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-110/13

Prishtinë/Priština,
20 July 2015

In the proceedings of:

M D
Village: V
N

Appellant

vs.

A A
Street: C D no.9
V /V

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Willem Brouwer, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 (case file registered at the KPA under no. KPA06718), dated 5 September 2012, after deliberation held on 20 July 2015, issues the following:

JUDGMENT

1. **The appeal of M D filed against the decision of Kosovo Property Claims Commission KPCC/D/R/167/2012, dated 5 September 2012, as far as it concerns the case registered in KPA under no. KPA06718 is accepted as grounded.**

2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012, dated 5 September 2012, as far as it concerns the case registered in KPA under no. KPA06718 is modified as follows:**

3. **The claim filed on 26 February 2007 by M D , registered under no. KPA06718 is approved as grounded, it is ascertained that M D is the owner of and is entitled to possession of the apartment located in the street "C D " No. 9 floor IV in V /V Municipality, with a surface area of 55 m2, and the appellee and any other person occupying the apartment is ordered to return this apartment to the claimant's possession and use within 30 days of delivery of this order; should appellee or that other person fail to comply to this order, they shall be evicted.**

Procedural and factual background:

1. On 26 February 2007, M D (hereinafter: the claimant), filed a claim for repossession of the apartment with a surface of 55 m² located in the street "C D " No. 9, floor four, in V /V Municipality (hereinafter: the claimed property).
2. He states that he is unable to exercise his property right due to the circumstances related to the armed conflict that occurred in Kosovo in the period 1998/99, indicating 20 June 1999 as date of loss of the possession. Further, the claimant declares that the claimed property is used by B A .
3. To support his claim, the claimant provided the KPA with the following evidence:

    - A Ruling no.671/93 issued by the Municipal Court of V /V dated 10 September 1993, according to which the claimant M D has the right of purchasing the apartment

located in V /V , in the street C D no.9, because he had been using it in the capacity of tenancy right holder according to the contract on use no.01-09/10 dated 20 January 1984, concluded between him and the social enterprise "A ". M D had the obligation to pay the social enterprise "A " the purchase price of 40.330.000 dinars within 15 days of the Ruling becoming final. The ruling replaces the purchase contract and serves as legal basis for registration of the property right.

- Form no. 59 dated 10 September 1993 by which the purchase price of the claimed property is determined.

4. On 17 January 2008, the KPA identified the property. The apartment was in possession of A A (hereinafter: the respondent).
5. On 16 June 2008, the respondent took part in the proceedings before the KPA denying the claimant's allegations and seeking legal interest for the property which is subject of the claim.
6. In order to support his allegation, he provided the KPA with the following:

- Copy of the original of the Ruling (Nr.671/93) certified in the Municipal Court in V /V on 4 February 2008 with number Vr.nr.197/2008, which ascertains that M D had the right of purchasing the apartment located in V /V , street C D no.9.
- A Statement dated 5 February 2008, in which the respondent's brother, B A , declares that he was director of the company M C , whereas M D was director of the company G M . The latter used to take goods from the company M C and had agreed with B A that in case of failure to pay the goods, the debt would be compensated by giving the apartment to B A , which is now the subject of the claim. According to B A , the contract was concluded in the office of lawyer H L and because the institutions were not functioning then, the contract was certified at KFOR.
- Contract concluded on 1 June 1998 between M D as giver of the apartment and B A as recipient of the apartment. According to the contract, M D at the beginning of 1998 had taken goods worth 92.000 dinars from PTP "M C " and had pledged his apartment located in street C D no.9, which he had purchased from the social enterprise "A " as per the Ruling R.Nr.671/93 dated 10 September 1993. Taking into consideration that the giver of the apartment had taken the goods on 1 February 1998, while the deadline for debt payment was 1 May 1998, while if until the conclusion of the contract, M D has not paid the said debt the apartment would go into ownership of enterprise "M C ". The contract was not legalized by the competent court. The Municipal Court of Vitia, on 4 February 2008, with reference number Vr. Nr. 196/2008

ascertained that copy of the contract dated 1 June 1998 is the same and identical to the original.

- Statement, Nr.2433/12 dated 19 September 2012 in which H L , in the capacity of lawyer, declares that he drafted the Contract of 1 June 1998 in his office. The contract was concluded between M D and B A who were present in his office.

7. According to the KPA verification reports, the Ruling R.Br.671/93 issued by the Municipal Court in Vitia/Vitina on 10 September 1993 was positively verified. The decision on allocation of apartment 2378/2 and the Contract for use of the apartment no. 01-09/10 were not found because the offices of former SMCI do not function.

   Regarding the contract based on which the respondent (and appellee) alleges to have obtained the ownership right over the claimed property, the officials in the Municipal Court in Vitia/Vitina, confirm that copy of the said contract was certified in the Municipal Court of Vitia/Vitina, with number Vr.nr.196/2008 as same and identical to the original. However, neither the protocol number of 1998 nor the Contract was found in the court archive, which means that verification of the contract was negative.

8. On 24 June 2012, the KPCC decided to hold a hearing session in order to obtain additional information regarding the claim. Summoned to the hearing were the claimant, the respondent and the lawyer H L in the capacity of witness.

9. The commission ordered the hearing session to be held by one of its members, pursuant to Section 5.4 of the Annex III of UNMIK Administrative Directive 2007/5 adopted by the law no. 03/L-079. Consequently, based on the Commission decision, the claimant, respondent, and a witness designated by the respondent, were summoned to participate in the hearing session on 17 July 2012. Nevertheless, only the respondent came to the session. The claimant explained that he was unable to participate because he could not travel due to his health condition and financial situation. The summoned witness declared that his duty as a judge prohibits him from serving as a witness. During the session held on 23 July 2012, the respondent confirmed his previous statements, including the one that he had taken possession of the claimed property in 1998, and submitted a copy of the purchase contract between the claimant and the respondent based on which the claimant indeed had agreed for the claimed property to be returned in the name of the respondent in case the claimant failed to fulfil the payment obligations. Furthermore, the respondent submitted a copy of the court decision confirming the claimant's ownership for the claimed property before the purchase contract was concluded. The secretariat verified both documents as positive.

10. After the session, the Kosovo Property Claims Commission (KPCC) on 5 September 2012, by its decision KPCC/D/R/167/2012 rejected the claim. İn paragraph 70-73 of the cover

decision, which according to the certified decision dated 5 September 2012, is applicable specifically for the claim in question, it is stated that the claimant submitted a positively verified court decision by which his ownership is confirmed. The respondent alleges that the claimant lost the property right over the claimed property which the respondent acquired based on the purchase contract concluded between the claimant as seller and respondent as buyer. According to the respondent, the purchase contract stipulates return of ownership to the responder in case the claimant fails to fulfil the obligation for debt payment within the deadline. Since the claimant failed to fulfil this obligation, the respondent alleges that he acquired ownership over the claimed property. Nevertheless, the claimant denies the existence of such a contract. The KPCC, based on evidence in front of it, ascertained that the claimant lost the property right over the claimed property based on conditions of the purchase contract. Consequently, the claim stands to be rejected.

11. On 25 March 2013, the decision was served on L D , (wife of M D , because M D was ill) whereas M D filed an appeal in the Supreme Court on 23 April 2013 (hereinafter: the appellant). The respondent received the decision on 5 March 2013 in the capacity of respondent.
12. On 19 May 2015 a court order, dated 15 May 2015, was served on the appellee.
13. Appellee responded to the order on 3 June 2015.

Appellant's allegations

14. M D alleges that KPCC ascertained the facts in erroneous and incomplete manner and committed essential violation of the material and procedural law.
15. The appellant initially declares that together with his family he lived at the claimed property until 20 August 1999, when because of security reasons he was forced to relocate and now lives in Niš. Immediately after he left, the apartment was usurped by the brothers B and A A .
16. The appellant states that he did not sign any contract with the respondent. According to him, the contract presented by the respondent is forged because he lived in the apartment until August of 1999 (there are witnesses to support this fact), whereas the contract was signed on 1 June 1998. İn addition, the appellant insists that the official books and the archive in Municipal Court of Vitia/Vitina be verified in order to ascertain if the contract, which was allegedly certified in 2008 with number V. Nr. 196/2008 in Municipal Court in Vitia/Vitina, is original.

17. Furthermore, the appellant declares that he does not know A A at all and that he has never had any legal transactions with him. He also states that A A had contacted him several times and they had discussed about the sale and purchase of the apartment. A had agreed to negotiate the apartment price, but after some time he offered the price of 1.000 euros for the apartment with a surface of 50 m² which according to D is a ridiculous price.
18. The appellant also states the fact that in the KPCC decision it is mentioned that he was summoned in the hearing session that was held on 17 April 2012 and that he did not appear due to health problems and financial difficulties. However, in fact, he was summoned in the hearing session dated 23 July 2012 and he did not participate in the session, but he adds that he had submitted his written statement.
19. In the end, the appellant motions that the Supreme Court schedule a hearing session whereby both parties and the witnesses would be summoned to ascertain the truth in relation to the claimed property and the fact that he is the owner of the claimed property.

Legal reasoning

Admissibility of the appeal

20. The Supreme Court reviewed the appeal decision pursuant to provisions of Article 194 of LCP, and after evaluating the appeal statements found that:
21. The appeal is admissible because it was filed within the legal time limit pursuant to the Law no. 03/L-079, which stipulates that a party may file an appeal against a Commission decision within thirty (30) days from the day parties were informed about the decision.

Merits of the appeal

22. After reviewing the case file and the appellant's allegations, the Supreme Court observed wrongful application of the legal provisions and of the material law.
23. In the context of proceedings before the KPA Appeals Panel, this means that the court has to grant the appeal and modify the challenged decision by grant the claim.

24. Pursuant to Section 3.1 of Regulation 2006/50, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
25. The court considers the case as directly related to the armed conflict if - as is the case here – the property right holder, respectively his family, were forced to abandon their property as refugees because of the armed conflict and if within a brief time the situation was taken advantage of and the property was usurped (either only through factual usurpation or as assumed through selling/purchasing it).
26. According to the final Ruling R.Br.671/93 issued by the Municipal Court of Vitia/Vitina dated 10 September 1993 and positively verified by the Executive Secretariat of KPCC, it is ascertained that the appellant is the property right holder according to Article 20 of the Law on Basic Property Relations 6/80, respectively Article 36 of the Law on Property and other Real Rights 03.L-154. This fact is not contested.
27. The Supreme Court notes that the claimant / appellant, in the claim before KPA had stated that the contested property was usurped by B A . The KPA Identification Team had found A A in possession of the property. Nevertheless, from the pieces of evidence attached it can be concluded that in fact his brother, B A , was the respondent/appellee.
28. On 19 May 2015 a court order, dated 15 May 2015, was served on the appellee. This court order says:

    A A in the capacity of Appellee, is requested that within 7 (seven) days of receiving this order:

    Submit at the Supreme Court the Authorisation given by B A . This Authorisation must state that A A is authorised to represent B A in the appeal proceedings GSK-KPA-A-110/2013 (KPA06718) before the Supreme Court, dated and signed by B A ;

    The court also requests a copy of Be A 's identification card in order to confirm his signature.
29. The appellee responded to this court order by attaching the authorisation with number 1723/2015 dated 3 June 2015, which states that B A authorises A A that on his behalf and account undertake all necessary actions according to the appeal GSK-KPA-A-110/2013 in the Supreme Court of Kosovo – Appeals Panel.
30. Allegations of the respondent/appellee that he had purchased the property from the appellant in June 1998 do not represent legally valid pieces of evidence. This precisely because according to Article 4 paragraphs 1 and 2 of the Law on Transfer of Immovable Property (Official Gazette of the Republic of Serbia no.43/81 and 19/85), Article 20 of the Law on Basic Property

Relations no.6/80 as well as Article 36 of the Law on Property and other Real Rights 03.L-154, it is foreseen that the contract for transfer of immovable property between property right holders is concluded in writing and signatures of the contractual parties are certified by the courts or notaries, and that the contract which was not concluded in this manner does not produce any actual legal effect. Therefore, legalisation of signatures is a constitutive element of validity of the contract.

31. Subject of review and evaluation of the Supreme Court were the allegations of the respondent/appellee that he acquired the ownership right over the apartment which is subject of the claim. The Supreme Court found that apart from circumstances that the contract dated 1 June 1998 is legally invalid because it was not legalised in the competent court, also because in the contract it is said that the apartment in question will be transferred in the name of "M C " enterprise, appellee cannot claim ownership of the apartment.
32. Moreover, the Supreme Court also evaluated the appellant's motion that the Supreme Court schedule a hearing session where both parties and the witnesses would be summoned to ascertain the truth regarding the claimed property and the fact that he is owner of the claimed property. Nevertheless, the court considers that the hearing session proposed by the appellant is not necessary because the facts, circumstances, and allegations of the parties are sufficient to serve as basis in order to render a meritorious decision. Furthermore, the appellant was given such an opportunity in the first instance but he did not use it, despite the fact that he was notified and had received the summons in timely manner, while the appellant had not given any reasonable clarification for not participating.
33. Based on the above and pursuant to Article 13.3 (a) of the Law no. 03/L-079 and Article 12.2, *ibid*, in conjunction with Article 149.1 of LCP, the Court decided as in the enacting clause.

Legal advice

34. Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar