

**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-002/14

**Prishtinë/Priština,
14 October 2015**

In proceedings of

R. D.

Claimant/Appellant

vs.

B. D.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) KPCC/D/R/199/2013 (case file registered at the KPA under No. KPA50190), dated 18 April 2013, after deliberation held on 14 October 2015, issues the following:

JUDGMENT

1. The appeal of R. D. against the decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013 dated 18 April 2013 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013, dated 18 April 2013, is confirmed as far as it concerns claim no. KPA50190.

Procedural and factual background:

1. On 17 October 2007, R. D. (hereafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA), for a property-apartment located in Prishtinë/Priština, Dardanija xxx (hereafter: the claimed property). He claimed that he is the owner of the claimed property and that he lost possession of the claimed property as a result of the circumstances in 1998/1999 in Kosovo on 12 July 1999.
2. In support of his claim the Claimant has presented numerous documents, among which:
 - a) Decision on the allocation of the apartments No. 01/76 issued by Radio Television of Prishtina/Priština (hereafter: RTP) on 15 March 1991 showing the locations of the apartments that will be allocated by RTP to his employees.
 - b) Decision No. 01-1707 issued on 23 September 1991 from RTP on allocation of apartments.
 - c) Decision on allocation of the apartment for use No. 01/2-1707 issued by TVP Director N. S. on 28 October 1991: by this decision is given - based on the allocation decision 01-1701 of RTP - for use the claimed property to R. D., professional staff member – independent TV director - of RTP.
 - d) The Contract on the Use of an Apartment no. 1193/15281 concluded on 2 September 1992 between Public Housing Enterprise of Prishtina/Priština and R. D.: this contract is based on the Allocation Decision No.01/2-1707 of 28 October 1991.
 - e) Determination of the purchase price of the apartment located at “Dardanija”, SU -9/1, LAM 2, and 7th floor, no 30, dated 29 September 1992.
 - f) Receipt no. 60816, dated 3 March 1993, showing that R. D. has paid the amount of 5 400 576 DIN for the purchase of the apartment.
 - g) Contract No. 1193/15281 concluded on 8 June 1993 between Public Housing Enterprise in Prishtina/Priština and R. D. The Contract stipulates conditions of the usage and maintenance of the common space of the building.
 - h) The Purchase Contract verified by the Municipal Court of Prishtina/Priština under Vr.no. 5860/1993 on 23 July 1993, between RTP as the seller and R. D. as buyer of the claimed property.

- i) Decision No. 10.950-3/1945 issued on 28 August 1993 by Cadaster Office of Prishtina/Priština granting the request of R. D. for changes in the Cadaster to register his property rights on the claimed property.
 - j) Judgment P. No. 1030/93 issued by Municipal Court of Prishtina/Priština on 26 April 1995: the court rejected the claim of the plaintiff in that case - Appellee B. in this case - and his wife L. D. - for confirmation of their use right and co-ownership right over the claimed property. Defendants in this procedure were RTP and Claimant. The Court inter alia reasoned as follows: Appellee and his wife joined assets with RTP to purchase in co-ownership the claimed property that was being built. Appellee and his wife paid the concluded price to RTP. RTP later decided to discontinue the employment of Appellee and after that allocated the claimed property to Claimant. The Court reasons further as follows: Appellee carried out a payment for the purchase, but Appellee and his wife did not acquire ownership, because the claimed property had to be constructed by Public Housing Enterprise and the necessary legal business had not preceded the payments by Appellee.
 - k) A Confirmation Letter issued on 6 December 2005 by RTP confirming the procedure of the allocation of the apartment to R. D.
 - l) A Lawsuit filed by R. D. on 3 October 2008 before Municipal Court of Prishtina/Priština. R. D. seeks confirmation of his property right on the claimed property and eviction of the Appellee and his wife.
3. On 7 February 2008, KPA officers notified the claim by placing a notification sign on the door of the claimed property. The apartment was found occupied by B. D. (hereafter: the Respondent).
 4. On the same date the Respondent filed a notice of participation, claiming property right over the claimed property alleging as follows: Claimant had already submitted the same claim for the same property before the Housing and Property Directorate (hereinafter: HPD). HPCC already decided on that claim. Therefore, the Respondent proposed the claim to be refused as Res Judicata.
 5. To support his claim the Respondent presented the following documents:
 - a) Decision, No. 02-955 issued by the Employees Council of RTP on 12 May 1986 on joining of means by Respondent and his wife and RTP for purchasing of the claimed property. Respondent and his wife were obliged to pay 40 % or 2.489.056.80 DIN while RTP was obliged to pay the remaining 60% of the total purchase price.
 - b) A Contract on joining of funds for purchasing the apartment no. 01-982 concluded between RTP and Respondent and his wife on 12 May 1986.
 - c) A Contract on acquiring of co-ownership No. 01-9811 concluded between RTP and Respondent and his wife on 12 May 1986.
 - d) Receipt no. 43 showing that Respondent has paid the amount of 2.489.056 DIN to RTP.

- e) HPCC Decision no. HPCC/D/137/2004/A&C, dated 18 June 2004. In this Decision, HPCC granted the Category “A” claim of Respondent and his wife and refused the Category “C” claim of Claimant: Respondent and his wife are restored in their rights under the contracts of 12 May 1986 and the claim for repossession by Claimant is refused.
 - f) HPCC Decision no. HPCC/REC/86/2006, dated 11 December 2006. HPCC refused in this decision the request of Claimant for review of the HPCC Decision no. HPCC/D/137/2004/A&C, dated 18 June 2004.
6. On 18 April 2013, by decision KPCC/D/R/199/2013, the KPCC dismissed the claim in the current case as an adjudicated case or *res judicata*. The KPCC reasoned in paragraphs 9 and 28 that the same claim has been registered with HPCC and adjudicated by a final administrative or judicial decision.
 7. On 20 August 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 11 September 2013.
 8. The letter of appeal was served on Appellee on 16 January 2014. He submitted a reply to the appeal on 23 January 2014.

Allegations of the Appellant

9. Appellant challenges the appealed decision on the ground that there is no *res judicata*.
10. To his opinion there are two different claims at issue – one for repossession of the apartment and one for confirmation of the ownership right 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. He emphasizes that the claim of Appellee was refused in the final judgment of the Municipal Court of Prishtinë/Priština, dated 26 April 1995. He further states that he himself did not commit an act of discrimination against Appellee and it is unfair that he has to bear the consequences, even if there was discrimination towards Appellee.
11. In the appeal Appellant gives a detailed presentation of the documents that he has submitted in order to confirm his ownership right and requests from the Supreme Court to reverse the KPCC decision and accept his claim.

Legal reasoning:

12. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property,

including agricultural and commercial property, as amended by Law No. 03/L-079 (henceforth: Law UNMIK 2006/50).

13. The Supreme Court finds that the KPCC acted rightfully when it dismissed Appellant's claim because his claim refers to an adjudicated matter or *res judicata*. According to Section 11.4.c Law UNMIK 2005/60, KPCC has to dismiss the claim in this situation.
14. The Appellant's claim was considered and adjudicated by the valid and enforceable decision HPCC/D/137/2004, mentioned in paragraph 5.e here for.
15. With this decision of the HPCC, the property right over the claimed apartment was awarded to the Appellee whilst the Appellant's claim for repossession was refused.
16. This decision was affirmed by the HPCC/REC/86/2006 decision, dated 11 December 2006, whereby the Appellant's request for review was rejected and the reviewed decision became final (mentioned here for in paragraph 5.f).
17. It is correct that *res judicata* is formed only regarding the subject matter of the claim in the previous proceedings – the objective boundaries of *res judicata* - and towards the parties who took part in these earlier proceedings – the subjective boundaries of *res judicata*.
18. The parties in the current case are the same as in the case in front of the HPD/HPCC.
19. Claimant alleges that the subject matter of the case now is different from the subject matter decided in the previous proceedings. He claims that the HPD/HPCC had to decide on his claim on a right of use and now the subject matter is his ownership right itself. The Court finds this allegation to be wrong. HPCC decided on two claims: the Category "A" claim of Appellee on restitution of his property right on the claimed property and the Category "C" claim of Appellant for repossession of a property right (ownership), lawful possession or a right of use or an occupancy right to the claimed property. On both two claims both Appellant and Appellee were parties in the proceedings. From the decision of the HPCC it is obvious that HPCC decided on the ownership right over the claimed property: on the Category "A" claim HPCC decided that Appellee had to be restored in his property right. The claim of Appellee was a co-ownership claim. On the Category "C" claim HPCC decided that Appellant could not have obtained any property right to the claimed property. Therefore between Appellant and Appellee the question who is the property right holder – who has ownership - of the claimed property is decided by HPCC. So, the HPCC decision is a *res judicata* on the matter of property right on the claimed property between Appellant and Appellee. Thus the already rejected property right cannot be subject of reconsideration in the current proceedings.
20. The allegation of Appellant that the claim of Appellee was already decided in 1995 by the Municipal Court of Prishtinë/Priština (meant here for in paragraph 2.j) cannot lead to another decision in this case. The reasoning and the decision in that judgement are based on the decision of RTP to discontinue the employment of Appellee. This dismissal from the job at RTP resulted in not acquiring the property right on the claimed property. As HPCC decided, the decision of

RTP to discontinue the employment of Appellee was based on a discriminatory law and in itself a discriminatory act. Therefor also the loss of property right by Appellee was a result of a discriminatory implementation of the law. The judgment of 1995 (meant here for in paragraph 2.j) is based on this discriminatory implementation and therefore in itself invalid (argument from Section 3 of UNMIK Regulation no. 1999/1 on the authority of the Interim Administration in Kosovo and Section 1.2.a of UNMIK Regulation no. 1999/23 on the Establishment of the Housing and Property Directorate and the HPCC and Articles 21, 22 and 145 of the Constitution of the Republic of Kosovo). That means that now only the HPCC decision is relevant as res judicata to decide on the claim of Appellant in the current proceedings and not the judgment of the Municipal Court of 1995.

21. Appellant further alleges that it is unfair that he has to bear the consequences of the discrimination of Appellee by RTP. On this ground of the appeal the Supreme Court reasons as follows. The fact that Appellant lost as a result of the HPCC decision the property right on the claimed property that he thought to have gained in 1992-1993, cannot come to the detriment of Appellee. That matter effects only the legal relation between Appellant and RTP and not the legal relation between Appellant and Appellee. If there is any legal basis for compensation for this loss that cannot be decided in the current proceedings, because KPCC does not have jurisdiction on such claims (Section 3.1 of Law UNMIK 2005/60).
22. In the light of foregoing, pursuant to Section 13.3.c of the Law UNMIK 2005/60 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of Law UNMIK 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar