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-3/09 **19 May 2011**

In the proceedings of

Z.J.

Claimant/appellant

vs.

R.H.

Respondent/appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/34/2008, (case file registered at the KPA under the number KPA 10480), dated 19 December 2008, after deliberation held on 19 May 2011, issues the following

JUDGMENT

1. **The appeal of Z.J. filed against the decision of KPCC/D/R/34/2008, dated 19 December 2008 is rejected as ungrounded.**

2. **The decision of KPCC/D/R/34/2008, dated 19 December 2008, is confirmed.**

3. **The claimant is obliged to pay costs of proceedings in the amount of € 80 (eighty) within 15 days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and Factual Background:

On 13 December 2007 Z.J. filed a claim with the Kosovo Property Agency (KPA) stating as follows: By the decision No. 4466, internal number 6-14, dated 12 June 1999, of the Military Post of the Jugoslav Army, he, as civil employee of the Jugoslav Army, was given lease of an apartment in Ferizaj/Uroševac, Boshko Čakić Street, No.48, floor I/8. Afterwards, by contract No. 5374, internal number 400-2, dated 18 June 1999, certified before the Municipal Court in Niš on the same day under II.OV-br.1280/99 this apartment (flat number 8 in Boshko Čakić Street, No. 48, surface area of 34.37 square meters), which was in the possession of FRY, Military Post in Nish, was sold to him. By decision No. 5374, internal number 400-3, of the Military Post in Nish, dated 18 June 1999, he was allowed to register the aforementioned flat in the public books for immovable property because he had paid the full price for this apartment

The claim of Z.J. was registered as claim KPA10480.

The respondent, R.H., declared that he used the contested apartment based on the decisions issued by the competent bodies. By the decision of the KPC-Brigade 30 of Xhenio from Ferizaj/Uroševac No.25/32, dated 16 February 2001, he was allocated the single-room apartment in Ferizaj/Uroševac in str. Ramadan Rexhepi, block I, first entry, second floor, apartment 8. Furthermore, the respondent indicated that based on the group decision HPCC/D/189/2005/C, dated 30 April 2005, Z.J.'s claim DS 200304 had already been rejected. Therefore, the respondent stated, the claim for repossession was ungrounded.

By the decision of HPCC/D/189/2005/C, dated 30 April 2005, the claim of claimant Z.J. for the repossession of the said apartment had been rejected on the grounds that he failed to prove that he had ownership rights on the claimed property until 24 March 1999.

By the decision of the Kosovo Property Claims Commission, KPCC/D/R/34/2008, dated 19 December 2008, the claim of the claimant Z.J. seeking the recognition of his property right on the apartment situated in Ferizaj/Uroševac str. Boshko Çakiç, No.48, entrance 8, number 8, with surface of 34.37 m², was rejected. The Commission was of the opinion that the sales contract related to this apartment signed between Svetomir Kovačević on behalf of the SRY State-Federal Government -

Federal Ministry of Defense Military Post No. 5374 - as seller and the claimant as buyer was invalid because it violated Section 6 of UNMIK Regulation 1999/1. This regulation prescribes that UNMIK administers the movable and immovable property registered on behalf of Federal Republic of Yugoslavia or Republic of Serbia and their structures. Subsequently, the ruling on the allocation of the apartment as well as the purchase contract of 18 June 1999 was signed by organs that had no authorisations or jurisdiction to do so. Therefore, those documents were legally invalid and null.

The claimant filed an appeal against this decision of the Commission within the legal deadline of 30 days. He stated that the determination of the factual situation was erroneous and incomplete and the material law wrongly applied. The claimant asked the Supreme Court that, pursuant to the provision of Section 13.3, Subparagraph (a) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079, his appeal be accepted and a new decision be issued with any necessary modifications in order to recognize his property right and to grant him repossession.

Although the appellee was served with the appeal, he did not reply.

Legal Reasoning:

The Supreme Court reviewed the appealed decision pursuant to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and Article 194 of the Law on Contested Procedure.

After reviewing the case submissions and based on abovementioned factual conclusions, the Court deems the appealed decision of the KPCC to be correct and the claimant's appeal for the confirmation of the property ownership ungrounded. The sales contract with the appellant dated 18 June 1999 concerning the apartment in Ferizaj/Uroševac, str. Bosko Çakiç, No. 48, entrance 8 No. 1 was entered in violation of Section 6 of the abovementioned Regulation; hence, it is ex-lege null and void.

The Supreme Court has examined the appealed decision on the grounds of the Law on Contested Procedure (LCP) 03/L-006 (Official Gazette of Kosovo No.38, 20 September 2008), which, according to its Article 538, entered into effect fifteen days after its publication in the Official Gazette, that is to say prior to the issuance of the appealed decision on 19 December 2008. As a consequence, it is applicable to the present case.

Pursuant to Article 194 of the LCP, the court of second instance shall examine *ex officio* whether there

exists a breach of the provisions of contested procedure as defined by its Article 182.2.

Pursuant to Article 182.2 i) of the LCP, there is always a substantial violation of the provisions of contested procedure if a decision was rendered in relation to a case which had already been adjudicated by a final judgment.

Although the claim of Z.J. referring to the repossession of the flat in str. "Boshko Çakiq" 48/1/8, apartment 8 in Ferizaj, had been rejected by the decision HPCC/D/189/2005/C, dated 30 April 2005, this constitutes no situation of res judicata. It is true that the parties and the purpose of the claims before the HPCC and the KPCC are the same. But 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 require that the claimant be the possessor of residential real property prior to 24 March 1999. For the reason that the claimant was not in possession of the apartment prior to 24 March 1999 as it was indicated by him, the HPCC dismissed his claim.

Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079 defines the claims that the KPA has to receive and register as being ownership claims and claims involving property use rights in respect with private immovable property where the claimant is not now able to exercise such property rights. So stating, it does not mention any requirement of a previous physical possession of the real property as it is expressly read in the abovementioned articles of Regulation 2000/60. Therefore it is true that the factual situation presented subsequently to the Commissions by the claimant was the same one. However the legal grounds upon which he based his claim allowed him meeting the requirements in the second procedure whereas he could not meet the legal requirements in the first one.

Consequently, the Supreme Court considers that there is no breach of the provision of the Law on Contested Procedure hindering to adjudicate twice the same case.

The claimant's claim is ungrounded. Based on the confirmed facts and administered evidence, there is no doubt that the factual situation in this legal matter was established justly and fully.

The KPA has justly applied the material law namely the UNMIK Regulation 1999/1 for Authorisations of Provisional Administration in Kosovo. Pursuant to Section 6 of this Regulation, it is foreseen that "*UNMIK shall administer movable or immovable property, including monies, bank accounts, and*

other property of, or registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of its organs, which is in the territory of Kosovo". Section 7 prescribes that this regulation enters into force on 10 June 1999.

The ruling of Military Post in Ferizaj No. 4466 of 12 June 1999, by which the claimant was allocated an apartment on lease, as well as the contract of Military Post in Nish of 18 June1999, in the capacity of lessor or seller of the apartment, was done by FRY or its military structure contrary to the UNMIK Regulation 1999/1. Section 6 of this Regulation explicitly prescribes that after 10 June 1999, the movable and immovable property registered on behalf of FRY and RS shall be administered by UNMIK. Therefore, both rulings which were issued after the 10 June 1999 were issued by an organization which had no authorisations to undertake valid legal actions to lease or enter a purchase contract. Subsequently these contracts or rulings are legally invalid and null. Due to the fact that both the ruling and the contract are unlawful, they do not result in binding legal and material obligations from the moment they were entered, that is, the contract and the ruling are invalid ex tunc. Article 103 of the Law of Obligations foresees that in case the contracts are in violation of legal provisions, they are null from the moment of their creation; in this case, the contract has no legal effects since 18 June1999.

Costs of the proceedings

Pursuant to Annex III, Section 8.4 of Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission.

However such exemption is not foreseen for the proceedings before the Appeals Panel.

As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30

- court fee tariff for the issuance of the judgment (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised between € 5001 and 10000: € 50 (fifty).

These court fees are to be borne by the appellant who loses the case as foreseen by Article 452.1 read in conjunction with Article 473.1 of the LCP. The deadline for the payment is prescribed in Article 45 Paragraph 1 of the Law on Court Fees (Official Gazette of the SAPK-3 October 1987).

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.

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar