

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-056/13

Prishtinë/Priština

20 July 2015

In the proceedings of:

L S
Banesa e S, kati III Nr.11
V

Appellant

Representative: A I, lawyer

vs.

S S
K
V

Appellee

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 KPCC/D/R/165/2012 (case file registered at the KPA under No. KPA00153), dated 5 September 2012, after deliberation held on 20 July 2015, issues the following

JUDGMENT

- 1- The appeal of L S against the decision of the Kosovo Property Claims Commission KPCC/D/R/165/2012 dated 5 September 2012 regarding the case file registered with KPA under number KPA00153 is rejected as ungrounded;

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/165/2012, dated 5 September 2012, as far as it regards the case registered under No. KPA00153 is confirmed.

Procedural and factual background:

1. On 22 November 2006, S S (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his ownership right and repossession of an apartment with the surface of 57.80m², situated in Vitia/Vitina, street 4 Juli, building S No.11 (henceforth: the claimed property). He explained that the property right over the claimed property was lost on 10 June 1999, as a result of the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
2. To support his claim, the Claimant provided the KPA with the following evidence:
 - An Allocation Decision No.360-74 issued by Municipal Assembly of Vitia/Vitina dated 8 March 1995 based on which the claimed property was allocated to the Claimant for permanent use.
 - A Lease Agreement numbered 51 concluded on 15 March 1995 between Fund for Construction Land and Non-categorized Roads from Vitia/Vitina as lessor and the Claimant as the holder of the tenancy right of the claimed property.
 - A Court Decision Gz.br.331/97 issued by the District Court of Gjilan/Gnjilane on 3 April 1997 by which the court rejected as unfounded, the appeal of the Municipality of

Vitia/Vitina against the Court Decision R.Br. 9/97 dated on 26 May 1997 issued by Municipal Court of Vitia/Vitina. The Court Decision R.Br.9/97 was confirmed.

- The Final Court Decision R.9/97 issued by Municipal Court of Vitia/Vitina on 26 May 1997 in which it was confirmed that the Claimant is entitled to purchase the claimed property owned by Municipality of Vitia/Vitina. The Claimant was obliged to pay to the Municipality of Vitia/Vitina the purchase price of 13,262.93 DIN (Serbian Currency), within 15 days after the decision has become final. The decision replaced the Purchase Contract that the parties were obliged to conclude and this Decision/Contract represents the basis of acquisition and registration of the property.
 - Other documents filed by the Claimant only dealt with determining the amount of the rent of the apartment and fees for the use of urban construction land.
3. On 30 January 2008, the KPA performed the notification of the claimed property. The apartment was found occupied by L S (henceforth to be referred as Respondent) who claimed to have a legal right to the claimed property. She participated in the KPA proceedings with the allegation that her husband, I S, has bought the claimed property from the rightful owner, V M in 2002.
4. In support of her allegation the Respondent submitted *inter alia* :
- The Final Judgment C.Nr.54/2002 dated on 6 September 2002 issued by Municipal Court of Vitia/Vitina by which the Municipal Court of Vitia/Vitina recognized the ownership right over the claimed property to V M. (Third party) from whom the Respondent maintains to have bought the same.
 - A Purchase Contract Vr.847/2002 dated on 2 October 2002, certified before Municipal Court Vitia/Vitina. The Purchase Contract was concluded between V M as the seller of the claimed property and I S in capacity of the buyer.
 - A Contract on Gift Vr.Nr.314/2003 certified before Municipal Court of Vitia/Vitina on 4 April 2003. The Contract was concluded between I S as the gift giver and his wife L K as gift receiver of the claimed property.
 - Invoices for the Property Tax Payments for 2003, 2004 and 2006 showing that I S has paid the property tax for above-mentioned years.
 - The Death Certificate No. 1712 issued by Civil Registration Office, Municipality of Prishtinë/Priština on 3 October 2006 showing that I S passed away on 25 September 2006.

- Marriage Certificate No. 2/9/461/1994 issued by Civil Registration Office, Municipality of Vitia/Vitina on 12 October 2006 showing that Isa Sejdiu was married to L K.
5. According to the Verification Report dated on 2 December 2008, the verification results of evidences submitted by both parties to the claim are as below:
 - Allocation Decision No. 360-74 dated 8 March 1995 and Lease Agreement No. 51 dated 15 March 1995 were not found. The officer of the archives in Vitia/Vitina confirmed that they do not possess any document from before 1999. Attempts were also made in Public Housing Enterprise in Vitina, but this institution does not exist anymore and employees are not active. There is no information about the documents that were before in their possession. The Executive Secretariat also tried to verify the document at the Municipal Court of Niš/Leskovac wherein the documents of the Municipal Court of Vitia/Vitina were transferred but the Municipal Court of Niš/Leskovac confirmed that abovementioned document was not transferred at the Municipal Court of Niš/Leskovac, thus, the verification resulted not positive.
 - The Decision Gz.br.331/97 issued by District Court of Gjilan/Gnjilane on 3 April 1997 was positively verified Municipal Court of Gjilan /Gnjilane.
 - The Final Decision R.9/97 dated on 26 May 1997 was positively verified.
 - The Final Judgment C.Nr.54/2002 dated on 6 September 2002 was positively verified.
 - Purchase Contract Vr.847/2002 dated on 2 October 2002 as well as the Contract on Gift Vr.Nr.314/2013 dated on 4 April 2003 were positively verified.
 - 6 With Decision KPCC/D/R/165/2012 dated 5 September 2012, the KPCC decided that the claim is grounded and recognized the ownership right of the Claimant over the claimed property and decided to return this immovable property into the possession of the Claimant. The Commission established that the provided documentation legitimates the Claimant as a lawful property right holder.
 - 7 The decision was served to the Claimant (henceforth: Appellee) on 30 January 2013. On 1 February 2013 L S received the KPCC decision. On 20 February 2013 Ajvaz Islami the lawyer representing L S (henceforth: the Appellant) filed an appeal. The appeal is served on Appellee on 15 April 2013. He did not reply to the appeal.
 - 8 The Supreme Court sent a court order to appellee, dated 16 February. He replied on 4 May 2015 and 15 June 2015. He submitted a copy of a payment slip of 13,262,93 DIN paid to

Municipal fund for residential construction of Viti/Vitina municipality, referring to the Court Decision R.9/97 and referring to date 26 May 1998.

The allegations of the Appellant

- 9 The Appellant states that the decision made by KPCC is based on an erroneous and incomplete determination of the facts.
- 10 The Appellant alleges that her deceased husband, I S, has bought the claimed property from the seller V M for a price of 22.000 Euro and the Purchase Contract was legalized before Municipal Court of Viti/Vitina on 2 October 2002. V M was the legal owner of the claimed property. This fact was confirmed by the Judgment C. Nr. 54/2002 dated on 6 September 2002 of the Municipal Court of Viti/Vitina.
- 11 According to the Appellant, the Judgment C. Nr. 54/2002 was issued based on valid legal grounds and supported on sufficient evidence, thus, in same time confirms her ownership right over the disputed apartment.
- 12 By the end of her appeal, the Appellant requests the KPCC to review once again the Decision.
- 13 The Appellant presented the same evidence that was considered before the first instance except the Power of Attorney No. 296/2013 dated on 6 February 2013 through which L S authorized the lawyer A I to act on her behalf in appeal.

Legal reasoning:

Admissibility of the appeal:

- 14 The appeal was filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079. The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal:

- 15 Following the review of the case file and appellant's allegations, pursuant to provisions of Article 194 of Law on Contested Procedure 03/L-006, the Supreme Court found that the appeal is ungrounded. The decision of the KPCC is correct; the Court finds neither erroneous nor incomplete determination of the facts.
- 16 For its reasoning KPCC made a special reference to the paragraphs 18, 42 -48 of the decision KPCC/D/R/165/2012. The KPCC indicated that the Claimant has submitted various documents in support of his claim, including an Allocation Decision dated 8 March 1995 and a Court Decision dated 26 May 1997, confirming the purchase of the claimed property by Claimant from the Municipality of Viti/Vitina on the basis of the Allocation Decision. The Executive Secretariat of KPA has been unable to verify the Allocation Decision, however the Court Decision dated on 26 May 1997 was positively verified and the KPCC finds that the existence of the Allocation Decision has also been proven.
17. In the KPCC's view, the Judgment from 2002 submitted by Respondent cannot be considered as sufficient evidence that she acquired ownership right over the claimed property on the basis of the Purchase Contract with the third party because the court procedure confirming the ownership right of the third party was undertaken without considering the complete factual background, particularly, that the Claimant had already established ownership right over the same property in 1997.
18. The Supreme Court concludes that the KPCC has taken a fair and grounded decision in complete and correct proceedings.
19. From the case file evidences is concluded that the Municipality of Vitia/Vitina allocated the claimed property to the appellee on 1995. On 1997 through the Court Decision R.9/97, that was confirmed by the Court Decision R.Br. 9/97 he has bought the claimed property. The Court Decision was based on article 16 of Law on Housing 50/92 (applicable at that time). The Appellee was obliged to pay to the Municipality of Vitia/Vitina the purchase price of 13,262.93 DIN (Serbian Currency), within 15 days after the Court Decision R.9/97 become final.
20. The Supreme Court ordered the appellee to present any evidence that he has payed to the Municipality, the purchase price of 13,262.93 DIN (Serbian Currency) as it was prescribed in the abovementioned Court Decision.

21. The Appellee answered to the Court order on 15 June 2015 by submitting :
 - The Invoice showing that he has paid the purchase price from 13,262.93 DIN, pursuant to Court Decision 9/97.
22. The Appellee was in possession of the claimed property until the conflict, when he was displaced. Hence, the Appellee fulfilled the requirement for a valid occupancy right according to the Law on Housing Relations OG SAPK 11/83, latest 42/86) hereunder Allocation Decision, Lease Agreement, Purchase Contract/Court Decision and possession.
23. The Appellant presented a Final Judgment C.Nr.54/2002 dated on 6 September 2002 issued by Municipal Court of Vitia/Vitina through which the ownership right of V M was confirmed and further that the latter sold the claimed property to the Appellant's husband. In the Judgment C.Nr.54/2002 it was established that V M had used the apartment from 1979, when it was allocated to him (based on the allocation decision No.01-57 dated 15 March 1988) by his employer, Municipality of Vitia/Vitna until 1993 when he had to leave Kosovo due to health reasons and went and lived in Bosnia.
24. However, the Supreme Court finds that Judgment C.Nr.54/2002 rests upon an erroneous or incomplete determination of facts. This is because Appellant lost his rights to the apartment by leaving it in 1993 and the Appellee established ownership right over the same property in 1997 confirmed in a decision by the same court. This fact was not taken into account by the court and there is no reason to be found for this neglect.
25. Consequently the appeal according to Section 13.3 (c) of the Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA 00153).
26. This Judgment has no prejudice to the Appellant's right to purpose her rights for compensation before the ordinary courts in Kosovo.

Legal Advice

27. 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.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar