

**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-114/12

**Prishtinë/Priština,
12 November 2013**

In proceedings of

D. S.

Claimant/Appellant

vs.

H. U.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/A/142/2012 (case file registered at the KPA under no. KPA14615) dated 29 February 2012, after deliberation held on 12 November 2013, issues the following:

JUDGMENT

1. The appeal of D. S. filed against the decision of Kosovo Property Claims Commission KPPC/D/A/142/2012, dated 29 February 2012, as far as it regards the appeal registered in KPA under no. KPA14615 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission, KPPC/D/A/142/2012, dated 29 February 2012 is confirmed.

Procedural and factual background:

On 13 November 2006, D. S. filed a claim with Kosovo Property Agency (KPA), seeking repossession of a property-parcel 2923 located in cadastral area of Korishë/Koriša, and registration of 1/3 of ideal part of that property in cadastral records. He claims that he is the owner of this property according to the Municipal Court of Prizren Judgment C.nr.726/97, dated 20 April 1998. He presents this judgment as a valid ownership right document.

According to the KPA verification report of 14 August 2007, this judgment was positively verified.

The claimant states that he lost the property due to circumstances related to the armed conflict that occurred in Kosovo, mentioning 13 June 1999 as a date of loss.

The claim is registered under no. KPA14615.

The claimant presented numerous other documents, which are not relevant for this legal matter.

In 2007 and 2010, the KPA officers went to the place where the immovable property was located and found out that the property was being used by H.U, who claimed the legal right over this property. He stated that he bought the property according to an oral agreement by U. I., but he did not present any evidence in support to this allegation.

On 29 February 2012, Kosovo Property Claims Commission (KPCC) through its decision KPPC/D/A/142/2012, rejected D. S. claim as an adjudicated matter or *res judicata*, pursuant to Section 11.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on grounds that regarding the same claim for the same immovable property, though the Municipal Court of Prizren Judgment C.nr.726/97, dated 20 April 1998, it was established that he is the owner of cadastral parcel 2923 evidenced in cadastral area of Korishë/Koriša.

The decision was served to the claimant (hereinafter: the appellant) on 07 August 2012, and he filed an appeal with the Supreme Court on 24 August 2012. On 06 September 2012, the decision was received by the respondent. The respondent received the appeal on 13 November 2012, but he did not submit a response to appeal.

The appellant challenges the appealed decision because of erroneous and incomplete determination of factual situation and misapplication of substantive and procedural law. He claims that the court proceedings regarding the property right over the immovable property which is subject of his claim was closed by the Municipal Court of Prizren Judgment C.nr.726/97 dated 20 April 1998, namely before UNMIK Regulation 2006/50 was applicable, and it therefore could not have rejected this claim.

The appellant requests from the Supreme Court to grant his claim and enable his possession over the claimed immovable property.

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 KPCC acted rightfully when it dismissed D. S. claim because of adjudicated matter or *res judicata* pursuant to Section 11.4.C. of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. This legal provision provides that the Commission shall dismiss a claim if the same was considered and adjudicated by a final court decision. This is because the appellant's claim was considered and adjudicated by a final and enforceable decision of the Municipal Court of Prizren Judgment C.nr.726/97 dated 20 April 1998. With this judgment, the property right over the claimed property was awarded to him. Therefore, the appellant's allegations that the recognition of the property right over the claimed property according to the said final judgment prior to entering into force of UNMIK Regulation 2006/50 could have not been a reason for dismissing his claim are unacceptable and ungrounded.

The appellant did not present in the appellate proceedings other evidence that was not subject of consideration and assessment of the KPCC.

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.

Based on such situation of factual findings, the Supreme Court assesses that there is a full and accurate objective and subjective identity as well as the same factual and legal ground between the Municipal Court of Prizren Judgment C.nr.726/97 dated 20 April 1998 and D. S. claim filed with KPA under the evidence no. 14615. Therefore, there is a clear legal conclusion that this case is res judicata.

It is not disputable that Municipal Court of Prizren through ruling E.nr.212/03 dated 13 April 2006, has approved the proposal of Z. V. in the capacity of creditor to withdraw partially his proposal for execution of the said Judgment which refers to parcel no. 2923, cadastral zone of Korishë. In accordance with this ruling the appellant is represented by the creditor Z. V.. Therefore, it can be ascertained that the appellant voluntarily (non ultra petita) withdrew from the execution of the final judgment of the Municipal Court of Prizren C.nr.726/97 dated 20 April 1998. The appellant withdrew from the execution of this judgment and that is why he does not have the interest for the judicial protection of KPCC and consequently from the Supreme Court of Kosovo. Therefore, the appellant's allegations that he did not enjoy legal and valid judicial protection are unfounded.

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.c 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.

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

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar