

**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-169/13

**Prishtinë/ Priština,
22 April 2015**

In the proceedings of:

R M
“Z H” str.no.2/9
F /U

Appellant

vs.

H T

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 (case file registered at the KPA under No. KPA49028), dated 5 September 2012, after deliberation held on 22 April 2015, issues the following

JUDGMENT

1. The appeal of R M against the decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 dated 5 September 2012, with regard to the claim registered with KPA under No. 49028 is rejected as unfounded.

2. The decision of the Kosovo Property Claims Commission KPCC/D/R/167/2012 dated 5 September 2012, with regard to the claim registered with KPA under No. 49028 is confirmed.

Procedural and factual background

1. On 27 November 2007, R M (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the property right and repossession over the attic with the surface 120 m² located in street “Zenel Hajdini” 2/9, Municipality of Ferizaj/Uroševac (henceforth: the claimed property).
2. To support his claim he provided the KPA among others with the following documents:
 - The agreement on giving the consent to build up the attic on the existing building and giving the same to R M for use. The agreement was concluded on 1 August 1997 between R M and tenants of the building (B T , M M , I K and B B). The tenants gave their written consent that R M can build up the attic on the top of the housing building. The agreement was certified within Municipal Court of Ferizaj/Uroševac with the number No. 1921/97.
 - Urban Planning Permit 03-350-707 dated 14 August 1997 issued by Municipal Assembly of Ferizaj/Uroševac, Department of Urban Development, Housing and Property Affairs, through which, R M was permitted to reconstruct and extend the building planned for collective housing.
 - Decision No 351-831, dated 8 October 1997 issued by Municipal Assembly of Ferizaj/Uroševac, Department of Urban Development, Housing and Property Affairs through which R M was granted temporary permission to build up the attic

- in the collective building (Article 4 of the decision specifies that R M was obliged to finish the reconstruction within 1 year from when the decision become final, otherwise the construction permit ceases to be valid.)
- The Request No. 2163 dated on 28 August 1997 through which R M requested from Public Enterprise for distribution of electricity “Elektrokosmet” to issue the consent for connection of the electricity to the claimed property.
 - Receipt No 2190 issued by Public Enterprise for the distribution of electricity “Elektrokosmet” on 1 September 1997 in the name of R M .
 - Decision No. 242 dated on 3 September 1997 issued by joint stock company of joint ownership “Unikosprojekt” based on which it is confirmed that the technical control of the project: reconstruction of the object for collective housing was done pursuant to Article 20 of the Law on Construction and Investment Objects (No.44/95).
 - Decision No. 2190 issued by Public Enterprise “Elektrokosmet” on 24 April 1998 based on which R M was given the permission for power connection to the claimed property.
 - Receipt of 30 April 1994 showing that R M paid the amount from 2040 dinars (Serbian currency) for contention of the water and sanitary supply.
 - Contract on Participation in Financing the Construction of Power Grid concluded on 3 November 1998 between Public Enterprise “Elektrokosmet” and R M .
3. On 28 January 2008, the KPA notified the claimed property. It turned out to be occupied by H T (henceforth: the Respondent). The Respondent claimed that she had been using the apartment with the permission of the interim government of Kosovo. On 17 June 2008, the Respondent signed the application for taking part in the proceedings. She pointed out that the claim was subject of the review with the Housing and Property Directorate (hereinafter: HPD) and she still remains entirely by her declarations submitted with the request for reconsideration of the HPD decision.
 4. To support her allegations the Respondent provided the KPA with the following documents:
 - Decision No.653/99 issued by the Council of Municipality of Ferizaj/Uroševac, Housing Department on 29 September 1999, based on which the claimed property was allocated to H T for permanent use.

- Certificate issued by the Municipal Assembly of Ferizaj/Uroševac, Department for Property Geodesy and Cadastre on 7 December 2006 confirming that there is no evidence regarding the attic which was built by R M because the said attic was not finalized until year 1999 (it was not yet technically accepted after its construction), so R M did not take possession over the same.
 - Statement No. 541/07, dated on 07 February 2007, according to which B B, tenant of the building in which the claimed property is located, confirmed that the attic which was built by the Claimant was not habitable until a month after the conflict ended.
5. The Executive Secretariat of KPA established that the claimed property as well as the same parties were previously subject to adjudication of the Housing and Property Claims Commission (hereinafter: HPCC) upon the application of R M. Initially, the HPCC in its decision No. HPCC/D/192/2005/C dated 18 June 2005 decided to grant the claim and restored possession of the claimed property to the C category Claimant (the Appellant). The RP filed the request for reconsideration of the claim. After reviewing the facts, a reconsideration request was granted by HPCC in its decision No. HPCC/REC/94/2007 dated 26 March 2007, thus, the initial decision HPCC/D/192/2005/C was overturned and the claim was dismissed. In paragraph 16 in the cover decision, which, according to certified decision applies to the claim, it is stated that after being notified of the Commission's Decision, the Current Occupant, as Requesting Party claimed that the C Category Claimant had permission to build a rooftop apartment, but had only built the walls by the time of his dispossession. The C Category Claimant avers that he had permission to carry out the construction and that he had almost completed it. Having considered the evidence, the Commission finds that the construction was not close to completion as alleged by C Category Claimant and the claimed property could not be considered to have been a habitable residence as of the time when he fled. Accordingly, the reconsideration request stands to be granted and new decision issued in respect of this claim to the effect that the claim be dismissed. However, the Commission considered it appropriate to refer the issue to the competent local court to consider whether any relief should be granted in relation to the investments to the claimed property made by both parties.

6. In the current case at hand filed with the KPA, on 5 September 2012, the Kosovo Property Claims Commission (KPCC), with its Decision KPCC/D/R/167/2012, refused the claim. In paragraph 9, 83 and 84 in the cover decision, which applies specifically to this claim, it is stated that in support of his claim the Claimant submitted a construction permit granting the Claimant the right to build an attic. The Commission notes that the Claimant did not finalize the construction works before he left Kosovo. Accordingly, pursuant to Article 22 of the Law on Basic Property Relation (6/80), the Claimant did not have any property right to the claimed property immediately prior to or during the 1998-1999 conflict and therefore could not have lost his right as a result of the conflict.
7. On 16 April 2013, the decision was served on R M , and he filed the appeal before the Supreme Court on 13 May 2013 (henceforth: the appellant). On 27 September 2013, the Decision was served on H T but according to neighbours she lives abroad, thus, she failed to receive the KPCC decision.

Allegations of the appellant

8. In the claim, it was argued that the possession over the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss and the same was occupied by H T .
9. In the appeal, the Appellant states that the decision made by KPCC is based on violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation.
10. The Appellant alleges that his claim was refused by KPCC and ownership right over the claimed property was completely challenged, with the reasoning that he did not finish the construction of the claimed property, thus, he is not its owner. According to the Appellant, the factual state which was determined by KPCC does not respond to the real condition, that the facts were not completely and objectively reviewed.
11. R M alleges that he had an intention to build up the attic on the existing building in which he lived with his family. He undertook all necessary actions in order to conduct the legal build of the attic, pursuant to applicable Law on Construction. He gained the

consent of all tenants in the building on which he planned the construction. After finalization of the construction works, he connected the electricity, water and sanitation supply. Until final completion of the apartment only the parquet and painting of the walls was left. That minimum of the work separated him from the usage permit as the act which would allow him registration of the immovable property in the cadastre. Due to the events, he moved out and left the claimed property in the stated conditions.

12. The Appellant considers that the ground of his right can be found precisely in the Article 22, paragraph 1 of the Law on Basic Property Relations which stipulates: “A person who out of his own materials and through his work created a new thing shall acquire the ownership right to it”, therefore he considers the KPCC decision as unfair because despite the obvious evidence on his investments in the construction of at least 95 %, the KPCC denies the existence of any property right.
13. In the appeal, M gives a detailed presentation of the documents that he submitted in order to confirm his ownership. Moreover, he continues that the HPCC contradictory resolved two same property rights claims. He alleged that at the same time and under the same procedure his neighbour (DS304051- S S) built up another attic. They both filed the claims before HPCC (DS002202 and DS 304051), absolutely identical cases, based on exactly the same factual state. With the first instance decisions, the HPCC decided positively for both claims. However, the persons who lived in their apartments filed the reconsideration requests. The HPCC decided to refuse the reconsideration request of the Requesting Party with regard to the claim of his neighbor (DS304051) and therefore confirmed her ownership right (he means the possession), while his case was referred to the Court for dispute settlement, which according to Appellant was impracticable due to unavailability of justice and representative in the territory of Kosovo.

Legal reasoning

14. The appeal has been filed within the time limit of 30 days as foreseen by Section 12.1 of Law No. 03/L-079 and is admissible.
15. The Supreme Court, after the review of the submissions from the case file, the appealed decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is ungrounded.

Merits of the appeal

16. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the Claimant filed with the KPA in 2007.
17. The rather simple undisputed facts of the case were not wrongly and incompletely determined by the report of the Executive Secretariat to the KPCC and through the first instance decision which expressly refers to it in its paragraph 83 and 84.
18. They are as follows: the litigious property is occupied by T family since 1999. Its construction was still ongoing at the beginning of 1999 so that the Appellant could not have possession before it was occupied by the Appellee.
19. The fact alleged by the Appellant that he was the property right holder over the claimed property since the beginning of 1999 is disputed.
20. To challenge the decision concerning the assessment of this fact and through the analysis of the documents he submitted, the Appellant raised these arguments that the Supreme Court has now to examine.
21. The appellant maintains that based on the Article 22, paragraph 1 of the Law on Basic Property Relations he is the owner of the claimed property as according to him he constructed the walls and connected the electricity supply. However, he himself admits that the construction of the claimed property was not completed before he left Kosovo; also before the HPD he had confirmed that the claimed property practically was uninhabitable. According to Article 4 of the Decision No 351-831 of October 1997 issued by the Municipal Assembly of Ferizaj/Uroševac, Department of Urban Development based on which to Appellant was granted temporary permission to build up the attic, the latter was obliged to finish the construction within 1 year from when the decision become final, otherwise the construction permit ceases to be valid, as such the permit would have fallen away. On the other hand, the Appellee invested in

construction of the claimed property and she completed the construction works, thus, the Commission refused the claim due to the Appellant could not have lost his right as a result of the conflict. Moreover, the appellant did not file any appeal before the competent court regarding the compensation as it was suggested by HPCC decision. This argument was also considered by the HPCC in the previous proceedings and rejected with a final decision. (The appeal of M against the KPCC decision repeats the same allegations that he made before the HPCC and KPCC. Furthermore, no new evidence which were not considered previously by HPCC and subsequently by KPCC has been submitted with the appeal. Those allegations were already discussed and rejected by the HPCC. The conclusion of this competent body on this issue is final and binding on all the courts now which also became *res judicata* between the parties.

22. The Appellant asserted that the HPCC contradictory resolved two same property rights claims, (paragraph 13 of the Judgment).
23. The appellant in his appeal refers to the previous decision issued by HPCC with regard to the attic. As a matter of fact, R M , previously applied to HPCC asking for re-possession of the apartment, which was allegedly lost during the conflict. The HPCC on its decision HPCC/REC/94/2007 dated 26 March 2007, overturned the decision HPCC/D/192/2005/C and dismissed the property claim as the claimed property could not be considered to have been a habitable residence at the time when he fled and considered appropriate to refer the matter to the competent local court in relation to the alleged investments made by both parties. It is not disputable that the claimant was clearly seeking to get repossession of the same attic before HPCC. However, in order to validly file a claim in the first procedure, Section 2.6 of UNMIK Regulation 2000/60 and Section 1.2 (c) of UNMIK Regulation No.1999/23 which is referred to Section 7.1 of UNMIK Regulation 2000/60 required that the claimant be the possessor of the claimed property prior to 24 March 1999. For the reason that R M was not in possession of the attic prior to 24 March 1999 as it was indicated by him, the HPCC dismissed his claim. Nor had he possessed it before 20 June 1999, as admitted by him. Accordingly, he could not have lost the possession due to the conflict.
24. Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079 defines the claims that the KPA has to receive and register as being ownership claims and claims involving property use rights in respect with private immovable property where

the claimant is not now able to exercise such property rights. So stating, it does not mention any requirement of a previous physical possession of the real property as it is expressly read in the Regulation 2000/60.

25. The above mentioned HPCC decisions were issued under UNMIK Regulation 2000/60 (hereafter the Regulation). With decision HPCC/REC/94/2007, a request for reconsideration against decision, HPCC/D/192/2005/C filed by appellee was granted and the claim was dismissed. This means that decision HPCC/REC/94/2007 is final and cannot be appealed. The provisions of the Regulation do not preview any legal remedies (appeals or extraordinary legal remedies) against the final decisions of the Housing and Property Claims Commission – argument ex. Sections 22 and 25 *ibid*.
26. Having regard to all these factors, the Supreme Court concludes that the appellant failed to bring the evidence of his possession right.
27. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly, the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.
28. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

29. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar