

**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-1/10

Prishtinë/Priština

26 August 2011

In the proceedings of:

N.A.

Appellant

vs.

V.V.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/23/2008, (case file registered at the KPA under the number KPA17068), dated 28 August 2008, after deliberation held on 26 August 2011, issues the following

JUDGMENT

- 1- The appeal of N.A. is rejected.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/23/2008, dated 28 August 2008, in the case registered under the No. KPA 17068 is confirmed.

- 3- **Costs of proceedings determined in the amount of 130 Euros (one hundred and thirty Euros) are to be borne by the appellant, N.A. and to be paid to the Kosovo Budget within 15 days from the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 5 March 2007, V.V. filed a claim with the Kosovo Property Agency (KPA) seeking for property right confirmation over the apartment located 66 A, Rade Popovic Street, 4th floor-No. 20 in Gjilan/Gnjilane, with a surface of 56, 36 m².

To support his claim, he provided the KPA with the purchase contract of the apartment No. 303-3 concluded between the State of SFRY-FSPD Military Post 5374-1 Niš as seller and himself as buyer on 30 January 1992 and certified on 10 February 1992 under the number Ov.br.174/92 at the Municipal Court of Gjilan/Gnjilane.

In its notification report, the KPA noted that the litigious apartment was occupied but that, due to the lack of cooperation of the neighbors, it could not identify the occupant who was not present. The KPA processed to the publication of the claim on 16 July 2007 and to its notification by putting a poster on the apartment three times, on 27 February, 5 March and 2 April 2008. Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

The verification report of the KPA confirmed that the above mentioned contract was found at the Municipal Court of Gjilan/Gnjilane.

In the claim processing report to the KPCC, it is mentioned that the date of loss of possession is 1 January 1999.

By its decision of 28 August 2008, the Kosovo Property Claims Commission (KPCC) decided that the claimant had established ownership of the claimed property and was entitled to possession of the said property and that any person occupying the property had to vacate it within 30 (thirty) days of the delivery of the decision.

The claimant received the KPCC Decision on 15 May 2009 and filed a request for repossession on the same day.

On 8 January 2010, N.A. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision.

He explained that he was living in Switzerland and discovered the notification of the claim as soon as he came to the litigious apartment. Since he was late to reply to the claim he decided to file an appeal.

In his appeal, he implicitly maintained that the appealed decision was taken on wrong or incomplete determination of the facts: he asserted that he purchased the litigious apartment from R.M. on 7 September 2001 through the contract No. 1773/2001 certified by the Municipal Court of Gjilan/Gnjilane and that R.M. had bought the same of D.D. on 26 July 2001 through the contract No. 1680/2001 also certified by the Municipal Court of Gjilan/Gnjilane on 29 August 2001.

In support of his appeal, he provided the Supreme Court with the two contracts.

The appellee was served with the appeal on 21 January 2010. He replied on 22 February 2010, asking for the confirmation of the decision of the KPCC. He emphasized that his purchase contract had never been annulled and provided the Supreme Court with the evidence of the payment of the sale price together with the receipt of this payment.

By order issued on 13 May 2011, the appellant was requested to provide the Supreme Court with the certified sale contract No. 255/99 dated 26 January 1999 and its annex No. 395/99 dated 28 January 1999, which were mentioned in the contract No. 1680/2001 as being the previous sale contract having given the ownership right to D.D.. The appellant was also requested to provide the Supreme Court with the sale contracts related to the same apartment signed between 1992 and 1999.

With the order issued on 20 June 2011, the appellant was granted an extension of deadline until 24 July 2011 to comply with the previous order.

On 22 July 2011, he filed his answer, in which he maintained that he bought the litigious flat and then discovered that the sale contracts presented to and signed by him could have been forged documents. He submitted the criminal report sent on 1 February 2011 to the Prosecutor of

Gjilan/Gnjilane in which he had explained his fears that R.M. had committed a fraud by having sold a flat while having known that this flat was owned by V.V..

Legal reasoning:

Admissibility of the appeal:

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by 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.

Pursuant to Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079: “*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.*”

In the present case, neither the claim nor the first instance decision was ever served on the appellant. According to the KPA, N.A. presented himself spontaneously at the regional office of the KPA in Gjilan/Gnjilane on 8 January 2010 after having discovered the posters publishing the claim under the door of the apartment, willing to file a reply to the claim.

There is no element in the case file allowing the Court challenging N.A.’s statement related to his residence in Switzerland and to the fact that living far from Kosovo had hindered him to reply to the claim within the deadline. Therefore the Court considers that he became aware of the claim and of the KPCC decision only a short time before he came to the regional office of the KPA in Gjilan/Gnjilane.

Concerning the time he was given knowledge of the KPCC decision, the report of the KPA ascertains that it occurred at the moment N.A. presented himself at the Regional Office. Therefore, N.A. filed his appeal as soon as he knew this decision. From this, the Court concludes that he timely filed it.

Since the appellant pretends that he is the owner of the claimed property, he has a legal interest in the claim.

Thus his appeal is admissible.

The merits:

Section 20 of the Law on Basic Property Relations (Official Gazette SFRY, No.6/80) reads:

“The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law.”

The contract of sale is one of the legal relations that allow acquiring the property right.

Furthermore, Section 45 of the same law reads:

“The property right that certain person holds over the property shall cease when some other person acquires the property right over that property.”

According to those provisions only a subsequent acquisition of the property right can induce the end of a previous property right. In other words, a continuous chain of subsequent transfers of a property right is needed to ascertain that the last transfer is valid.

In the present case, both the appellant and the appellee provided the Court with a written contract of sale of the litigious apartment. The appellant also provided the Court with the contract of sale that preceded his. Those three contracts bear the mention that they were certified by the Municipal Assembly of Gjilan/Gnjilane.

However, the appellant did not bring the evidence that the contract of sale concluded on 30 January 1992 with the appellee as buyer has ever ceased.

The contracts he brought to the Court were respectively dated 29 August 2001 and 7 September 2001. The older one refers in its Article 1 to a precedent sale contract No. 255/99 dated 26 January 1999, certified by the Municipal Court of Niš, and to its annex No. 395/99 dated 28 January 1999.

Such documents are not sufficient to bring the evidence that a transfer of the property right over the apartment at hand had ever occurred between 1992 and 1999. Moreover, the appellant was formerly requested by the Supreme Court to provide the sale contract which is supposed to have been passed

before the contract No. 255/99. Not only he cannot submit this document but he submitted a criminal report showing his own doubts about the regularity of the transactions passed with him.

Furthermore, the Supreme Court points out that the contract dated 26 January 1999, mentioned in the contract dated 29 August 2001 but not provided, in case it would have existed, would have allegedly been concluded one month after the date of loss of possession of the apartment indicated by V.V. to the KPA. This element contributes to question at least the circumstances in which this contract might have been passed.

For all these reasons, the Supreme Court concludes that the property right acquired by V.V. through the sale contract signed on 30 January 1992 has never ceased and that the contracts signed later on do not validly allow the parties to these contracts validly acquiring the property right over the apartment, subject matter of the case at hand.

The appealed decision therefore has to be upheld.

Costs of the proceedings:

Pursuant to Article 8.4 of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission.

However such exemption is not foreseen for the proceedings before the Supreme Court.

As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Supreme Court.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): 30 €
- court fee tariff for the issuance of the judgment (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being 20.000 €: 50 € + (10.000 € X 0,5 %) = 100 € .

These court fees are to be borne by the appellant that loses the case.

According to Article 45 of the Law on Court Fees, the deadline for outstanding fees payment is 15 days from the day the judgment is delivered. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

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.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, Eulex Registrar