

**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-153/13**

**Prishtinë/Priština,  
26 March 2013**

In the proceedings of:

**F. A.**  
K./K.

By power of attorney represented by:  
**Sh. Xh.**  
M. Sh. str.  
G./G.

**Appellant**

**vs.**

**S. TH.**  
M. T. 2.  
K./K.

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (hereafter to be referred to as: KPCC) number: KPCC/D/R/167/2012 dated 5 September 2012 (case file registered at the KPA under No. KPA 1340, hereafter to be referred to as: the KPCC decision), after deliberation held on 26 March 2014, issues the following

## JUDGMENT

1. The appeal of F. A. filed against the decision of the Commission KPCC/D/R/167/2012 dated 5 September 2012 is rejected as unfounded as the case has previously been decided in a final juridical decision (*res judicata*);
2. The decision of the KPCC No.: KPCC/D/R/167/2012 of 5 September 2012 is confirmed as far as it regards the case file registered at the KPA under No. KPA 1340.

### **Procedural background:**

1. On 3 December 2007 F. R. A., represented by his wife F. A.i, filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his right of use an apartment with a surface of 26.20 m<sup>2</sup> at Marshal Tito str. 21 in Kamenicë/Kamenica (hereafter: the apartment).
2. The KPCC decided the claim to be dismissed due to *res judicata*.
3. The KPCC decision was served upon Sh. Xh. 10 July 2013, who, on behalf of the claimant filed an appeal against the KPCC decision at the KPA on 1 August 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 (hereinafter: the UNIMK Regulation 2006/50) on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.
4. On 24 October 2013 S. Th., being the occupant of the apartment, was informed of the appeal as an interested party. She filed a response on 30 October 2013.

### **Factual background**

5. On 12 January 2000 the appellant filed a claim at the Housing and Property Directorate.
6. This claim regarded the same apartment and the same responded.
7. In its certified decision dated 18 June 2005, no HPCC/195/2005//A&C, the housing and property Commission (HPCC) refused the claim.

### **Legal reasoning:**

*Allegation of parties*

8. The appellant demands the decision of the KPCC regarding KPA 1340 to be quashed and the case to be returned to the KPCC in order to assess the appellant's right of use of the apartment and thus to be reinstated in this right of use.
9. The appellant alleges that the KPCC decision has been taken in violation of the articles 182, paragraph 1, in combination with article 70 of the Law on contested procedures (Law No. 03/L-006 hereafter referred to as the LCP). This because the KPCC, when assessing the appellant's claim, has omitted to verify ex officio whether S. Th. could be a party in the proceedings.
10. The appellant further states that article 182, paragraph 2, subparagraph n, of the LCP was violated since (shortly said): the KPCC decision contains many errors and its enacting clause is incomprehensible and contradictory in itself.
11. The appellant further states that article 183 of the LCP is violated, because the factual situation was erroneous determinate by the first instance body.

*Jurisdiction*

12. The Supreme Court has jurisdiction.

*Admissibility*

13. The appeal is admissible.

*Merits*

14. The KPCC has dismissed the claim of the appellant based on Section 11.4.c of the UNMIK Regulation No 2006/50 as the claim has previously been decided in a final administrative or juridical decision (res judicata).
15. As mentioned above under the paragraphs 5, 6 and 7, the matter was decided by the HPCC, dated 18 June 2008 and become final, so the KPCC took the right decision based on the right arguments.
16. The Supreme Court does not follow the appellant's the allegation mentioned under paragraph 10. The KPCC decision has been duly motivated by the KPCC in the paragraphs 50 and 51 of the KPCC decision. The final conclusion of the KPCC decision: "*the claim be dismissed*", is clearly drawn in both the enacting clause, as well in paragraph 51 of the KPCC decision and in paragraph 1 of the certified decision. No decisive errors have been noticed by the Supreme Court.

17. As far as the violation of article 70 of the LCP is concerned (the allegation in paragraph 9), the Supreme Court holds the appeal on article 70 of the LCP for an error, since this article regards the disqualification of judges. The text of the appeal however says: “...the Commission initially should have verified if the person presented as a party in de procedure pursuant to the provision of Article 70 of LCP which should be pursued by the Commission ex officio” Thus referring to the text of article 76 of the LCP: “The court shall at all stages of the proceeding, by official duty, review whether the person that is presented as a party may be a party in the procedure (...)”.
18. Whatever may be of this allegation, it does not alter the decision. The KPCC could decide on the case as it did, since the competence of the parties involved could not whatsoever change the fact that the matter already had been decided by the HPCC.
19. As far as the allegation mentioned under paragraph 11 is concerned: the facts regarding the merits of the case have been established by the HPCC in its decision of 18 June 2005, no. HPCC/195/2005/A&C. This decision is final and is not to be reconsidered by the Supreme Court.
20. In case, the appellant considers the HPCC to be the first instance, this allegation does not stand. The KPCC could decide on the case as it did since (re-) establishing the facts could not whatsoever change the fact that the matter already had been decided by the HPCC.

*Conclusion*

21. In the light of foregoing and pursuant to Section 13.3 (c) of UNMIK Regulation No. 2006/50, it is decided as in the enacting clause of this decision.

**Legal Advice**

22. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Willem Brouwer, EULEX Presiding Judge**

**Sylejman Nuredini, Judge**

**Esma Erterzi, EULEX Judge**

**Urs Nufer, EULEX Registrar**