

**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-96/13

Prishtinë/Priština

12 November 2013

In the proceedings of

I.SH

Claimant/Appellant

vs.

SH.M

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 (case file registered at the KPA under the number KPA00262) dated 5 September 2012, after deliberation held on 12 November 2013, issues the following

JUDGMENT

1. The appeal of I.SH against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 regarding case file registered at the KPA under the number KPA00262, is rejected as unfounded.
2. The decision of the KPCC/D/C/184/2012 regarding case files registered at the KPA under the number KPA00262 is confirmed.

Procedural background

On 16. January 2007 I.SH filed a claim with the Kosovo Property Agency (KPA), seeking repossession and ownership of the commercial property Dardania SU 6/6 LB3 in Prishtina. In the claim I.SH is stated as the claimant, and N.S is stated as the property right holder. It was also stated in the claim that S.M was the current occupant of the property.

With the claim I.SH submitted a contract which states that N.S purchased the property from M.A.P City. The contract is not signed or dated. In the contract it is however said that the purchase price shall be paid on 1 February 1991, thus indicating a possible time for the negotiation and finalization of the alleged contract.

In the claim it is stated that N.S lost his right to the property on 1 June 1999.

In the claim I.SH is stated to be the claimant, whereas N.S is named as the property rights holder. The KPA and KPCC handled the case with Sh. as the claimant.

On 20 April 2001 N.S signed a Power of Attorney, which gave I.SH full factual and legal power over the property. The signature on the Power of Attorney has been confirmed, and the document has been verified by the KPA.

In a letter to the KPA dated 27 November 2008 I.SH has stated that his son A.SH bought the property from N.S on 7 March 2002. When the agreement was made, I.SH represented N.S in accordance with the Power of Attorney.

A.SH sold the property to A.J on 23 April 2008.

When served with the claim on 8 August 2008, S.M, stated that had a legal right to the property. His position was clarified in a letter dated 23 April 2010 from his lawyer F.SH. In this letter the lawyer states that the alleged contract between the Municipality of Pristina and S. was falsified, as the alleged verification by the Court of Pristine/Pristina refers to a completely different document, a power of attorney in the name of A.T. The lawyer claims that S.M possessed the property from 1990 to 1994, when it was taken from him by the Serbian interim measures of the Public Housing Enterprise in Prishtina. M. repossessed the property again after the war, from August 1999, and he has leased the property since from the Public Housing Enterprise (PHE).

On 27 April 2010 the PHE has made a response to the claim which it states that it had been given notification of on the day before. In the response the PHE stated that it was the owner of the property, and that it had been rented out to several tenants since 1991 until the present day. In its response the PHE claims that the contract of 1991 is a falsification.

I.SH made a new written statement on 27 September 2012, reiterating his position. In the statement he also claims that the PHE is the administrator of the property, not the owner. The ruling 08. Nr. 355-14 dated 28 January 1983, issued by the Secretariat for Urbanism, Municipal affairs and Apartments of the Municipality of Pristina, is given only to administration and management, and not into ownership. Therefore the respondents do not have any right over the property, and have occupied the property without any legal base.

I.SH also states that the director of the PHE and SH.M are friends and has family relations, and rents the property to M. at a low price, sharing the difference among them.

In this statement, I.SH has named S., S. and B.M as respondents. However S. and B.M have not responded to the claim at any time.

In its cover decision of 14 December 2012 on page 6 under the headline "Claim nr. 00262" the KPCC dismissed the claim. The KPCC stated that the claimant had been able to exercise his property rights after the conflict because he had sold his property in 2008. The claim was therefore outside the KPCC's jurisdiction in accordance with UNMIK/REG/2006/50 Section 3.1.

The decision was served on I.SH on 22 March 2013. He filed an appeal against the decision on 22 April 2013. In the appeal he states that the lease contract presented by SH.M is not valid because the PHE is not the owner. The legitimate owner is A.J from Kosovo. Furthermore he refers to the facts that have been presented before the KPCC.

The appeal has been served to PHE and SH.M and PHE on 20 June 2013, neither of whom has responded within the 30 day deadline.

Legal reasoning

The appeal has been submitted within the legal time frame of 30 days prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079. The time limit expired on Saturday 20 April 2013. The appeal has been made in due time in accordance with the Law on Contested Procedure Art. 126.5, which is applied *mutatis mutandi* according to UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079 art. 12.2.

In the claim I.SH is stated to be the claimant, whereas N.S is named as the property rights holder. The KPA and KPCC handled the case with Sh. as the claimant, and it is also he who has appealed the KPCC decision.

The Supreme Court finds the question of whether I.SH has a legal interest in the claim, doubtful. According to his own submissions, I.SH has at no time been the owner of the property. On 20 April 2001 he was given the right to dispose over the property as an owner through a Power of Attorney. On 7 March 2002 the property was sold to A.SH, who is the son of I.SH. I.SH acted on behalf of N.S when the agreement was made in accordance with the Power of Attorney. On 16 April 2008 A.SH sold the property to A.J.

However the Supreme Court does not have to decide on the question of who would be the correct claimant. The Supreme Court agrees with the KPCC that the case does not under any circumstance fall under the jurisdiction of the KPCC, although with another reasoning than that of the KPCC.

The KPCC has reasoned that the “claimant” (I.SH) sold the property in 2008, and that he therefore was able to exercise his rights over the property after the conflict. This is not correct or relevant. A.SH bought the property in 2002 and sold it in 2008.

Even so the Supreme Court agrees with the KPCC that the claim falls outside the Commission’s jurisdiction

The disputed question between the parties is whether N.S bought the property from Municipal Assembly of Pristina City around January 1991, as stated in the unsigned and undated contract that has been submitted in the case. Such a purchase is a prerequisite for the contracts of sale that were later made. This dispute has no relation to the armed conflict that occurred between 27 February 1998 and 20 June 1999,

and the dispute is not within the jurisdiction set in UNMIK Regulation 2006/50 art. 3.1. The conflict has to be resolved by the ordinary courts of Kosovo.

Accordingly the appeal is rejected and the decision of KPA is confirmed.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by 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

Sylejman Nuredini, Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar