the case file can be seen that S. D.1 (the son of N. D.) has been contacted by telephone from the KPA officer. He confirmed the Power of Attorney given to D. D., however, he expressed his interest to continue with the Claim before KPA on his own name. (page no 113 of the case file)

17. Article 99 paragraph 1 of the LCP stipulates that the claim, reply to the claim, appeals and **other statements, proposals and notices that are made out of court are submitted in written (submissions).**
18. There is no evidence in the case file proving that S. D.1 submitted a written statement declaring that he wishes to continue with the Claim on his own name. The **telephone conversation is not sufficient evidence for proving a fact.**
19. Nevertheless, the issue to consider in this case is whether the Claim is within the Executive Secretariat of KPA mandate of not.
20. The KPCC in its Decision KPCC/D/R/253/2014 established that N. D. concluded a Lease Agreement on 30 May 1977 with the Public Housing Enterprise in Prishtinë/Priština. The Contract refers to the Decision on Allocation of the Apartment No 364 issued on 26 February 1975 whereby the Public Housing Enterprise allocated to N. D. the apartment for using purpose.
21. According to Section 3.1 the Law No. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of private immovable property towards which he is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. This does not apply to property rights or use rights towards publicly/socially owned property.
22. From the evidences presented before the first instance, the claimed property is socially owned property. In this regards the KPCC had no jurisdiction over the dispute as it does not relate to a claim with respect to a private property – arg. after section 3.1 of the Law No. 03/L-079.
23. The KPCC had not to decide on the merits of the case but to dismiss it based on Section 11.4 (a) the Law No. 03/L-079. As this has not been done the appealed Decision *ex officio* has to be annulled and the claim dismissed pursuant to article 198 paragraph 1 of the Law on Contested Procedure which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the Law No. 03/L-079.
24. Therefore the Decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of the Law No. 03/L-079), as the dispute is related to a socially/publicly owned property and it falls outside the Jurisdiction of the KPCC and this Court.

Legal advice:

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar