

**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-065/12**

**Prishtinë/Priština,  
15 May 2013**

**In the proceedings of:**

**V. (M.) H.**

Prishtinë/Priština

***Claimant/Appellant***

represented by

**B. K.**

Prishtinë/Priština

vs.

**1. S. A.**

**2. A. A.**

Prishtinë/Priština

***Respondents/Appellees***

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/138/2011 (case file registered at the KPA under number KPA01369), dated 7 December 2011, after deliberation held on 15 May 2013, issues the following

## **JUDGMENT**

- 1- The appeal of V. H. against the decision of the Kosovo Property Claims Commission KPCC/D/R/138/2011, dated 7 December 2011, as far as it regards the claim registered at the KPA under No. KPA01369, is rejected as unfounded.**
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/138/2011, dated 7 December 2011, as far as it regards the claim registered at the KPA under No. KPA01369, is confirmed.**
- 3- Costs of the proceedings determined in the amount of € 60 (€ sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

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

On 4 December 2007, V. H., represented by B. K. filed a claim with the Kosovo Property Agency (KPA), seeking recognition of her ownership of an apartment located in Prishtinë/Priština, Ulpijana C-5, ul-1, 3, 5 rooms with a surface of 49,89 m<sup>2</sup>. She asserted that she was the owner of this apartment which formerly had been in public ownership and that the apartment was lost on 1 June 1999 as a result of the circumstances in 1998/1999 in Kosovo. The claim was registered at the KPA under the number KPA01369.

To support her claim, the claimant provided the KPA amongst others with the following documents:

- Power of attorney given by V. H. to B. K. on 16 December 2004 in which she not only entitles him to represent her before the competent bodies regarding the use of the litigious apartment but also said that B. K. and his family were authorized to use the apartment;
- Contract of exchange of apartments concluded between M. H. and M.J dated 10 July 1986, with which the parties exchanged the tenancy rights for their apartments and according to which M. H. obtained the tenancy right for the litigious apartment, the consent of both companies who owned the apartments is included.

M. H. and his family (including the claimant, his daughter) lived in the apartment. M. H. died before on 19 July 1998, the claimant continued to live in the apartment.

The claimant states that she left the apartment and Kosovo in June 1999 because of the dangerous situation due to the armed conflict.

On 17 March 1999, S.A., the respondent, entered in a contract with the Health House of Pristina, represented by its director, according to which she bought the apartment for the price of 29.400 DM. The KPA could not find the contract in the archive of the Municipal Court of Prishtinë/Prishtina.

On 22 March 1999, the claimant sold the apartment for 5.000 DM to B. K.. The claimant left the apartment when the bombing started in March 1999. Whether this was before the conclusion of the contract or shortly after is not clear.

In June 1999, A. A., now the husband of S. A., entered the apartment. Later on in 1999, S. A. entered the apartment and since then she lives in it.

On 30 September 2003, V.H. filed a claim with the Municipal Court of Prishtinë/Prishtina (P.br.1748/03) against the respondent and A. A., her husband, for disturbing her possession by breaking the door of the apartment and changing the lock. The claim was refused by the Municipal Court of Prishtinë/Prishtina as untimely. According to the ruling, B. K. as a witness had stated that V. H. had sold the apartment to him with a preliminary contract on 22 March 1999. According to B.K. the claimant left the apartment sometime in March or June 1999 and “practically handed over the apartment to him”. In August 1999 B.K. informed the claimant that the respondent and her husband had unlawfully moved into her apartment.

In 2005, the claimant filed a lawsuit against S. A. and Xh. Al. her father, requesting the annulment of the contract of 17 March 1999 and vacation of the apartment (Municipal Court of Prishtinë/Priština, C.No. 72/05). The case is not finally decided yet.

On 7 December 2011, the Kosovo Property Claims Commission with its Decision KPCC/D/R/138/2011 dismissed the claim for lack of jurisdiction. Pursuant to UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to the entry into force of the Regulation (that is the 16 October 2006, Section 22 of the Regulation). As the claimant had initiated a court procedure requesting the annulment of the purchase contract between S.A. and the Pristina Health Center of 17 March 1999 and requesting repossession "judicial proceedings in respect of the claim" had been initiated already in 2005.

The decision was served on B. K. on 25 April 2012. On 8 May 2012, V. H., represented by B. K., filed an appeal.

In her opinion she has an ownership right to the apartment. She also claims that the Commission's interpretation of Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 is unlawful.

The claimant (from here on: appellant) requests to approve his appeal and change the KPCC's decision in the part related to the claim or send the case back for reconsideration.

The respondents (from here on: appellees) reject the appeal and uphold the KPCC's decision.

The Court has ordered the appellant to submit a power of attorney for B. K. together with a copy of a valid ID-card of the appellant. Also the appellant should explain how the loss of the apartment was related to the armed conflict in 1998/1999. The appellant submitted the power of attorney together with a copy of her ID-card, issued on 14 February 2013. She explained that she had to leave the apartment and Kosovo out of fear.

**Legal reasoning:**

The Court at first wants to clarify that respondents/appellees are S. A. and A. A.. Both persons responded to the claim. Furthermore, the Court is satisfied that B. K. is not the claimant/appellant, but represents the claimant/appellant V. H.

The appeal is admissible. Yet it is not founded.

The claim is not within the jurisdiction of the KPCC or the KPA Appeals Panel.

The Court, however, cannot agree with the KPCC's findings that according to Section 18 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the case is not within the scope of jurisdiction of the KPCC. Only cases which would fall under the jurisdiction of the KPA if a lawsuit had not been filed before 16 October 2006 with the Municipal Courts cannot be decided by the KPA. The objective of Section 18 is to prevent different courts from deciding on the same subject matter and in the worst case decide differently. Consequently, not only the parties have to be the same but also the subject matter of the cases has to be the same. Here, however, the subject-matter is completely different: with the KPA it is about ownership and repossession, with the regular Court it was disturbance of possession and later on the annulment of a sales contract. As therefore the subject-matter of the lawsuit before the regular courts is not the same as the subject matter of this claim before the KPCC, Section 18 does not prevent the KPCC or the KPA Appeals Panel from deciding on the case.

The case, however, is not within the scope of jurisdiction of the KPCC because the appellant did not lose the possession of the property because of the armed conflict of 1998/1999.

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

The Court cannot find this. The appellant states that she left the apartment and Kosovo out of fear for her life because of the armed conflict. This fact alone, however, is not enough to constitute the

jurisdiction of the Court. The crucial point is whether the loss of the apartment is directly related to the armed conflict. The appellees stated that the appellant sold the apartment to her representative on 22 March 1999. This fact has not been denied by the appellant. It is even sustained by the statements of the representative B. K. during the different hearings related to the proceedings before the Municipal Court and the criminal investigation the appellee initiated against the appellant (examples: Questioning of B.K. by the Kosovo Police on 3 April 2006: “There was a woman and I asked her who was currently using the apartment because it belongs to me” and the fact that the power of attorney of 16 December 2004 includes the right to use the apartment). From these facts the Court concludes that the appellant lost possession of the apartment not because she fled from Kosovo because of the armed conflict and then the appellees occupied it, but because the appellant sold the apartment to her representative, left before the sale or shortly after and with this voluntarily gave up her possession of the apartment. The loss of possession therefore is connected with the sale of the apartment, which might have been motivated by fear of the armed conflict. Yet the loss of possession is – if at all – related only indirectly with the armed conflict. This, however, is not enough to establish the jurisdiction of the Commission or the KPA Appeals Panel.

The Court also notes that according to the statements of the appellant, who does not claim to have acquired private ownership of the parcel, but only claims an ownership right without stating how she acquired ownership, especially that she or her father bought the apartment, the apartment is a publicly owned property. The KPA Appeals Panel, however, is not entitled to decide on publicly or socially owned property, but only on private immovable property (Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

According to all this, the Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law in the KPCC’s decision. Consequently the appeal according to Section 13.3 c) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079 had to be rejected as unfounded.

**Costs 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 (10.21, 10.15 and 10.1 of AD 2008/2) considering that the value of the litigious property could be reasonably estimated as being € 30.000: € 30.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees the deadline for fees' payment is 15 (fifteen) 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 Nufer, EULEX Registrar**