

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-032/14

**Prishtinë/Priština,
11 November 2015**

In the proceedings of

B.L.

Branka Deletica bb,
Adrijevića
Serbia

Appellant

vs.

A.B.

Pejë/Peć

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 (henceforth: KPCC) no. KPCC/D/R/215/2013 dated 21 August 2013 (case file registered at the Kosovo Property Agency (henceforth: KPA) under the No. KPA29220 after deliberation held on 11 November 2015, issues the following

JUDGMENT

1. The appeal of B.L. against the decision of the KPCC no. KPCC/D/R/215/2013 dated 21 August 2013, is rejected as unfounded.
2. The decision of the KPCC no. KPCC/D/R/215/2013 is confirmed as far as it concerns claim no. KPA29220.

Procedural and factual background

1. On 31 May 2007, B.L. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking ownership and repossession of an apartment with a surface of 32.67 m² located at street “B. Vukmirović 210” in Pejë/Peć (henceforth: the claimed property)
2. Claimant submitted *inter alia* to KPA:
 - Purchase Contract no .9555/93 concluded on 30 September 1993 between Municipality of Pejë/Peć in a capacity of the seller and S.V. as a buyer of the claimed property.
 - Death Certificate no 203-19915/2002-VI issued by Civil Registration Office of Municipality of Pejë/Peć on 28 October 2002 showing that S.V. (wife of S.V.) passed away on 16 June 1999.
 - Inheritance Decision No. 33/02 issued by Parallel Court of Municipality of Pejë/Peć on 29 November 2002 based on which B.L. inherited the claimed property from the sister of his grandmother S.V..
 - Pre Purchase Contract concluded between R.D. in a capacity of the seller of the claimed property and A.B. as buyer on 12 July 2004. The contract was not certified by a court.
 - Death Certificate no VII-203-3-151/2011 issued by Civil Registration Office of Municipality of Pejë/Peć on 19 September 2011, showing that S.V (S.'s husband) passed away on 7 April 1999.
 - Power of Attorney no. 74/2013 issued on 4 February 2012 through which B.L. authorized A.H. to act on his behalf before the Kosovo Property Agency.

3. On 30 March 2008, the KPA notified the claim at the claimed property. It turned out to be occupied.
4. On 4 July 2008, A.B. (henceforth: the Respondent) participated in the proceedings before the KPA, claiming that he has bought the property from the rightful owner.
5. Respondent submitted *inter alia* to KPA:
 - Pre Purchase Contract concluded between R.D. in a capacity of the seller of the claimed property and A.B. as buyer on 12 July 2004. The contract is not certified by a court.
 - Rulings on determination of the property tax no 432-1/3643 and 436-98/3643 issued by State Public Revenue Administration-Department for assessment and collection of public revenues in Peja/Peć confirming that S.V. has paid property tax for year 1995 and 1998.
 - Statement of D.R. dated 18 April 2006 declaring that she submitted criminal denouncement against B.L. and all the evidences submitted by her to the HPD are true.
 - Decision no. 011. No. 464-19898/93 issued by Ministry of Finance, Department for Property Legal Affairs on 19 January 1994 approving the request for conclusion of the purchase contract between Municipal Assembly of Peja/Peć and S.V..
 - Life-long care Contract concluded on 3 May 1999 between S.V.as a beneficiary of the care and R.D.as provider of the life-long care. The contract contains a stamp showing that it was court certified but does not contain a reference number of the Municipal Court of Peja/Peć.
6. The Executive Secretariat of the KPA on 20 March 2013 requested from Claimant to provide a valid Inheritance decision and further evidence to prove his alleged property right but the claimant did not provide the requested evidences. (See page 208 of the file).
7. KPA established that the claimed property was previously subject to the adjudication of HPCC upon the application of B.L.. The claim was dismissed by the HPCC in its decision no. HPCC/D/189/2005/C, dated 30 April 2005. According to paragraphs 12 and 13 of the cover decision which applies especially to the claim, L. failed to produce any verified documentary evidence to prove that he had possession of the property concerned or any proof of a property right, which conferred the right to take a possession of the claimed property. A request for reconsideration was rejected by HPCC in its decision HPCC/REC/95/2007, dated 26 March 2007. In paragraph 6 in the cover decision, it is stated that the Claimant has not presented any new legally relevant evidence, which was not considered by the Commission in deciding of the claim, hence, the reasoning for the decision remains as set out in the first instance decision.
8. The KPCC decided in its decision: KPCC/D/R/215/2013 to refuse the claim. In its reasoning (paragraph 42) it is stated that the claimant did not submit any evidence that would support his claim.
9. The decision was served upon B.L. (henceforth: the appellant) on 29 November 2013.
10. Appellant filed an appeal against the KPCC decision on 16 December 2013.

11. The appeal was served on 26 November 2013. Respondent's brother A.B. received the appeal but A.B. (henceforth: the appellee) did not participate in the appeal.

Allegations of the appellant

12. The appellant alleges that the KPCC erroneously and incompletely established the facts and has made an erroneous application of substantial law.
13. According to appellant he is a legal heir after the death of S.V. The claimed property was her property and he has become the owner of the same regardless of the time when he actually acquired factual ownership over it. He is the only heir and KPA should have taken this fact into consideration.
14. Finally, the appellant seeks the Supreme Court to revoke the refused decision and returns it to the first instance for reconsideration.

Legal reasoning

15. The Supreme Court, after the review of the submissions in the case file, the appealed decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is ungrounded.
16. The KPCC based its decision on the fact that the Executive Secretariat of KPA established that the appellant submitted an inheritance decision which was issued by a parallel court in 2002 to support his claim. However, the KPCC does not consider such documents issued by parallel institutions as valid evidence. Moreover, the KPA had not been able to obtain *ex officio* any evidence that supported L.'s claim. Based on this, the KPCC found that L. had failed to establish any property right over the disputed property.
17. The Supreme Court notes that the Housing and Property Claims Commission dismissed L.'s claim in its decision HPCC/D/189/2005/C dated 30 April 2005, and rejected his request for reconsideration in decision HPCC/REC/95/2007 dated 26 March 2007.
18. The appeal from L. repeats the same allegations that he made before the KPCC. No new evidence of significance has been submitted with the appeal.
19. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.
20. In the light of foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar