

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-048/14

Prishtinë/Priština, 9 December 2015

In the proceedings of:

M.Th.

Zahir Thaqi 29/3

Prizren/Prizren

Appellant

Vs.

G.B.T.

Hotel Kastrum

Gamzigradska Banja

Zajecar, Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/205/2013 (case file registered at the KPA under No. KPA30879) dated 11 June 2013, after the deliberation held on 9 December 2015, issues the following

JUDGMENT:

1. **The Appeal of M.Th. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/205/2013 dated 11 June 2013 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/205/2013 dated 11 June 2013 as far as it regards the case KPA30879 is confirmed.**

Procedural and factual background:

1. On 5 July 2007 G.B.T. filed a Claim in the capacity of the alleged property right holder, seeking the confirmation of the property right and the repossession of the claimed property. The claimed property is an apartment with the surface of 38.90 m², located at a residential building, street Mateja Gupac, Prizren/Prizren, No. 29 (new name for street Karadjordjeva 29/3). He stated that M.Th., a teacher at the Educational and Rehabilitation Centre for Children with Special Needs “Spiro Mojsic”, in Prizren/Prizren, uses the apartment. He also indicated that the possession over the property was lost due to armed conflict of 1998/99, indicating 16 July 1999 as the date of loss. The Claim was registered with the KPA under the number KPA30879.
2. To support his Claim, the Appellee submitted the following documents:
 - Contract on use of the apartment concluded on 19 November 1982 between Self –Governing Community of Interests of the Municipal Assembly of Prizren/Prizren and the Appellee;
 - Contract No. 596, dated 19 July 1993 for the purchase of the apartment with a surface of 38.39 m², located at Street Mateja Gupac No.29, in Prizren/Prizren. This contract was concluded between the Rehabilitation Centre of School “Spiro Mojsic”, in Prizren/Prizren, as allocation right holder, represented by the School’s Secretary O.G. and G.B.T. . That contract was certified at the Municipal Court of Prizren/Prizren, with the number Vr. No. 1012/93 on 13 April 1993;
 - Decision No. 584/395 dated 7 June 1982 for the increase of existing rental price, issued by the Housing Self –Governing Community of Interests;
 - Decision No. 01-292, dated 28 April 1982 issued by the Rehabilitation Centre of School “Spiro Mojsic”, Prizren/Prizren, wherewith the claimed property was allocated to the Appellee.

3. The abovementioned documents were positively verified by the Executive Secretariat, excluding the tax invoice and other payments, verification of which was considered as unnecessary.
4. The claim was properly notified on 8 January 2008. From the notification report it resulted that the property was an apartment used by M.Th. (hereinafter: the Appellant), who stated that he was using the property for residential purpose and claimed legal right over the property. He signed the participation notice on 8 January 2008.
5. The Appellant contested the Claim and approached the KPA on 22 January 2008, as the Respondent. To support his allegations, the Appellant submitted the following documents:
 - A written statement dated 22 January 2008, wherewith he alleges the ownership right over the claimed property;
 - A copy of Contract No. 2847/1003, dated 19 June 2003 on purchase of an apartment, concluded between the School "Spiro Mojsic"(now "Nënë Tereza") in Prizren/Prizren and M.Th.t;
 - An Annex to Contract No. 2913/2003 dated 25 June 2003 on purchase of apartment, concluded between the same parties as on the aforementioned contract;
 - Decision No. 29, dated 18 December 2002 for allocation on use of the public apartment to the employee M.Th., issued by the director of school "Nënë Tereza";
 - Decision No. 413-405/2003 dated 26 June 2003 on determination of municipal fees for transfer of the immovable property, issued by the Municipal Directorate of Finance and Economy of Prizren/Prizren.
6. For additional clarification on the dispute, the Executive Secretariat contacted the representative of the Allocation Right Holder "Nënë Tereza", who informed that the claimed property after the conflict was allocated and sold again to the Appellant, because the Allocation Right Holder "Nënë Tereza" was not aware of the previous sale.
7. The Kosovo Property Claims Commission (KPCC), based on the submitted evidence by the parties, with the Decision KPCC/D/R/205/2013, dated 11 June 2013, decided to grant the claim of G.T.T. According to the Decision, the Appellee G.T.T. is the owner of 1/1 of the claimed

property and should enjoy the right of possession over the mentioned property. The KPCC further reasoned:

“Allocation Property Right Holder, the School “Nene Tereza” concluded a contract with the claimant in 1993 and according to the allocation decision, the claimant acquired the ownership at that time. Consequently, the allocation property right holder “Nene Tereza” could not lawfully sell the claimed property since the claimant has acquired the ownership. As a result, the allocation decision issued in favour of respondent in 2002 and the sales contract concluded in 2003, could not transfer the ownership of claimed property to the respondent”

8. The Decision was served to the Appellant on 18 October 2013.
9. The Appellant filed an Appeal against the KPCC Decision at the Supreme Court on 7 November 2013. Together with the Appeal, the Appellant submitted the same documents he had submitted before the KPA.

Allegations of the Appellant

10. The Appellant, M.Th., in his Appeal refers to the incomplete determination of facts and serious violation of procedural and substantive law in force, with the reasoning that the allocation of property to G.T. , is contrary to Regulation which stipulates that the employee does not have the right to be allocated with apartment if he/she owns an apartment or family premise. In the meantime, G.T. has a family premise in the village of Drajqiq/?.
11. The Appellant alleges that he acquired the ownership on 19 June 2003 as an employee - teacher at the Special School “Spiro Mojsic”, in Prizren/Prizren, according to the law in force in Kosovo and he is using it ever since. He states that the property was given to G.T. only for using purposes and he could not buy it. Therefore, the School as the owner of the apartment has transferred the property to the Appellant through a legal procedure since he did not have any other residential property on his own.

Legal reasoning

Admissibility of the appeal

12. The Appeal is admissible as it has been filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079.

Jurisdiction

13. The Supreme Court has the jurisdiction to review the Appeal.

14. After having reviewed the case file and Appellant's allegations, pursuant to Article 194 of LCP, the Supreme Court concluded that the Appeal is ungrounded.

15. The Appellant seeks the confirmation of his ownership right over the claimed property supporting his allegations by submitting the Contract No. 2847/1003, dated 19 June 2003 on purchase of an apartment concluded between him and the School "Spiro Mojsic" (now "Nënë Tereza") in Prizren/Prizren. On the other side is the Appellee, G.T. who claims to have acquired the ownership right according to the Contract No. 596 dated 19 July 1993, concluded between him and the Rehabilitation Centre of School "Spiro Mojsic", in Prizren/Prizren.

16. In addition, the representative of the School "Spiro Mojsic" (now "Nënë Tereza"), when contacted by the KPA confirmed that the identical property was sold once in 1993 to the Appellee and then after the conflict of 98/99 it was re-allocated and re-sold to the Appellant. That means that the same property right holder has disposed of the claimed property twice by entering into contract with both, the Appellant and the Appellee.

17. On the basis of Article 3 of the Law No. 03-L-154 "On property and other real rights" which provides that: *"if several limited real rights exist in a single asset, their priority is determined in accordance with the time of their creation, unless otherwise provided by law"*, the Supreme Court concludes that the property right belongs to the Appellee.

18. Based on what was mentioned above, the property right acquired by the Appellee in 1993 prevails over the right acquired with re-sale of the claimed property in 2003 by the Appellant.

19. Consequently, the Supreme Court comes to conclusion that the Appeal filed by the Appellant, M.Th. stands to be rejected as that the challenged Decision neither contains essential violation nor any misapplication of the procedural and material law.

20. Based on the facts and considering what was mentioned above, as well as pursuant to provision of Article 12.2 of the Law No. 03/L-079 and Article 198, paragraph 1 of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

Legal Advice

21. Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar