

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-127/13

**Prishtinë/Priština,
2 April 2014**

In the proceedings of

N

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S

Appellant

vs.

H SH

L H floor 2 11

P /P

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Dag Brathole, Presiding Judge, Elka Filcheva – Ermenkova and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA51833) dated 22 October 2012, after deliberation held on 2 April 2014, issues the following

JUDGMENT

1. The appeal of N R against the decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 dated 22 October 2012 (case file KPA51833), as far as the claim for ownership right is concerned, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 dated 22 October 2012 (case file KPA51833), as far as the claim for ownership right (based on a purchase contract OV.br. 359/02 from 5 December 2002) is concerned, is confirmed.
3. The decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 dated 22 October 2012 (case file KPA51833), as far as the claim for property use right is concerned is annulled and the claim for property use right (based on a decision on allocation of the apartment on rent No. 7/210 dated 6 October 1992) is dismissed as falling outside the jurisdiction of KPCC.

Procedural and factual background

1. On 7 December 2007 N R filed a claim with the Kosovo Property Agency (KPA) seeking ownership and/or property use right of a two bedroom apartment on Street “19 November” (today renamed Luan Haradinaj St) no. 4, apartment No. 4, second floor, surface 64,04 m² in Prishtinë/Priština. The date of loss was stated to be 12 June 1999. With the claim he submitted a decision on allocation of the apartment for rent dated 6 October 1992 and two purchase contracts concerning the apartment, both undated. One contract has been stamped by the University of Prishtinë/Priština on 26 December 1998, and the signatures on the contract were verified by the Municipal Court of Prishtinë/Priština on 5 December 2002.

2. N R had earlier filed a claim concerning the same apartment before the Housing and Property Claims Commission. In this case no response was filed. The claim was dismissed by Cover Decision No. HPCC/D//230/2005/C, dated 21 October 2005.
3. H Sh responded to the claim before the KPCC on 10 October 2008. He submitted *inter alia* an interim decision for temporary use of the apartment.
4. On 22 October 2012 the Kosovo Property Claims Commission (KPCC) in Cover Decision Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA51833), rejected the claim. The decision was served on N R on 17 April 2013. He filed an appeal to the KPA Appeals Panel of the Supreme Court on 29 April 2013. The appeal was served on H Sh on 15 August 2013. He did not reply to the appeal within the time limit of 30 days. The Supreme Court received the case file on 4 February 2014.

The allegations of the parties

5. N R asserts in the appeal that his case should be reviewed again as he has been the user of the flat since 6 October 1992.
6. During the proceedings before the KPCC, R stated that he claimed ownership of the flat in accordance with the purchase contract. The apartment was allocated to him as a member of the teaching staff of the University of Prishtina. He later purchased the apartment, as shown by the documents submitted to the KPA.
7. H Sh has not responded to the appeal. He submitted before the KPA an interim decision allocating the disputed apartment to him for temporary use. He has stated that the apartment was in a very poor condition when he took it over, and that he has had considerable expenses renovating it. Sh does not claim ownership of the apartment.

Admissibility

8. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including

Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*).

Legal reasoning

Claim of ownership

9. Both the decision of allocation and the purchase contracts that R have submitted have been negatively verified. Both purchase contracts are undated, but one contract bears a stamp from the University of Prishtinë/Priština dated 26 December 1998, which could indicate the date when the contract was made. However no court certification of the signatures on any of the contracts was made by a court at this time. On 5 December 2002 the “Municipal Court of Pristina” has certified the signatures on one of the contracts. However, the stamp of the court shows that this certificate has not been made by a court within Kosovo, and has in all probability been issued by a parallel court in Serbia. As such the certification has no legal effect in Kosovo.

10. Accordingly the purchase contract has not been made in accordance with the Art. 4 of the SRS Law on Trade of Immovable Property (Official Gazette of the Socialist Republic of Serbia, 43/81, 1 August 1981, p. 3050 or with Art. 4 of the Law on Transfer of Immovable Property (Official Gazette RS no. 42/98), whichever was applicable at the time of the alleged conclusion of the contract/s. The purchase contracts are therefore null and void.

11. The Supreme Court accordingly agrees with the KPCC that R has not submitted evidence that could substantiate his claim of ownership of the apartment. The Supreme Court finds that the KPCC decision is based on correct and complete determination of the facts and a correct application of the law. Based on the documents submitted by N R , he has failed to give proof of ownership of the apartment. In the light of this, pursuant to Section 13.3 under (c) of Law 03/L-079, it was decided to reject the claim and to confirm the decision of the KPCC as far as the claim for ownership is concerned, as stated as in paragraph 1 of the enacting clause of this judgment.

Claim for property use right

12. As R has failed to prove his ownership of the apartment, the Supreme Court finds that the apartment is either publicly or socially owned property. According to Art. 3.1 of Law No. 03/L-079

the competence of the KPCC is limited to “private immobile property”, R ’ claim for property use right is outside the jurisdiction of the KPCC. In the light of this,, pursuant to Section 12.2 under (c) of Law 03/L-079 and Art.. 198.1 of the Law on Contested Procedure (Law No. 03/L-006), it was decided to annul the decision of the KPCC and dismiss the claim as far as the claim for property use right is concerned, as stated as in paragraph 2 of the enacting clause of this judgment.

13. Pursuant to Art. 3.2 of Law 03/L-079, claimants have the right to pursue before courts of competent jurisdiction claims that are outside the jurisdiction of the KPCC as described in 3.1 of the same law.
14. The Supreme Court remarks that this judgment does not in any way confer any right on H Sh .

Legal Advice

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

Dag Brathole EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EULEX Registrar