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-97/13 **Prishtinë/Priština, 12 November 2013**

In proceedings of

R.V
Claimant/Appellant

vs.

K.J

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/159/2012 (case file registered at the KPA under No. KPA47114), dated 6 June 2012, after deliberation held on 12 November 2013, issues the following:

JUDGMENT

1. **The appeal is rejected as ungrounded.**

2. **The decision of the Kosovo Property Claims Commission KPCC/D/R/159/2012 (case file registered at the KPA under No. KPA47114), dated 6 June 2012 is confirmed.**

Procedural and factual background:

On 1 November 2007, R.V filed a claim with Kosovo Property Agency (KPA), seeking repossession of a property-apartment located in Goleska, Pristinë/Pristina with surface of 68.03 m^2. The claimant stated that she is unsatisfied by the HPD decision in the case DS002177 and she demanded a "decision on ownership over the property in question".

In support of her claim Mrs V. has presented numerous documents, among which a decision, issued on 23 February 1966 by an Administrative Committee of the Socialist Republic of Serbia for allocation of an apartment in Belgrade to H.F; a lease contract from 1966 for the allocation of the use right over the same apartment in favour of the same person; purchase contract from 1992 for the same apartment with H.F as a buyer; decision of the Commission for allocation of apartments and loans of the Socialist Republic of Serbia from 1975 for allocation of the disputed apartment in Pristina for temporary (official) use to H.F; an order from 1991 of the Secretariat of Urbanism Utility and Housing Affairs for the eviction of H.F from the same apartment; certificate from 2002, issed by a Public Housing Company in Belgrade, that the apartment, sold to H.F in 1992, belonged to the Government of Serbia prior to that; decision of the Housing Committee of Provincial Authorities from 1991 for allocation of the disputed apartment in Pristinë/Pristina for usage to the current claimant R.V.

The claim is registered under the number KPA47114.

On 30 January 2008, the KPA officers notified the property by placing a notification sign on the door of the apartment.
On the same date the respondent K.J filed a notice of participation, claiming property right over the apartment.

To support her claim the respondent presented the documents related to the allocation and the consecutive purchase of the apartment by H.F.

The documents presented by both sides have been positively verified by the KPA.

On 6 June 2012, by decision KPPC/D/R/159/2012, the Property Claims Commission dismissed the claim as an adjudicated case or *res judicata*. The KPCC reasoned that the same claim has been registered with HPCC and adjudicated by final decision HPCC/REC/56/2006 from 18 February 2006.

The Commission noted that that the claimant had previously filed a C category claim with the HPD for the same property under claim number DS002177. Simultaneously the respondent in the KPCC had also filed a claim with the HPD – a category A claim under number DS001096. Initially the HPD with decision HPCC/D/195/2005A&C granted the category C claim. A reconsideration request followed and the HPCC issued a new decision HPCC/REC/56/2006 overturning the previous decision, granting the category A claim with restoration of the property right and the category C claimant with the right for compensation. Therefore the KPCC considered the case as *res judicata.*

On 19 March 2013, the decision was served both to the claimant (hereinafter the appellant) and the respondent (hereinafter the appellee). The appellant filed an appeal to the Supreme Court on 19 April 2013.

The appellant challenges the appealed decision on the ground that there is no *res judicata*.
To her opinion there are two different claims at issue – one for the return of occupancy rights and one for the return of the ownership and these two do not exclude each other. The decision made for the restoration of the occupancy right does not exclude the possibility of the initiation of a procedure in which the court would decide on the ownership right over the same property.

The appellant requests from the Supreme Court to reverse the KPCC decision and accept her claim. She is also asking the court to exempt her from the payment of the court fees due to the fact that she is an internally displaced person and is in difficult financial situation. She is not able to pay taxes. The payment would jeopardise the subsistence of her family. She has not presented evidence in that regard.
The appellee did not respond to the appeal.

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 R.V claim because of adjudicated matter or *res judicata*. The appellant's claim was considered and adjudicated by the valid and enforceable decision HPCC/REC/56/2006.

With the decision of the HPCC, the property right over the claimed apartment was awarded to the appellee whilst the appellant's claim for repossession was rejected but she was awarded with the right of compensation.

It is correct that res judicata is formed only regarding the subject matter of the claim – the objective boundaries of the res judicata, and towards the parties who took part in the proceedings (with few exceptions when *res judicata* may affect also third parties, which is irrelevant in the current matter) – these are the subjective boundaries of *res judicata*. There is no argument regarding who are the parties in the current case – they are the same as the case in front of the HPD/HPCC. However the claimant alleges that the subject matter of the case now is different from the subject matter decided in the previous proceedings. She claims that the HPD/HPCCC had to decide on a right of use and now the subject matter is the ownership right itself. The Court finds this allegation to be wrong. From the decision of the HPCC it is obvious that it was the ownership right over the property in question that was decided upon as *res judicata* and not only the right of use of the parties. In the previous proceedings the HPCC with decision HPCC/REC/56/2006 has recognised the category A claimant as the owner of the property in question. The category C claimant (whom is the current appellant) was awarded with the right of compensation to be paid by the HPD (House and property Directorate). This means that the property right was rejected to the category C claimant. Thus the already rejected property right cannot be subject of reconsideration in the current proceedings.
It is true that the previous category A claimant (whom is now the appellee) was awarded the right of property and requested to pay a particular sum to the HPD. The category C claimant was entitled to request repossession in case the category A claimant does not pay the sum in question

to the HPD (point c of the enacting clause of the reconsideration decision). However, whether the category A claimant has paid the sum in question and whether the category C claimant has received the compensation does not change the fact that the property dispute among the two of them cannot be subject of a second court proceedings as the decision of HPCC precludes the right to the same claim, it forms *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.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

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar