

**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-023/14

**Prishtinë/Priština
4 September 2015**

In the proceedings of

N.P.
Gjakovë

Appellant

vs.

M.P.
Grada Karare 4/I br.3
Kragujevac
Srbija

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/213/2013 (case file registered at the KPA under the number KPA24074), dated 21 August 2013, after deliberation held on 4 September 2015, issues the following

JUDGMENT

1. The appeal of N.P. is accepted as grounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/213/2013, dated 21 August 2013, as far as it regards the case registered under No. KPA24074 is annulled.
3. The claim of D.P., registered under No. KPA24074 is dismissed as falling outside the jurisdiction of the KPCC.

Procedural and factual background:

1. On 5 February 2007, D.P. acting as heir of his late father, T.P. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of use right and repossession of an apartment with the surface of 65.72 m², located in Gjakovë/Đakovica, M.Tita bb 25 (hereafter to be referred to as: the apartment).
2. The Claimant stated that his late father was the sole occupancy right holder of the apartment. Moreover, he stated that the apartment is occupied by an unknown person.
3. To support his claim, he provided the KPA with the following documents:
 - The Contract on Use of Apartment No. 01-905/1 concluded on 4 December 1975 between Housing Enterprise Gjakova/Đakovica and T.P. . The Housing Enterprise, pursuant to the Allocation Decision No. 4711/10 dated 1 December 1975 issued by the Joint stock Company "Dukagjini" in a capacity of the Allocation Right Holder, has given for use and T.P. has accepted an apartment of the surface of 65.72 m², located in street M. Tito.
 - Contract on the acquisition of ownership of the Apartment No. 9-203/4 concluded on 2 October 1991 between the Allocation Right Holder-Joint stock Company "Dukagjini" as the seller and T.P. as buyer of the apartment. According to the contract, the purchase will be realized by installments, lasting for 34.42 years.
 - Death Certificate No. 454/1992 issued on 20 February 2003 by UNMIK, Municipality of Gjakova, indicating T.P. passed away on 3 November 1992.

- Marriage Certificate No. 202-46/10 issued on 17 March 2010 establishing the family relation between Claimant and T.P. as well confirming that M.P. is Claimant's his spouse.
The KPA has verified the above mentioned documents.
4. On 24 September 2008 the KPA performed the notification of the apartment. The apartment was found occupied by N.P. (henceforth: the Respondent). The Respondent claimed that he is using the apartment with the permission of the Municipal Assembly of Gjakova/Đakovica since 1999. At the same date after receiving the notification of the claim, the respondent signed the application for taking part in the proceeding.
 5. To support his allegations the Respondent provided the KPA with the following documents:
 - The Ruling issued by Local Interim Government of Gjakova/Đakovica, Commission on Allocation of Apartments on 29 July 1999 based on which the apartment was allocated to the Respondent for temporary use.
 - Information Letter No. 4/83, dated 15 August 2007 from the Joint stock Company "Dukagjini" informing KPA that T.P. acquired the ownership over the apartment based on the Contract on No. 9-203/4 dated 2 October 1991. The payment should have been done by monthly installments for period of 34 years. T.P. did not pay any of the instalments up to date. Due to the failure to fulfil the obligations the Joint stock Company is preparing initiation of the legal procedure at the competent court to quash the contract.
 - A Statement dated 21 August 2007 in which the Respondent declared that the Municipality of Gjakova/Đakovica had issued a Ruling for temporary accommodation for him at the apartment in question, immediately after the conflict. After some research he found out that the apartment belongs to T.P. , former employee of Joint stock Company "Dukagjini". The Respondent added that, due to his interest to buy the apartment he has visited the abovementioned Company. The officer of the Joint stock Company "Dukagjini" informed him that T.P. concluded the Contract on the acquisition of ownership of the apartment and the contract was legalized before the Municipality Court but P. never paid any of the requirement instalments, so the Company is preparing to initiate a legal procedure for annulment of the Contract.
 6. The Claimant passed away on 17 December 2009.
 7. On 21 August 2013, the KPCC in its decision KPCC/D/R/213/2013, with the reference made to paragraphs 41-45 granted the claim. According to the KPCC decision, Claimant has established that his father, T.P. , has a use right over the claimed apartment.
 8. The KPCC decision was served to the Claimant's spouse, M.P. on 7 November 2013. The KPCC decision was served to the Respondent on 28 October 2013.
 9. On 11 November 2013 the Respondent (henceforth: the Appellant) filed an appeal with the Supreme Court.

10. The appeal was served on the Claimant (from now on: appellee) on 25 February 2014. She responded to the Appeal on 24 March 2014.

Allegations of the Appellant

11. The Appellant alleged that the KPCC decision contains fundamental errors or serious misapplication of the applicable material or procedural law and erroneous or incomplete determination of the facts. The Appellant argues that the apartment was in the possession–use of the Appellee’s father, T.P. , who died in Gjakova/Đakovica on 3 March 1992. T.P. worked at the Joint stock Company "Dukagjini" in Gjakovë/Đakovica, so in 1975 the Company allocated him the apartment for use. Although the deceased concluded the Contract on the acquisition of ownership of the apartment in 14 November 1991 he cannot be considered the owner but only the possessor of the apartment because he did not pay any of the monthly payments that he was obliged to pay for 34 years. He also stated that based on the Law on Apartments of Republic of Serbia it is foreseen that if the user of the apartment does not use the apartment for 1 year, then the apartment user forfeits the right to use it. P’s family had vacated the apartment in June 1999, so the Joint stock Company "Dukagjini" could have taken the apartment back to its ownership.
12. The appellant additionally presented :
- The Certificate No.15-01-3076/2003 issued by Municipal Assembly of Gjakova/Đakovica, directorate for cadaster, geodesy and land consolidation on 11 July 2003 confirming that T.P. is the owner of the claimed apartment. This property he gained pursuant to the Purchase Contract Leg.Nr. 3101/91 dated 14 November 1991 certified before Municipal Court of Gjakova/Đakovo. However, pursuant to this contract the apartment has to be bought in instalments for the period of 34.42 years.
13. In her response the appellee stated that her father in law, T.P. , is registered as the owner of the apartment. He gained the ownership over the apartment pursuant to Purchase Contract Ov.br. 3101/91 dated 14 November 1991. She further states that the arguments of the Appellant are legally irrelevant because the KPA confirmed the right of usage and not the ownership right.
14. In addition, the Appellee added that the argument of the Appellant on losing the right of usage over the apartment due to non-use for 1 year period does not stand. The provision of non-usage of the apartment implies non-usage without the justified reason. It is a well-known fact that the persons involved had to leave the place of residence in 1999 due to fear for live. At the end the Appellee stated that she concurs with the documentation submitted before the KPA (the documents are listed).

Legal reasoning:

Admissibility of the appeal:

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

On the merits:

16. The appeal is grounded and the decision of the KPCC has to be annulled on a *ex officio* taken into account ground as the case does not fall within its jurisdiction.
17. The KPCC in its decision KPCC/D/R/213/2013 established that Claimant's father concluded a Contract on Use on 4 December 1975 with the Allocation Right Holder. The Contract refers to a previous Allocation Decision issued on 1975 whereby the Claimant's father was granted a use right over the apartment. The Contract on the acquisition of ownership of the Apartment of 1991 was not considered by the KPCC because both, Claimant's spouse as well as the Allocation Right Holder confirmed that the instalments were never paid (the contract was concluded under the condition of monthly installments for 34 years) .
18. According to Section 3.1 of the Law No. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of private immovable property towards which he/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. This does not apply to property rights or use rights towards publicly/socially owned property.
19. The right of property can be acquired by law itself, based on a legal transfer (legal affair) or inheritance - article 20 of the law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time of the alleged transfer of property (as pointed by the claimants it occurred in 1991).
20. The Appellee's husband before the first instance submitted the Contract on the acquisition of ownership of the Apartment No.9-203/4 concluded on 2 October 1991. According to the Contract, the purchase of the apartment will be realized by installments, lasting for 34.42 years. Article 6 of the Contract specifies that if the buyer is in delay with 3 consecutive monthly instalments or 5 instalments within a year the seller has the right to initiate a procedure for mortgage. Neither the Appellee the Allocation Right Holder did not present evidence to prove that any of the installments were paid. This means that condition of the payment was not fulfilled as set out in Contract on the

acquisition of ownership of the Apartment. However, the Claimant before the KPA seeks confirmation of use right and declared that his late father is the sole occupancy right holder of the apartment.

21. From the evidences presented before the court, the apartment is socially owned most probably by the Joint Stock Company "Dukagjini". In this regards the KPCC had no jurisdiction over the dispute as it does not relate to a claim with respect to a private property as meant in section 3.1 of the Law No. 03/L-079.
22. The KPCC had no jurisdiction to decide on the merits of the case but had to dismiss it based on Section 11.4 (a) the Law No. 03/L-079. As this has not been done the appealed decision has to be annulled and the claim has to be dismissed pursuant to article 198 paragraph 1 of the Law on Contested Procedure which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the Law No. 03/L-079.
23. Therefore the decision of the KPCC insofar as it has been appealed has to be annulled and the claim dismissed (Section 11.4 (a) of the Law No. 03/L-079), as the dispute is related to a socially/publicly owned property and it falls outside the jurisdiction of the KPCC.

Legal Advice:

24. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by 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