

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-061/14

Prishtinë/Priština, 24 February 2016

In the proceedings of:

K.R.

Blok Save Kovacevica 35/P, apartment no.6

Krnjaca, Beograd

Republic of Serbia

Appellant

Vs.

Sh.K.

Represented by the lawyer Q.F.

Decan

Kosovo

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 dated 11 June 2013 (case file registered at the KPA under number KPA14497), after deliberation held on 24 February 2016, issues the following:

JUDGMENT

1. **The appeal of K.R. filed against the decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 dated 11 June 2013 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 dated 11 June 2013 as far as it concerns claim no. KPA14497 is confirmed.**

Procedural and factual background:

1. On 27 October 2006 K.R. (henceforth: the Appellant) filed a claim as a member of family household of the alleged property right holder M.R. , her husband, seeking repossession of an apartment with the surface of 29 m², located at a residential building in the Street Marsala Tita no. 37/4 in Pejë/Peć (henceforth: the claimed property) and compensation for the damage caused by the use of the property. The Appellant stated that the claimed property was lost due to the armed conflict during 1998/99, indicating 26 June 1999 as the date of loss. The claim was registered at the Kosovo Privatisation Agency (henceforth: the KPA) under number KPA14497.
2. To support her claim, the Appellant submitted the following documents:
 - Marriage certificate no.101, dated 27 April 1976 issued by the Municipality of Pejë/Peć, proving that the property right holder is the Appellant's husband;
 - Death certificate no.00578, dated 9 October 2006 issued by the town hall Beograd, proving that the Appellant's husband died on 8 October 2006.
 - Decision no.01-351/728, dated 20 March 1998 issued by the Directorate for Urbanism, Municipal Housing, Construction, Property and Legal Issues in the Municipality of Pejë/Peć. Through this decision, the Appellants' husband was allowed to construct the claimed property.
3. The above-mentioned documents were positively verified by the Executive Secretariat.
4. The claimed property was physically verified on 12 July 2007. From the verification resulted that the property was occupied by Sh.K. (hereinafter: the Appellee), who stated that he is using the property for housing purposes and alleged that he has invested on the claimed property. The Appellee signed the notification of participation on 12 July 2007.

5. The Appellee contested the claim. To support his allegations, the Appellee submitted the following documents:
- Contract vr.nr.2155/03 dated 20 March 2003, concluded between M.R. (the Appellant's husband) represented by M.R. and Sh.K. represented by K.B. The contract which is verified by the Municipal Court of Pejë/Peć, confirms that the owner of the subject of dispute has willingly sold the said property to the Appellee for a price of 22 500 euro. From the consolidated report, dated 30 June 2011 results that the contract was positively verified by the KPA Executive Secretariat.
6. The Kosovo Property Claims Commission (henceforth: the KPCC), according to the submitted evidence by the parties, with the Decision KPCC/D/R/207/2013, dated 11 June 2013 paragraphs 16, 17 and 56, decided to dismiss the claim of the Appellant, with the reasoning that the ownership right over the claimed property was not lost due to the conflict, but as a result of voluntary transaction of sale of the property. Consequently, the claim falls out of jurisdiction of the KPCC and the claim for compensation was also dismissed.
7. The decision was served on the Appellant on 7 November 2013. The Appellee was notified on the KPCC's decision on 5 November 2013, through his lawyer, Q.F.
8. On 2 December 2013, the Appellant filed an appeal to the Supreme Court by challenging the KPCC's decision. The Appellant filed together with the appeal the same documents he filed before the KPA.

The allegations of parties

9. The Appellant in her appeal refers to the incomplete determination of factual situation and serious violation of the material and procedural law in force, with the reasoning that neither she nor her husband has sold the claimed property. She alleges that the KPCC might have misinterpreted the contract that is not related to the claimed property with the surface of 29 m², but to another property of the same address and with the surface of 40.24 m². Therefore, the Appellant is seeking from the Supreme Court to grant her claim and to decide in her favour by recognizing her possession right.
10. The Appellee, in his response clarifies that the allegations of the Appellant are ungrounded, because the Appellant's husband through the contract vr.nr.2155/03 dated 20 March 2003, under his free will has sold the claimed property to the Appellee. There were constructions made on the said property by the Appellee.

Legal reasoning

Admissibility of the appeal

11. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation no. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by the Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50).

Jurisdiction

12. The Supreme Court has jurisdiction to examine the appeal.
13. The Supreme Court notices that the claimed property is an apartment with the surface of 29 m² and that the Appellants husband sold another property of the same address with the surface of 40.24 m².
14. The Appellant seeks the confirmation of her property right over the claimed property, repossession and compensation for the unlawful possession of the property.
15. Pursuant to Article 3.1 of the UNMIK Regulation 2006/50, the KPCC have 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.
16. The Appellant alleges the ownership over the claimed property and that she lost the ownership right during the armed conflict of 1998-1999. Pursuant to Article 7 of Law No. 03/L-006 on Contested Procedure (henceforth: the LCP), “parties shall present all the facts on which they base their claim and propose evidence which establishes such facts”.
17. The Appellant has proved that the ownership was acquired with the decision no. 01-351/728, dated 5 March 1998, issued by the Directorate for Urbanism, Municipal Housing, Construction, Property and Legal Issues in the Municipality of Pejë/Peć.
18. The subject of review and evaluation is the appealed allegations of the Appellant whereby her husband was granted an apartment, with the permission to construct the loft based on the decision of the competent authorities, in the surface of 29m² (the claimed property), but she did not present any fact

nor proposed any legally valid evidence that she or her husband have performed constructions of the said loft within the deadline of one year as prescribed with the decision as emphasised by her.

19. Consequently, the Appellant failed to prove that she lost the ownership over the claimed property during or due to the armed conflict that occurred in Kosovo in 1998-1999. The Supreme Court therefore agrees with the outcome of the decision of KPCC and concludes that the appeal is unfounded.

20. Based on the reasons presented above pursuant to Article 13.3.c of the UNMIK Regulation 2006/50 and Article 200 of the LCP, the KPCC's decision is confirmed and the appeal is rejected as unfounded.

Legal Advice

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

Krassimir Mazgalov, EULEX Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar