

**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-021/14

Prishtinë/Priština,
4 September 2015

In the proceedings of:

N.S.

Str. Dušana Petrovića Šaneta 4/1
Lazarevac
Serbia

Appellant

vs.

N.S.

Rruga Hasan Pristina H-GJ 10
Obiliq/Obilic

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Elka Ermenkova, 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. KPA01212), henceforth also: the KPCC Decision, after deliberation held on 4 September 2015, issues the following

JUDGMENT:

- 1. The appeal of N.S. against the Decision of the KPCC no. KPCC/D/R/199/2013, dated 18 April 2013, is rejected as unfounded.**
- 2. The decision of the KPCC no. KPCC/D/R/199/2013, dated 18 April 2013, is confirmed as far as it concerns claim no. KPA01212.**

Procedural and Factual background

1. On 12 November 2007 N.S. as Claimant (henceforth: Appellant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of a user right over a residential 2-room apartment located at Milos Obilića Street, bloc D, floor III, nr A, in Obiliq/Obilić with a surface of 68.20 m² (henceforth: the claimed apartment).

2. Appellant submitted *inter alia* to KPA:
 - a document ‘Decision on allocation of solidarity apartment’ no. 456/98-2, dated 17 December 1998 (henceforth: Allocation decision); according to this document this was issued by the Committee for allocation of solidarity apartments of PE TE ‘Kosovo’-Obilić; also according to this document the claimed apartment was allocated for use through lease to M.S. and his family, consisting of Appellant, his wife, and three children;
 - a document ‘Contract on use of apartment through lease’ nr. 4311-1, dated 28 December 1998 (henceforth: Contract on use/lease); according to this document this contract is concluded between EPS-TE Kosovo Obilić as lessor and M.S. as lessee; also according to this document the lessor gives the claimed apartment for use for an indefinite period of time to lessee, to use it together with his wife, Appellant, and three children; no price for rent is mentioned in the Contract on use/lease;
 - a decision on allocation of solidarity apartments in Obilić, Milos Obilić Street, to PE TE Kosovo – Obilić and a decision of 17 December 1998 on formation of a Commission for allocation of these solidarity apartments (henceforth: Administrative Decision);
 - a marriage certificate of the marriage at 15 October 1978 between M.S. and N.M., Appellant;
 - a death certificate on the death on 4 March 2006 of M.S.;
 - Inheritance Decision issued by the First Municipal Court of Belgrade, dated 18 May 2009, in the inheritance procedure after the death of M.S.; according to this decision as heirs to ‘the rights and obligations from the Contract of use of the apartment through lease concluded between EPS TE Kosovo – Obilić as the lessor and [M.S.] as the buyer filed at EPS PE TE Kosovo – Obilić under the number 4311-1 on 28.12.1998’ are announced Appellant and one of the children.

3. Appellee participated in the proceedings before KPCC. He sent in a response to the claim. He stated that the claimed apartment was allocated to him on 1 February 2005.
4. Appellant replied to the response of Appellee.
5. KPA had the Allocation decision and the Contract on use/lease verified on 21 February 2008. In the report of that date is stated that verification of these documents at Public Companies was negative and that the officer for property apartments at KEK stated that in KEK there is no decision on sharing the apartment. The Administrative Decision was also negatively verified.
6. The KPCC decided in the KPCC Decision to refuse the claim. In its reasoning (paragraphs 9 and 35 of the cover decision) KPCC states that Appellant has failed to submit evidence at all, or any evidence that could be verified by the Executive Secretariat of KPA, that the alleged property right holder enjoys any property rights over the claimed property. KPCC also states that the Executive Secretariat of KPA did not obtain such evidence ex officio.
7. The decision was served upon Appellant on 20 August 2013 and on Appellee on 21 August 2013.
8. Appellant filed an appeal against the KPCC decision on 12 September 2013.
9. This appeal is received by Appellee on 27 February 2014. Appellee did not send in a reply to the appeal.

Allegations of the parties in appeal

10. Appellant alleges that the KPCC decision is based on an erroneously and incompletely established factual state. Verification of the documents should have been done at bodies that own records, based on which the documents can be confirmed authentic. She requests to be provided with evidence showing that the competent bodies: Elektroprivreda Srbije, POE Termoelektrane Kosovo and First Municipal Courts of Belgrade, have notified KPA that the documents were invalid. The arbitrary note that KPA was not able to verify any of the documents, without specifying reports on verification are, according to Appellant, not acceptable. She refers as evidence for her allegations again to the Allocation decision and the Contract on use/lease. She also alleges that through the inheritance decision the rights on the

apartment were transferred to her. She further refers to Article 8 of the European Convention on Human Rights and Fundamental Freedoms (henceforth: ECHR): state bodies are, according to Appellant, obliged to secure her right to a home and there is no specified reason to deny her right to a home. She stresses furthermore that she must be restored in her rights, which she lost due to circumstances related to the armed conflict in Kosovo in 1998/1999.

Legal reasoning:

Merits of the appeal

11. According to Section 2.1 of UNMIK Administrative Directive implementing UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 into Annex 1 by that law (henceforth: Annex 1 to Law UNMIK 2006/50), as far as relevant, any person who had any lawful right of or to private immovable property, who at the time of filing the claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, is entitled to reinstatement in his/her property right.
12. According to the Law on housing relations (Official Gazette SAPK, no. 11/83, 29/86, 42/86) for acquiring an occupancy right to an apartment is needed an allocation decision by the allocation right holder (article 33), a contract on apartment usage in a written form between the person who was allocated the apartment for use and the self-management housing community of interest on the basis of the allocation decision (article 37) and moving into the apartment (article 11).
13. According to the Law on housing (Official Gazette RS, no. 50/92 and last as far as relevant 46/98) a contract on lease of an apartment is concluded in writing and contains inter alia the height of the rent (article 7).
14. The KPCC decision is based on the conclusion that Appellant did not prove that her deceased husband gained a right to the claimed apartment. In appeal Appellant alleges that a proper verification would lead to another decision. On this ground of her appeal the Supreme Court reasons as follows.
15. Not clear is whether Appellant claims an occupancy right to the apartment or a lease right to the apartment, but in both cases documents in writing are necessary to prove the existence of the

right: for the occupancy right a written allocation decision and a contract on use in writing and for the lease right a written contract on lease.

16. KPA had the Allocation decision and the Contract on use/lease verified at the company that according to the allegations of Appellant was the allocation right holder of the claimed apartment (PE TE 'Kosovo'-Obilic or Elektroprivreda Srbije, POE Termoelektrane Kosovo as the company was named in 1998/1999 and KEK nowadays). This verification led to a negative result. The documents were not found. This means the documents provided by Appellant are not genuine and her allegation about gaining a occupancy right or lease right is not valid.
17. The Supreme Courts adds to this reasoning that the Contract on use/lease is also not convincing as genuine in themselves because in general a contract on lease does not provide an occupancy right and for a contract on lease is necessary that the rent is mentioned in the contract. So according to the legal provisions quoted in paragraphs 12 and 13 herefore this document, if genuine, cannot be sufficient to provide either an occupancy right or a lease right.
18. Therefore the conclusion of KPCC that Appellant did not prove that her deceased husband gained a right to the claimed apartment is right so she is not entitled to any reinstatement in the claimed right to the apartment.
19. The reference Appellant makes to Article 8 ECHR does not lead to another decision, because there is no interference in her private life by the refusal of her claim on the grounds stated herefore.

Conclusion

20. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 of Law UNMIK 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

Elka Ermenkova, EULEX Judge

Urs Nufer , EULEX Registrar