

**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-41/12

**Prishtinë/Priština,
25 July 2013**

In the proceedings of

Z. V.

Address ...
Serbia
Represented by
B. B.

Appellant

vs.

S. I.

Address ...
Prishtinë/Priština

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esmā Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/18/2008 (case file registered at the KPA under No. KPA01429) of 30 April 2008, after deliberation held on 25 July 2013, issues the following:

JUDGMENT

- 1- The appeal of Z. V. against the decision of the Kosovo Property Claims Commission KPCC/D/R/18/2008 of 30 April 2008 as far as it regards the claim registered at the KPA under No. KPA01429 is dismissed as impermissible.
- 2- The appellant has to pay the costs of the proceedings which are determined in the amount of € 30 (thirty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 7 December 2007, the claimant S. I. filed a claim with the Kosovo Property Agency (KPA), seeking repossession and use of the property. The claimed property is located in the municipality of Prishtinë/Priština in Prishtinë/Priština, **address of property ...**, surface 51,60m². The claim was registered at the KPA under no. KPA01429.

On 30 April 2008 the KPCC dismissed the claim, deciding the claimant failed to submit any evidence to demonstrate that he had property right during the relevant period to the litigious property.

On 24 March 2011, Z. V. filed an appeal regarding case no KPA01429. He stated incomplete and erroneously established facts. In his appeal he writes that he found out by chance that there was a dispute between the claimant S. I. and respondent S. S. before KPA about the claimed property. Thus, Z. V. claims owner and user rights over this apartment.

The appeal was served by the KPA to respondent S. S. on 7 March 2012. No reply was received after 30 days deadline.

On 19 April 2012 the appeal was served to S. I. (claimant). He filed a response on 16 May 2012, in which he stated that the Public Housing Enterprise is the owner of the claimed apartment.

The apartment in question was also subject of the dispute before the Housing and Property Claims Commission (HPCC), between the claimant Z. V. and the respondent R. S.

On 24 April 2005 the Housing and Property Claims Commission decided on a claim no. DS003905 of claimant Z. V. (from now on the appellant), address of the property ... Prishtinë/Priština, in Cover Decision No. HPCC/D/174/2005/C, dated 24 February 2005 to be dismissed and to be referred to the competent local court.

On 22 September 2011 the Municipal Court of Pristina in C no 1249/08 approved as grounded a claim filed by claimant Public Housing Enterprise in Pristina. As a result respondent S. S. from Pristina is ordered to handover the apartment his is using to the claimant, after having vacated it of all belongings and people, within 15 days from the day of receipt of the judgment under threat of forced execution. The said apartment is 51m2 in size, and is located in Prishtina, **address ...**

Legal Reasoning

The appeal is impermissible.

In the current proceedings Z. V. regardless of the existence or nonexistence of any property rights in his patrimonium has no legal interest in appealing the decision of the KPCC No KPCC/D/R/18/2008 with regard to claim No KPA01429 because with the Commission has dismissed the claim of S. I. *I.e.* this decision does not reflect the legal interests of the appellant Z. V. The only person that has a legal interest to appeal this decision is S. I., because his procedural right to file a claim has been denied. No one else's legal sphere is concerned with the said decision including the appellant's Z. V.

The existence of legal interest is absolute positive procedural prerequisite for the permissibility of a claim, appeal, etc. in civil proceedings. This is articulated in art.2.4 of the Law on Contested Procedure of 2008, which is applicable in front of the Supreme Court in appellate proceedings against decisions of the KPA (section 12.1 of UNMIK/REG/2006/50). The Law stipulates that a party must have a legal interest in the claim and other procedural actions that may be taken in the proceedings. The requirement for a legal interest stands throughout the whole proceedings, including appeal stage as stated in art. 186.3 *ibid*, which stipulates as well that an appeal is impermissible if the person who filed the appeal has no legal interest in filing the appeal.

In case the appellant claims ownership (as is suggested in his appeal) towards the property, subject to the appealed decision and in case he claims that he had lost possession due to the armed conflict of

1198/1999 he should have had filed a claim for repossession in front of the KPCC in accordance with section 3 of UNMIK/REG/ 2006/50 as amended by Law No. 03/L-079 and within the time limits determined in section 8 of the UNMIK/AD/2007/5, as amended by the same law, *i.e.* before the expiry of six months from the date of promulgation of this Administrative Direction.

Therefore, the present appeal as filed against appealed decision had to be dismissed pursuant to the provision from article 13.3, sub para (B) of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

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 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

These court fees are to be borne by the appellant who loses the case. According to Article 46 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. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 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

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar