

**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-158/13

**Prishtinë/Priština,
19 March 2014**

In the proceedings of:

E B
D SU ½ x E
P/P

Appellant

vs.

DN
Str. H A, no. 13
P/P

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo (hereafter: the Supreme Court) composed of Willem Brouwer, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under No. KPA01099), dated 22 October 2012, after deliberation held on 19 March 2013, issues the following

JUDGMENT

1. The appeal is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/R/175/2012, regarding the claim registered at the KPA under the number KPA01099 dated 22 October 2012, is confirmed.

Procedural background:

1. On 29 Augustus 2007, the appellant filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over the apartment Ulpiana A-7/4 in Prishtina with a surface of 36.71 m² (hereafter: the apartment).
2. The claim was contested by the responding party D N.
3. The KPCC decided the claim to be dismissed with a reference to section 11.4 of UNMIK regulation 2006/50 as amended by Law No. 03/L-079, reasoning that a claim for the same property had been previously decided by the Housing and Property Directorate by decision HPCC/D/226/2005/A&C dated 22 October 2005 (hereafter the HPCC Decision).
4. The decision was served upon the appellant on 29 April 2013.
5. Appellant filed an appeal against the KPCC decision at the KPA on 27 May 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.

Factual background

The Appeals Panel takes the facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

6. D N had been living in the apartment since 1986 as a tenant of E, the company that was her employer at the time.
7. By decision on termination of employment of 23 November 1990 D N was fired from her job with Et as from 26 November 1990. As a consequence she was expelled from the apartment.

8. By a decision of EPS-PE "E", followed by a contract of lease dated 28 November 1993 the employer of Ž M M (hereafter: M) became the tenant of the apartment.
9. M finally became the owner of the apartment by a contract of sale, verified by the Municipal Court of Prishtina on 18 March 1994.
10. According to a contract of sale of the apartment dated 7 may 2004 the appellant purchased the apartment of M M.
11. The HPCC Decision was taken as a group decision regarding several claims among which the claim of D N contested by M and a claim of M contested by D N. Both claims concerned the apartment.
12. The claim of D N was decided as founded and the claim of M was rejected.
13. Moreover, in paragraph 6 of the HPCC Decision in combination with paragraph 7, the contract of sale concerning the apartment between M and the appellant E B was decided to be in violation of the articles 5.1 and 5.2 of the UNMIK/REG/2000/60 and therefore void.
14. A request of reconsideration of the HPCC Decision was filed by M and the appellant E B.. The responding party was D N.
15. This request was rejected by the HPCC by the cover decision HPCC/REC/61/2006 dated 31 March 2006.

Legal reasoning:

Position of parties

16. The appellant requests the confirmation of his rightful ownership of the apartment and to be instated in the ability to exercise this right.

Jurisdiction

17. The Supreme Court has jurisdiction in this matter.

Admissibility

18. The appellant is admissible in his appeal.

Merits

19. Since the HPCC decision of 22 October 2005 was confirmed by the decision HPCC/REC/61/2006 dated 31 March 2006, the HPCC decision became final.

20. Article 166 paragraph (c) of LCP, applicable *mutatis mutandis*, according to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, provides that **no** new adjudication is permitted between the same parties for a legal matter for which a final decision exists.
21. Since the case in front of the HPCC regarded the same matter, the apartment, and since it was between the same parties the matter is *res judicata*.
22. That, as the appellant alleges, he never received the decision HPCC/REC/61/2006 dated 31 March 2006 in writing, does not influence the finality of the decision. This decision is binding and enforceable and not subject to any review by any other judicial or administrative authority in Kosovo.
23. This being the case, the KPCC has taken the right decision on the right grounds.
24. The appellant's further allegations all regard the HPCC decision and need no further consideration by the Supreme Court.

Conclusion

25. The aforementioned leads to the conclusions that the appellants appeal has to be rejected and the decision of the KPCC has to be confirmed as far as it regards the claim filed under KPA 1099.
26. In the light of foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

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

Willem Brouwer, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar