

**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-170/13

**Prishtinë/Priština,
23 April 2014**

In the proceedings of:

M.V

Appellant

vs.

N.H

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Dag Brathole, Presiding Judge, Elka Filcheva – Ermenkova and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/183/2012 dated 14 December 2012 (case file registered at the KPA under No. KPA21714), after deliberation held on 23 April 2014, issues the following

JUDGMENT:

1. **The appeal of M.V is rejected as unfounded.**

2. **The decision of the Kosovo Property Claims Commission**
KPCC/D/R/183/2012 dated 14 December 2012 (case file registered at the
KPA under No. KPA21714), dated 14 December 2012 is confirmed.

Procedural and factual background:

1. On 24 September 2007 M.V filed a claim at the Kosovo Property Agency (KPA), seeking ownership/property use right of an apartment of 72 m2 on second floor of Casa Dušana BB, apartment no. 6 in Viti/Vitina.
2. In the claim he states that the private property was lost on 12 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.
3. N.H responded to the claim on 13 February 2008 and 17 June 2008. He claimed to be the owner of the apartment.
4. Prior to this, both M.V and N.H had filed claims concerning the apartment before the Housing and Property Claims Commission (HPCC). In Decision HPCC/D/236/2005/A&C dated 16 December 2005. In this decision N.H was awarded property right to the property provided that he paid a sum for the apartment which was to be determined by the Housing and Property Directorate (HPD). In the same decision it was decided that M.V was entitled to compensation from the Directorate. If N.H did not pay the fixed sum to the HPD, M.V would be awarded possession of the property. M.V requested a reconsideration of the decision, but the reconsideration request was rejected by the HPCC in Cover Decision no. HPCC/REC/76/2006 on 18 October 2006.
5. On 14 December 2012 the Kosovo Property Claims Commission (KPCC) in Cover Decision KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA21714), dismissed the claim. The KPCC stated that the claim was outside its jurisdiction because dispute had already been decided *res judicata* by the HPCC.
6. The decision was served on M.V on 13 May 2013. He filed an appeal to the KPA Appeals Panel of the Supreme Court on 4 June 2013. The appeal was served on N.H on 9 October

2013. He has not responded to the appeal within the time limit set. The Supreme Court received the case file on 26 February 2014.

Allegations of the parties

7. M.V alleges that the the decision of the KPCC is based on inaccurate and incomplete establishment of factual background and inaccurate application of the substantive law.
8. The KPCC has wrongly found that the claim has been reviewed by a final decision, and that it therefore had to be dismissed in accordance with Art. 11.4 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*). Referring to Art. 2.6 and 31 of this law, M.V contests that the claim is indeed within the mandate.
9. As to the merits, M.V alleges that he is the rightful user and owner of the disputed apartment in accordance with the documents he has submitted to the KPCC, including ruling of the Municipal Court in Viti/Vitina in case P. 197/95, decision of the Municipal Court in Viti/Vitina in case 109/96, and contract on the use of apartment dated 28 March 1996.
10. According to M.V, N.H was given the right to purchase another apartment in the same building, nr. 5. This follows from the decision of the Municipal Court in Viti/Vitina dated 27 Ocotober 1994. All documents that N.H has submitted, claiming ownership of apartment nr. 6, have been issued after 1999.
11. N.H offered M.V 22 000 Deutsche Mark for apartment nr. 6 in the beginning of June 1999.
12. M.V claims to be the rightful owner of apartment nr. 6. He has lost his ownership due to the armed conflict in Kosovo in 1998 to 1999, and through discrimination. He alleges that his loss of possession and ownership is a violation of the European Convention on Human Rights (ECHR) Art. 8 and 14, and a breach of Art. 1 of protocol 1 to the convention. Pursuant to Art. 22 of the Constitution of the Republic of Kosovo these

provisions are directly applicable in the Republic of Kosovo with priority over provisions of laws and other acts of public institutions.

13. N.H has not replied to the appeal.
14. Before the KPCC N.H alleged that he had lived with his family in apartment nr. 6 since 1980. On 29 March 1996 he was evicted, by force, from the apartment. Pursuant to Law on Housing of SR of Serbia Art. 35, 37 and 38 he was discriminated as an ethnic Albanian.
15. N.H states that the case has been adjudicated by the Municipal Court of Viti/Vitina (Decision 379/94 dated 27 October 1998, Decision C.no. 10/2004 dated 19 May 2004, as well as HPCC Decision no. HPCC/D/236/2005/A&C dated 16 December 2005 and HPCC decision No. HPCC/REC/76/2006 dated 18 October 2006.

Legal reasoning

Admissibility of the appeal.

16. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of Law No. 03/L-079).

Jurisdiction

17. The Supreme Court notes that the HPCC has decided on the same case between the same parties in two decisions, HPCC Decision no. HPCC/D/236/2005/A&C dated 16 December 2005 and HPCC decision No. HPCC/REC/76/2006 dated 18 October 2006. The last decision is final.
18. Pursuant to Art. 11.4 (c) of Law No. 03/L-079 the KPCC shall dismiss the claim where “(the) claim has previously been considered and decided in a final administrative or judicial decision.”
19. Accordingly the KPCC has correctly concluded that the case has previously been decided by a final administrative or judicial decision, in this case a final administrative decision made by the HPCC.

20. M.V has argued that the claim is within the competence of the KPCC in accordance with Art. 3.1 of Law No. 03/L-079. However, this competence cannot be exercised by the KPCC when the case has already been considered and decided by a final administrative decision. Art. 11.4 (c) of Law No. 03/L-079 limits the competence of the KPCC in this regard.
21. As the case has been considered and decided by the HPCC, which was the competent body to review the case at the time, the Supreme Court does not find that the dismissal before the KPCC violates the rights of M.V according to (ECHR) Art. 8 and 14, or of Art. 1 of protocol 1 to the Convention.
22. In the light of foregoing, pursuant to Section 13.3 under (c) of Law No. 03/L-079, it was decided as in the enacting clause of this judgment..

Legal Advice

23. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Dag Brathole, EULEX Presiding Judge

Erdogan Haxhibeqiri, Judge

Elka Filcheva Ermenkova, EULEX Judge

Urs Nufer EULEX Registrar