

**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-131/12

**Prishtinë/Priština,
10 October 2013**

In the proceedings of

S.M

Claimant/Appellant

vs.

R.R

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 KPCC/D/R/152/2012 (case file registered at the KPA under No. KPA10469) of 19 April 2012, after deliberation held on 10 October 2013, issues the following

JUDGMENT

- 1- The appeal of the S.M, against the decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012, dated 19 April 2012, as far as it regards the claim registered with KPA under No. KPA10469, is rejected as ungrounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012, dated 19 April 2012, as far as it regards the claim registered with KPA under No. KPA10469, 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 07 December 2007, S.M filed a claim with the Kosovo Property Claim Commission (KPA) seeking re-possession of the property-apartment located in Viti/Vitina, Str. Car Dušan, building P+4, apartment no: 16, in surface of 52,31 m². He alleges being the owner of this apartment based on the contract on sale, certified in the Municipal Court of Vitia, Vr. Nr. 735/93, dated 22 June 1993.

He claimed that the apartment was lost due to the circumstances resulting from the armed conflict that occurred in Kosovo, with the date of loss being 1 June 1999.

The claim is registered under the number KPA10469.

The claimant submitted a set of other documents which are irrelevant to this legal matter.

The contract for purchase of the apartment, certified in the Municipal Court of Vitia, Vr. Nr. 735/93/99, dated 22 June 1993, was verified positively by KPA verification report, dated 21 February 2008.

KPA officers visited on 25 January 2008 the site where the apartment was located and concluded that the respondent was using it, further the same demanded legal rights by signing the participation notice.

On 17 June 2008 the respondent in proceedings before the KPA alleged legal right over this apartment.

In support of such an allegation she submitted the following pieces of evidence:

- Municipal Assembly of Vitia Decision no. 04-360-60, dated 16 October 1975, whereby it is established that the apartment in Vitia, St. M. Tito, is allocated to the respondent.
- The Executive Council of the Municipality of Vitia contract 02 nr. 360-158, dated 27 April 1990, the apartment no. 15 in the housing building in Vitia is allocated to the respondent until the apartment according to the JU program is constructed.
- Through the Serbian Supreme Court in Belgrade, Ruling Rev.nr. 1671/95, dated 31 May 1995 the Ruling of the Municipal Court of Vitia C.nr. 2/94 and the Ruling of the District Court of Gjilan AC.r.18/94 were annulled and the case was sent for retrial. Through this ruling it was concluded that she would be resided temporarily in the disputed apartment, until the new premise constructed when she would get the permanent use upon receiving the keys of the assigned apartment.
- Through the HPCC/D/236/A&C decision, dated 06 December 2005, the respondent's claim no. DS200338 was granted, whereby the property right over the claimed property was reinstated upon the respondent, whereas for the same apartment was approved the monetary compensation right to the claimant with the claim no. DS200490; and
- Through the HPCC/REC/81/2006 decision, dated 11 December 2006, the reconsideration claim of S.M filed against the HPCC/D/236/A&C, dated 16 December 2005, is rejected as ungrounded.

According to verification report, dated 21 February 2008, all aforementioned documents were positively verified by the KPA verification team.

The Kosovo Property Claims Commission with decision KPCC/D/R/152/2012, dated 19 April 2012, dismissed the claim of S.M as an adjudicated matter or *res judicata*; with reasoning that his same claim registered with HPPC under no. DS200490 was reviewed and a final decision HPCC/D/236/A&C, dated 16 December 2005, is issued, whereby the compensation right was

recognized. Whereas, according to the claim of the respondent R.R, claim registered by no. DS200338, with the same decision her property right over the claimed apartment was recognized and reinstated, pursuant to Article 14.4.C. of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The decision was served to S.M on 13 September 2012. He filed an appeal in the Supreme Court on 9 October 2012 (hereinafter the appellant). On 01 October 2012 the decision was served to Rufadije Rexhepi in capacity of the respondent.

On 04 December 2012, the appellee filed a response to the appeal.

The appellant challenged the appealed decision due to incomplete and erroneous determination of the factual situation and misapplication of the material law. He alleges that he purchased the claimed apartment in a lawful manner by paying the entire sale price. The appellant demanded from the Supreme Court to grant the appeal and enable housing rights over the claimed apartment.

The appellee proposed to the Supreme Court to affirm the decision, because it is issued through complete and fair determination of the factual situation and fair application of the material and procedural law. She maintained that the first instance decision is correct, because the same matter between the same parties was already decided with a final decision of HPCC/D/236/A&C, dated 16 December 2005. She also emphasized that the reconsideration request of S.M against the HPCC/D/236/A&C decision, dated 16 December 2005, is rejected as ungrounded. The appellee's property right and the appellant's compensation right were recognised with these decisions.

Legal Reasoning

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

The Supreme Court, after the review of the submissions from the case file, the appealed decision and the allegations in view of article 194 of the LCP, found that the appeal is ungrounded.

The Supreme Court of Kosovo considers that the appealed decision is fair and lawful. The KPCC has rightfully dismissed the claim of S.M on the grounds of adjudicated case or *res judicata* pursuant to

Article 14.4 (c) of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The claim was adjudicated with a decision HPCC/D/236/A&C, dated 16 December 2005.

The request of the claimant for reconsideration of that decision had already been rejected with decision HPCC/D/236/A&C dated 16 December 2005. Thus, the same matter, between the same parties, for the same legal and factual grounds, was already decided with a final decision of HPCC/D/222/2005/AC, dated 22 October 2005. This decision was affirmed with the HPCC/REC/81/2006 decision, dated 11 December 2006, and appellant's reconsideration claim was rejected.

Through the aforementioned HPCC decision the property right over the claimed apartment was recognized to the respondent and the same was reinstated under her possession, whilst the right for compensation over the claimed apartment was recognized to the appellant. Thus, there is a final decision for the same matter between the same parties on the same legal and factual grounds.

The Supreme Court reviewed and assessed the appellant's allegations, that he allegedly bought and paid the price for sale of the disputed apartment therefore the housing right should be granted, however, the court found that such allegations are ungrounded, inadmissible and thus unlawful. Accordingly, KPCC rightfully dismissed the claim of S.M.

The appeal's allegations have already been reviewed and settled through recognition of the right for compensation as provided by decision HPCC/D/236/2005/A&C, dated 16 December 2005, which is *res judicata* or an adjudicated matter. In Article 166 of the LCP, which *mutatis mutandis* is applicable according to Section 13.5 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, it is foreseen that a new trial is impermissible for the same legal matter for which there is a final decision between the same parties.

Thus, based on the aforementioned and in pursuant to Section 13.3.B of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, and Article 166, para 2 of the 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 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 (section 10.15, 10.21 and 10.1 of the AD 2008/2) taking into account that the estimated value of the property in question it may not be more than 30 €.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 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 within 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

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar