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-82/13

Prishtinë/Priština,
2 April 2014

In the proceedings of:

B Ž
N S
S

Claimant/Appellant

vs.

Besnik RRECAJ
Skenderaj/Srbica
Kosovë/Kosovo

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 (case file registered at the KPA under the number KPA00747), dated 5 September 2012, after deliberation held on 2 April 2014, issues the following

JUDGMENT

1. **The decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 (regarding case file registered at the KPA under the number KPA00747), dated 5 September 2012, is annulled as rendered outside jurisdiction.**
2. **The claim of B Ž KPA00747 is dismissed as inadmissible.**

Procedural and factual background:

1. On 23 April 2007 B Ž filed a claim with the Kosovo Property Agency (KPA) seeking repossession over an apartment of 69sq. m. (67, 89) on the third floor in a building situated in Pristina, 39 "Ramiz Sadiku" str. A2. The claimant asserted that the loss of the property was a result of the circumstances in 98/99 in Kosovo and that the date of the loss was 1 June 1999.
2. In support of his claim he presented various documents among which a court decision, issued on 26 September 2006 by a parallel court of Pristina, stationed in Novi Sad (case number 53/2005). It established the existence of a purchase contract, concluded on 31 March 1996 between B Ž as a buyer and J T as a seller of the apartment, subject of the current case.
3. Ha presented a second court decision, issued on 28 May 2009 by the Municipal Court in Pristina (case number 173/2009) with the same subject matter. The decision established the existence of a purchase contract, regarding the same apartment between the same parties as buyer and seller – B Ž as a byer and J T .
4. The property was notified and R B responded to the claim. He argued to be the legal owner of the apartment. He asserted to have purchased it on 4 November 2003 from I G . He presented a written contract with certified signatures by the Municipal Court of Pristina. The certification of the signatures was done on 27 November 2003. The seller on his account had previously acquired the property from J T . The transfer happened on 14 December 2000 with a written contract and the signatures of the parties were certified the same date in the Municipal Court in Pristina.

5. The KPA established *ex officio* that the claimant had previously requested the same apartment from the HPCC (Housing and Property Claims Commission) under UNMIK/REG/2000/60. With Cover Decision HPCC/260/2006 from 15 July 2006 the HPCC dismissed the claim of B Ž . The HPCC accepted that until 24 March 1999 the claimant had lawfully used the apartment on the basis of the verbal agreement of the owner J T . The HPCC considered that the following loss of possession was not related to the NATO campaign in Kosovo, but to the fact that J T sold the apartment to a third person – Ib G .
6. The KPA/KPCC processed the claim and with cover decision KPCC/D/R/167/2012 (case file registered at the KPA under the number KPA00747), refused the claim. The KPCC noted that the claimant did not submit evidence in support of his claim, apart from the two court decisions. One decision from 2006, issued by a parallel court, which could not be considered, because it originated from an incompetent institution and one from 2009, taken by the regular court in Pristina. The KPCC considered that the proceedings in front of the Municipal Court of Pristina commenced after 16 October 2006, accordingly the Court in Pristina lacked jurisdiction regarding this case. The KPCC accepted that the claimant failed to prove his property right and refused the claim.
7. The claimant received the decision on 13 February 2013 and on 11 March 2013 filed an appeal.
8. As appellant B Ž asserts that the decision of the KPCC involves fundamental errors and serious misapplication of the applicable material law and procedural law. He also claims that the decision rests upon an erroneous and incomplete determination of facts.
9. The appellee, responded to the appeal on 2 July 2013. He claims the appeal is ungrounded and has to be rejected.

Admissibility of the appeal:

10. The appeal is admissible. It has been filed within the 30 day period as prescribed in section 12.1 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).

Validity of the appealed decision and jurisdiction:

11. The decision of the KPCC had to be annulled as rendered in the absence of jurisdiction.

12. According to Section 3.1 of the Law the Commission has the competence to resolve claims related to the armed conflict of 1998/1999, claims related to rights that cannot be exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
13. In the current case it is established that in 1996 B Ž had an informal agreement with Jovan T . It is not disputed that for some time and with the consent of the Mr. T , Mr. Ž used the apartment. H Ž and T never concluded a contract. It is established that from the moment the two had this informal agreement they had arguments regarding the payment for the property and the conclusion of a contract. Later in 2000 T sold the apartment to a third person I G , who on his turn sold it to the respondent, now appellee. In the meantime the claimant Mr. Ž filed a request with the HPCC, who dismissed his request for the reason that he lost possession over this apartment not because of the NATO campaign in Kosovo but because Mr. T sold the property to a third person. In 2005 Mr. Ž filed a claim in front of a parallel court to recognize the validity of the "contract" from 1996. Later in 2007 he filed a claim with the KPCC and while the procedure in front of the KPCC was ongoing he filed a new claim for the "validation" of the same contract with the Municipal Court in Pristina in 2009, who in the arguments of the decision recognizes as well that the dispute between Ž and T dates back to 1997.
14. The established facts in their totality lead to the only one conclusion that the dispute in question originated before the armed conflict in 1998/1999. It did not fall within the jurisdiction of the KPCC and the Appeals Panel of the Supreme Court. Therefore the Court had to annul the decision and dismiss the appeal.

Obiter Dictum:

15. In this regard it is irrelevant to contemplate on the nature of the decision, taken by the Municipal Court of Pristina in 2009 and what kind of effect it may have had on the legal relations between Ž and T on one side and Ž and the current possessor of the property R B on the other.
16. The Court only notes that even if it would be acceptable to have a post factum substitution of the non-concluded contract with a court decision under article 4, paragraph 4 of the Law on Trade of Immovable Property from 1981, amended in 1987[1], as the Municipal Court

[1] Law on Trade of Immovable Property, original title: Zakon o prometu nepokretnosti, published in Official Gazette of the SR Serbia nr. 43/81, amended in 1987 – OGSR 29/87. According to art.4, paragraph 4 states that: "In case the signatures of the contracting parties are not certified by a court, a contract on the transfer of

accepted in 2009, this decision, could not have affected the rights of the parties to the non-concluded contract *ex-tunc (from the outset of the relations between the parties in 1996)*.

17. Such decision could only have an effect for the future (*ex-nunc*), meaning after the moment it was taken in 2009. In that regard the decision would not have had any legal effect after all, because the property was already sold to a third person long before - in 2000.
18. In any case the claimant may be eligible to receive back whatever he had paid to T while waiting the apartment to be sold to him and may be eligible as well to receive some damages from the same T , who for some reason made Ž believe that he will be transferred the property but was not. If this is the case and if there is a dispute for return of money received without ground and/or compensation, those are not within the remits of the competence of this Court and the KPCC.
19. On the basis of the above and in accordance with section 12.2 of Law 03/L-079 and art 198.1 of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

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

Elka Filcheva-Ermenkova, EULEX Presiding Judge **Erdogan Haxhibeqiri, Judge**

Dag Brathole, EULEX Judge **Urs Nufer, EULEX Registrar**

rights to immovable property concluded in writing between ownership right holders may nevertheless deemed to be valid, if the contract has completely or predominantly been fulfilled, if the transaction did not exceed the limits established by law, if the taxes payable have been settled, if the right of pre-emption has not been violated and if other social interests are not violated, unless the trade is prohibited".