

**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-138/13

**Prishtinë/Priština,
23 April 2014**

In the proceedings of:

H.Q

Claimant/Appellant

vs.

A.A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA01183), dated 22 October 2012, after deliberation held on 23 April 2014, issues the following

JUDGMENT

1. The appeal of H.Q is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA01183), dated 22 October 2012, is confirmed.

Procedural and factual background:

1. On 31 October 2007 the appellant, then claimant H.Q filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his user right over an apartment of 54 sq m, 35 “Marshal Tito” str., now “Skenderbeu” str.
2. He claimed the property was given for usage with a contract to his father in 1966 and he used it uninterruptedly until 1984 when another person occupied it without having the right to that. This other person used the apartment until 1999.
3. In front of the Commission the claimant presented a contract from 1966. With it the father of the claimant (Š.T) was given the right to use the apartment, property of back then the Municipal Housing Company¹ in Istok/Istog. The existence of this contract and the kinship between the claimant and the beneficiary in this contract – the said Š.T, are not disputed.
4. It is not disputed that the family of the claimant used this apartment until 1984.
5. It is not arguable that after 1984, and before the armed conflict of 1998/1999 the property was used by other people.
6. It is irrelevant for the current case on what basis these other individuals used the said property after 1984 and until the armed conflict.
7. The property was notified and the respondent A.A was found occupying it. She does not claim any rights towards the property. She explains that when she entered the property in 1999 it was empty.
8. The KPCC dismissed the claim. The KPCC accepted that the case is not related to the armed conflict in 1998/1999.

¹ “Stambeno Komunalno Preduzeće” in the original language of the contract, which was Serbian

9. The decision was served on the claimant on 23 April 2013. He filed an appeal on 16 May 2013.
10. The respondent did not react to the appeal.

Allegations of the appellant:

11. The appellant asserts that the decision is groundless. There is evidence which proves that his father T.Q was allocated the usage right over the apartment in 1966. In 1984 the apartment was usurped without legal grounds by B.B who lived there until 1999. After that A.A usurped the property. As a legal inheritor of T.Q he has the right to request repossession against the current usurper.

Legal reasoning:

Admissibility of the appeal:

12. The appeal is admissible. It has been filed within the 30 day period as prescribed in section 12.1 UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the resolution of claims relating to private immovable property, including agricultural and commercial property (hereinafter Law 03/L-079).

Merits:

13. The appeal is unfounded.
14. According to Section 3.1 of the Law the Commission has the competence to resolve claims related to the armed conflict of 1998/1999; claims related to rights that cannot be exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. In the current case the possession over the property was lost in 1984 (the claimant himself asserts this fact). *I.e.* the claim is not related to the armed conflict of 1998/1999. Therefore the Commission rightfully dismissed the claim as falling outside its jurisdiction.
16. On the basis of the above and in accordance with section 13.3 (c) of Law 03/L-079 the Court decided as in the enacting clause.

Legal Advice:

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EULEX Registrar