

**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-180/15

Prishtinë/Priština,

7 December 2017

In the proceedings of:

R. H.

Appellant

vs.

A. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC), KPCC/D/R/253/2014 (case file registered with the KPA under No KPA39148) dated 28 August 2014, after the deliberation held on 7 December 2017, issues the following

JUDGMENT

1. The appeal of H. R. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 dated 25 August 2014 with regard to the claim registered with the KPA under no 39148 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/253/2014 dated 25 August 2014, with regard to the claim registered with the KPA under no KPA39148 is confirmed.

Procedural and factual background

1. On 26 September 2007, A. M. (hereinafter: the Appellee) filed a claim with the Kosovo Property Agency (hereinafter: KPA) on behalf of her late husband M. M, seeking confirmation of the ownership right of an apartment located at street **“Nemanjinoj No 8/5 (former Mose Pijade No 8), entrance no 1, floor no 2, apartment no 5**, Municipality of Prishtinë/Priština (hereinafter: the claimed property).
2. In support of her claim the Appellee submitted with the KPA the following evidence:
 - Receipt dated on 23 March 1994 showing M. M. has paid the total purchase price of the apartment on the amount of 51.235.18 dinars (Serbian currency) pursuant to Decision No 50/98,
 - Marriage Certificate No ~~302/94~~ 304/94 issued by Civil Registration office of Leskovac on 8 August 1994, showing the relation between the Appellee and M. M,
 - Certification No 304 issued by YU GARANT BANKA a.d. on 13 April 1999 confirming that M. M. has paid the purchase price of the apartment on the amount of 51.235.18 dinars (Serbian currency) pursuant to the Decision of Municipal Court of Prishtinë/Priština No 50/98 dated on 31 August 1998,
 - Decision No. 50/98 issued by Municipal Court of Prishtinë/Priština on 31 August 1998, whereby, the court considers that M.M. has fulfilled all his obligations towards the claimed property, thus, allowing him to purchase the same. The Decision became final on 12 February 1999,
 - Written Consent No 1-84/98 issued by Military Post with the location at Nish/Niš, giving its consent M. M. to be registered as the new owner of the claimed property,

- Inheritance Decision No 586/99 issued by Municipal Court of Leskovac on 22 July 2008, whereby, the claimed property was inherited by Appellee and her two children's each per 1/3 ideal part of the property,
3. On 1 October 2008 the Executive Secretariat of KPA performed the notification of the Claim by founding the claimed property occupied by R.H. (hereinafter: the Appellant) who claimed having bought the apartment by its legal owner.
 4. Supporting his allegation the Appellant submitted the following evidences:
 - Contract of Sale legalized before Second Municipal Court of Beograd under reference number No 906/99 on 19 January 1999. The contract was concluded between M.M. in a capacity of the seller and Ž. J. in a capacity of the buyer. The subject of the sale was the apartment located at **street "Nemanjina No 10/6" (former Mose Pijada 8/6)**
 - Contract of Sale legalized before Second Municipal Court of Beograd No 907/99 on 21 January 1999. The contract was concluded between Ž. J. in a capacity of the seller and M. R. in a capacity of the buyer. The subject of the sale was **street "Nemanjina No 10/6" (former Mose Pijada 8/6),**
 - Contract of Sale legalized before Municipal Court of Prishtinë/Priština No 1216/2000 on 20 July 2000. The contract was concluded between M. R. in a capacity of the seller and Q. H. in a capacity of the buyer. The subject of the sale was **street "Nemanjina No 10/6" (former Mose Pijada 8/6),**
 - Contract on Gift No 647/2010 legalized before Municipal Court of Prishtinë/Priština on 1 February 2010. The Contract was concluded between Q. H. in a capacity of the giver of the gift and R. H. in the capacity of the receiver of the gift. The subject of the sale was **street "Nemanjina No 10/6" (former Mose Pijada 8/6), entrance no 8, apartment no 6,**
 5. The Executive Secretariat of KPA verified positively the documents submitted by Appellee.
 6. On 25 August 2014, the KPCC with its Decision KPCC/D/R/253/2014 (paragraph 28-30) decided that the Appellee has established the ownership right of M. M. over the claimed property. Regarding the Appellant (paragraph 29 of the Decision) states as follows: the Respondent (Appellant at current stage) claims legal right over the claimed property asserting that his father purchased the claimed apartment from a third party and that he later obtained ownership right over the property based on the Contract on Gift. He submitted a Purchase Contract and Contract on Gift, however, the Contracts does not relate to the claimed property.
 7. On 21 January 2015 the Decision was served on the Appellee.

8. The Appellant received the Decision on 1 December 2014. The appeal was filed on 17 December 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision contains essential violation of the substantive and procedural law and erroneous and incomplete determination of the factual situation.
10. The Appellant alleged that the Commission decided to recognize the Appellee's ownership right over the claimed property by not considering at all the documents submitted by him.
11. According to the Appellant the KPCC Decision is unclear and contradictory between the Decision and the evidences at the file and there is no sufficient justification for the crucial evidence supporting the appealed Decision. The Appellant alleged that he was not given the opportunity to submit material evidence and this action has influenced the challenged Decision. The Appellant sold the claimed property many years ago to Ž. J., then Ž. J. sold the claimed property to M. R. and finally M. R. sold it to Q. H. (Appellant's father).
12. The Appellant alleged that the KPCC Decision was issued based on the Partial Inheritance Decision which according to him it is unlawful Decision.
13. By the end of his appeal, the Appellant seeks the Supreme Court quashed the KPCC Decision and dismiss the Claim KPA39148 or to refer back the case at the first instance for reconsideration.
14. The Appellant attached to his appeal the same documents that were considered by Commission.
15. In addition, the Appellant presented the Power of Attorney No 8151/2014 dated on 15 December 2014 showing that he has authorized the lawyers N. Th. and Q. Z. to represent him before Kosovo Property Agency, Supreme Court of R of Kosovo and Basic Court of Prishtinë/Priština.

Legal reasoning

Admissibility of the appeal

16. The Supreme Court reviewed the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after the assessment of the Appellant's allegations found that:

17. The appeal is admissible because it has been filed within the legal deadline pursuant to Section 12.1 of the Law No. 03/L-079 which provides that the party may file an appeal against the Commission's Decision within thirty (30) days from the notification of parties about the Decision.

Merits of the appeal

18. After reviewing and assessing the case file submissions and Appellant's allegations, the Supreme Court notes that the appeal is ungrounded.
19. The KPCC Decision is correct. The Court could not find an incomplete determination of facts or misapplication of the substantive and procedural law.
20. Regarding the allegation of the Appellant that the KPCC Decision is unclear, contradictory between the Decision and the evidences at the file and there is no sufficient justification for the crucial evidence supporting the appealed Decision, the KPCC has given a certified Decision dated on 25 August 2014. The Decision made a reference to relevant paragraphs in the Cover Decision. A special reference was made to the paragraphs 28-30 of the Decision.
21. The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have the jurisdiction in the case.
22. According to Section 3.1 of the Law No 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established his/her ownership right over the private property but also that he/she now is unable to exercise such property rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
23. Supporting her claim, the Appellee presented: the Receipt dated on 23 March 1994 showing her husband has paid the total purchase price of claimed property, Certification No 304 issued by YU GARANT BANKA a.d. on 13 April 1999 confirming that the purchase price of the claimed property was paid pursuant to the Decision of Municipal Court of Prishtinë/Priština No 50/98 dated on 31 August 1998, Decision No. 50/98 issued by Municipal Court of Prishtinë/Priština on 31 August 1998, whereby, the court considers that M. M. has fulfilled all his obligations towards the claimed property, thus, allowing him to purchase the same and Written Consent No 1-84/98, whereby, the Military gives its consent M. M. to be registered as the new owner of the claimed property. All these documents were verified positively by the Executive Secretariat of KPA. The Crucial document proving the Appellee's husband right over

- the claimed property was the Final Decision No. 50/98 issued by Municipal Court of Prishtinë/Priština on 31 August 1998.
24. The Appellant's allegation that the documents were not considered by the Commission then that he was not given the opportunity at all to submit material evidence does not stand.
 25. From the case file evidences it is obviously proven that the Appellant signed the Notice of Participation that he will be party before the KPA proceedings on 11 January 2008. The discloser of the documents between the parties was performed, the Appellant received the documents of the Appellee on 23 January 2012 (page 168 of the file) while he had submitted his documents on 11 November 2008 and 14 February 2012 (page no 40-60 of the case file), however, the documents submitted by him do not relate the claimed property.
 26. The claimed property is an apartment located at street **“Nemanjinoj No 8/5 (former Mose Pijade No 8), entrance no 1, floor no 2, apartment no 5**, Municipality of Prishtinë/Priština while the documents submitted by the Appellant refers to the apartment located at street **“Nemanjina No 10/6” (former Mose Pijada 8/6), entrance no 8, apartment no 6**, Municipality of Prishtinë/Priština. This fact was very well explained at paragraph 29 of the KPCC Decision KPCC/D/R/253/2014.
 27. As far as regards the Partial Inheritance Decision No. 586/99 issued by Municipal Court of Leskovac on 22 July 2008, the Court notes that this documents was not taken into the consideration by the KPA.
 28. The appeal from R. repeats the same allegations that he made before the KPCC. No new evidence has been submitted with the appeal.
 29. 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.
 30. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.
 31. This judgment has no prejudice to any party's to claim right over the property before the competent court in Kosovo.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar