

**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-252/13
Prishtinë/Priština,**

12 August 2015

In the proceedings of:

V.R. K.
Krushevac

Appellant/Claimant

vs.

B. M.

Prizren
Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Elka Filcheva-Ermenkova, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 (case files registered at the KPA under number KPA16516), dated 13 February 2013, after deliberation held on 12 August 2015, issues the following

JUDGMENT

- 1- The appeal of the Appellant V. R. K. against the decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 (case file registered at the KPA under number KPA16516), dated 13 February 2013, is accepted.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/191/2013 (regarding case file registered at the KPA under number KPA16516), dated 13 February 2013, is annulled.
- 3- The claim of V. R. K. is dismissed, as the claim is not within the scope of jurisdiction of KPCC.

Procedural and factual background:

1. On 6 December 2006 V. R. K. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his use right over a residential property, an apartment with surface 67.18 m², located on str.Oktobarske Revolucije bb, Ortakol Lamela 2F in Prizren. He claimed confirmation of his use right over the apartment which was given to him with the decision of the Housing Commission of the Government of Republic of Serbia no.34 Br.360-1754/99-97, dated 15 March 1999. According to this decision a two room apartment no.2, ground floor, in surface of 67.18m² was allocated to the claimant for an indefinite period. The claimant stated that the claimed property was lost as a result of the circumstances in 98/99 in Kosovo and that the date of loss is 12 June 1999. The claim was registered at the KPA under KPA16516.
2. As evidence the claimant presented the decision no.34, 360-1754/99-97, dated 15 March 1999 of the Housing Commission of the Government of Republic of Serbia. This decision was positively verified by KPA.
3. KPA physically identified the claimed property on 20 August 2007. The notification was done properly and the property was found occupied by B. M., who claimed a legal right over the property and signed the notice of participation, but he did not submit any evidence to prove his alleged rights.

4. With the Decision KPCC/D/R/191/2013, dated 13 February 2013, the Kosovo Property Claims Commission (KPCC) decided to refuse the claim with the reasoning that:
 - *“The claimant failed to submit further evidences to prove his alleged use right, The allocation decision is not sufficient to establish a use right in the form of an occupancy right, according to the Law on Housing Relations (42/86) as amended by Law on housing (50/92) such rights arises only if there is also a taking of possession and conclusion of a contract on use. In this case claimant failed to fulfil the requirements for a use right. The decision was served on the claimant on 16 August 2013.”*
5. The decision of KPCC was served to the claimant, V. R. K. (hereinafter: the appellant) on 23 July 2013. On 21 August 2013, he filed an appeal against it.

Allegations of the appellant:

6. With his appeal the appellant challenged the KPCC’s decision with the reasoning that this decision is illegal and given based on an incorrect and incomplete determination of the facts which were decisive for deciding and that there was a serious violation of the procedure rules. In addition he explained that he acquired the apartment on lease for an indefinite period according to the allocation decision. Therefore, he asked from the Supreme Court to annul the KPCC’s decision and send the case for retrial.

Legal reasoning:

Admissibility of the appeal

7. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

8. According to Section 3.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership right or user right of private immovable property, including agricultural and commercial 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.

9. In view of this provision, it follows that the jurisdiction of the Kosovo Property Claims Commission(KPCC) is limited exclusively to resolution, adjudication and settlement of property right claims for *private immovable property*, including agricultural and commercial immovable property of which possession was lost due to the armed conflict
10. Based on submitted evidence and appellant's allegations, it should be accepted that the dispute is not within the jurisdiction of KPCC. The appellant alleges that he acquired the use right over the property pursuant to the decision of Housing Commission of the Government of Republic of Serbia no.34 Br.360-1754/99-97, dated 15 March 1999. The allocation decision itself is issued based on the Law on Housing (Official Gazette of the SAPK, no. 50/92, 76/92, 84/92, 33/93, 46/94 and 47/94) which regulates the rights and obligations of citizens regarding the usage of *socially owned apartments*. Based on the provisions of the Law on Housing Relations, an occupancy right is acquired when:
 - The Allocation Right Holder (lessor) allocates for use a property to an employee(lessee) according to article 32 of the Law on Housing Relations 42/86;
 - The occupancy right holder concludes a contract on lease with the lessor on the basis of the allocation decision from the Allocation Right Holder according to article 7 of the amended Law on Housing 80/92;
 - Takes the possession of the allocated property according the article 11 of the Law on Housing Relations 42/86.
11. In the documents submitted as evidence by the appellant there is no contract on lease of the claimed property to show that he entered in possession of this property or any other evidence to prove that he was using the property before the armed conflict 98/99. Therefore he failed to prove that he met all the criteria stipulated by the abovementioned laws. In addition, during the proceedings in first instance he stated that the claimed property was inhabitable from 1998 and that he was not able to purchase it due to the armed conflict, which means that the appellant himself admitted that he never entered into possession of the claimed property and that the case has no relation with the armed conflict.

12. Furthermore, from the provisions of the Law on Housing results that the mention property is not a private property, but a *socially owned property*. In this context and from the abovementioned reasons the claim of V. R. K. does not fall within the jurisdiction of KPCC.
13. On the basis of the above and according to the provision of section 12.2 of the Law No. 03/L-079 and art.198, paragraph 1 of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice

14. 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

Rolandus Bruin, EULEX Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar