

**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-040/2013

**Prishtinë/Priština,
3 April 2015**

In the proceedings of:

Z. M.
Ćuprija
Serbia

Appellant

vs.

Xh. J.
Skenderaj/Srbica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/159/2012 (case file registered at the KPA under the number KPA39214), henceforth: the contested KPCC decision, dated 6 June 2012, after deliberation held on 3 April 2015, issues the following:

JUDGMENT

1. The appeal of Z. M. against the decision of Kosovo Property Claims Commission KPPC/D/R/159/2012, dated 6 June 2012, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/R/159/2012, dated 6 June 2012 regarding the claim registered at the KPA under the number KPA39214, is confirmed.

Procedural and factual background:

1. On 15 October 2007 Z. M. as Claimant (hereafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of ownership right and repossession of an apartment in Prishtinë/Priština, address ... , with the surface of 57, 88 m² (hereafter: the claimed apartment).
2. To support his claim, the claimant submitted *inter alia* the following documents:
 - a document headed Ref. no. 34 number 380-5353/98-9, containing an allocation decision for the claimed apartment in the name of Appellant, issued by the Commission of Residential Matters in Belgrade on 28 December 1998 (henceforth: the Allocation decision);
 - a document headed Contract on Lease of the apartment no. 68/1, dated 19 January 1999, concluded between the Public Housing Enterprise in Prishtinë/Priština (PHE) and Appellant (henceforth: the Contract on lease);
 - a Purchase Contract for the claimed apartment dated 29 September 2001 and certified on 1 March 2002 with no. 701/02 concluded between the Republic of Serbia, represented by the Minister of Economy and Finance, and Appellant (henceforth: the Purchase contract);
 - a Certificate from the Republic of Serbia, Ministry of Internal Affairs, no. 452-3/2002-5688 dated 28 March 2002; according to this certificate Appellant fulfilled all the obligations arising from fore mentioned Purchase contract; on this certificate is printed a Payment receipt no. 35230, dated 1 March 2002; as purpose is noted: purchase of the apartment according to fore mentioned contract (henceforth: the Certificate on payment).
3. On 29 January 2008 the KPA located the claimed apartment. The claimed apartment was found occupied by Xh. J. (henceforth: the Appellee). KPA notified the claim to him. The Appellee claimed a legal right to the claimed apartment.
4. According to a KPA verification report dated 3 March 2008 the Contract on lease was not found at Public Housing Enterprise. A person at Public Housing Enterprise stated this contract was not issued by Public Housing Enterprise. KPA concluded this document could not be verified.

5. KPA verified according to a verification report dated 4 April 2008 the Purchase Contract positive. It was found at the Municipal Court of Belgrade.
6. The Appellee did not send in a notification of participation in the proceedings before KPCC but submitted *inter alia* the following documents:
 - a Decision of the Housing and Property Claims Commission (henceforth: HPCC) nr. HPCC/D/116/2004/A&C, dated 16 April 2004; in this Decision HPCC refused the category A claim of Appellee for restitution of a property right on the apartment and the category C claim of Appellant for repossession of the claimed apartment. Regarding the category C claim of Appellant HPCC reasons that the Allocation decision dated 28 December 1998 and the Contract on lease dated 19 January 1999 could not be verified with reference to the documents in the appropriate public records and that Appellant had acknowledged that he never took possession of the claimed apartment, which moreover prevented him from obtaining an occupancy right on the claimed apartment;
 - a Decision HPCC/REC/65/2006, dated 15 July 2006 on reconsideration requests of Appellant and Appellee against the HPCC Decision of 16 April 2004 by which the reconsideration requests are granted and the HPCC Decision dated 16 April 2004 is overturned. The category C claim of Appellant is dismissed. HPCC reasons that Appellant failed to demonstrate that he had a property right in respect of the claimed apartment at 24 March 1999, so the category C claim was correctly dismissed in first instance. The category A claim of Appellee is refused. The HPCC *inter alia* also orders to refer to the competent court the determination of legal relief, if any, that may be available to Appellee under the applicable law as a result of the allegedly irregular manner in which the claimed apartment was allocated or otherwise was acquired by Appellant;
 - a Claim filed before Municipal Court dated 8 December 2006 by Appellee against Appellant.
7. KPA verified these HPCC decisions positive.
8. On 20 October 2011 in a telephone conversation (p. 193 of the KPA file) Appellant's wife said to KPA that she and Appellant had not been able to settle in the claimed apartment for the fact that there lived a senior police supervisor and that when he would get another apartment they would be situated in the claimed apartment.
9. On 6 June 2012, Kosovo Property Claims Commission (KPCC), through the contested KPCC decision nr. KPCC/D/R/159/2012, refused the claim of Appellant in the current procedure. In the reasoning of its decision, the KPCC indicates:

“(The) Claim (...) was filed by the Claimant in his capacity as the property right holder. (...) The Claimant submitted in support of his claim an allocation decision dated 28 December 1998 and a contract on use dated 19 January 1999. Neither of these two documents could be verified by the Executive Secretariat. The Claimant subsequently admitted that he was never in possession of the claimed property. Consequently the Claimant’s claim falls short of meeting the requirements for acquisition of an occupancy right pursuant to the Law and Housing Relations (42/86) as amended by Law on Housing (50/92), which provides that an allocation decision, taking of possession and the conclusion of a contract must all exist before an occupancy right can arise”,

and:

“ The [KPCC] notes that both the Claimant and the Respondent had filed claims for the same property with the HPD (...) Both the claims where refused by the HPCC by decision HPCC/REC/65/2006/ of 15 July 2006. However, the Commission considers that the HPCC decision does not constitute res judicata for the present purposes as the relief sought by the Claimant before the HPCC was repossession, whereas in the present claim the Claimant seeks confirmation of an ownership right.”.

Moreover KPCC indicates:

“In the absence of any evidence that the claimant met the relevant statutory requirements for an occupancy right, the claimant’s claim stands to be refused”.

10. The KPCC decision was served on Appellant on 4 December 2012, while the Appellee received it on 22 January 2013.
11. On 28 December 2012 the appellant filed an appeal to the KPA Panel of the Supreme Court. He submitted with the appeal the Allocation decision, the Contract on lease and the Certificate on payment.
12. On 15 April 2013 Appellee sent in a reply to the appeal.

Allegations of the parties:

13. The Appellant alleges in appeal that the KPCC decision is based on erroneously and incompletely established factual state and on wrong application of the material law.
14. The appellant grounds the appeal on the following:
The conclusion of the KPCC is untrue that the KPA Executive Secretariat could not verify any of the documents he submitted. The bodies that are to perform the verification are in the possession of the evidences based on which they could confirm that the submitted documents are authentic. He requests verification by the competent body of the Government of Serbia, Ministry of Internal Affairs. Appellant states he acquired the claimed apartment in a legal matter as is corroborated by the submitted documents. The appellant ascertains that he was entitled to

use the claimed apartment and that he fulfils all criteria for getting a decision to restore his rights, which he lost as result of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Finally, the Appellant proposes the Supreme Court to accept his appeal and to grant him with ownership rights over the claimed apartment.

15. Appellee in his reply to the appeal states that the claimed apartment was already allocated to him in 1988. He alleges that he resided in the apartment until he was dismissed of his job. After the war he filed a request for restitution of the apartment to him. This request was rejected and he was instructed to file a claim at the Municipal Court of Prishtinë/Priština. He filed such a claim on 20 November 2006, but there is not a judgment in that case until now. He also states that the documents submitted by Appellant are not valid evidence. He further refers to the dismissal of Appellant's claim by HPCC.

Legal reasoning:

Admissibility:

16. 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:

17. According to Section 3.1 of Law No. 03/L-079, KPCC has the competence to resolve conflict-related claims, if the claimant proves not only the ownership right or the right to use the private property, including agricultural and commercial property, but also proves that he/she is not able to exercise such right due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
18. Regarding the appeal grounds of Appellant the Supreme Court has to answer the question whether Appellant during the armed conflict did have any ownership right or any other use right on the claimed apartment.
19. As far as Appellant alleges that he gained an ownership right over the claimed apartment by referring to the Certificate on payment in his letter of Appeal and to the Purchase Contract, which he submitted with his claim to KPA, his appeal cannot be successful. According to his

allegations and the Purchase contract that was verified in Belgrade, he gained this alleged ownership right only in 2002 when he fulfilled the obligations of the Purchase contract dated in 2001. This means that he was not a property right holder as owner during the armed conflict. So the claim cannot be granted on this basis under Law No. 03/L-079 as mentioned before in paragraph 17. The grievance that these documents were not well verified can for this same reason be left aside, although even the Purchase contract was verified positive in Belgrade. The Supreme Court will leave aside the answer to the question whether this Purchase contract can be valid because of the UNMIK laws that were in force during 2001 and 2002.

20. As far as Appellant alleges that he was a use right holder during the armed conflict, because he gained an occupancy right on the claimed apartment, the Supreme Court reasons as follows.
21. As far as Appellant in this procedure claims repossession of the claimed apartment based on this alleged occupancy right, KPCC does not have jurisdiction. HPCC decided in its decision HPCC/REC/65/2006, dated 15 July 2006, on Appellant's claim for repossession. This is a final administrative decision as meant in Section 11.4 under c of the Law No. 03/L-079. According to this provision KPCC has no competence to decide on the same claim anymore in this procedure.
22. As far as Appellant wants to have his alleged occupancy right as a use right on the apartment established in this procedure KPCC has jurisdiction, because HPCC did only decide on the claim for repossession and not on a claim to establish the occupancy right. The Supreme Court reasons on this allegation as follows.
23. The Supreme Court notes that the contested KPCC decision relies on the fact that the appellant has not proven his occupancy right over the claimed property. In the reasoning of the contested KPCC decision it is ascertained that the Allocation decision and the Contract on lease could not be verified by the KPA Executive Secretariat. The same decision also notes that *'[...the claimant's claim falls short of meeting the requirements for acquisition of an occupancy right pursuant to the Law on Housing Relations (42/86) as amended by Law on Housing (50/92), which provides that an allocation decision, taking of possession and the conclusion of a contract must all exist before an occupancy right can arise]'*.
24. According to Article 11 of the Law on Housing Relations (Official Gazette of the SAPK, no. 11/83, 29/86, 42/86), which was in force in the Province of Kosovo, occupancy right is acquired as of the day of lawful moving into the apartment. According to the legal provisions of the Law on Housing *[(OG of the SAPK no. 42/86 (Articles: 2, 11, 32 paragraph 1 and 2, 32 paragraph 2, 37 paragraph 1 and 42 paragraph 1), and OG of the SR no. 50/92 (Articles: 5 paragraph 1, 7 paragraph 1)]* as a legal requirement (together with factual possession) for the acquisition of occupancy right Appellant has to prove the allocation and contract on use. This means that a person

alleging to have the occupancy right over a socially owned apartment must prove that there is an allocation decision of the apartment issued by the allocation property right holder (ARH), entry into factual possession and that he/she concluded a contract on use with Public Housing Enterprise (PHE), or the owner of the apartment. These occupancy rights will continue according to Article 31 of the Law on Housing (Official Gazette of the RS, no. 50/92, latest, relevant amendment 46/98).

25. KPCC established that Appellant never was in possession of the claimed apartment. KPCC based this inter alia on the telephone conversation meant in paragraph 8 herefore. Appellant did not challenge this fact in appeal. Also HPCC established in its decision dated 16 April 2004 that Appellant never gained possession. Therefore, as far as Appellant alleges he has an occupancy right as a use right to the claimed apartment, the appeal is not grounded, because he did not prove he gained such a right in 1998/1999.

26. As far as Appellant means to allege that he gained a use right based on the Contract on lease dated 19 January 1999, the Supreme Court reasons as follows. KPA had this contract verified at the Public Housing Enterprise, who is mentioned as lessor in this contract, but as mentioned in paragraph 4 the contract was not positively verified. Based on this report KPCC reasons that this document does not prove the existence of a contract on lease and established Appellant's allegation on lease not as a fact. Other than Appellant alleges there is no ground to have this document verified at the Ministry of Internal Affairs in Belgrade, because he did not substantiate this could lead to another conclusion than bases on the verification by KPA at the Public Housing Enterprise. So the Supreme Court concludes Appellant's allegation that he has a use right based on the Contract on lease can also not be followed.

27. The Supreme Court finally concludes that the question whether Appellant during the armed conflict did have any ownership right or any other use right on the claimed apartment must be answered negative. The Supreme Court furthermore concludes that the appealed KPCC decision does not involve an erroneous and incomplete determination of the factual situation or the misapplication of the provisions of the material law, as emphasized by the appellant in his allegations.

28. 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

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar