

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-078/14

Prishtinë/Priština,
2 December 2015

In the proceedings of

S.S. (represented by lawyer R.I.)

Street “Pariska Komuna no. 2 A/3”

17500 Vranje

Serbia

Appellant

vs.

M.Sh. (represented by lawyer H.S.)

Mustaf Koka 6

61000 Vitia/Vitina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami Presiding Judge, Anders Cedhagen, and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission No. KPCC/D/R/207/2013, case file registered at the Kosovo Privatisation Agency (henceforth: the KPA) under the number KPA01152 on 11 June 2013, after deliberation held on 2 December 2015, issues the following

JUDGMENT

1. **The appeal of S.S. against the decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 dated 11 June 2013, with regard to the claim registered with KPA under No. KPA01152 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/207/2013 dated 11 June 2013, with regard to the claim registered with KPA under No. KPA01152 is confirmed.**

Procedural and factual background

1. On 16 October 2007, S.S. (henceforth: the Appellant) filed a claim with the KPA, seeking confirmation of the ownership right and re-possession of an apartment with a surface of 63 m² located on street “Car Dusana”, Municipality of Vitia/Vitina (henceforth: the claimed property).
2. In the claim the Appellant stated that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 1 January 1999 as the date of loss.
3. With the claim the Appellant submitted the following documents:
 - Annual Plan of the Enterprise/Factory for Furniture “VINEX D.D” (henceforth: VINEX D.D) for the housing needs of the employees, no. 732 dated 22 August 1994 through which were resolved the needs of the below mentioned employees: the Appellant as Assistant Director for the administrative and personnel issues and two other employees.
 - Decision on Allocation no. 2005 issued by VINEX D.D on 30 December 1994 through which VINEX D.D allocated the claimed property to his employee, the Appellant.
 - Contract on Lease of Apartment no. 2071 concluded between VINEX D.D and the Appellant on 10 January 1995.
 - Request to purchase the socially owned apartment no. 2077 on 11 January 1995 submitted by the Appellant to VINEX D.D through which he seeks to purchase the claimed property based on Articles 39 and 47 of the Law on Housing of Republic of Serbia.

- Contract on Purchase of an apartment Vr. 147/95 dated 25 January 1995 concluded between VINEX D.D in a capacity of the seller and the Appellant in the capacity of the buyer of the claimed property.
 - Power of Attorney certified before the Municipal Curt of Vranje no.Vr. 7661/07 on 25 September 2007 through which the Appellant authorized R.I. to represent him before the KPA regarding the apartment situated in Vitina/Vitia.
4. On 24 June 2008, the KPA notified the claimed property. It turned out to be occupied by M.Sh. (henceforth: the Appellee), who participates in proceedings before the KPA.
5. In support of his allegation the Appellee submitted the following documents:
- Allocation Decision no. 529 issued by VINEX D.D on 22 November 1976 through which the Enterprise allocated the claimed property to the Appellee.
 - Contract no. 524/2 concluded on 21 December 1976 between VINEX D.D and the Appellee through which VINEX D.D allocated the claimed property to the Appellee.
 - Minutes of VINEX D.D no. 1910 on 10 September 1994 regarding the state of the apartment after the Appellee was evicted.
 - The Judgment no. 29/92 issued by the Municipal Court of Vitia/Vitina on 16 March 1992 whereby the claim for termination of the contract on lease of the apartment was approved and the Appellee was ordered to vacate the apartment.
 - The Judgment of the District Court of Gjlane/Gnjilane no. 199/92 on 30 June 1994 whereby the appeal of the Appellee was rejected and the first instance Judgment was confirmed.
 - Decision no. 5447/94 issued by the Supreme Court of Serbia on 3 October 1995 through which the Judgment no. 29/92 of the Municipal Court of Vitia/Vitina and the Judgment of the District Court of Gjlane/Gnjilane no. 199/92 were annulled and the case was returned to the first instance for retrial. The lawsuit of the Appellee filed before the Municipal Court of Vitia/Vitina on 19 January 1996 for illegal eviction of the occupant.
 - Power of Attorney no. 1047/08 certified before the Municipal Court of Vitia/Vitina on 3 July 2008 in which the Appellee authorized the lawyer H.S. to represent him before the KPA regarding his case no. KPA01152.
6. According to the verification reports of the Executive Secretariat of the KPA (henceforth; the Executive Secretariat), none of the documents submitted by the Appellant have been verified as being genuine.

7. On 11 June 2013 the Kosovo Property Claims Commission (henceforth: the KPCC) with its Decision KPCC/D/R/207/2013, refused the claim. In paragraph 37-38 in the cover decision, which according to the certified decision applies specifically to the claim, it is stated that the documents, that the Appellant had submitted, had not been verified by the Executive Secretariat as genuine. The KPCC found that the Appellant has failed to establish a lawful property right over the claimed property.
8. On 29 November 2013, the decision was served on the Appellant and an appeal has been filed on 27 December 2013.
9. The Appellee received the KPCC decision on 6 November 2013. He filed a response to the appeal.

Allegations of the Appellant

10. The Appellant alleges that the KPCC has erroneously and incompletely established the facts and also made an erroneous and serious violation of the substantial and procedural law.
11. The Appellant declared that the KPA has stated that the Executive Secretariat could not verify any of the documents submitted by him. According to the Appellant the Executive Secretariat never asked him for the original documents or valid photocopy of the original although he has told the officers of the Executive Secretariat that he possesses complete original documents.
12. For this reason the Appellant believes that the facts were erroneously and incompletely established which resulted the decision taken by the KPCC.
13. In the appeal the Appellant gives a detailed presentation of the documents that he has submitted in order to confirm his ownership right.

Allegations of the Appellee

14. The Appellee alleges that the Enterprise/Factory for Furniture "VINEX D.D" allocated him the claimed property in 1976, which he possessed and used continuously with his family and spouse until expulsion by Serb regime.

15. The Appellee filed a lawsuit before the Municipal Court of Vitia/Vitina regarding the claimed property, but the proceedings were never completed with a final Judgement. Therefore, according to the Appellee, both the Decision no. 2005 on 30 October 1994 and the Purchase Contract concluded between the Appellant and the Enterprise are unlawful and cannot establish any legal effect, because the previous allocation decision through which the same Enterprise allocate the claimed property to the Appelle was never declared as invalid or null.

Legal reasoning

16. Following the review of the case file and the Appellant's allegations, pursuant to Sections 12 and 13 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50) and Article 194 of the Law No. 03/L-006 on Contested Procedure, the Supreme Court found that the appeal is unfounded. The reasoning for this conclusion is the following.
17. The KPCC based its decision on the fact that the Executive Secretariat made a negative verification of the documents, on which the Appellant based his claim of ownership. The Executive Secretariat had not been able to obtain *ex officio* any evidence that supported the Appellant's claim. Based on this, the KPCC found that the Appellant had failed to establish any property right over the disputed property.
18. The appeal from the Appellant repeats the same allegations that he made before the KPCC. No new evidence 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 the foregoing and pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50, it is decided as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anders Cedhagen, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar