

**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-004/2015

**Prishtinë/Priština,
12 October 2016**

In the proceedings of:

K. M.

Appellant

Vs.

Nobody

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, judges, deciding on the Appeal against the Decision of the Kosovo Property Claim Commission KPCC/D/R/239/2014 (case file registered at the KPA under the number KPA54910), dated 30 April 2014, after deliberation held on 12 October 2016, issues the following:

JUDGMENT

1. The appeal of K. M. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/239/2014; dated 30 April 2014, with regard to the case file registered at the Kosovo Property Agency under the number KPA54910 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/239/2014, dated 30 April 2014, with regard to the case file registered at the Kosovo Property Agency under the number KPA54910 is confirmed.

Procedural and factual background:

1. On 30 December 2007 K. M.(hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of Ownership Right and Repossession over the apartment with a surface of 34.81 m², located on Kralja Petra str. I bb, third floor, apartment no 9, Municipality of Ferizaj/Uroševac (hereinafter: the claimed property). She claims that she acquired the claimed property based on the Decision on Allocation and later she bought it.
2. To support her claim, she submitted with the KPA the following documents:
 - The Decision on the Allocation and Use of the claimed property, issued by the Municipality of Ferizaj/Uroševac no 360-37, dated 26 January 1999;
 - The Purchase Contract Ov.Br.18/99 conducted between the Municipal Assembly of Ferizaj/Uroševac as a seller and the Appellant , dated 16 March 1999;
 - Statement Ov.Br.240/07, given by the former neighbour J. D., certified before the Municipal Court in Knjazevc;
 - Statement Ov.Br.383/07, given by the former neighbour B.R., certified by the Municipal Court in Kruševac;

- Statement given by the former neighbour P. S. certified by the Municipal Court in Mitrovicë/Mitrovica, Leg.nr. 179/2007.
 - Certificate Su.Br.1/07, dated 10.01.2007, issued by the parallel Municipal Court of Ferizaj/Uroševac located in Leskovc/Leskovac proving that the Purchase Contract was conducted before the Parallel Court of Leskovc/Leskovac
 - Identification document issued by the authority of the Republic of Serbia on 25 June 2003
3. On 27 June 2007 the KPA notified the claimed property. The property resulted usurped by F. Sh, who stated that he moved in this property after the armed conflict because his family had no shelter and that the property was not habitable because the apartment had not been finished and that he invested his money to make it inhabitable.
 4. Given that no party filed a response on the claim within the legal deadline of 30 days pursuant to Article 10.2 of the Law no. 03/L-079, the claim was considered as uncontested.
 5. According to the Verification Report, dated 29 October 2008, the submitted documents were not found at the competent institutions, hence, the verification of the documents results as Negative.
 6. The KPA established that the apartment has been subject of review by the Housing and Property Claim Commission (HPCC), established by the UNMIK/REG/1999/23 and UNMIK/REG/2000/60, after the claim DS605373 was filed by K. M. The claim has been dismissed by the HPCC with its decision no. HPCC/D/189/2005/C, dated 30 April 2005.
 7. The KPA contacted the Appellant several times asking from her additional documents in order of proving the ownership right over the claimed property. According to the data in the KPA case file she was informed that the documents she had submitted for this purpose were not found in public records and a notification on potential eligibility was sent asking from her the needed documents. She submitted the same documents in relation to the ownership title, which already had been negatively verified by the HPCC. She stated that she did not have other documents to submit.
 8. On 30 April 2014, the Kosovo Property Claims Commission (KPCC), in its decision KPCC/D/R/239/2013, rejected the claim. In paragraphs 10 and 26 of the cover decision, which according to the confirmed decision applies specifically to the claim, it is stated that the documents which were submitted by the Claimant, have not been verified as original by the Executive Secretariat. Additionally, the Claimant submitted written statements from

three witnesses, confirming that he has lived in the claimed property in 1999. In the Commission's view, these statements, in absence of confirming evidence, are insufficient to prove the ownership over the claimed property. Consequently, the claim stands to be rejected.

9. The Decision was served on K.M. on 15 July 2014. The Appellant filed an appeal on 14 August 2014 by submitting it before the respective office in Beograd and the same was referred to the KPA on 18 August 2014.
10. After reviewing case file submissions and appellate allegations pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter: LCP), the Court while reviewing the Judgment as per its official duty, for the reasons mentioned and not mentioned in the appeal, found that: The appeal is unfounded.

Allegations of the Appellant

11. In the claim it is stated that the possession over the claimed property has been lost because of the circumstances related to the armed conflict in Kosovo in 1998/99, whereas 16 June 1999 is mentioned as date of loss, and the same property has been usurped by F. Sh. Additionally, the Appellant alleged that she filed a claim for re-possession of the stated property before the Housing and Property Claims Commission (hereinafter: HPCC). She alleged that the apartment was allocated to her on 26 January 1999 and that she acquired possession over it in January 1999 by purchasing it from the Allocation Right Holder, Municipality of Ferizaj/Uroševac on 16 March 1999. Nevertheless, the HPCC decided otherwise.
12. K. M. alleges that the KPCC violated the UNMIK Regulation 2006/50 and the Law 03/L-079, at her expense. The KPA stated that the Executive Secretariat could not verify the submitted documents. With this Decision, the Secretariat has violated the right for private property and inflicted a large material and immaterial damage on her family. By doing so the KPCC violated International Conventions and Universal Declaration on Human Rights and consequently the Constitution of the Republic of Kosovo which obliges the Institutions to apply international instruments with priority.

13. The Appellant alleges that the KPCC has erroneously established the factual situation and misapplied the substantive law and added that with its actions the KPCC violated human rights which are protected by the Universal Declaration and International conventions which are applied with priority in Kosovo.
14. Among other documents she submitted statement from witnesses who used to live in the same building as her and who had apartments allocated by the Municipal Assembly of Ferizaj/Uroševac in the same way. They filed claims before the HPCC (cases were absolutely the same) and the HPCC confirmed their ownership rights (cases DS003510 and DS603418).
15. In the appeal, K. M. provided a detailed presentation of the documents that she submitted in order to confirm her ownership.
16. Finally, K.M. considers that the KPCC Decision is incorrect asking from the KPA's Appellate Panel of the Supreme Court of Kosovo to grant the Appeal and amend the KPCC Decision in order to confirm her Ownership Right over the claimed property and issue an order for the re possession to her.

Legal reasoning

Admissibility of the appeal

17. The Appeal is admissible because it has been filed within the foreseen deadline. Although in the cover letter of the KPA Executive Secretariat case, dated 08 January 2015, it is stated that the Appellant received the HPCC Decision on 15 July 2014 and filed her appeal on 18 August 2014, in the case file it is clear that the Appeal has been filed within the 30 days deadline before one of the KPA Offices and the same was submitted on 14 August 2014 before the UNCHR Property Office in Beograd. In light of the above it can be concluded that the Appeal is admissible and that it has been filed within the timeframe foreseen by the provision of Article 12 par. 1 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-79, which provides that the appeal against the KPCC decision may be filed within the timeframe of 30 days from the date of its receipt.
18. First of all, the Appellant in her Appeal refers to the previous Decision issued by the HPCC with regard to the stated apartment. In fact, K. M. previously has addressed to the HPCC

claiming repossession of the apartment which she allegedly lost during the conflict. The HPCC in its decision HPCC/D/189/2005/C, dated 30 April 2005, dismissed the claim because M. did not submit any evidence to prove that she ever had possession over the stated property. Additionally, the identification document issued to her by the authorities in Serbia proves that the last address in Kosovo of the Appellant is the village Talinoc i Muhagjerëve rather than the claimed property.

19. Nevertheless, in order to assess if the case subject has already been reviewed, one should take into consideration not only the purpose of the Appellant but the entire legal and factual situation that has been presented.
20. It is not being disputed that the Appellant was clearly seeking to take repossession over the stated apartment in a proceedings before the HPCC. Nevertheless, in order to file a claim in a first instance proceedings (before the HPCC), Section 2.6 of the UNMIK Regulation 2000/60 and Section 1.2 (c) of the UNMIK Regulation no. 1999/23 referred to in Section 7.1 of the UNMIK Regulation 2000/60 require that the Appellant had to be in possession of the claimed property before 24 March 1999. In order to prove her possession right, the Appellant submitted before the HPCC the same documents mentioned in the first part of this Judgment, in the part of procedural and factual background. These documents could not be verified by the HPCC before the competent court in Kosovo.
21. The Appellant did not submit any new evidence based on which the KPCC would disregard the result of the verification in the proceedings before the HPCC. Therefore the factual situation presented before the KPCC by the Appellant remained the same. Nonetheless, the property right over the apartment has not been reviewed by the Housing and Property Directorate (HPD), therefore the Appellant fulfilled the requirements for procedure before the KPA.
22. In connection to the case filed before the KPA, the KPCC bases its Decision on the fact that the KPA Executive Secretariat and the KPCC have again made the negative verification of the documents, in which Appellant based her property claim. The KPCC's Executive Secretariat could not obtain, *ex officio*, any evidence to support the claim filed by Appellant. Based on this, the KPCC found that Appellant could not prove any property rights over the claimed property.

23. The appeal filed by Appellant reiterates the same allegations she has made before the HPCC and the KPCC. Additionally, no evidence that was previously taken into consideration by the HPCC and later by the KPCC was submitted with the appeal.
24. The Supreme Court finds that the KPCC has taken a correct Decision based on comprehensive and accurate proceedings. Therefore, the Supreme Court finds that there was neither violation of the substantive law nor erroneous or incomplete determination of the factual situation. The Supreme Court finds that the appeal is ungrounded and the KPCC decision lawful.
25. In light of the above, pursuant to Article 13.3 (b) of the Law no. 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar