

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-262/13

Prishtinë/Priština,
6 October 2015

In the proceedings of:

Z. R.

B. R.

H. R.

L.R.

S.R.

N. R.

Sh. R.

B. R.

.

Pejë/Peć

Represented by the Lawyer **B. L.**

Appellants

vs.

D. V.

Montenegro

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/129/2011 dated 26 October 2011 (case file registered at the KPA under No. KPA51031), after deliberation held on 6 October 2015, issues the following

JUDGMENT:

The appeal of Appellants against the decision of the Kosovo Property Claims Commission KPCC/D/R/129/2011 dated 26 October 2011 is dismissed as inadmissible because Appellants were not parties in proceedings before KPCC.

Procedural and factual background:

1. On 5 October 2007 D. V. (hereafter: the claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her property use right over an apartment, Str. Dositejeva 6, at Pejë/Peć (hereafter: the claimed property). Claimant states the surface is 65 m². The claimant alleges that she lost the possession of the claimed property on 16 June 1999 as a result of the circumstances of 1998/1999 in Kosovo.
2. In order to support her claim, the claimant submitted the following documents:
 - Decision no. 05-360/1009 dated 12 November 1993, issued by Department for Social Services of the Municipal Assembly of Pejë/Peć. According to this document allocated to the claimant for temporary use is an apartment of 24 m²;
 - Decision no. 360/1009 dated 20 March 1996, issued by the Department for Social Services of the Municipality of Pejë/Peć. According to this an extra 24m² was allocated to the claimant, together forming the claimed property;
 - Contract on Use of Apartment no. 663/664 dated 23 May 1996, concluded between the PHE “Peć Stan” and claimant regarding the claimed property;
 - Certificate no. 663/664 dated 12 May 1998 issued by the Public Housing Enterprise “Peć Stan”. This document certifies that the claimant is occupancy right holder of the socially owned apartment (claimed property); and
 - Claimant’s ID card no. 179124 dated 31 January 1997, issued by Republic of Serbia.

3. On 14 November 2008 the KPA Notification Team went to the place where the claimed property was situated and put a sign in the land. However, according to the KPA notification report made on the same date the claimed property is totally destroyed.
4. According to the KPA verification report(s) dated 30 June 2009, the Decision no. 05-360/1009 dated 12 November 1993 and no. 07-360/1009 dated 20 March 1996 were positively verified.
5. Since nobody responded within the time limit on the submitted claim, the KPA processed the claim as uncontested.
6. The KPCC with its Decision KPCC/D/R/129/2011 dated 26 October 2011 established *“that the claimant is the owner of the claimed property and was the owner at the date of destruction of the claimed residential property and the underlying and associated land; or have/has subsequently succeeded to the said ownership”*. Moreover, the same decision ordered that the claimant *“...is entitled to possession of the said property”*.
7. The decision was served on the claimant (hereafter: the appellee) on 10 February 2012. In the same date the appellee submitted a request to put the claimed property under KPA administration.
8. Previously the claimed property was subject matter of a claim submitted by the claimant before the Housing and Property Claims Commission (HPCC). HPCC with the decision HPCC/D/114/2004/C, dated 16 April 2004, decided that D. V. (the claimant) is entitled to the possession of the claimed property. HPCC rejected a request for reconsideration filed by R. R. with its decision HPCC/REC/66/2006, dated 15 July 2006.
9. On 26 August 2013 the Family R.(Z., B., H., L., S., N., Sh. and B. R.) through the authorised lawyer B. L. from xx (hereafter: the appellants) filed the appeal against the said KPCC Decision. On 2 December 2013 the appellants’ appeal was served on the appellee, while on 20 December 2013 she replied to the appeal.

The allegations of the parties:

The appellants:

10. The appellants filed their appeal due to essential violations of the procedural provisions and erroneous application of the provisions of the material right and also due to incomplete and erroneous determination of the factual state, non-use of important legal evidence and non-evaluation of the material evidence regarding the case in the favor of the appellee. Moreover,

the appellants consider the KPCC Decision factually ungrounded, logically incomprehensible, legally unsustainable and unlawful.

11. The appellants on their appeal request that the Supreme Court should decide as follows:
 - review and change the challenged KPCC decision;
 - approve the appeal as grounded;
 - annul the contract on use no. 663/664 dated 23 May 1996 (concluded between the PHE and appellee);
 - amend the challenged decision pursuant to Section 11.4 under “a” and “b” of UNMIK Regulation no. 2006/50 as amended by Law no. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property (henceforth: Law no. 03/L-079);
 - entirely reject as ungrounded the appellant’s claim;
 - oblige the appellee to recognize the right of ownership, the right on quiet and factual use of the claimed property of the appellants;
 - oblige the appellee to reimburse to the appellant the amount of € 50 for drafting of the appeal and € 150 in the name of the fees for the appeal after the decision becomes final under the threat of violent execution;
 - to approve the appeal, quash the KPCC Decision and return the case for retrial to the first instance KPCC for review and re-deciding with the recommendation to take a new decision;
 - to summon the appellants and their authorized person in the review session in front of the panel;
 - quash the challenged decision and refer the case to the Basic Court of Pejë/Peć in review and re-decision in a merited way;
 - to order temporary measures in order not to come to alienation of the claimed property to third persons and not to come to change of the factual or legal situation or any other uncompensated material damage to the appellants.
12. In order to support their allegations, the appellants submitted the following documents:
 - Certificate payment, without number and date, showing that the appellants paid the amount of 4000 DM to the alleged owner of the claimed property N. D. regarding a right of use;
 - Sub-lease contract dated 23 July 1990 between B. R. and the alleged owner N.D.;
 - Power of attorney (PoA) given by family R. (8 members) to B. L. for filing the appeal before the Supreme Court;
 - Annex of the appeal dated 27 August 2013, which shows that the appellants lodged a law suit before the Municipal Court of Pejë/Peć – Department for Civil Issues;

- Another Law suit dated 26 August 2013 lodged at the Municipal Court of Pejë/Peć – Department for Civil Issues;
- a Copy of plan no. 18 (receive date at the KPA is 27 August 2013) issued by the Municipality of Pejë/Peć;
- The ID cards of the appellants.

According to the appellants the claimed property is located in the center of Pejë/Peć city in the Street Isa Demaj, formerly known as Street of Sutjeska [*the Supreme Court notes that this is another street than in the claim and the KPCC decision*] and is built up in the floor above the appellants' deceased fathers (R.R.) apartment. The appellants allege that the claimed property was purchased by their father and uncle from the alleged owner N.D.. The appellants point out that they concluded a contract on permanent use as sub users and paid the amount of 4000 DM to the alleged owner (N. D.) for a part of his apartment. According to them this contract has the same effects as a purchase contract. The appellants declare that after a while the alleged owner had come to Kosovo (from Bosnia) and said that because of the political situation he could not come back and live in Kosovo and that he wanted to sell the claimed property entirely to the neighbor R. R.. In accordance with this the alleged owner received the amount of 6000 DM for the other part of the claimed property. The appellants confess that regarding the purchase of the first part their father bought (two rooms), the written agreement was produced while for the other part, not written document was drafted. According to them N. D. as the alleged owner/seller promised that he will come to Kosovo and finish the legal transfer of the claimed property, but he unfortunately did not come because of the political situation.

The appellants point out that the claimed property is inherited by them as successors of their father R. R. and based on the legal provisions of the Law on Housing, Law on Basic Property Relations and Law on Ownership Right and Other Real Rights.

The appellants declare that the claimed apartment was used by them since 1990 until 1999 when they had been expelled from the property and then the same was given to the appellee even though the same was registered in the name of N. D.

The appellants request that the claimed property to be returned to them.

The appellee:

13. The appellee alleges that she used to live in the claimed apartment which was a socially owned property and the owner of the same was the Municipality of Pejë/Peć. She added that as a mother of two kids she requested the enlargement of the apartment which was allocated

to her on 1996 based on the allocation decision. She adds that she possesses the Contract on Use dated 23 May 1996 as well as the allocation decision. She declares that she submitted the documents for purchasing of the claimed property.

The appellee considers herself property right holder of the claimed property and emphasizes that the allegation of the appellants are not true. She adds also that she does not know a person with the name N.D. Before the moment she moved into the claimed property, it was used by Mrs. N. A. who after her removal died very soon. The appellee proposes to the Supreme Court the appellants' appeal to be rejected as unfounded and to confirm the KPCC's decision.

Legal reasoning:

Admissibility of the appeal

14. The appeal is inadmissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereafter: the Law No. 03/L-079) because the appellants have not taken part in the proceeding in the first instance.
15. Section 10.2 of Law No. 03/L-079 provides that any other person who is exercising or purporting to have rights to or has a legal interest in the claimed property than the claimant shall be a party in the proceedings, provided that such person informs the KPA of his or her intention to participate in the proceedings.
16. Section 12.1 of Law No. 03/L-079 stipulates the following: *“Within thirty (30) days of the notification to the parties by the KPA of a decision of KPCC on the claim, a **party** may submit [...] an appeal against such decision.”*
17. The appellants have not been parties in the first instance proceedings before the KPCC. The appellants do not justify why they did not participate in first instance in order to be accepted as a party to the proceedings now.
18. The Court notes that the notification of the claim in first instance had been properly executed. The KPA team placed an information sign in three languages – Albanian, Serbian and English - in the field where the (destroyed) claimed property had been located.
19. There is no justified reason why the appellants did not inform the KPA of their intention to take part in the proceedings. As they do not have a justified excuse as to why they did not take part in the first instance proceedings before the KPA, this omission goes to their detriment.

20. Therefore the appeal has to be dismissed as inadmissible (Section 13.3 (b) of Law No. 03/L-079; see also Art. 176.1 and 195.1 of the Law on Contested Procedure).
21. As the appeal is inadmissible, the Supreme Court cannot go into the merits of the appeal and is not allowed to decide on either the question on jurisdiction of the KPCC/KPA or the legal questions concerning the property rights on the claimed property.

Legal Advice:

Pursuant to Section 13.6 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar