

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-143-13

Prishtinë/Priština

12 March 2014

In the proceedings of

Z. O.

Represented by J. R.

L.

S.

Appellant

Vs.

1. Q. G.

I.K. S ./1 L. 3 .-8 3.

P./P.

2. K. E. e K./E.a K. K.

S.N. T. nr. 36

P./P.

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Dag Brathole, EULEX Presiding Judge, EULEX Judge Elka Filcheva-Ermekova and Judge Shukri Sylejmani on the appeal

against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA36389) dated 14 December 2012, after deliberation held on 12 March 2014, issues the following

JUDGMENT

The decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA36389), dated 14 December 2012, is annulled and the claim is dismissed as it does not fall within the jurisdiction of the KPCC.

Procedural and factual background

1. On 3 May 2007 Z. O. filed a claim with the Kosovo Property Agency (KPA) seeking ownership of a 2 room apartment with a surface of 60,83 m² on the eighth floor with the address Dardanija SU-9/1 3/8 in Prishtinë/Priština. The claim was made as a household member on behalf of her husband, M. O., who was stated to be the property right holder. The date of loss was stated to be 1 June 1999. With the claim Z. O. submitted a purchase contract for the apartment dated 12 November 1998 between JP. Termoelektrane “Kosovo” and M. O.. The contract bears a stamp dated 3 February 1999, where it is given the number 158. She also submitted a lease contract between the same parties dated 17 November 1998 and a decision dated 15 September 1998 made by JP. Termoelektrane “Kosovo” giving D. O. the same apartment on lease for an indefinite period of time, stating M. and Z. O. and their children as members of the family household.
2. In the claim Z. O. also demanded compensation for illegal use of the apartment.
3. Q.G.responded to the claim on 21 March 2008.

4. On 3 August 2010 the KPA made a verification report at where it is stated that the purchase contract was given a negative verification. The verification was done at “E.”, which is another name for JP. T. Kosovo, which has changed name to K. E. e K./E. Korporasjia K.. (K). It follows from the verification report that KEK considers itself to be the owner of the apartment. The KPA understood this to be a response to the claim, and registered K. as a respondent in the case.
5. In decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 (regarding case files registered at the KPA under the number KPA36389), dated 14 December 2012 the KPCC rejected the claim for ownership and dismissed the claim for compensation.. According to the individual decision dated 2 April 2013 paragraphs 30, 31 and 45 of the cover decision apply specifically to the claim. In paragraph 30 it is stated that the claim of ownership was rejected because of lack of evidence. According to paragraph 45 the claim for compensation was dismissed because the KPCC has no jurisdiction over such claims according to 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*)
6. In the individual decision, dated 2 April 2013, the respondents are stated to be Q. G. and H.D.. H. D. is the legal representative of KEK. Naming him as a respondent is an obvious error. It follows from the documents that the KPCC has in fact considered KEK to be the second respondent.
7. The decision was served on Z. O.ć on 15 May 2013. She filed an appeal to the Supreme Court on 10. June 2013. The appeal was served on Q. G. on 14 November 2013. He has not responded to the appeal within the time limit set. KEK has responded to the appeal on 24 October 2013, stating that it had become aware of the decision informally. The appeal was served on H. D.on 8 November 2013. He has not responded to the appeal personally. The Supreme Court received the case file on 31 January 2014.

The allegations of the parties

8. Z. O. alleges that the KPCC has not made correct and complete determination of the facts. The KPCC has wrongly found that the contracts submitted could not be verified. The KPCC did not give any kind of evaluation on the validity of the documents, which were duly issued by the apartment giver, JP. T.” Kosovo”. The KPA was satisfied only with the fact that this company

could not confirm the authenticity of the documents. The KPA has neglected to assess whether Orlić worked in the company, and whether the apartment was allocated to him. The KPA should have heard the claimant and the family in order to determine the facts completely and correctly.

9. Q.G. stated before the KPCC that he has lived in the apartment for a while with the understanding and permission of the owner. He is interested in buying or renting the apartment if proper documents are issued.
10. K.E. e K.E. K. K. alleges that the appeal is completely ungrounded, and should be rejected for the same reasons as those stated by the KPCC. None of the documents submitted by Z. O. could be verified, as they were issued by illegal authorities. Therefore it is not established that M.O. owned the apartment.

KEK proposes that the Supreme Court should reject the appeal and order that Q. G. should vacate the apartment.

Legal reasoning

11. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of Law No. 03/L-079.
12. The Supreme Court will first assess whether the KPCC has jurisdiction in the case. In order to do this, it is necessary to determine whether M. O. was the owner of the disputed apartment at the time the family fled from Pristina.
13. As proof of ownership Z. O. has submitted a contract dated 12 November 1998, according to which M. O. has bought the apartment for 53 236,18 dinars. However the KPA has verified the contract negatively, because the contract has not been found in the archive of KEK. Furthermore the signatures of the contracted parties have not been certified by the court. According to Article 4 second paragraph of Law on Transfer of immobile property (Official Gazette RS no. 43/81), a contract on transfer of immovable property, where the signatures of the contracting parties are not confirmed by the court, does not have legal effect. Accordingly Z.O. has failed to provide the KPA with a valid contract of purchase.
14. KEK (earlier called JP. T.e “Kosovo”) was, and is, a publicly owned company. As the jurisdiction of the KPCC in accordance with Art. 3.1 of Law No. 03/L-079 is limited to claims with respect to private immovable property, the claim is outside the jurisdiction of the KPCC. Accordingly the

decision of the KPCC has to be modified so that the decision is annulled, and the claim is dismissed.

15. The Supreme Court cannot take into consideration the request from KEK to order that Q. G. should vacate the apartment for the following reasons:

Firstly, the case is not within the jurisdiction of the KPCC. Secondly, the subject matter of this case is the ownership claim of Z. O. against the respondent who is in possession of the property – Q. G.. Possible disputes between the two respondents KEK and Q. G. are not within the subject matter of the case.

In the light of foregoing, pursuant to Section 12.2 under (a) of Law 03/L-079, it was decided as in the enacting clause of this judgment

This judgment does not prejudice the right of Z. O. to file an eventual claim of property use right or privatization before courts of competent jurisdiction. The Supreme Court refers to Art. 3.2 of Law No. 03/L-079 and Art. 198.1 of The Law on Contested Procedure.

Legal Advice

Pursuant to Section 13.6 of 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

Shukri Sylejmani, Judge

Urs Nufer, EULEX Registrar