

**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-093/15

**Prishtinë/Priština,
13 September 2017**

In the proceedings of:

S. J.

Appellant

vs.

None

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Isa Kelmendi, Judges, deciding on the appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 (case file registered at the Kosovo Property Agency under number KPA35172) after deliberation held on 13 September 2017, issues the following

JUDGMENT

1. The appeal filed by S. J. against the decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 with regard to the claim registered with KPA under number KPA35172, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 as far as it concerns the case registered with the Kosovo Property Agency with number KPA35172, is confirmed.

Procedural and factual background:

1. On 5 April 2007, S. J. (hereinafter: Appellant), filed a claim with the Kosovo Property Agency (KPA), seeking re-possession of apartment based on the right to use, located in Pejë/Peć, street Ushtria Jugosllave/Jugoslovenska Vojska, 1st floor, number 31, with the surface of 61 m², Municipality of Pejë/Peć (hereinafter: claimed property). The appellant states that she had the right to use the claimed property but she lost it due to the circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 15 June 1999 as the date of loss.
2. To support her claim, the appellant submitted with the KPA the following documents:
 - Decision on allocation no. 380/463, issued by the Municipal Assembly of Pejë/Peć, on **26 July 1996**, based on which the appellant was allocated with apartment for use.
 - Identification card issued by the parallel structures of the Municipality of Pejë/Peć, on 18 December 2000, wherein the previous address is V. S. No. 49 Pejë/Peć.
3. Initial notification took place on 26 September 2008. Based on the notification report, the claimed property was occupied by F. B, who stated that he uses the property for residential purposes and does not allege any legal right over it.
4. Based on the verification reports of the KPA Executive Secretariat:
5. Decision on allocation no. 380/463, issued by the Municipal Assembly of Pejë/Peć, on 26 July 1996, was not found at the archives of the Municipality of Pejë/Peć.
6. The Agency's Secretariat contacted the appellant on 25 September 2008, and asked for submission of additional documents to prove her alleged right to use, but she failed to submit other documents or evidence on use.
7. The Kosovo Property Claims Commission through its decision, KPCC/D/C/247/2014, dated 18 June 2014, decided that the claim should be dismissed by stating that the claimant, now the appellant failed to prove any ownership right over the property. In the reasoning of decision, paragraph 25 is stated that the party has failed to present evidence

to prove any right over the property and the Secretariat could not find any evidence ex officio in the support of party's claim.

8. The decision was served on the appellant, on 16 October 2014. She filed an appeal on 30 October 2014.

Allegations of Appellant:

9. The appellant alleges that the KPCC did the incomplete determination of material facts and misapplication of substantive law. According to the appellant, she had the right to use, and that she purchased the claimed property from the Municipality of Pejë/Peć. To support her appealed allegations she submitted the sales contract, Ov.br.2/09 dated 9 April 2009, concluded between the parallel Municipality of Pejë/Peć and the appellant, and certified by the parallel Municipality of Pejë/Peć.
10. The appellant based on this document requests from the court to render a judgment wherewith shall quash the decision of the KPCC and shall recognize the ownership of appellant and restitution into her possession.

Admissibility of appeal:

11. The Supreme Court reviewed the appealed decision pursuant to Article 194 of the Law on Contested Procedure no. 03/L-006 (hereinafter: LCP) and after the assessment of appealed allegations ascertained the following:

The appeal is admissible because was filed within a deadline of 30 days as prescribed by Article 12.1 of the Law No. 03/L-079, which provides that the party may file an appeal against the decision of the Commission within thirty (30) days of notification of parties with the decision.

Legal Reasoning:

12. The Supreme Court has reviewed the appeal pursuant to provisions of Article 194 of the LCP and after the assessment of appealed allegations concluded the appeal as ungrounded.
13. The KPCC grounded its decision on the fact that the appellant could not prove that she had any right over the claimed property and that consequently lost her right due to or related to the circumstances of armed conflict.
14. The Supreme Court found that the KPCC issued a correct decision when it rejected the claim due to the lack of evidence because the party failed to prove any ownership right, and the Secretariat could not find any evidence in the support of allegations of claim.
15. The appellant, now at the appealed procedure has provided new evidence by alleging that she became the owner based on sales contract, Ov.br.2/09 dated 9 April 2009 concluded

between the parallel Municipality of Pejë/Peć and the appellant, and certified by the parallel Municipality of Pejë/Peć, which was not attached to the claim and consequently was not reviewed by the KPCC.

16. The appealed allegations that the property was purchased through a contract concluded before parallel structures, the court considers as irrelevant for two legal reasons: **a)** With Section 12.11 of UNMIK Regulation No. 2006/50, as amended by Law no. 03/L-079 is provided that (quotation: New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned. (party did not provide explanations why those were not attached to the claim) and **b)** Exclusion of possession of socially owned apartments by UNMIK Regulation No. 2000/60, wherewith is suspended Article 3 of Law on Property Relations and Property Right Holders (allocators of apartments) could in no way have into possession the socially owned apartments after the entrance into force of the Regulation (meaning they could not allocate or change the occupancy right holder). Section 5 of Regulation No. 2000/60 on the limitation of allocation of apartments and Section 6 of the Regulation provides that: Housing and Property Relations Directorate and the Housing and Property Claims Commission have the exclusive jurisdiction over these cases until the regulation UNMIK/REG/2000/60 is in force.
17. Consequently, the appellant did not prove that she acquired the right of use of claimed property and that the transaction or purchase from the parallel Municipality of Pejë/Peć, in the capacity of allocator of apartment is irrelevant.
18. In the light of forgoing and pursuant to Section 13.3 sub-para (c) of the Law No. 03/L-079, is decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Article 13.6 of Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Isa Kelmendi, Judge

Krassimir Mazgalov, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar