

**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-107/12

**Prishtinë/Priština,
1 October 2013**

In proceedings of

R. A.

Claimant/Appellant

vs.

A. M.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Ertezi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 (case file registered at the KPA under No. KPA44455), dated 29 February 2012, after deliberation held on 1 October 2013, issues the following:

JUDGMENT

1. The appeal of R. A. against the decision of the Kosovo Property Claims Commission Commission KPCC/D/R/145/2012, dated 29 February 2012, as far as it regards the appeal filed with the KPA under No. KPA44455 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012, dated 29 February 2012, as far as it regards the appeal filed with the KPA under No. KPA44455 is confirmed.
3. The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 06 July 2007, R. A. filed a claim with Kosovo Property Agency (KPA), seeking repossession of a property-apartment located in Suharekë/Suva Reka, Karađorđević street no. 110, third entrance, apartment no. 6, in the second floor. He claimed that he was the owner of the apartment according to sale contract for the apartment, Vr.nr 12/99, dated 18 March 1999, certified before the Municipal Court in Suharekë/Suva Reka.

The claimant provided the copy of the contract *inter alia* a range of other documents which are not relevant in this legal matter.

According to the submitted copy of the sale contract for apartment, Vr.nr 12/99, dated 18 March 1999, it has been certified before the Municipal Court in Suharekë/Suva Reka. However it is not found in this court's archive and such contract under this number does not exist in the sale contracts registries.

The claim is registered under the number KPA44455.

On 07 July 2008, the KPA officers went to the place where the residential building was situated and found that it was used by the respondent's brother, N.M., who claimed a legal right by signing a notification for participation.

On 05 February 2009, the respondent, participating in the KPA proceedings, claimed legal right over this apartment.

To support his claim A.M. provided the KPA with the following documents:

- Sale contract for the apartment no. 6 located in residential building 43 in Suhareka, Car Dushan street, concluded between the Health Centre in Prizren as a seller and him as a buyer, under no. 11/384 dated 06 September 1993;
- Municipal Court of Suhareka Ruling C.nr.15/97 dated 16 December 1997, whereby it was established that the Municipality of Suhareka forcibly evicted the respondent from the claimed apartment and this body was due to reinstate his possession over this apartment otherwise through compulsory execution;
- With decision HPCC/D/222/A&C, dated 22 October 2005, the property right over the claimed apartment was recognized to A. M. in the capacity of category A claimant, whilst R.A. claim for the same apartment was rejected; and
- With decision HPCC/REC/81/2006, dated 11 December 2006, R. A. request for reconsideration of decision HPCC/D/222/A&c dated 22 October 2005 was rejected as ungrounded.

According to the notification report of 24 May 2011, the above-mentioned documents have been positively verified by the KPA verification team.

On 29 February 2012, the Property Claims Commission (KPCC), with decision KPCC/D/R/145/2012, rejected R.A. claim as an adjudicated case or *res judicata*. This was done with reasoning that the same claim registered with HPCC under no. DS 6066382, was considered and adjudicated by final decision HPCC/D/222/A&c, dated 22 October 2005. On the other hand, the claim of the respondent A. M., was granted pursuant to Section 14.4 of UNMIK Regulation 2006/50 as amended on by Law No. 03/L-079.

On 23 July 2012, the decision was served to R. A. (hereinafter: the appellant) and he filed an appeal to the Supreme Court on 15 August 2012.

On 26 June 2012, the decision was served to A. M. (hereinafter: the appellee) and through his lawyer he filed reply on appeal on 01 October 2012.

The appellant challenges the appealed decision on grounds of erroneous and incomplete determination of factual situation and misapplication of substantive law. He claims to have been the lawful possessor of the claimed apartment and he lost possession of it due to the armed conflict in Kosovo in 1998/1999.

The appellant requests from the Supreme Court to annul the KPCC decision related to the matter at stake and send the case back to KPCC or review the decision and recognize the appellant's rights relating to the reinstatement of possession of the claimed apartment and grant compensation as per the compensation schedule.

The appellee alleges that the appealed decision is fair and lawful and he therefore proposes to the Supreme Court to confirm it.. He stated the KPCC acted rightfully when it rejected the appellant's claim on fair and lawful grounds because the same matter between the same parties was adjudicated by a final and enforceable decision HPCC/D/222/2005/AC, dated 22 October 2005. With this decision, the property right over the claimed apartment was recognized to the appellee and the same was returned into his possession, where the appellant's claim for repossession was rejected.

Legal reasoning:

The appeal is admissible because it has been filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Following the review of the case files and the appellant's allegations pursuant to Article 194 of LCP, the Supreme Court found that the appeal is ungrounded.

The Supreme Court finds that the appealed decision is fair and lawful. The KPCC acted rightfully when rejected R. A. claim because of adjudicated matter or *res judicata* pursuant to

Section 14.4.C of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, KPCC. The appellant's claim was considered and adjudicated by a valid and enforceable decision HPCC/D/222/2005/AC, dated 22 October 2005.

With the decision of the HPCC, the property right over the claimed apartment was recognized to the appellee and the same was returned into his possession, whilst the appellant's claim for repossession was rejected.

The appellant's allegations have been already considered and adjudicated in the rejection of his claim by decision HPCC/D/222/2005 dated 22 October 2005, which decision is an adjudicated matter or *res judicata*. Pursuant to Article 166 of LCP, applied *mutatis mutandis* according to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, no new adjudication is permitted between the same parties for a legal matter for which a final decision exists, as in the concrete case.

The appealed decision does not contain any serious error or serious misapplication of the substantive and procedural law.

In the light of foregoing, pursuant to Section 13.3.B of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and Article 166 para 2 of LCP, it is decided as in the enacting clause of this judgment.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt 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 is 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 (10.15, 10.21 and 10.1 of AD 2008/2): € 30.

These court fees are to be borne by the appellant who filed an inadmissible appeal. According to Article 46 of the Law on Court Fees, the deadline for fees' payment shall be no shorter than 30 (thirty) days and no longer than 90 (ninety) days. The Court decided that the deadline in the current case shall be 90 (ninety) days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar