

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-082/15

Prishtinë/Priština,
27 July 2017

In the proceedings of:

G. V.

Appellant

vs.

H. K.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/182/2012 dated 14 December 2014 (case file registered at the KPA under No. KPA00189), after deliberation held on 27 July 2017, issues the following:

JUDGMENT

1. **The appeal of G. V. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/182/2012 dated 14 December 2012 with regard to the claim registered with KPA under No. KPA00189 is accepted as grounded.**
2. **The Decision of Kosovo Property Claims Commission KPCC/D/R/182/2012 dated 14 December 2012 with regard to the claim registered with KPA under KPA00189 is annulled.**
3. **The Claim of H. K. for the right of use over the socially-owned apartment is dismissed due to lack of jurisdiction of the KPCC.**

Procedural and factual background:

1. On 31 August 2006, H. K. (hereinafter: the Appellee) filed a claim with the Kosovo Property Agency (hereinafter: KPA) seeking confirmation of the Use Right over an apartment with a surface of 65.96 m², located in the street “Vlado Cvetković” No 193, Municipality of Mitrovicë/Mitrovica (hereinafter: the claimed property). According to the Appellee the loss of possession over the claimed property occurred on 25 March 1999 as a result of circumstances of 1998/1999 in Kosovo.
2. To support her claim, the Appellee provided the KPA with the following documents:
 - Decision on Allocation No 2517/2 issued on 25 January 1980 based on which Self-Governing Community of Interests of Municipality of Mitrovicë/Mitrovica allocated to the Appellee an apartment for using purpose, located at street “Vlado Cvetković”,
 - Contract on lease of the Apartment No.1121 concluded on 6 November 1981 between Public Housing Enterprise of Mitrovicë/Mitrovica as lessor and the Appellee as lessee based on which the Appellee gained the claimed property for permanent use,
 - Confirmation letter No 52 issued by Public Housing Enterprise of Mitrovicë/Mitrovica on 26 November 1981 through which the Public Housing Enterprise confirmed that the Appellee was allocated for use the apartment with the surface of 65.96 m², located at street “Vlado Cvetković”,

3. On 24 December 2007, the Executive Secretariat of KPA notified the claimed property by placing a sign at the alleged location of the apartment, which turned out to be NOT occupied but destroyed house.
4. As no party filed a response to the claim within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079 the claim was considered as uncontested.
5. The Executive Secretariat of KPA managed to verify positively all the documents through which the Appellee supported his Claim.
6. On 14 December 2012, the Kosovo Property Claims Commission with its Decision KPCC/D/R/182/2012 decided that the Appellee has established the Use Right over the claimed property and that she had the Use Right at the date of destruction of the claimed property and she is entitled to the possession of the said property.
7. The Decision was served on Appellee on 27 September 2013.
8. On 27 August 2014, G.V. (hereinafter: the Appellant) received the KPCC Decision. He filed the appeal with the Supreme Court on 25 September 2014.

Allegations of the Appellant

9. The Appellant states that the KPCC Decision contains essential violation of the material law, also, erroneous and incomplete determination of the factual situation.
10. According to the Appellant, the exclusive owner of the claimed property was Sh. Sh. According to the Contract on Sale of the Apartment conducted between the State Found for Local and Uncategorized Roads of Mitorvië/Mitrovica and Sh. Sh. Sh. Sh. sold the apartment on 2006 to the Administrative District of Kosovska Mitrovica.
11. The Appellant alleges that he is not the usurper of the claimed property but he is living at the property based on the Contract on Lease that he has conducted with the Administrative District of Kosovska Mitrovica.
12. The Appellant especially notes that he was never informed by anyone regarding the proceedings before the KPA upon the Claim filed by Appellee, until one month ago when he received the KPCC Decision. Because of this, the Appellant alleges that he was not able to contest the Claim filed by Appellee.
13. By the end of his appeal the Appellant seeks Supreme Court to accept his appeal and issue a new Decision refusing the Appellee's Claim.
14. In support of his allegations, the Appellant attached to his appeal the documents as follows:

- Contract on Sale of the Apartment conducted on 25 May 1993 between Found for Local and Uncategorized Roads form Mitrovicë/Mitorivca and Sh. Sh. The Contract was legalized before Municipal Court of Mitrovicë/Mitrovica on 22 February 1994 by containing the legalization No. 127/94,
- Contract on Sale concluded on 1 February 2006 between Sh. Sh.in a capacity of the seller and Administrative District of Mitrovicë/Mitrovica in capacity of the buyer of the claimed property. The Contract was legalized before Municipal Court of Mitrovicë/Mitrovica on 1 February 2006 with the legalization No 10/06,
- Contract on Lease of the Apartment No 6/07 conducted on 28 December 2006 between G. V. as lessee and Administrative District of Mitrovicë/Mitorovica as lessor. The Contract was signed for 1 year duration,
- Contract on Lease of the Apartment No 6/07 conducted on 25 August 2011 between G. V. as lessee and Administrative District of Mitrovicë/Mitorovica as lessor. The Contract was signed for 1 year duration,
- Contract on Lease of the Apartment No 6/12 conducted on 16 November 2012 between G. V. as lessee and Administrative District of Mitrovicë/Mitorovica as lessor. The Contract was signed for 1 year duration,
- Contract on Lease of the Apartment No 6/07 conducted on 15 January 2014 between G. V.as lessee and Administrative District of Mitrovicë/Mitorovica as lessor. The Contract was signed for 1 year duration,

Legal reasoning:

Admissibility of the appeal

15. According to Section 12.1 of the Law No. 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property, a party may submit an appeal within thirty (30) days of the notification of the Decision.
16. The Appellant was not a party before the proceedings in KPCC. The claim was uncontested at first instance level.
17. Section 10.2 of the Law No. 03/L-079, requires that any person other than the Claimant who is currently exercising or purporting to have right to the property which is subject of the claim and/or any other person who may have legal interest in the claimed property shall be a party to the claim and the related proceedings, provided that such person informs the

- Executive Secretariat of his or her intention to participate in the proceedings within 30 days of being notified of the claim in accordance with section 10.1. The referred Section sets forth the ways of notification as notifying any person who might have legal interest or in appropriate cases in the form of announcement in the official publication of the Executive Secretariat.
18. On the other hand, Section 10.3 of the same Law provides the exception of that: *“A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.”*
 19. In the case at hand, the physical notification of the claim was done on 24 December 2007 founding the claimed property as not occupied destroyed house. Accordingly, the Appellant could not have known about the filed claim. The Appellant was only served with the Decision of the KPCC against which he filed an appeal.
 20. The Supreme Court concludes that he became a party to the proceedings as soon as he became aware of the claim through the appeal. In any case, the appeal is filed within the time limit provided in Section 12.1 of the aforementioned Law against the KPCC’s Decision. Since the Appellant pretends that he has a legal right over the claimed property, he has a legal interest in the claim. Thus, his appeal is admissible.

Merits of the appeal

21. After reviewing the case file submission, appealed Decision and allegations of the Appellant, pursuant to Article 194 of LCP, the Supreme Court found that the appeal is grounded and the Decision of the KPCC has to be annulled *ex officio* taken into account that the Claim does not fall within its jurisdiction.
22. The Claim concerns the leasing of the apartment of the Public Housing Enterprise of Mitrovicë/Mitorvica.
23. Pursuant to Article 3.1 of the Law no. 03/L-079, the KPCC has competence to resolve claims related to ownership right over private property and claims related to the right of use of private immovable property.
24. Pursuant to Article 2.1 of the UNMIK Administrative Decision 2007/5 for implementation of UNMIK Regulation 2006/50 on resolution of claims concerning the private immovable property, including agricultural and commercial property, amended by the Law no. 03/L-079, hereinafter the Administrative Direction (AD) “any person **who had the ownership right, lawful possession of or lawful right of use of or to private immovable property, who at the time of filling the claim was not able to exercise his/her property right**

- due to the circumstances directly related to or resulting from the armed conflict of 1998/1999, is entitled to the return of the property right, as property right holder”.**
25. The apartment in question was not a private immovable property and thus is outside the scope of application of proceedings before the KPA.
 26. The apartment was in the ownership of the Public Housing Enterprise of Mitrovicë/Mitorivca which means that it was a socially-owned property. Pursuant to article 321, paragraph 1 of the Law on Contested Procedure No.03-L-006, there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.
 27. Confirmation and protection of the rights of use over socially-owned properties and/or state-owned properties is not in the jurisdiction of KPCC, respectively the KPA Appeals Panel.
 28. Based on the above and pursuant to Article 12.2 of the Law no. 03/L-079 and Article 198.1 of the Law on Contested Procedure, the Court decided as in the enacting clause of this Judgment.

Legal advice:

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.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Sandra Gudaityte, EULEX Registrar