

**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-22/13

**Prishtinë/Priština,
1 October 2013**

In the proceedings of:

R.B

Claimant/Appellant

vs.

M.B

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva Ermenkova, Presiding Judge, Esma Ertezi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/159/2012 (case file registered at the KPA under the number KPA 44574) dated 06 June, 2012, after deliberation held on 1 October 2013 , issues the following

JUDGMENT

1. The appeal of R.B filed against the decision of Kosovo Property Claims Commission KPPC/D/C/159/2012, dated 06 June 2012, as far as it regards the claim registered in KPA with number KPA 44574, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/159/2012, dated 06 June 2012, as far as it regards the case file registered in KPA with number KPA44574, is confirmed.
3. The appellant has to pay the cost of proceedings which are determined in the amount of 60 (sixty) euros, within 90 (ninety) days from the day this judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 17 July 2007, R.B filed a claim with Kosovo Property Agency (KPA) seeking re-possession of the property – apartment located in Gjakovë/Đakovica, street Skenderbeu no. 8, second entrance, with a surface of 24,48m² (hereafter: the apartment). She claimed she the ownership of the apartment based on the sale contract confirmed by the Municipal Court in Gjakovë/Đakovica, dated 10 April 2002. She alleged having lost the apartment as a result of the armed conflict in Kosovo, respectively on 17 July 1999.

The claim was registered under number KPA44574.

Apart from the sale contract, the appellant presented a set of other documents which are irrelevant to the subject matter.

On 20 March 2008, the KPA Officials visited the residential premises and concluded that it is used by an unknown party.

On 06 January 2009, the appellee participating in the KPA proceedings alleged the legal right over the apartment by emphasizing that the appellant is not the property right holder of the apartment.

To support her claim she presented the following evidence:

- Decision of Share-Holding Company “Agim”, no.246 dated 06 May 1992, whereby it is stated that the apartment in Gjakova, Building 8, Str. Skenderbeu, with a surface of 24.48m²m, was allocated to the appellee;
- Sale contract confirmed by the Municipal Court in Gjakova, Vr.nr.498/92 dated 19 May 1992, whereby it is concluded that the appellee in the claim purchased the apartment.
- Decision HPCC/REC/181/2005/A&C dated 30 April 2005, whereby the claim filed by the appellee- category A claimant with no. DS502386 was approved, wherewith she recovered her property right, whereas the claim for the same apartment of the category C claimant with no. DS305787 was rejected; and
- Decision of HPCC/REC/95/2007 dated 16 March 2007, whereby the petition for review filed by R.B against the decision HPCC/D/181/2005/A&C dated 30 April 2005, was rejected as ungrounded.

According to the verification report dated 22 June 2008, all documents referred to have been positively verified by the KPA verification team.

On 06 June 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/C/159/2012 dismissed the claim of the appellant as an adjudicated matter, res judicata, with the reasoning that the same claim for the same apartment registered at HPCC no. DS305787 was examined and closed by a final decision of HPCC/D/181/A&C dated 30 April 2005, by rejecting the claim as ungrounded.

Based on the claim of appellee registered as DS502386, she recovered with the same decision the possession and the property right over the claimed apartment pursuant to Section 11.4.C of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079.

On 26 November 2012, the decision was served to the claimant who filed an appeal with the Supreme Court on 12 December 2012.

The appellant challenged the appealed decision due to erroneous and incomplete determination of factual situation and misapplication of the substantive law. She alleges that the Municipal Assembly of Gjakova with its decision dated 06 August 1997 allocated the apartment for use - rent for an indefinite period of time.

The appellant requests from the Supreme Court that with the approval of the claim to recognize the appellant’s property right over the claimed apartment.

Legal reasoning:

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

The Supreme Court, after the review of the submissions from the case file, the appealed decision and the allegations pursuant to Article 194 of the LCP, found that the appeal is ungrounded.

The Supreme Court of Kosovo considers that the appealed decision is fair and lawful. The KPCC rightfully dismissed the claim of R.B on the grounds of adjudicated case or *res judicata* pursuant to Section 11.4 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The claim was already decided with final and enforceable decision HPCC/D/181/A&C, dated 30 April 2005. This decision was affirmed with the HPCC/REC/95/2007 decision, dated 16 March 2007, whereby the appellant's petition for review was rejected and as such it became final and enforceable.

With this HPCC decision, the property right over the claimed apartment was recognized to the appellee and the same was returned into her possession, whilst the appellant's claim for use and repossession was rejected with the reasoning that she could not obtain this right because the apartment was sold to the respondent party based on the sale and purchase contract confirmed by the Municipal Court in Gjakova, Vr.nr.498/82 dated 19 May 1992. i. e. the dispute on the same subject matter and between the same parties has been already resolved.

Article 166 of LCP, applicable *mutatis mutandis*, according to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, provides that no new adjudication is permitted between the same parties for a legal matter for which a final decision exists, as in this case.

Based on these factual conclusions, the Supreme Court assesses that claim has exactly the same objective and subjective identity and the same factual and legal grounds as the decision HPCC/D/181/A&C, dated 30 April 2005 and. Therefore, it is clearly concluded that this is an adjudicated matter, *res judicata*.

The appealed decision neither contains any serious error nor misapplication of the substantive and procedural law.

Thus, based on the aforementioned and pursuant to Section 13.3.B of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, and Article 166, para 2 of the LCP 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 10.15, 10.21 and 10.1 of the AD 2008/2) €30.

These court fees are to be borne by the party who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees payment may not be less than 30 days and no longer than 90 days. The Court determines the deadline of 90 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 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