

**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-103/13

**Prishtinë/Priština,
12 February 2014**

In the proceedings of

D. K.

Fushë Kosovë/ Kosovo Polje

Claimant/ Appellee

vs.

E.G.

Glllogoc/Glogovac

Respondent/ Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPCC/D/R/173/2012 (case file registered at the KPA under No. KPA 01289), dated 24 October 2012, after deliberation held on 12 February 2014, issues the following:

JUDGMENT

1. The appeal of E. G. filed against the decision of the Kosovo Property Claims Commission (KPCC) KPCC/D/R/173/2012 (case file registered at the KPA under No. KPA 01289), dated 24 October 2012, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission, KPCC/D/R/173/2012, dated 24 October 2012, as it regards the case file registered at the KPA under No. KPA01289, is confirmed.

Procedural and Factual Background:

1. On 29 November 2007, the claimant D. K. filed a claim with the Kosovo Property Agency (KPA) stating that E. G. occupied the apartment located on the Street "Peti Stambeni Blok, Ulaz III in Glllogoc/Glogovac that belonged to him and asked for the repossession of it. The claim was registered with the KPA under case no KPA 01289. Together with the claim, he submitted, *inter alia*, the copy of the sale contract, dated 7 December 1995, concluded between him and Public Housing Enterprise Glllogoc/Glogovac.
2. KPA notified the claim on 31 March 2008 to E. G. He claimed that he bought it from the property right holder with a price in the amount of 25.009 DM. He further alleged having entered into the possession of the same apartment on 29 January 1996. He submitted the copy of a sale contract which does not include his signature but seemingly signed by the claimant D. K. and some other invoices.
3. KPA found out that both the claimant and the respondent filed claims as to the ownership and possession of the same apartment with the Housing Property Directorate. It, *ex officio*, established that both B category claim of Elmi Gërguri registered under claim no DS310148 and C category claim of D. K. registered under claim no DS308817 were refused by the HPCC with the decision No HPCC/D/203/2005/B&C, dated 18 June 2005. The request on reconsideration was also rejected.
4. Housing Property Directorate, in 2006, requested a criminology lab in Bulgaria to make a forensic examination of the signature in the purchase contract submitted by the respondent E. G. allegedly concluded between the claimant and him. The examination concluded that the signature in the document was not affixed by D.K.. Given that the result of the forensic examination was not considered by the HPCC, the KPA Executive Secretariat disclosed the copy of it to the respondent on 17 May 2012 who did not provide a response to it.

5. In the hearing held by the KPCC, the claimant mentioned that the sale contract VR.Nr. 223/95 dated 7 December 1995 made between him and the Public Housing Company was not available to him so he could not provide it to the HPCC in his previous claim. He repeated his arguments on that he did not sell it to the respondent. He claimed the sale contract submitted by the respondent is a forged one. The respondent still maintained that he bought it from the claimant. He mentioned that his only witness to this contract was killed during the conflict.

6. Considering the sale contract is positively verified by the KPA, KPCC decided to grant the claim to the claimant who now could prove his ownership title over the said apartment. KPCC also established that the sale contract submitted by the respondent is not certified and the examination conducted by forensic expert in Bulgaria found that the signature of the claimant on the alleged contract was not comparable to the claimant's signature on the certified contract from 1995. It further noted that the documents submitted by the respondent could not be verified as they are not recorded in the respective public companies that allegedly issued them.

7. The Decision of the KPCC was served on the respondent on 11 April 2013. He filed an appeal against it on 24 April 2013.

8. The appeal was served on the claimant D. K. on 23 July 2013. He filed a response on 21 August 2013.

Legal Reasoning:

Admissibility of the Appeal:

9. The appeal has been submitted within the legal time frame of 30 days prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 and is admissible.

Jurisdiction:

10. The KPA Appeals Panel of the Supreme Court notes that KPCC has jurisdiction over the claim since it falls under the categories of the claims stipulated in Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079. The loss of possession derives from the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. KPA Appeals Panel has jurisdiction over the appeals submitted against the decisions of KPCC.

Merits of the appeal:

11. The Supreme Court considers that KPCC is correct on its conclusion as to the merits of the claim of the claimant and that of the respondent.

12. Previously, two competing claims were filed by the claimant and the respondent before the HPCC both of which were dismissed. The matter was not resolved with a final decision on the substance. In addition, in those proceedings the sale contract VR.Nr. 223/95 dated 7 December 1995 was not examined by the HPCC since it was not presented as evidence by the claimant. The claimant explained it as it was not available to him by then. The allocation decision and the sale contract submitted by the claimant in these proceedings at hand are both positively verified by the KPA. The sale contract of the claimant is duly certified by the Municipal Court of Prishtinë/Priština. Thus, the claimant has proven his ownership title over the said apartment.

13. However, the sale contract and other invoices submitted by the respondent are negatively verified by the KPA. None of them can be found in the archives of the institutions allegedly issued them. Moreover, the forensic report established that the signature in the sale contract submitted by the respondent was not affixed by the claimant D. K. Thus, the respondent could not prove his allegation on that he bought it from the claimant.

14. Therefore, the appellant's appeal is rejected as unfounded according to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079

Legal Advice:

15. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar