

**SUPREME COURT OF KOSOVO  
GJYKATA SUPREME E KOSOVËS  
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL  
KOLEGJI I PËR APELIT TË AKP-së  
ŽALBENO VEĆE KAI**

**GSK-KPA-A-02/12**

**Prishtinë/Priština,  
01 November 2012**

In the legal proceedings of

**J.M.**

*Claimant/Appellant*

vs.

**E.B.**

*Respondent/Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/122/2011 (case file registered at the KPA under the number KPA30510), dated 07 September 2011, after deliberation held on 1 November 2012, issues the following

## JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/R/122/2011, dated 07 September 2011, as far as it relates to the case file registered under the number KPA30510 is annulled as rendered in the absence of jurisdiction.
- 2- The claim of J.M., registered under the number KPA30510 is dismissed as not being within the jurisdiction of the KPA.
- 3- Costs of the proceedings determined in the amount of 60 € (sixty euro) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgement is delivered otherwise through compulsory execution.

### **Procedural and factual background:**

On 08 March 2007, J.M. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognised as the owner of the apartment with a surface 76.30 square meters, which is located in Vushtrri/Vučitrn, street Vidovdanska no.124, fourth floor, apartment no. 22. She claimed that she is the owner of the apartment based on the sale and purchase contract dated 04 July 1997, which was certified by the Municipal Court in Vushtrri/Vučitrn Vr.nr.34/2004, dated 10 June 2004 and that her property had been usurped. She stated that at the HPD office she filed a claim for the apartment but was not notified about the present status concerning the resolution of that claim. She alleges that she lost the possession of the property on 1 June 1999.

To support her claim, the claimant provided the following documents:

- Decision on allocation of the apartment for usage by the Joint-Stock Company “Industria e Tekstillit Polet” from Vushtrri/Vučitrn no.18/K dated 28 January 1994;
- Contract on the purchase of the apartment, entered between the above-stated company as seller and claimant as buyer, no.74/K dated 14 July 1994 certified by the Municipal Court in Vushtrri/Vučitrn, dated 10 June 2004, and
- Identification Card dated 28 April 2005 issued by the Ministry of Internal Affairs of Serbia.

The same apartment was subject to review by the Housing and Property Claims Commission, which refers to the claim of S.M. - who is the spouse of the claimant's son, registered under the number no. DS301037 dated 28 July 2005.

According to the cover decision of this Commission no. HPCC/D/204/2005/60 dated 18 June 2005, the claim of S.M. was rejected with the reasoning that she did not confirm the ownership right over the claimed apartment. Namely, the verification team of KPA Executive Secretariat was unable to find the corresponding documents (decision and the contract) either in original or in copy at the Municipal Assembly in Vushtrri/Vučitrn, at the Public Housing Enterprise, or at the Municipal Court in Vushtrri/Vučitrn, as competent bodies for issuing such documents.

The notice of the property was made on 27 April 2009. It was found to be usurped by E.B. who signed the notice of participation on 05 November 2011, claiming legal right over the claimed property.

To support his claims as property rights holder over this apartment, the respondent provided the following legally valid and relevant documents and evidence:

- Decision on allocation of the apartment by the Textile Factory "Polet" from Vushtrri/Vučitrn no 069 dated 16 December 1997;
- Lease contract with the Textile Factory "Polet" from Vushtrri/Vučitrn no 069/1 dated 16 December 1997;
- Contract on the sale of the apartment with the Textile Factory "Polet" from Vushtrri/Vučitrn no 069 dated 03 December 1998;
- Payment receipt by the Textile Factory "Polet" from Vushtrri/Vučitrn no 6250 dated 27 August 2007, by which the payment of the apartment's price is ascertained;
- Electricity bill under his name DMI-30034 25 September 2008, and
- Property tax bill under his name no.595677 dated 25 September 2008.

All these documents were positively verified by the KPA Verification Team at the competent bodies that issued those documents or where they were *ex officio* deposited or archived.

On 07 September 2011, the KPCC in its decision KPCC/D/R/122/2011 rejected the claim. The KPCC concluded that the claimant had not provided any legal evidence that she was the legitimate owner, that is, she failed to present legally valid evidence to confirm the ownership right over the claimed property.

The Decision was served to the claimant on 13 December 2011. On 4 January 2012, she filed an appeal.

The appeal was served to the respondent on 12 December 2011, who did not file a response to the appeal.

**Legal reasoning:**

The appeal is admissible. The appeal has been filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079.

The Supreme Court, after reviewing and assessing the case file submissions, the appealed decision as well as the appellant's allegations observed that the appealed decisions was taken by essential violations of the provisions of Article 182 paragraph 2 subparagraph (B) of the LCP, which *mutatis mutandis* is applied pursuant to Section 12 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. Therefore, the same KPCC decision pursuant to Article 198 paragraph 1 of LCP should be annulled and the claimant's claim dismissed. This is because this legal property matter is not within the jurisdiction of the Property Claims Commission or within the jurisdiction of the KPA Appeals Panel of the Supreme Court. Therefore, taking into account that this decision is of a procedural nature – due to the lack of jurisdiction it has not been decided on its grounds, that is, on its merits.

This is because pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, the claimant is entitled to an order by the Commission for repossession of the property if the claimant not only proves the ownership of the private immovable property, but that he or she is currently unable to exercise his or her ownership rights by reason of circumstances related directly to or resulting from the armed conflict that occurred in Kosovo between the 27 February 1998 and 20 June 1999.

For the same apartment a claim was initially filed by the claimant's son's spouse S.M. registered at HPD under the number DS301037. Whereas through the decision of HPCC/D/204/C dated 18 June 2005, this claim was rejected with the reasoning that the documentation provided by the claimant was not found in the archives of responsible bodies and institutions and thus has failed to prove the ownership right over the claimed apartment with relevant and valid documents. Meanwhile, a claim for this apartment was filed by J.M. in the capacity of property right holder over the contested apartment. On 07 September 2011, KPCC with its decision KPCC/D/R/122/2011 rejected the claim. KPCC concluded that the claimant did not provide any legal evidence that she is the legitimate owner, that is, she failed to present legally valid evidence to verify the property right over the claimed property.

Therefore, it can be concluded that the dispute concerning the property in question does not result from nor is directly related to the armed conflict of 1998/1999.

The case was not within the jurisdiction of the KPA, and the KPCC should not have decided on its merits but should have dismissed it. This was not done so the KPCC rendered an invalid decision which has to be annulled pursuant to Article 198.1 of the Law on Contested Procedure. According to the legal provision referred to, when the first instance court (in this case, it is a quasi-judicial body) renders a decision which is not within its jurisdiction, the second instance court should annul the decision and dismiss the claim.

These provisions of the Law on Contested Procedure are applied mutatis mutandis in the proceeding of the KPA Appeals Panel to the Supreme Court, pursuant to Section 12.2 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079.

Due to the fact that the claim was dismissed by a decision as not being within the jurisdiction of the Property Claims Commission and of the Supreme Court, the review and assessment of the claim, response to the claim and the appeal, referring to their validity and merits, becomes unnecessary.

#### **Cost of the proceedings:**

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2: 30 €
- court fee tariff for the issuance of the judgment (Sections 10.21 and 10.15 of AD 2008/2), which cannot be more than € 30.

These court fees are to be borne by the appellant/claimant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

**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.

*Anne Kerber, EULEX Presiding Judge*

*Elka Filcheva-Ermenkova, EULEX Judge*

*Sylejman Nuredini, Judge*

*Urs Nuffer, EULEX Registrar*