

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-191/14

Prishtinë/Priština,
9 June 2016

In the proceedings of:

R. V.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges, Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission no. KPCC/D/R/231/2014 (case files registered at the KPA under the number KPA30522 dated 13 March 2014, after the deliberation held on 9 June 2016, issues the following:

JUDGMENT

1. The Appeal of R.V. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014 dated 13 March 2014, as far as it concerns the Claim number KPCC30522, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission No KPCC/D/R/231/2014 dated 13.3.2014, is confirmed as far as it regards the Claim registered with the KPA under No KPA30522.

Procedural and factual background:

1. R. V. filed a claim as a property right holder seeking the confirmation of the right to use and the repossession of the apartment located in “Dr.Tot Abot Jovana” Street No 24 in Prishtinë/Priština, with surface of 49.50 m².
2. He alleges that he lost the possession of the apartment due to the armed conflict which occurred in the period of 1998/99, indicating 18.6.1999 as the date of loss. The Claim was registered at the KPA under the number KPA 30522.
3. To support his Claim, the appellant submitted the following documents:
 - The Ruling of the GIP “Grading” JSC Prishtinë/Pristina, No 01-57-92 dated 14.6.1992,
 - The Decision of the GIK “Ramiz Sadiku” No 162 dated 13.7.1979,
 - The contract on purchase of the apartment certified by the parallel Municipal Court of Prishtina/Priština Vr. No 174/2006 dated 19.5.2006.
4. According to the Verification Team of the KPA, the Decision No 01-57-92 dated 14.6.1992 was negatively verified, whereas the Contract on Sale Vr. No 174 of the year 2006 resulted in negative verification as the same was certified by the parallel court, and the Decision No 162 of the GIK “Ramiz Sadiku” dated 13.7.1979, was positively verified.
5. According to the Notification Report dated 1.4.2008, the apartment was notified on 1.4.2008, this apartment was occupied by B. M. who presented the notification of the Claim dated 4.1.2008, but he did not claim the legal right of possession or ownership rights. Also I. V. appeared in the capacity of the Respondent, however, she did not claim possession or ownership rights over the apartment. She requested to be allowed to use the apartment due to her difficult material conditions.

6. By its Decision **KPCC/D/R/231/2014 dated 13.3.2014**, the Kosovo Property Claims Commission (KPCC) **rejected the Claim** filed by R. V. as unfounded. In the reasoning of this Decision in paragraphs 68 and 69 it is concluded that his claim was rejected with the reasoning that the Claimant's Contract on Purchase was certified by the parallel court, therefore it does not constitute any proof of the ownership right. In addition, the Commission noted that pursuant to the Law on housing relations No 42/86 and Law on housing No 50/92, he did not present any legally valid facts and did not propose any relevant evidence that he has concluded the Contract on Use for this apartment and that he had taken the same in his possession.
7. As the Claimant did not present sufficient evidence that he has fulfilled all relevant requirements of the Law to confirm his right to use, as well as considering+ the fact that the Contract on Sale does not constitute proper and valid proof for confirmation of the housing right over the apartment that is subject of the claim.
8. The Decision was served on the appellant on 21 May 2014, whereas he filed an appeal on 11 June 2014.

Allegations of the parties:

9. The Appellant R. V. alleges that, the KPCC's Decision was rendered based on erroneous establishment of the factual situation and erroneous application of the material law. The Appellant stated that the documents presented, particularly the Contract on Purchase of the apartment No 194, dated 11.12.1992 constitutes sufficient evidence for the Supreme Court to grant him the right to use the apartment which is the subject of the Claim.

Legal reasoning

Admissibility of the appeal

10. The appeal is admissible; it was filed within the period of 30 days as prescribed by article 12.1 of the Law no. 03/L-079.

Jurisdiction

11. The Supreme Court has jurisdiction to review the appeal.
12. After having reviewed the appealed Decision, case files and the allegations of the appeal, the Supreme Court, pursuant to the provision of the Article 194 of the LCP, found that.
The Appeal is unfounded.
13. The Supreme Court notes that the appealed Decision of the KPCC is correct, complete, and comprehensible and contains description and explanation of the decisive facts for rendering a lawful decision. The KPCC, by its Decision has properly established the factual situation and on this basis has properly applied the material law by rejecting the Claimant's claim for the confirmation of the right to use and the repossession, as unfounded. The Claimant to the claim attached the abovementioned contract, as well as other document evidence which is not relevant for Decision of this legal housing matter, and moreover those contracts according to the Executive Secretariat of the KPA were not positively verified.
14. The Supreme Court finds that the Decision of the KPCC is correct, lawful, complete, clear and consequently was it was comprehensible when it decided to reject the Claimant's claim with the reasoning that pursuant to the Law on housing relations No 42/86 and Law on housing No 50/92, he not only has not presented the Contract for the Use of the apartment and proof of the possession of the property, but also the Claimant's Contract on Purchase was certified by a parallel court and therefore it is not considered as legally valid evidence to confirm that he acquired the ownership rights.
15. Subject of special review and the evaluation of the Supreme Court were also the allegations of the Appellant that he acquired the ownership and possession rights over the claimed apartment in a lawful manner based on the Ruling No 162 dated 13.7.1979, Ruling No 01-57-92 dated 14.6.1992 and the Purchase Contract No 194 dated 11.12.1992, but concluded that these allegations were unfounded, inadmissible and consequently without legal basis. This because, the Contract on Sale is certified by a parallel court and that the same does not constitute an appropriate and valid document for confirmation of the ownership rights over the claimed apartment. In addition, the Ruling No 01-57-92 dated 14.6.1992, was not positively verified.
16. The Supreme Court, based on such factual findings fully and entirely accepts the legal stance expressed in the Decision on appeal where it concluded that based on the Law on housing relations No 42/86 and Law on housing No 50/92, he did not present the Contract on Use and he did not have possession over the apartment which is subject to the claim, legal requirements

that represent a necessary condition to grant the right to use and consequently a precondition to recognize the property right over the object of the claim.

17. The Supreme Court considers that the Commission while examining the property claim through its appealed Decision properly established the factual situation and properly applied the material law when it rejected the Claimant's claim as unfounded. The appealed decision does not contain essential violations of the provisions of the Law on Contested Procedure Article 182 par. 1 and 2 of the LCP, which the court examines ex officio, Article 194 of the LCP, nor violations that would influence its fairness, correctness and lawfulness.
18. Subject of the review and the evaluation of the Supreme Court was also other evidence and the Appellant's allegations, however they could not have impact on rendering a different Decision in this legal contested matter
19. Considering on the reasons presented above, pursuant to Article 13.3.c of the Law No 03/L-079 and Article 200 of the Law on Contested Procedure, the Decision of the KPCC is confirmed and the appeal is rejected as unfounded.

Legal Advice:

Pursuant to article 13.6 of the Law no.03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anna Bednarek, EULEX Judge

Sandra Gudaityte, EULEX Registrar