

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-003/15

Prishtinë/Priština,
24 February 2016

In the proceedings of:

B. D. in the name of **V. D.**

Appellant

vs.

R. S.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/239/2014 dated 30 April 2014 (case file registered at the Kosovo Property Agency (henceforth: KPA) under number KPA40248, after deliberation held on 24 February 2016, issues the following:

JUDGMENT

1. The appeal of B. D. against the Decision of the KPCC no. KPCC/D/R/239/2014 dated 30 April 2014, is rejected as unfounded.
2. The decision KPCC/D/R/239/2014 dated 30 April 2014 as far as it concerns the claim no. KPA40248 is confirmed.

Procedural and Factual background:

1. On 13 July 2007, B. D. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (KPA) on behalf of his spouse V. D. (henceforth: the alleged property right holder), seeking ownership right and re-possession of an apartment with a surface of 63.86 m², (henceforth: claimed property).
2. The Appellant submitted *inter alia* to KPA:
 - The Purchase contract no. 360/93 concluded on 26 February 1993, between Medical Centre “Boro e Ramizi” in Prizren as seller of the claimed property and V. D. as buyer of the apartment through instalments for the period of 38 years and six months.
 - The Annex to the purchase contract with number 3043/1992 indicating that V. D. paid the entire purchase price.
 - A Power of attorney no. 352/2004 dated 1 April 2004 certified at the Municipal Court of Bela Crkva indicating that the property right holder authorized R. D. to sale the apartment for the price of 39.000 Euro.
 - Marriage certificate dated 2 February 1971 indicating that the Appellant B.D. and the property right holder V. D. are married.
 - Contract for use concluded between the property right holder V. D. and the Housing Enterprise “Universal” from Prizren.
 - ID card issued on 26 March 1990, in Prizren.

3. On 1 August 2008, the KPA notified the claimed property, and found that R. S. born D. occupies the property.
4. On 8 January 2009, R. S. (henceforth: the Respondent) participated in the procedure before the KPA, alleging that she purchased the property from the legitimate owner.
5. The Respondent submitted *inter alia* to KPA:
 - The Power of attorney with number 1999/2005, certified at the Municipal Court in Mitrovica (established by the UN Mission, UNMIK) signed by V. D. wherewith she authorizes B. S. on her behalf to find a buyer, to conclude the sales price, to accept the sales price and to transfer the ownership to the buyer.
 - Decision on municipal fees no. 413-39/2007 dated 1701.2007 indicating that R. S. has paid the required tax for trading the immovable property.
 - Sales Contract, certified at the Municipal Court in Prizren, Leg.Nr. 4385/2005, concluded between V. D. represented by B. S. and R. S. as buyer.
 - Report on payment and specification of banknotes in numbers.
6. The documents submitted by the Appellant and the Respondent were verified positively based on data and place of issue.
7. According to the referral report (page 109-111 of the case file) the KPA has found that the claimed property previously has been subject of the claim DS606176, adjudicated by the Housing and Property Claims Commission. The claim was dismissed by the HPCC with the decision no. HPCC/D/164/2004/C, dated 9 December 2004. The claim for reconsideration was rejected by the HPCC with its decision HPCC/REC/91/2007, dated 19 January 2007.
8. The KPCC decided in its decision KPCC/D/R/239/2014 to dismiss the claim. In its reasoning (paragraph 18) is stated that the Appellant has claimed the reinstatement into possession of the claimed property due to circumstances directly related to or resulting from the armed conflict, but later on admitted that the apartment's owner sold the claimed property.

Admissibility of the appeal:

9. The decision was served on B. D. on 21 July 2014. The Appellant filed an appeal against the KPCC decision on 4 August 2014. The appeal is admissible. It was filed within the deadline of 30 days as prescribed by the Article 12.1 of Law no. 03/L-079.

Allegations of the Appellant:

10. The Appellant alleges that the KPCC decision contains an erroneous and incomplete determination of the facts and a misapplication of substantive law.
11. According to the Appellant, the KPCC decision is unclear and the reasoning regarding his claim is incomplete. The documents which were taken as a basis for the rejection of the claim, submitted by the Respondent R. S. born D., who is Appellant's sister, are contradictory. The power of attorney given by his spouse, now the deceased V. D. was given without his consent.
12. Finally, the Appellant requests from the Supreme Court to revoke the challenged decision and to reinstate the claimed property under his possession. He proposes to the Supreme Court to initiate a review as well as invite the Appellant for a hearing.

Legal reasoning:

13. After review of the case file, the appealed decision and Appellant's allegations pursuant to Article 194 of the Law on Contested Procedure (LCP), the Supreme Court finds the appeal unfounded.
14. According to Section 3.1 of the UNMIK Regulation 2006/50 KPCC on the resolution of claims relating to private immovable property, including agricultural and commercial property the Commission has the competence to resolve property claims and claims regarding property rights "resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999". In this concrete case the loss of the possession is related to the legal transaction verified before the Court and verified by the KPA officials and no longer related to the conflict.
15. The Appellant reiterates the same allegations he made before the KPCC. No new supportive evidence was submitted with the appeal. In addition, the new buyer is the Appellant's sister. His former spouse without pressure and voluntarily signed the power of attorney to B.S. The sales contract no. 4385/2005 was concluded based on this power of attorney and is valid.

16. The Appellant's allegations in regard to the identity – the surname - of the Respondent and the (non)existence of the legal marriage of R. S. born D. are assessed by the Court, but the Court finds that they are not relevant for the issue at hand.
17. The property right holder V.D. became in 1993 the owner of the apartment based on the purchase contract of 1993 and it is not mentioned anywhere that the apartment is the co-ownership of spouses, therefore the power of attorney given without the consent of the spouse is not in contradiction with the law.
18. The Supreme Court ascertains that the KPCC decision is fair, complete and based on the correct procedure. Consequently, the Supreme Court ascertains that there is no violation of the material law or incomplete verification of the facts. The Supreme Court finds that the loss of possession is not related to the circumstances of the conflict but a result of the sale of the property which is what the Appellant affirms. Therefore the KPCC decided correctly that it does not have jurisdiction to decide on the claim.
19. In the light of forgoing, pursuant to Section 13.3 sub-para (c) of Law UNMIK 2006/50, as amended by Law No. 03/L-079, the Supreme Court decided as in the enacting clause of this judgment.

Legal advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as ammended by Law No. 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

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar