

**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-277/13

**Prishtinë/Priština,
14 October 2015**

In the proceedings of:

D. K.

Montenegro

Claimant/Appellant

Vs.

A. R.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, members, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/199/2013 (case file registered at the KPA under the number KPA28642) dated 18 April 2013, after deliberation held on 14 October 2015, issues the following:

JUDGMENT

1. The appeal of D. K. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/199/2013, dated 18 April 2013, is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission no. KPCC/D/R/199/2013 (case file registered at the KPA under the number KPA28642), dated 18 April 2013, is confirmed.

Procedural and factual background:

1. On 28 March 2007, D.K. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property-apartment located in Gjakovë/Đakovica, Skenderbeu Street, “Orizare” No.8, entry II, with a surface of 71,90 m². He claims that he was the owner of this apartment according to the purchase contract, certified before the Municipal Court in Gjakovë/Đakovica on 28 December 2000. He lost the apartment due to circumstances related to the armed conflict that occurred in Kosovo, indicating 12 June 1999 as the date of loss.
2. The claim was registered under the number KPA28642
3. Claimants filed a number of other documents, but are not relevant to this legal matter.
4. Purchase contract Vr.nr. 48/2000, dated 28 January 2000, was not positively verified, according to the KPA verification report dated 23 January 2009.
5. On 29 September 2008, KPA officials went to the place where the apartment was located and found that it was used by an unknown party.
6. On 06 October 2010, A. R., henceforth: Respondent, participated in the proceedings before the KPA and claimed the legal right over the apartment saying that the Claimant is not the property right holder.
7. To support his claim, he submitted the following evidence:
 - Contract on Joint of Means for Construction of the Apartment in co-ownership dated 30 June 1991.
 - Purchase Contract No. 497 dated 17 July 1992, through which it is ascertained that the Respondent bought the apartment which is subject of the claim in

Gjakovë/Đakovica, “Orizare 8”, type “C”, first floor, “Skënderbeu” Str., with a surface of 71,90 m².

- Contract on Exchange Vr.nr. 448/95 dated 26 May 1995, certified before the Municipal Court in Gjakovë/Đakovica, through which it is ascertained that the Respondent exchanged the apartment located at “Skënderbeu” Str. n.n, type C, with a surface of 71.90 m², which is subject of the claim, with the Municipal Enterprise in Gjakovë/Đakovica, in a manner that in exchange for the apartment, the Enterprise allocated under his ownership and use the business premise in the “Lenin” Street No. 22/D, with a surface of 51,42m².

All these documents were positively verified.

8. Through the decision of HPCC/D/209/2005/A&C dated 20 August 2005, the Respondent’s category A claim (KPA Respondent) under the number DS502337 was granted, by reinstating his property right over the claimed property located in Gjakovë/Đakovica, “Skënderbeu” Str., ”Orizare” 8 No.1672, with the reasoning that with the Contract on Joint Means for Construction of the Apartment he proved that he enjoyed a valid tenancy right and that this right was revoked as a result of discrimination during the period from 23 March 1989 until 24 March 1999. On the other hand, the Claimant’s C category claim (KPA Claimant) under the number DS502141 for the same apartment was rejected. In the reasoning of this decision, it is stated that the Claimant did not submit any evidence to show that he ever had the right of possession or the right over this property. Documents presented to support his allegations about the property right could not be verified.
9. Through the decision of HPCC/REC/94/2007, dated 26 March 2007, on Claimant’s request for review the decision of HPCC/D/209/2005A&C, dated 20 August 2005, was amended and the category A claim DS502337 as well as the category C claim CNn.DS502141 were rejected as ungrounded. In the reasoning of this decision, it is stated that the Claimant (A. R.) , according to the Purchase Contract No .497 dated 17 July 1992, bought the apartment that is subject of the claim. Whereas, he exchanged this apartment with the Municipal Enterprise in Gjakovë/Đakovica. The category A claimant gave the contested apartment to the Municipal Enterprise, which in exchange gave him a business premise. Thus, both the category A claim DS502337 as well as the category C claim CDS502141 were rejected.
10. On 18 April 2013, the Kosovo Property Claims Commission (KPCC) with its decision KPPC/D/R/199/2013 dismissed the claim of D. K. as an adjudicated matter or res

judicata. The reasoning for this is that the same claim from him for the same apartment registered with the HPCC under No. DS502141 was reviewed and adjudicated by a final decision HPCC/D/209/A&C dated 20 August 2005, thus rejecting the category C claim as ungrounded.

11. On 15 August 2013, the decision was served on the Claimant who filed an appeal before the Supreme Court on 12 September 2013 (hereinafter: the Appellant). On the other hand, the Appellee received the decision on 05 September 2013. This party received the appeal on 26 December 2013. He filed a response to the appeal on 15 January 2014.
12. The Appellant objects the appealed decision due to an erroneous and incomplete determination of the factual situation and misapplication of the substantive law. He alleges that he acquired the contested apartment legally, for which he has already filed the respective documents.
13. In his response, the appellee reiterates the same allegations he had made before the KPCC emphasising the fact that the case was already decided by HPD.

Legal reasoning:

14. The appeal is admissible because it was filed within the period of 30 days as foreseen by law (Section 12.1 of UNMIK Regulation No. 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, as amended by the Law No. 03/L-079).
15. After reviewing the case file and the allegations in appeal, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is ungrounded.
16. The Supreme Court finds that the appealed decision is just and legal. The KPCC acted rightfully when it decided, through the appealed decision, to dismiss the claim of D. K. as an adjudicated matter or *res judicata*, pursuant to Section 11.4.c of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. This is because the Appellant's claim was reviewed and adjudicated through the final decision HPCC/D/REC/94/2007, dated 26 March 2007. The Supreme Court notes that for the same subject matter, the same parties, and same factual and legal ground it was decided through this final decision.
17. Through this decision HPCC/D/REC/94/2007, dated 26 March 2007, both the Claimant-Appellant's and the Appellee's claims for recognition of property right over the apartment, which is subject of the claim, were rejected. The HPCC provided clear, complete, accurate, and meritorious clarifications concerning the rejection of their claims,

specified under paragraph 8 of this Judgment. Therefore, taking into account that the HPCC provided sufficient and convincing arguments about the rejection of category A claim no. DSS502337 and category C claim no. DSS502141. Although HPCC used in the decision of 26 March 2007 the legal term dismissed, according to the reasoning this was wrong. The decision must be understood as HPCC rejected the claims. This is also because in the Albanian and Serbian versions of this text it is said that these claims are rejected.

18. The Appellant's allegations that he acquired the contested apartment legally, for which he presented the respective documents, were subject of review and evaluation by the Supreme Court. However, the Court found that the allegations were inadmissible because those allegations had been reviewed and adjudicated by the decision HPCC/D/REC/94/2007, dated 26 March 2007, when his claim was rejected, which is a *res judicata* decision or an adjudicated matter.
19. In addition, Article 166 of LCP, which is applied mutatis mutandis pursuant to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, provides that a new trial is not allowed for the same legal matter between the same parties for which there is a final decision as in the case at stake.
20. Based on such factual ascertainment the Supreme Court finds that the subjective and objective identity exists entirely, and the factual and legal grounds between the decision HPCC/D/REC/94/2007, dated 26 March 2007, and the claim of D. K. filed before the KPA with number 28642 are the same: in both claims he request's an order for repossession based on the allegation that he gained the ownership of the apartment by the purchase contract of 2000. Therefore, there is a clear legal conclusion that this case is *res judicata*.
21. The appealed decision does not contain any essential error or serious misapplication of material and procedural law.
22. Therefore, based on the above and pursuant to Section 13.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, as well as Article 166, paragraph 2 of LCP, the Supreme Court decides as in the enacting clause of this Judgment.

Legal advice

23. Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50 as amended by the Law No. 03/L-079 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