

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-210/13

Prishtinë/Priština,
22 April 2015

In the proceedings of:

D. B.

Appellant

vs.

M. S.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA01206), after deliberation held on 22 April 2015, issues the following:

JUDGMENT

1. **The appeal of D. B. against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 dated 13 February 2013 with regard to the claim registered with KPA under No. KPA01206 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 dated 13 February 2013 with regard to the claim registered with KPA under No. KPA01206 is annulled.**
3. **The claim of D. B. 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 9 November 2007, D. B. (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of the user right over an apartment with a surface of 82.35 m², located in the street “Milos Obilič” Lam D in Obiliq/Obilič (hereinafter: the claimed property). He lost the possession of the claimed property on 1 June 1999 as a result of circumstances of 1998/1999 in Kosovo. He seeks confirmation of ownership and return of possession over the property.
2. To support his claim, the claimant provided the KPA with the following documents:
 - Decision no.456/98-5 on establishing the committee for allocation of apartments, issued by the Public Enterprise “Elektroprivreda Srbije” on 17 December 1998.
 - Decision no.1834 for allocation of apartment, issued by the Public Enterprise “Termoelektrana Kosova” on 25 December 1998, through which D. B. is allocated for use (based on lease for unlimited period of time), the apartment located in Obilič/Obiliq, Lamella D, with a surface area of 82.35m².
 - Contract on use of the apartment no.1834-1, issued by the Public Enterprise “Termoelektrana Kosova” on 28 December 1998. The contract was concluded between “Termoelektrana Kosova” and D. B. for an unlimited period of time.

3. On 15 January 2008, KPA notified the claimed property by placing a sign at the alleged location of the apartment, which turned out to be in the possession of M. S. (hereinafter: the respondent). The respondent participated in the proceedings before the KPA, claiming that the apartment was allocated to her by the Municipal Assembly of Obilič/Obiliq in 2005.
4. To support her allegation, she provided the KPA with the following:
 - Decision No.01-42/05, issued by the Municipal Assembly of Obilič/Obiliq on 16 March 2005, based on which M. S. was allocated an apartment with lease for 10 years at the “D” building, with a surface of 82.35m².
5. According to KPA verification reports of 2008 and 2012, allocation decision and contract on use submitted by the claimant in support of his claim were not found, thus, the verification of the documents was negative.
6. On 13 February 2013, the Kosovo Property Claims Commission rejected the claim through the decision KPCC/D/R/191/2013. In paragraphs 46 and 47 of the cover decision, which according to the certified decision dated 13 February 2013 applies specifically to the claim at hand, it is said that the Executive Secretariat did not verify the documents submitted by the claimant. The Executive Secretariat also could not obtain evidence *ex officio* to support the claimant’s claim. Due to lack of sufficient evidence in support of the claim, the claimant failed to prove his use right over the claimed property. Thus, the claim is rejected.
7. The decision was served on D. B. on 19 June 2013. D. B. (hereinafter: the appellant) filed an appeal on 18 July 2013. The same decision was served on M. S. (hereinafter: the appellee) on 19 June 2013.
8. The Supreme Court received the matter on 17 October 2013.
9. The appeal was served on the appellee on 30 October 2013. She did not respond to the appeal.

Allegations of the parties:

10. The appellant states that the KPCC decision contains essential violations and wrongful application of the material and procedural law because he was prevented from re-possession of the apartment and thus prevented from purchasing the apartment, which he had obtained based on decisions attached to the appeal.
11. According to the appellant, the reasoning that the Executive Secretariat could not verify the documents submitted by him at the competent institutions does not stand, because the Executive Secretariat could have held a hearing session in which the appellant would participate and it would be ascertained that he had obtained the contested apartment lawfully, based on already submitted documents.

Legal reasoning:*Admissibility of the appeal*

12. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law no. 03/L-079 and is admissible.

Merits of the appeal

13. The claim concerns the leasing of the apartment of the Public Enterprise “Termoelektrana Kosova”.
14. 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. Therefore, for the Supreme Court it is necessary to determine if the property of the Public Enterprise “Termoelektrana Kosova” is private property.
15. 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 filing the claim is 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**”.
16. The apartment in question was not a private immovable property and thus is outside the scope of application of proceedings before the KPA.
 17. The apartment was in the ownership of the Public Enterprise “Termoelektrana Kosova”, 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.
 18. There is no argument whether this apartment was given for use to the appellant in 1998, because the documents he submitted before the KPA were not positively verified. Nevertheless, this is not relevant.
 19. 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.
 20. Although the Appellant’s allegations that he obtained the right of use based on the contract on use through lease no.1834-1 were subject of examination and evaluation, the court found that the verification team ascertained that such a contract was not positively verified.
 21. Therefore, the contested apartment is still registered as socially-owned property , so the claim for this apartment, according to the provision 3.1 (b) of the Law no. 03/L-079, is not within the competency of KPCC.
 22. 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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar