

**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-044/12

**Prishtinë/Priština,
17 July 2013**

In the proceedings of:

K. B.

Prizren/Prizren

Appellant/Claimant

vs.

M. K.

Prizren/Prizren

Appellee/Respondent

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/131/2011 (case file registered at the KPA under No. KPA11590), dated 26 October 2011, after deliberation held on 17 July 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/R/131/2011, dated 26 October 2011, as far as it relates to the case file registered under the number KPA11590 is annulled as rendered in the absence of jurisdiction.
- 2- The claim of K.B. registered under the number KPA11590 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 15 (fifteen) days from the day the judgement is delivered otherwise through compulsory execution.

Procedural and factual background:

On 13 December 2006, K. B. in a capacity of the property right holder filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of user right and repossession over the apartment located in Prizren/Prizren 11 Marsi Street, 2/E, No. 8 with a surface of 72, 28 m².

He explained that he had acquired occupancy right over the claimed property based on the allocation decision issued on 1998 by the Enterprise DD ISF "Progress". He asserts that he was into a possession of the claimed property only two months after the end of the conflict/war and that he lost the possession on 01 August 1999. The case was registered at the KPA under No. KPA11590.

To support his claim, the claimant provided the KPA with the following documents:

- Allocation Decision No. 85/03 dated 20 September 1998, issued by the DD ISF "Progress" in Prizren, showing that the claimed property is allocated to the claimant K. B.;
- General Announcement for lease allocation No. 92/01, issued on 16 March 1999 by DD ISF "Progress" in Prizren;
- Handwritten Document (without date and number) which describes the building in which the claimed apartment is situated; and
- ID card of the claimant, issued on 9 March 2001.

The KPA verified the allocation decision (no. 85/03), however, KPA has deemed unnecessary verification for the other presented document.

On 11 July 2007, the KPA notification team went to the place where the claimed apartment allegedly was located and put up a sign in the door indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The apartment was found occupied by M.K.. She signed a notice of participation. Moreover she asserted that she has permission from Enterprise IFS “Progres Perllonka” from 2005. In the same notification report it is stated that property was claimed with HPD with claim number DS500172 and DS301938.

On 21 September 2011 in correspondence with the KPA the claimant stated that he was not able to conclude contract on use for the claimed property, since before the war the whole building where the claimed apartment located was not technically accepted for handover. Moreover, he stated that after the conflict immediately he used the claimed apartment for two months but then A.K. (a KLA member) forced the claimant to vacate the claimed property. To the question of the KPA why he was not able to conclude the contract on use, he said that “the enterprise was not able to due to the political changes in Kosovo that happened after the conflict”.

On 23 September 2011, M.K. – respondent on her reply to the claim emphasized that she was employee for many years of the enterprise that has constructed the building where the claimed apartment located and that she is the user of the claimed apartment for more than 12 years. As evidences she mentioned bills that she has paid all obligations which came out from user of claimed apartment.

On 27 September 2011 when the claimant met the KPA officials he declared that in 1999 before the NATO air campaign started he was dismissed from his working place at the Enterprise DD ISF “Progress”. He added that when he started to work with the OSCE Mission this might have been the reason why Serbs dismissed him from his job and the claimed apartment was allocated to another person named Dragan Zdujic. He could never conclude the contract on purchasing of the claimed apartment with the Enterprise.

On 26 October 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/R/131/2011 refused the claim as the claimant failed to demonstrate use right over the claimed property. The reasoning part of the same decision confers the fact that claimant never concluded a contract on use or lease and that the same was in a possession of the claimed apartment only for two months after the end of conflict.

The decision was served on the claimant on 30 January 2012, while the same is delivered on respondent’s daughter on 20 February 2012.

On 29 February 2012, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of erroneous and incomplete determination of the facts and misapplication of material law. Moreover he proposed the KPCC decision to be annulled and his claim be approved in order to be verified that he is the occupancy right holder over the claimed apartment.

The appellant in his appeal states that the KPCC decision did not confirm his occupancy property right, although he provided appropriate documents (decision on allocation of the claimed apartment and statement from two witnesses) as support of his allegations. He further states that based on the submitted evidence it is very clear that the claimed apartment was allocated to him. In addition he says that immediately after the claimed apartment was allocated to him he was maltreated due to the known fact at that time - pressure against non-Serbs. At the end of his appeal he also notes that after many pressures from post-war usurpers that resulted with threats it was impossible for him to stay in the claimed apartment.

The appeal was served on the respondent (henceforth: the appellee) on 22 March 2012.

On 28 March 2013 the appellee replied on the appellant's appeal with the proposal that the appeal of the appellant is dismissed as inadmissible and the KPCC decision KPCC/D/R/131/2011 be confirmed.

The appellee declared that the allegations of the appellant have no legal base because he has not provided any evidence with his appeal. Moreover she stated that the evidence submitted by the appellant was not convincing - he offered the statement of the witness, who is his neighbor and such statement, could not serve as evidence which would be considered as ground for challenging the decision. She added also that she was employed in the enterprise that built the claimed apartment and that she was entitled with the right to use the same apartment like all other employees. She stated that this circumstance gives her the right to be the first user of the claimed property. As evidence she submitted the bills and receipt that she paid obligations for using the claimed property.

Legal reasoning:

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

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 of 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.

From the data available in the case file it can be seen that the claimant did not prove that he acquired his occupancy right over the claimed apartment as it foreseen with the Law and Housing Relations (42/86 – Chapter II, section 11, which refers to a possession of the allocated property and Chapter III, Section 32, which refers to the allocation of the property to an employee from the allocation right holder) and the amended Law on Housing (50/92 – Chapter II, Section 5, which refers to conclusion of the lease contract between the Public Housing Enterprise (PHE) and employee on the basis of the allocation decision from the allocation right holder). **Moreover, the claimant stated that he entered into a possession of the claimed apartment only after the war and according to the information within the case file he was into a possession until 1 August 1999, which means after the period of time 27 February 1998 and 20 June 1999. This means that the dispute is not directly related in this regard or resulting from the armed conflict. On the contrary the claimant was in possession of the property after the war.**

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.

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.

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 property at hand could be reasonably estimated as being comprised at € 35.000: € 30 (€ 50 + 0,5% of € 35.000, yet no more than € 30).

These court fees are to be borne by the appellant who filed an inadmissible claim. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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 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