

**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-229/2013

**Prishtinë/Priština,
29 September 2015**

In the proceedings of:

I. A.,

Viti/Vitina

Appellant/Respondent

vs.

R. I.

Serbia

Appellee/Claimant

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 KPCC/D/R/197/2013 (case file registered at the KPA under the number KPA24390), dated 18 April 2013, after deliberation held on 29 September 2015, issues the following:

JUDGMENT

1. The appeal of I. A. against the decision of Kosovo Property Claims Commission KPPC/D/R/197/2013, dated 18 April 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/R/197/2013, dated 18 April 2013 is confirmed as far as it concerns the claim registered at the KPA under the number KPA24390.

Procedural and factual background:

1. On 13 February 2007 R. I. (hereinafter: the Claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her ownership right over and repossession of an apartment of 60 m², Stambeni Blok no. 1, in Pozharan/Požaranje, Municipality of Viti/Vitina (hereinafter: the claimed apartment).

The Claimant alleged that she and her husband M. I. lost the possession of the claimed apartment on 12 June 1999 as a result of the circumstances in 1998/1999.

2. To support her claim, the Claimant provided *inter alia* the KPA with the following documents:
 - Copy of a Purchase contract concluded on 20 January 1995, certified under number OV (VR).br (nr).253/96 at the Municipal Court of Viti/Vitina on 4 March 1996; the contract is concluded between M. N. (seller) and M. I. (buyer), Claimant's husband; the contract shows that Claimant's husband (hereinafter: M. I.) purchased the claimed property;
 - Copy of the Death Certificate No. 203-332/2001-44, issued by Municipality of Kragujevac, Republic of Serbia, on 23 July 2001; the certificate shows that M. I. died on 18 July 2001 in Koričan, Kragujevac, Republic of Serbia;
 - Copy of an Inheritance Decision O(Tr)-1229/2001, issued by the Municipal Court of Kragujevac, Republic of Serbia, on 14 September 2001, showing that the claimed apartment was inherited by the Claimant after the death of M. I.;
 - Written statements (undated) of L. B., M. I., M. A. and M. Z.. They state that M. I. and Claimant have not sold the claimed apartment and that they used to live there until 9 June 1999.
 - Claimant's submission to the Municipal Court of Viti/Vitina, dated 28 January 2010, explaining to the court that the allegation of I. H. that he purchased the claimed apartment is not true. She further proposed to the Municipal Court of Viti/Vitina to reject the Respondent's law suit;
 - Copy of Claimant's ID card no. 2308957977016, issued by the Republic of Serbia on 5 February 2001.

3. The KPA Verification Unit in its reports dated 2 August 2007 and 7 May 2009, as well as the consolidated verification report dated 24 June 2009, established as far as relevant, that the submitted Purchase contract and Inheritance decision were positively verified at respectively the Municipal Court of Viti/Vitina and of Kragujevac, Serbia.
4. On 22 June 2007, the claim was notified and I. H. (hereinafter: the Respondent) was found occupying it. He signed a notice of participation on 20 June 2007 stating that he does not claim any legal right to the claimed property. However, on 22 July 2007, the Respondent signed another notice of participation stating that he claims a legal right to the claimed property.
5. In order to support his reply, the Respondent submitted the following documents:
 - The statements (without date and number) of M. I., A. I., A. H. and A. H. They state that the Claimant and M. I. sold the claimed apartment to the Respondent in or around June 1999;
 - Respondent's law suit, dated 25 July 2007, submitted before the Municipal Court of Viti/Vitina against Claimant. The Respondent claimed ownership right over the claimed apartment, alleging that he purchased it;
 - An invoice for property tax payment of immovable property No. 18342003 for a property of 86 m² in Pozharan/Požaranje, issued by the Municipality of Viti/Vitina on 20 May 2003; and
 - The Respondent's ID card no. ID02890799 issued by the Republic of Kosovo on 1 September 2009. In appeal he submitted a new ID card with the same number issued on 1 September 2009. On this card his name is spelled as: I. A.

KPA found out that the law suit is suspended by the Municipal Court of Viti/Vitina.
6. By its decision KPCC/D/R/197/2013, dated 18 April 2013, KPCC decided that the Claimant had established her property right over the claimed apartment, that she is entitled to possession over this property and that any person occupying the property has to vacate it within 30 (thirty) days of the delivery of the decision. The reasoning is found in paragraphs 10 and 37-39 of the Cover Decision. The KPCC refers to the positively verified Purchase Contract and Inheritance Decision submitted by the Claimant. KPCC points out that the Respondent failed to submit documentary evidence and that the witness statements submitted by the Respondent are denied by the Claimant. The Claimant stated merely that her husband gave – in June 1999 - the keys of the claimed apartment to the Respondent to take care of it in the absence of the Claimant and her husband. The Claimant submitted witness statements that confirm her assertions. KPCC finds on the basis of the documentary evidence that the Claimant sufficiently proved her ownership right and that the Respondent failed to submit (documentary) evidence for his assertion.
7. The KPCC decision was received by the Claimant (hereinafter: the Appellee) on 15 August 2013. The Respondent (hereinafter: the Appellant) received the decision on 22 July 2013. The Appellant filed an appeal on 19 August 2013.
8. The Appellee filed a reply on the appeal on 15 November 2013.

Allegations of the parties:

The Appellant:

9. The Appellant in his appeal challenges the KPCC decision stating that the KPCC decided wrongly and in contradiction with the applicable legal provisions. The Appellant bought the claimed apartment from M. I. after the entering of NATO forces in 1999. This fact is not taken into account by the KPA/KPCC.
10. The Appellant alleges that the Appellee and M. I. came to him and expressed their interest to sell the claimed property for the amount of 10.000 DM. The Appellant states that they agreed and that he paid the seller the amount of 5200 DM. He states that he is ready to pay at any time the unpaid amount of 4200 DM (respectively 2100 Euro) to the seller. Further, the Appellant alleges that the Appellee and Đ. A., the Appellee's father, were present when the purchase of the claimed apartment was concluded. The keys were handed over to him.
11. The Appellant alleges that the Inheritance Decision O(Tr)-1229/2001, issued by the Municipal Court of Kragujevac, Republic of Serbia, on 14 September 2001, declaring Appellee as heir of M. I. and owner of the claimed apartment, is rendered by an incompetent court.
12. The Appellant further states that the purchase contract presented by the Appellee is a fictitious (false) contract. He alleges that the contract was drafted on 10 January 1995 and certified on 4 March 2006. He requests the verification of the same in order to see whether it is a real one.
13. He further alleges that he is living in the apartment for more than 10 years since 1999, while the claim was filed by Appellee in December 2009. He states that the claim was filed after the deadline of relative statutory limitation.
14. Finally, the Appellant proposed the Supreme Court to reject the Appellee's claim and waive the KPCC decision as unfounded.

The Appellee/Respondent:

15. The Appellee alleges that she is the owner of the claimed apartment. She states that she inherited the claimed apartment from her husband M. I. based on the inheritance decision. Further she points out that M. I. previously acquired the property right over the claimed apartment based on the purchase contract OV(VR).br.(nr).253/96, dated 20 January 1995, concluded between him and M.N.
16. The Appellee alleges that she and M. I. did not sell the claimed apartment to anyone and also not to the Appellant. Therefore, the statement of the Appellant that he purchased the claimed apartment is not true.
17. The Appellee considers further that the Appellant's allegation that the purchase contract is falsified and certified on 4 March 2006 does not stand. The contract was certified on 4 March 1996 and not on 4 March 2006.

18. The Appellee finally proposes the Supreme Court of Kosovo to reject appellant's appeal as not founded.

Legal reasoning:

Admissibility:

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

Merits of the appeal:

20. The Supreme Court has to answer two questions. 1. Whether the Appellee acquired the ownership right on the claimed apartment, as Appellant disputes in appeal? And 2. is Appellant's allegation on the agreement between him and M. I. in 1999 true.
21. These questions are based on Section 3.1 sub a of Law No. 03/L-079: KPCC has the competence to resolve conflict-related claims involving circumstances that directly relate to or result from the armed conflict which occurred in Kosovo between 27 February 1998 and 20 June 1999: ownership claims with respect to private immovable property where the claimant is not now able to exercise such property rights.
22. Appellee provided before the KPA/KPCC and in front of the Supreme Court the written Purchase contract from 1996 on the claimed apartment and the Inheritance decision.
23. The Purchase contract concluded in 1996 and The Inheritance decision rendered on 2001 can served as the legal basis for acquiring the Appellee's ownership for fulfilment of the first conditions set out in Section 3.1 of Law No. 03/L-079 if these legal acts are in accordance with the law.
24. The legal criteria as set out in the Section 4 paragraph 2 of the Law on Trade of Immovable Property (Official Gazette of RS, no. 43 of 1981) provide that "*the contract on the transfer of a property has to be concluded in a written form and the signature of the parties has to be certified by the court*". So the written form and verification of the signatures in the contract by the court are the constitutive elements of the Purchase contract.
25. The Appellant alleges that the purchase contract submitted by the Appellee is fictive and false because the Purchase contract was certified in 2006. This allegation cannot stand. The purchase contract was drafted on 20 January 1995 and certified on 4 March 1996 before the Municipal Court of Viti/Vitina under number OV.br.253/96. This fact is positively verified by the KPA

verification team (see paragraph 3 of this judgment). So the provisions for the Purchase contract are fulfilled.

26. By the Inheritance decision [(O(Tr)-1229/2001, dated 14 September 2001)] the Appellee is declared heir of M. I. KPA also found the Inheritance decision to be genuine.
27. The Supreme Court considers that the Appellant's allegation that the inheritance decision is rendered by an incompetent court (Municipal Court of Kragujevac, Serbia) does not stand. Article 95 of the Law on Uncontested Procedure (Official Gazette of SAPK no. 72, dated 24 October 1986) applicable at the time when the mentioned decision is rendered, provides: "*the territorial jurisdiction to consider the heritage is the Municipal Court in whose territory the testator has a permanent or temporary address*". That means that the permanent or temporary address of M.I. (testator) is relevant in this case. It is not disputed is that M. I. after he left Kosovo in 1999 stayed in the city of Kragujevac, Serbia, where he died as well (on 18 July 2001). So Kragujevac was his last (temporary) address. Therefore the Municipal Court of Kragujevac was the competent court to adjudicate the concrete heritage procedure. The Inheritance decision was verified positive by KPA. The Supreme Court therefore concludes that this decision is valid and that Appellee inherited the claimed apartment from her late husband. The answer to the first question is that Appellee acquired the ownership right on the apartment.
28. The second question to be answered is whether the allegation of Appellant on the agreement in 1999 is true. As mentioned herefore for transfer of the ownership right is needed a contract in written form and verification of the signatures in the contract by the competent court. KPCC rightfully reasoned that there is not such a written contract from 1999 or any other documentary evidence on an agreement between Appellant and M. I.. The assessment from KPCC that the statement of Appellant and the written declarations of M. I., A. I., A. H. and A. H. are not enough to conclude that Appellant and her husband in 1999 by agreement gave up possession of the claimed apartment in favour of Appellant, is also not an erroneous or incomplete determination of the facts, because Appellee presented statements that dispute these statements. Therefor the answer to the second question is also negative: the allegations of Appellant on the agreement are not found to be true.
29. Appellant further alleges in appeal that he relative statutory limitation should have led to rejection of the claim. This is also not a ground for appeal in this case. A proprietary possessor acquires ownership of an immovable property after twenty years of uninterrupted possession and after ten years of uninterrupted possession if he is registered as proprietary possessor in the immovable property rights register (article 40 of Law No. 03/L-154 on Property and other real rights: the article on Acquisition by Prescription). After Appellee took possession of the claimed apartment in 1999 not 20 years and not even 10 years of (uninterrupted) possession passed. Other than Appellant states in appeal Appellant filed the claim at KPA not in 2009, but on 13 February 2007.

Appellant was aware of that on 22 June 2007, when the claim was notified. This is an interruption of the possession even within ten years of possession.

30. The Court also finds that it is not arguable that the Appellee (and M. I.) used to live within the claimed apartment until 12 June 1999, when she (they) left the same as a consequence of the armed conflict occurred in 1998/1999 in Kosovo (fulfilment of second conditions set out in the article 3.1 of Law No. 03/L-079).
31. On the basis of the above and in accordance with section 13.3 (c) of Law No. 03/L-079 the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, 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

Urs Nufer, EULEX Registrar