

**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-85/12

**Prishtinë/Priština,
17 September 2013**

In the proceedings of

A. S.

Claimant/Appellant

vs.

R. B.

St. Ramiz Sadiku,
Prishtina

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi 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 No. KPA50277) of 07 December 2011, after deliberation held on 17 September 2013, issues the following

JUDGMENT

1. The appeal of A. S. against the decision of the Kosovo Property Claims Commission KPCC/D/R/138/2011, dated 07 December 2011, with regard to the claim registered with KPA under No. KPA50277 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/138/2011, dated 07 December 2011, with regard to the claim registered with KPA under No. KPA 50277, is confirmed.
3. The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 30 October 2007, the claimant A. S. filed a claim with the Kosovo Property Agency (KPA), seeking to reinstate the use of an apartment-basement, which is located in Prishtina, st. Ramiz Sadiku, Prishtinë/Priština. The possession was alleged to have been lost due to the circumstances resulting from the armed conflict that occurred in 1998/99.

In support of his claim, he submitted the decision of the Secretariat for Urbanism and Municipal-Housing Affairs, number 07. Nr. 360-253, dated 26 January 1994 in Prishtinë/Priština.

The apartment notification was done on 24 July 2008.

On 14 August 2008, the respondent alleged his rights over this apartment, whereby the respondent submitted the following evidence:

- The decision from the Committee for allocation of apartments of the National Province Theatre in Prishtinë/Priština, number 337, dated 01 September 1990;
- The decision from the Council of National Province Theatre in Prishtinë/Priština, number 337/2, dated 25 October 1990.

According to these decisions the respondent is given for use the apartment- basement, which is located in Prishtina, st. Ramiz Sadiku, number 28.

Previously, the possession of the said apartment located in Prishtinë/Priština, st. Ramiz Sadiku was subject to the adjudication of the Housing and Property Claims Commission (HPCC). With decision HPCC/D/221/2005/A&C, the Commission dismissed the A category claim of Rr. B. whereas granted the C category claim of A. S. in the claim Nos DS004261 & DS601196. Upon the reconsideration request of Rr. B. and T.K., with decision HPCC/REC/88/2007, dated 19 January 2007, the A category claim was dismissed and referred to the ordinary court and the connected C category claim No DS601196 was dismissed as well. The decision is based on the argument that the C category claimant failed to prove that he had any property right over the alleged apartment-basement. The HPCC, in its decision, noted that the first requesting party Rr. B. averred that he was granted the apartment in 1990 but prevented from concluding a contract due to his Albanian ethnicity and alleged discrimination in this regard whereas the second requesting party T. K. (N. Th.), as the Allocation Right Holder (employer), averred that it never issued a decision to A. S. granting the right to use of the claimed property since he was not employed by it. The decision further refers to the fact that in support of its allegations T. K. submitted the minutes of the Theatre in which it was recorded that the C category claimant (A. S.) was using the property without any legal grounds. The HPCC also stated that the Directorate's attempts to verify the decision which was issued by Secretariat for Urbanism of the Municipal Assembly permitting the C category claimant to use the property failed.

The further claim filed by A. S. this time before the Kosovo Property Agency (KPA) registered under case number 50277, was dismissed with the KPCC/D/R/138/2011 decision, dated 07 December 2011, based on the argument that the previous final decision of the Housing and Property Claims Commission HPCC/REC/88/2007, dated 19 January 2007 became *res judicata* among the parties.

The decision was served to the claimant on 31 June 2012.

On 03 May 2012, the KPCC decision was served to the respondent.

On 24 August 2012, the claimant (hereinafter the appellant) filed an appeal with the Supreme Court, by challenging the decision alleging violation of the material law and erroneous and incomplete determination of facts, proposing to amend the appealed decision and grant the right on possession of the claimed apartment-basement.

On 5 September 2012, the appeal was served on the Respondent who did not file a response to the appeal.

Legal Reasoning

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

The Supreme Court, after the review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, found that the appeal is ungrounded.

The KPCC rightfully dismissed the claim of A. S. on the grounds of that the subject matter constitutes *res judicata* between the same parties. The same matter had already been adjudicated with a final decision HPCC/REC/88/2007, dated 19 January 2007, before this claim at hand was filed. With the aforementioned judgment, HPCC dismissed the previous claim since A. S. failed to prove that he had any property right over the alleged apartment-basement. Regardless of the term used by HPCC as “dismissed”, the Supreme Court observes that the legal reasoning of the said decision refers to an examination of a claim which was actually rejected. Such a decision constitutes a final adjudication on the merits of a claim. Accordingly, the claimant cannot be allowed to have his same claim heard once again on the same matter between the same parties for which he could not present valid evidence previously unless the conditions of application for an extra ordinary remedy is alleged and proven.

The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.

Based on the aforementioned and in pursuant to Section 13.3.b. of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph 2, of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

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 exempted 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 (section 10.21, 10.15 and 10.1 of the AD 2008/2): 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 by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 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 within 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar