

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-206/2014

Prishtinë/Priština,
8 September 2016

In the proceedings of:

I.Z.

Bazhdarane 2, Kulla 5/13

Prizren/Prizren

Appellant

Vs.

R.B.

Beogradski kej 43 7

21000 Novi Sad

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/229/2014 (the case file registered at the KPA under No KPA13807), dated 13 March 2014, after the deliberation held on 8 September 2016 issues the following:

JUDGMENT

1. **The Appeal of I.Z. against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/229/2014, dated 13 March 2014, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No KPCC/D/R/229/2014 of 13 March 2014, as far as it regards the Claim registered with the KPA under the No KPA13807 is confirmed.**

Procedural and factual background:

1. On 20 October 2006, R.B. , (hereinafter “the Appellee”) in the capacity of the family household member of the alleged property right holder filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”), seeking the repossession over an apartment with the surface of 88.38 m² located in Str. Katarina Cica Patrnoic 1/13 in Prizren/Prizren, described as “red military building surrounded by 4 towers, constructed in 1975” (hereinafter “the claimed property”). He stated that his father was the property right holder of the claimed property and that the possession over it was lost due to the armed conflict, indicating 12 June 1999 as the date of loss.
2. To support his Claim he provided the KPA with the copy of the Contract on Purchase of the Immovable Property concluded on 31 January 1992 between the Socialist Federal Republic of Yugoslavia - Yugoslav Ministry of Defence, Nis, represented by the colonel M.P. as the seller and N. R.B. (the Appellee’s father) as the buyer. The subject of the contract was the sale of the claimed property. The Contract was certified by the Municipal Court in Prizren/Prizren (Ov.br.II.115/82). The Appellee also attached the copy of the letter of conformation (II 115/92) that the parties signed the Contract before the Court and that the sale was exempted from the taxes (No 80/92).
3. The case was registered under the number KPA13807.

4. The notification of the Claim was carried out on 9 June 2008. The claimed property - an apartment was found to be occupied by I.Z. (hereinafter “the Appellant”), who was present at the property. He claimed a legal right over it and signed the notice of participation on the same day. He asserted that had been “authorized by the legal owner to use the property”.
5. Subsequently, on 28 July 2009 I.Z. filed a Response to the Claim stating that he is in contact with the owner of the apartment: N.B. and the latter one is not aware of the fact that the Appellee filed a Claim to the KPAS. According to the Appellant, the owner agrees for him staying in the apartment until he comes and reaches agreement with the Appellant. Together with the Response I.Z. submitted the copy of the Contract on Use of the apartment No 137/559, dated 23 December 1980 concluded between the Directorate for Administration and Management of the JNA Military Housing Fund, branch in Nis/Niš and the Appellee’s father, on the basis of which the latter person was granted the right of use of the claimed property. On 12 October 2009 R.B. passed away.
6. The Appellant claimed that the property rights over the apartment belonged to “the SFRY and later to the Yugoslav Army and as none of them exist anymore, the apartment belongs to nobody.” He alleged that there are no documents confirming R.B.’s ownership rights over the apartment and that the latter one could have only used the apartment like the Appellant is doing now. Moreover he questioned the active legitimacy of the Appellee due to the fact that there was no Birth Certificate that would prove the family relations. The Appellant added he has been using the apartment for many years and has been paying property taxes for the flat.
7. On 13 May 2010 the Appellee replied to the Response and denied all the allegations mentioned by the Appellant. He underlined that “the owner of the property N.B., nor any family member have ever given any written or verbal consent to anybody in Prizren or Kosovo, and neither to the Respondent”.
8. From the Verification Report done on 6 August 2008 and the Consolidated Verification Report dated 26 March 2010, it appears that the Contract on Sale, legalised by the Municipal Court in Prizren/Prizren was positively verified.

9. On 13 March 2014, the Kosovo Property Claims Commission (hereafter “the KPCC”), through its Decision No KPCC/D/R/229/2014 (hereafter “the KPCC’s Decision”) granted the Claim. In the reasoning of it, the KPCC underlined that the evidence submitted by the Appellee was sufficient to prove the property right of his father over the claimed property.
10. The KPCC’s Decision was served upon the Appellant on 9 June 2014 and on the Appellee on 5 June 2014. On 24 June 2014 the Appellant filed an Appeal against the KPCC’s Decision. A copy of the Appeal was served on the Appellee on 13 October 2014. He responded to the Appeal on 29 October 2014.

Allegation of the Appellant

11. The Appellant challenged the KPCC’s Decision with the reasoning that it involves a serious violation of the law due to the fact that the Claim was filed by a person who had no legitimacy to be a party. Furthermore, he added that the Decision was rendered despite of lack of material evidence, because the allegations of the Appellee were based on a Contract, which was terminated after the Appellee’s father death.
12. The Appellee, in his response declared that the Appellant’s allegations are groundless and that his purpose is to prolong the procedure. He stated that the legitimacy issue rose by the Appellant does not stand, as he is family member (son) and a legal successor after his father – he submitted the copy of the Death Certificate of N.B. and of the Birth Certificate of R.B.. He requested the Supreme Court to reject the Appeal of the Appellant as ungrounded.

Legal Reasoning

13. The Appellant challenges the Decision claiming that he has the valid title to use the claimed property as the person who previously had the right to use it allowed him to stay. The Appellee instead argued that neither his father R.B., nor anyone from his family ever agreed on that. He argued first of all, that the Appellant lacks active legitimacy to be party

to these proceedings. The Appellee, submitted the copies of the Birth and Death Certificates.

14. The Supreme Court considers however, that the persons who fall under the definition of the “Member of the Family Household” are automatically entitled to submit the Claim on behalf of the property right holder. The definition of the “Member of the Family Household” is contained in Section 1 of the Administrative Direction No 2007/50 implementing the UNMIK Regulation 2006/50 and it reads as follows: *“the Member of the Family Household” means a spouse, children, (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder.*
15. In addition, Section 5.2 of the same Administrative Direction stipulates that *“In proceeding before the commission were the natural person is unable to make a claim, the claim may be made by a member of the family household of that person. A claimant may be represented by an authorized natural person by a valid and duly executed power of attorney. In exceptional cases where the provision of the power of attorney is problematic the Executive Secretariat may certify an alternative document authorizing representation of the claim”*. Hence, in the opinion of the Supreme Court, the Appellee being the son of the now deceased R.B. (those circumstances being proven through the submitted Birth and Death Certificates), was entitled to file a Claim on behalf of his father and now to act as his heir. In the view of the Supreme Court this allegation does not stand and N.B. has active legitimacy to act in the case at hand.
16. The Appellant argued that since the claimed property belonged to the SFRY and then to the Yugoslav Army, and considering that none of the mentioned previous owners exist now, the apartment “belongs to nobody”. However, the Appellant seems not to accept the fact that the apartment he has been living now for some years, was indeed sold to the now late Appellee’s father in the year 1992. The circumstance concerning the question of non-existence of the previous owners at the time the Judgment is being rendered remains without effect on the validity of the Sales Contract concluded in 1992. The Supreme Court assesses it was proven by the positively verified Contract that the property rights over the

claimed property were transferred in accordance with the law in force at the time it was signed.

17. The Appellant moreover argued that he has the same right to use the apartment as R.B.. However, the Appellant has not submitted any evidence confirming that circumstance. The documents attached to the Response to the Claim and to the Appeal were: the copy of the Contract on Use of the claimed property signed on one side by the Appellee's father in 1980 and invoices paid by the Appellant referring to the claimed property. It should be underlined here that the fact that R.B. entered into a Contract on Use some years before entering into Sale Contract was not denied by the Appellee. That element has no importance to the end of acquiring of the ownership rights by R.B. through the Sale Contract. Lastly, the invoices and tax payment certificates do not confirm the legal title of the Appellant to the claimed property, may not constitute a trustworthy evidence for the fact that the Appellant had the title to possess the claimed property. The fact R.B. passed away does not mean "the Sale Contract was terminated".

18. 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 proves his rights over the claimed property.

19. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when accepting the Claim of the Appellee. 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

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.

20. This Judgment has no prejudice to the Appellant's right to refer this 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 No 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar