

**UPREME 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-126/2013

**Prishtinë/Priština,
15 April 2014**

In the proceedings of

Z M
S
38...
M /M

Claimant/Appellant

vs.

T P
Str. B i D 72 A/3
P /P

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 (case file registered at the KPA under No. KPA00882), dated 5 September 2012, after deliberation held on 15 April 2014, issues the following

JUDGMENT

1. The appeal of Z M against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012, dated 05 September 2012, as far as it regards the claim registered with KPA under No. KPA00882, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012, dated 05 September 2012, is confirmed as far as it regards the claim registered with KPA under No. KPA00882.

Procedural and factual background:

1. On 5 June 2007, the claimant Z M filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his ownership right of the apartment, located in Prishtinë/Priština, Dardanija SU-9/1, Block II, Apartment No. 23, with surface 60.83 m² (hereafter to be referred to as the apartment).
2. Z M alleged to have lost the ability to exercise his property right due to the circumstances resulting from the armed conflict that occurred in 1998/99. He also claimed compensation.
3. The claim filed by Z M was dismissed by the KPCC/D/R/167/2012 decision, dated 05 September 2012, (hereafter to be referred to as: the KPCC decision) based on the argument that the same matter between the same parties was previously decided finally, in a reconsideration decision, by the Housing and Property Claims Commission decision number

HPCC/REC/86/2006/C, dated 11 December 2006. The matter thus became *res judicata* among the parties.

4. On 19 March 2013, the KPCC decision was served upon the respondent. The decision was served to the claimant on 28 March 2013.

5. On 26 April 2013, the claimant (hereinafter the appellant) filed an appeal with the Supreme Court.

6. Previously, the property right and repossession of the said apartment was subject to the adjudication by the Housing and Property Claims Commission (HPCC). With the decision: HPCC/D/132/2004/A&C dated 18 June 2004, the Commission granted the A category claim (no. DS000371) of the now respondent T P. The C category claim (no. DS301858) of the now appellant Z M was dismissed.

7. Upon the reconsideration request of Z M with the decision HPCC/REC/86/2006, dated 11 December 2006 again, the A category claim DS000371 of T P was granted and the C category claim DS301858 of the appellant Z M was dismissed.

Allegation of the parties

8. The appellant Z M requests his case to be reconsidered by issuing a fair and legal decision which will enable him the property right over the claimed apartment. In this respect he requests the Supreme Court to reconsider the KPCC decision that the matter already had been decided by a final decision of the HPCC and has to be considered *res judicata*.

9. To support his appeal the appellant Z M refers to the arguments presented in front of the KPA/KPCC. He attached to his appeal the same documents presented previously in the proceeding in front of the KPA/KPCC.

10. As additional the appellant Z M states that the decisions of the HPCC and later on of the KPCC have accepted incredible “fraud” and instead of bringing a legal decision, political decisions were made by using the allegation that the respondent was discriminated.

Legal Reasoning

11. The appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 of the UNMIK Regulation No 2006/50 as amended by Law No. 03/L-079.

12. The Supreme Court, after the review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, found that the appeal is ungrounded.

13. Under the principle of *res judicata* a case shall not be examined by a court when the same matter, with the same parties participating in the proceedings, has already been decided by another court. This is the matter in the present case, the same claim was filed before HPCC and KPCC, and the participating parties were the same in both proceedings. Also, the facts, the legal grounds as well as the evidentiary issues are exactly the same in both claims filed before HPCC, respectively KPCC.

14. The KPCC rightfully dismissed the claim of Z M on the grounds of that the subject matter constitutes *res judicata* between the same parties. The same matter had already been adjudicated with a final decision HPCC/REC/86/2006, dated 11 December 2006, before this claim at hand was filed. With the aforementioned decision, HPCC dismissed the previous claim since Z M failed to prove that he had any property right over the alleged apartment. Such a decision constitutes a final adjudication on the merits of a claim. Accordingly, the claimant cannot be allowed to have his same claim heard once again on the same matter between the same parties.

15. The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.

16. Based on the aforementioned and in pursuant to Section 13.3.(b) of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph 2, of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

Legal Advice

17. 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.

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar