

**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-196/2014

**Prishtinë/Priština,
27 April 2016**

In the proceedings of:

Z.R.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 (case file registered at the KPA under No. KPA52451), dated 13 March 2014, after the deliberation held on 27 April 2016 issues the following

JUDGMENT

1. The Appeal of Z.R. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014, dated 13 March 2014, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014, dated 13 March 2013, is confirmed as far as it regards the claim registered with the KPA under No. KPA52451.

Procedural and factual background:

1. On 21 December 2007, the Appellant Z.R. (hereinafter referred to as: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking the confirmation of user right and the repossession of the apartment number 34 located in the residential building in Dardanija, Block 5, E-2, on the 9th floor, of the surface of 21.59 m² in Prishtinë/Priština (hereinafter referred to as: the claimed property). He mentioned that he had lost the possession of it on 13 June 1999 due to the overall security situation and personal fear. According to the Appellant an unknown person lives actually in the apartment.
2. Together with the Claim the Appellant submitted to the KPA:
 - The copy of the Decision No. 360-1720/97-101 on Allocation to the Appellant of the one room apartment No. 4 with the surface of 33.04 m², located in Dardanija SU-3/2, Lamela C in Prishtinë/Priština (hereinafter to be referred as: the second apartment) for an indefinite period of time. Point 3 of the Decision stated that “On the basis of the Decision, the employee shall conclude a contract on lease for an indefinite period of time with the Public Company for Housing Services, provided that, the apartment in which he currently resides located in Dardanija, Block 5, E-2, 9th floor, apartment number 34 with the surface 21.59 m² in Prishtinë/Priština he shall transfer, emptied of all persons and things in accordance with the contract to be concluded before the execution of the contract.”
 - The copy of the utility bill for January 1999.
 - The copy of the Contract number 34 on use of Cable Distribution System entered into on 30 May 1994 between the Appellant and the company providing the satellite

television programmes. As the address where the contract will be executed it was indicated “BL 5, E 2/34”.

- The copy of the Contract entered into on 14 May 1997 between the Appellant and the Ministry of Internal Affairs aiming at the “regulation of the mutual rights and obligations with respect to lease (...) of the apartment number 4, with the surface of 33.04 m² on the 9 the floor, located in the building SU 3/2, lamela C, in Dardanija Street in Prishtinë/Priština. According to Article 2 of that Contract the Appellant was obliged to cede the previously used apartment – the claimed property to the Ministry of Internal Affairs within 15 days from receiving the keys to the apartment being subject to the Contract.
3. The case was registered under the number KPA52451.
 4. According to the Verification Reports dated 12 August and 6 July 2011 the Contract on Use and the Allocation Decision submitted by the Appellant were positively verified by the KPA.
 5. The Claim was notified on 6 February 2008. The claimed property was found occupied by R. Z., who did not claim a legal right to the property and signed the notice of participation. R. Z. declared not to be willing to submit any claim to the KPA
 6. On 13 March 2014, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/R/231/2014 (hereafter to be referred to as: the KPCC’s Decision) refused the Claim. In the reasoning of the Decision (paragraphs 10, 52 and 53), the KPCC concluded that “in the absence of any other corroborative evidence, the mere reference to the Claimant’s obligation to vacate the claimed property in documents related to another property, as well as utility bills are not a sufficient proof of the Claimant’s property right over the claimed property. The Executive Secretariat requested the Claimant to submit further evidence to prove the alleged ownership, but he failed to do so. Consequently, in the opinion of the Commission the Claim had to be refused.
 7. The KPCC’s Decision was served upon the Appellant on 22 May 2014. On 20 June 2014 the Appellant filed an Appeal against the KPCC’s Decision.

Allegation of the parties

8. The Appellant requests the Supreme Court of Kosovo to grant the Appeal and to modify the KPCC’s Decision acknowledging his rights over the claimed property. In the Appeal he indicated that the KPCC’s Decision is based on erroneous and incomplete establishment of facts, as well as it involves breach of substantive law. In the Appellant’s opinion the documents submitted proved

that “he was the lawful possessor of the apartment”. Moreover, he explained, that he lived with the family in the claimed apartment until 24 March 1999. He was supposed to move in to the “new apartment” in May 1999, but he left Kosovo before.

Legal Reasoning

9. The Supreme Court of Kosovo found that the appealed KPCC’s Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
10. The Appellant argued that he was entitled to live in the claimed property on the basis of the contract entered into between him and the competent authority. He signed another contract for use of a bigger apartment, but before he moved in to it, he had to leave Kosovo due to the conflict. According to the Appellant, as he could not move into the second apartment before and after the conflict (it was subsequently sold to a third person) he is now entitled to repossess the claimed property.
11. The Supreme Court does not share that opinion for the following reasons. The scope of the examination of the KPA and at the current instance of the Court is to verify the following elements: who was in possession of the claimed property before 27 February 1998, was there a legal title to use the property, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. The evidence in the case file proves that the Appellant possessed the claimed property before the conflict, he left it on 19 June 1999 and now the apartment is being used by the third party. The circumstance which is not proved by the Appellant is related to having the legal title to possess the claimed property before or during the conflict.
12. The Commission rightly concluded that the utility bills may not constitute a trustworthy evidence for the fact that the Appellant had the title to possess the claimed property. This is the duty of the KPA and the Court to assess if the factual possession of the property was based on the law. Only in such a case the Court may consider that the requirements provided for by law are fulfilled and the claim may be accepted. The documents though submitted by the Appellant, contrary to his opinion, prove the opposite circumstances. The Allocation Decision and the Contract for the second apartment not only do not confirm the title to use the claimed property at the time the Appellant left it, but prove the opposite circumstance: that he had no title to possess it in that date. Moreover, the fact that the second apartment was allocated and then sold to a third party does not constitute the proof of the title to repossess it. In other words: the sale of the second

apartment does not implicate the title for the Appellant to possess the claimed property and does not substantiate the Claim.

13. Consequently, the Supreme Court contends that the examination of the evidence and their assessment was done correctly by the KPCC. In the opinion of that Court, none of the documents submitted by the Appellant prove his rights over the claimed property.

14. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when refusing the Claim of the Appellant. As a result, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

15. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

16. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

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 or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar