

**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-201/15

Prishtinë/Priština,

14 February 2018

In the proceedings of

B.S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding upon the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014 (case file registered at the KPA under the number KPA56110), dated 27 August 2014, after deliberation held on 14 February 2018, issues the following

JUDGMENT

1. The appeal of B. S, filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014, dated 27 August 2014, with regard to the claim registered with KPA under No KPA56110, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014, dated 27 August 2014, with regard to the claim registered with KPA under No KPA56110, is confirmed.

Procedural and factual background

1. On 27 December 2007, B. S. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (henceforth: the KPA), seeking confirmation of the ownership right and repossession of an apartment with a surface of 65.08 m², located at street “Bregu I diellit/Suncani Breg” No II, Object No 40, entrance no II, floor no 2, Municipality of Prishtinë/Priština (henceforth: the claimed property).
2. To support his claim, the Appellant provided the KPA with the following documents:
 - Ruling No 01-185/2 on General Allocation of 42 Solidarity Apartments for Use at place called Bregu i Diellit/Suncani Breg issued on 12 June 1998 by Found for Financing Constructions of Solidarity Apartments, showing the claimed property is on the list,
 - Decision on Allocation of the Solidarity Apartment for Use No 360/99 issued by Public Revenue Service of R of Serbia on 18 January 1999, whereby, the Appellant in a capacity of the employee of Public Revenue Service with its centre in Prishtinë/Priština was allocated for use the claimed property,
 - Contract on Lease of the Apartment No 25 concluded on 21 January 1999 between Public Housing Enterprise in Prishtinë/Priština and the Appellant regarding the claimed property,
 - The Contract on Sale of the Apartment legalized on 18 March 1999 before Municipal Court of Prishtinë/ Priština and took reference No 2100/99. The Contract was concluded between Public Revenue Service- Centre Prishtinë/Priština in a capacity of the seller and the Appellant in a capacity of the buyer of the claimed property,
3. On 9 July 2008, the Executive Secretariat of KPA notified the claimed property. It turned out to be occupied by Sh. G. but he did not claim any right over the claimed property.

4. Because no party filed a response to claim within the legal deadline of 30 days pursuant to Article 10.2 of Law No. 03/L-079, the claim was considered as uncontested.
5. According to the verification report of the Executive Secretariat of KPA, the Decision on Allocation of the Solidarity Apartment for Use No 360/99, as well as the the Contract on Sale of the Apartment legalized on 18 March 1999 before Municipal Court of Prishtinë/ Priština under reference No 2100/99, was not found at the competent institutions, thus, verification of these documents resulted to be negative.
6. KPA established that the apartment was previously subject to the adjudication of HPCC upon the application of the Appellant. The claim was dismissed by the HPCC in its Decision no. HPCC/D/154/2004/C dated 22 October 2004. According to paragraphs 11, 12 and 18 of the Cover Decision that applies especially to the claim the documents presented by S. appears not to be genuine. The Officials of the Directorate attempted to verify the documents at the relevant public offices but not one of the presented documents had a corresponding original of copy of the reference in the records of the relevant allocation right holders, the Public Housing Enterprise and the competent Municipal Court. The Appellant failed to produce any verified documentary evidence to prove that he had possession of the property concerned or any proof of a property right, which conferred the right to take a possession of the claimed property, consequently the claim stands to be dismissed.
7. A request for reconsideration was rejected by the HPCC in its Decision HPCC/REC/76/2006 dated on 18 October 2006. In paragraph 30 of the Cover Decision which according to Certified Decision applies especially to the claim, it is stated that C category Claimant (the Appellant in case at hand), seeks proper investigation of his case claiming that valid documents regarding the claimed property exist. The Commission requested additional investigations at the dislocated archives in Niš and no such documents in the name of the Appellant were found. The Directorate also conducted investigations once more at the Public Housing Enterprise in Prishtinë/Priština. They obtained a list of the names of the users of apartments in the building concerned and this document does not mention the Appellants name.
8. The Executive Secretariat of KPA contacted the Appellant and requested further documents to prove his alleged ownership title over the claimed property. According to the notes in the KPA file, he was informed that the documents he submitted in this concern were not found in the public records and a notice of potential inadmissibility was sent asking him for the requested documents (page no 171 of the case file). The Appellant presented the same documents which were already examined by the HPCC previously and found out to be not genuine. He confirmed that he had no other document to submit.

9. On 27 August 2014, the Kosovo Property Claims Commission (KPCC), with its Decision KPCC/D/R/255/2014, refused the claim. In paragraph 35 and 36 of 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 Claimant further submitted written statements, given by three witnesses, confirming that the claimed property was allocated to the Appellant. In the Commission's view, this statement, in absence of any corroborative documentary evidence, is not sufficient evidence to establish the ownership over the claimed property. Consequently the claim stands to be refused.
10. On 19 November 2014, the Decision was served on Appellant, and he has filed the appeal before the Supreme Court on 19 December 2014.

Allegations of the appellant

11. The Appellant challenges the Decision by stating that it rests on erroneously and incomplete established the factual situation and wrongly application of the material law.
12. The Appellant insisted that the fact that the Commission was not able to verify positively documents submitted by him is not true. The Institutions before which the documents should be verified possess the evidences based on which can be proven the ownership right on his name.
13. The Appellant requested the proof from the competent institutions that documents were not issued by those institutions.
14. Further, the Appellant stated that he used the claimed property until Jun 1999 when he was forced to leave the property due to well-known circumstances.
15. Finally, the Appellant expects the Supreme Court to correct the mistake and issues the right Decision by confirming that to the appellant belong the right for repossession of the claimed property.

Legal reasoning

16. The appeal has been filed within the time limit of 30 days as foreseen by Section 12.1 of Law No. 03/L-079 and is admissible.
17. The Supreme Court, after the review of the submissions in the case file, the appealed Decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is ungrounded.
18. As a matter of fact, the Appellant previously applied to HPCC asking for re-possession of the claimed property, which was allegedly lost during the conflict. HPCC in its Decision of 22 October

- 2004, HPCC/D/154/2004/C, dismissed the Claim because the Appellant failed to produce any verified documentary evidence to prove that he ever had possession of the property concerned.
19. It is not disputable that the Appellant was clearly seeking to get repossession of the claimed property before HPCC. However, in order to validly file a Claim in the first procedure, Section 2.6 of UNMIK Regulation 2000/60 and Section 1.2 (c) of UNMIK Regulation No.1999/23 which is referred to by Section 7.1 of UNMIK Regulation 2000/60 required that the Appellant be the possessor of claimed property prior to 24 March 1999.
 20. To prove his possession right, the Appellant submitted with the HPCC the **same documents** described in the part of this Judgment related to the procedural and factual background. These documents could not be verified by HPCC in the competent court in Kosovo.
 21. With Decision HPCC/REC/76/2006 dated on 18 October 2006, a request for reconsideration against the Decision HPCC/D/154/2004/C, filed by Appellant was rejected. This means that Decision HPCC/D/154/2004/C is final and cannot be appealed.
 22. The Appellant did not bring any new evidence leading the KPCC to deny this verification, therefore, the factual situation presented subsequently to the Commissions by the Appellant was the same one; however the ownership right over the apartment was not examined by HPD, thus, allowing the Appellant to meet the requirements in procedure before KPA whereas he claimed the ownership right and repossession over the apartment.
 23. Regarding the case at hand filed with KPA, the KPCC based its Decision on the fact that the KPA Executive Secretariat and the KPCC had again made a negative verification of the documents on which the Appellant bases his claim of ownership. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported the Appellant's claim. This means that the same documents were verified twice by HPCC (HPCC/D/154/2004/C dated 22 October 2004 and HPCC/REC/76/2006 dated on 18 October 2006) and again by KPCC on 27 August 2014 KPCC/D/R/255/2014 leading the verification to the same conclusion which is negative.
 24. The appeal of the Appellant repeats the same allegations that he made before the HPCC and KPCC.
 25. The Supreme Court finds that the KPCC 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.
 26. 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.

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

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar