

**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-003/14

Prishtinë/Priština, 9 June 2015

In the proceedings of:

N. K.

Appellant

Representative: N.K.

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. KPA14782), henceforth also: the KPCC Decision, after deliberation held on 9 June 2015, issues the following

JUDGMENT:

1. The appeal of N. K. against the Decision of the KPCC no. KPCC/D/R/199/2013, dated 18 April 2013, is rejected as unfounded.
2. The decision of the KPCC/D/R/199/2013 is confirmed as far as it concerns claim no. KPA14782.

Procedural and factual background

1. On 29 November 2006 N.K. filed on behalf of N. K. a claim at the Kosovo Property Agency (KPA). She claimed that N. K., her daughter in law, is holder of an occupancy right over apartment Durmis Aslani Street, Bloc II, number 38 in Prizren with a surface of 41,51 m² (henceforth: the claimed apartment). She states that she lost her right to the claimed apartment as a result of the circumstances in 98/99 and the date of loss was 13 June 1999.
2. N. K. submitted *inter alia* to KPA:
 - A document (henceforth: allocation decision) that holds the number 166/98 and reads *inter alia*:
 ‘Director of DD ‘Grafika’ Prizren, on 22.06.1998, reaches a following DECISION
 1. An apartment with area of 41,51 m² in residential business centre ‘Culjan’ bloc II apartment no. 38 is allocated for lease, for an indefinite period of time, to accountant in financial department N. K.. (...) Slavoljub Furnjanovic, dipl.’
 - A document (henceforth: lease contract) that holds the number 167/98 and reads *inter alia*:
 ‘CONTRACT ON LEASE
 Concluded on 5.08.1998 in Prizren between:
 Lessor DD ‘Grafika’ Prizren represented by Director Slavoljub Furnjanovic, dipl. ecc, and Lessee N. K. from Prizren, accountant in financial department of DD ‘Grafika’ regarding the following:
 Article 1:
 Based on the final decision no. 165/98 dated 22.06.1998. DD ‘Grafika’ Prizren in Prizren is allocating for use through lease, for an indefinite period of time, an apartment out of solidarity in Residential business centre ‘Culjan’, bloc II, apartment no 38, area 41,51 m² (...) to accountant in financial department N. K. (...)’

- Two telephone bills from 20.02.99 till 20.04.99 in the name of N. K. and addressed DURMIŠ ASLANI II 38, 38400, 010 Prizren.
3. KPA identified the claimed apartment and notified the claim.
 4. No other party participated in the proceedings before KPCC.
 5. KPA tried to verify the documents meant here fore under paragraph 2.
 6. KPA added to the file an email sent from the responsible official of Socially Owned Enterprise (SE) NGLB 'Kosovo' (ex-Grafika) via Kosovo Privatisation Agency to KPA on the verification that reads:

In our archive records there is no information in regard to this transaction contract or for the mentioned apartment, the contract seems to be in the same form with a copy of the contract of another apartment. We do not have any further records due to fact that SE is in Liquidation and there are no administrative personnel in this SE.'
 7. Verification reports of KPA on the allocation decision and the lease contract, dated 7 February 2012 read *inter alia*:

'Status: Verification negative; Verified at: Public Housing Enterprise; Comments: According to the privatisation officer Mr. Izet Hasolli there are no data in their archive regarding this purchase contract for the said apartment submitted by the party and the have no other data.'
 8. A consolidated Verification Report, dated 19 February 2013, from KPA reads *inter alia*:
 - 'Document type: Allocation decision; Document reference: No. 166/98; Document date: 22/06/1998; Submitted by: Claimant; Verified date: 19/02/2013; Verified at: Allocation Right Holder-Prizren; Verification method: Comparison with public record; Verification result: Document not found; Verification status: Verification complete negative'
 - 'Document type: Contract on use; Document reference: No. 167/98; Document date: 05/08/1998; Submitted by: Claimant; Verified date: 19/02/2013; Verified at: Public Housing Enterprise-Prizren; Verification method: Comparison with public record; Verification result: Document not found; Verification status: Verification complete negative'
 - 'Document type: Utility bill; Document reference: N/A; Document date: 26/05/1999; Submitted by: Claimant; Verified date: 15/06/2009; Verified at: Public Companies -PTK-Prizren; Verification method: Authorized person confirmed; Verification result: Document found; Verification status: Verification complete positive'.
 9. The KPCC refused the claim. KPCC reasoned in paragraphs 10 and 27 of the Cover Decision as far as relevant: the Claimant does not hold a valid and duly executed power of attorney authorizing her to act on behalf of the alleged property right holder. Furthermore, the Claimant has not provided any evidence that would suggest that she herself enjoys any property rights

over the claimed property, nor has the Executive Secretariat obtained *ex officio* any such evidence.

10. The decision was served upon N.K. on 29 August 2013.
11. Appellant, represented by N.K., filed an appeal against the KPCC decision on 25 September 2013. With her appeal she sent a certified Power of Attorney, in which Appellant authorizes N. K. to represent her in this case (henceforth: the Representative).
12. No other party participated in the appeal procedure before the Supreme Court.

Allegations of the Appellant

13. The Representative alleges that KPA never requested to submit a Power of Attorney and that she in appeal sends a Power of Attorney to substantiate she is authorized by Appellant to represent her.
14. She also alleges that Appellant with all the evidence submitted, without a doubt determined that Appellant was the legal owner of the claimed apartment and lost it due to circumstances that derived from the armed conflict between 27 February 1998 and 20 June 1999. She also alleges KPA did not request for more evidence. She claims repossession of the claimed apartment.

Legal reasoning:

Admissibility of the appeal

15. The appeal is admissible because Appellant sent in a sufficient Power of Attorney. If there had been any doubts about the authorisation to the Representative to represent Appellant in the first instance, this doubts are lifted by the Power of Attorney sent in appeal.

Merits of the appeal

16. Although Appellant in the letter of appeal refers that she was the legal owner of the claimed apartment, the claim and the provided documents clarify that she is alleging to have a property use right on the claimed apartment, because she sent in (only) a lease contract and no evidence that implies she gained an ownership right over that apartment.
17. Therefore the question to be answered in appeal is whether KPCC made an erroneous or incomplete determination of the facts whereas Appellant alleges she had a property use right on the claimed apartment when she had to leave Prizren in 1999.

18. To answer this question is relevant whether the documents meant in paragraph 2 here fore provide sufficient evidence for the allegation of Appellant that she has a lease contract for the claimed apartment.
19. KPCC concluded, based on the verification reports, that Appellant provided with those documents not the needed relevant evidence for her claim.
20. The Supreme Court does not come to another conclusion on the determination of the facts. The verification efforts of KPA did not result in a positive verification of the lease contract and the allocation decision. On that basis KPCC decided rightfully to refuse the claim. The statement of Appellant in appeal that the submitted documents are enough to prove her allegations on the use rights to the claimed apartment cannot lead to another conclusion. The telephone bills, that were verified positively, do not prove a use right either.
21. This leads to the conclusion that the appeal stands to be rejected and the KPCC Decision to be confirmed.

Conclusion

22. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

23. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Kryetar i Kolegjit

Willem Brouwer, Gjqtar i EULEX-it

Rolandus Bruin, Gjqtar i EULEX-it

Nënshkruar nga: Urs Nufer, Referent i EULEX-it