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-16/12 **Prishtinë/Priština, 22 June 2012**

In the proceedings of

M.M., acting on behalf of S.B.
Gjilan/Gnijlane

Claimant/Appellant

vs.

S.B.
Gjilan/Gnijlane

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/122/2011 (case file registered at the KPA under the number KPA01186), dated 07 September 2011, after deliberation held on 22 June 2012, issues the following

JUDGMENT

1- The decision of KPCC/D/R/122/2011 regarding case file registered at the KPA under the number KPA 01186 is annulled as rendered in the absence of jurisdiction.

2 - The claim of M.M. on behalf of S.B. in claim No. 01186 is dismissed as falling outside the jurisdiction of the KPA.

Procedural and factual background:

On 02 November 2007 M.M., on behalf of S.B. filed a claim with the Kosovo Property Agency (KPA) seeking repossession of an apartment of 60.30 sq.m., situated in Gjilan/Gnjilane.

To support the claim Mr M. has presented numerous documents.

The claimant has indicated S.B. as the occupant of the property.

The KPA processed the notification by putting a poster on the door of the apartment.

In a report, dated 5 August 2011, the KPA (the Executive secretariat) recommended the claim to be dismissed as there is already a res judicata formed regarding the same property and the same parties – a reference to HPCC Decision No. HPCC/REC/76/2006 is made.

In the argumentative part of the report the Secretariat elaborates that the claim has previously been considered and comprehensively decided by the HPCC, ultimately through decision on reconsideration request on 18 October 2006 and following that the decision, Mr S.B. now respondent to the claim of S.B., has been given repossession of the claimed property.

From the analysis of the documents presented in the file it can be concluded that the disputed apartment was originally property of L.V. Factory. It is established that initially in 1978, on the basis of a contract between the Factory and the Municipal Assembly of Viti/Vitina the apartment was "assigned" to the Assembly for a temporary use. Then in 1981 a loan contract was concluded between the labour organization "L.V." and L.B., the late husband of S.B.. Also the respondent party S.B. requested to be granted the right to purchase the property and a decision of the Municipal court confirmed his right in this respect.

Legal Reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the Court should not elaborate on the merits of the appeal, respectively the merits of the appealed decision as the latter has been rendered in the absence of jurisdiction.

This is so because according to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In the context of the established facts the statement of the claimant that the possession of the property was lost in relation to the armed conflict of 1998/1999 remains completely unjustified. It is obvious from the documents within the file that the dispute regarding who had the right to purchase the property in question has started long before the eruption of the armed conflict of 1998/1999. The dispute was neither caused nor influenced by the war. Therefore the claim is out of the jurisdiction of the KPA and the KPCC had not to decide on the merits of the claim but to dismiss it. As this has not been done the KPCC has rendered a void decision which has to be annulled as per argument after art. 198.1 of the Law on Contested Procedure. According to the referred legal provision when the court of first instance (in this case it is a quasi-judicial body – the KPA) has rendered a decision outside its jurisdiction, the court of second instance has to annul the decision and dismiss the claim.

In the lack of jurisdiction it would be obsolete to elaborate whether there is res judicata regarding the same case and whether the claim was founded on its merits.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge ***Sylejman Nuredini, Judge***

Elka Filcheva-Ermenkova, EULEX Judge ***Philip Drake, EULEX Registrar***