

**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-130/2014

Prishtinë/Priština, 4 May 2016

In the proceedings of

R.D.

Miradi e Ulët/Donja Dobrev
Fushë Kosovë/Kosovo Polje

Appellant

Representative: I.I. ,
Lawyer in Prishtinë/Priština

vs.

N.A.

Dardania SU-5 K-2 L-3 25
Prishtinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/R/223/2013 (case file registered at the Kosovo Property Agency (KPA) under No. KPA00511) of 27 November 2013, after deliberation held on 4 May 2016, issues the following

JUDGMENT

1. **The appeal of R.D. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/223/2013, dated 27 November 2013, is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission no. KPCC/D/R/223/2013 is confirmed as far as it concerns claim no. KPA00511.**

Procedural and factual background:

1. On 20 March 2007, R.D. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking repossession of the apartment, located in street Dardania, SU-5, L-3, K-2 Prishtinë/Priština (hereinafter: the claimed property). He further claimed financial compensation.
He lost the possession of the claimed property in June 1999 when N.A. (the Appellee) pressed him to vacate it.
2. In support of his claim, he submitted *inter alia* the following documents:
 - The decision from the (SOE) Foreign Trade Enterprise “Eximkos” [(hereinafter: the Allocation Property Right Holder (APRH)], number 07, dated 14 January 1993; with this decision the claimed property is allocated to G.S. ;
 - The contract on use of the claimed property concluded between G.S. and the Public Housing Enterprise (PHE), number 1193/13092, dated 23 March 1993;
 - The purchase contract concluded between APRH and G.S. , certified by the Municipal Court of Prishtinë/Priština on 18 November 1993, OV.Br. (VR.Nr.) 12237/93; with this contract the claimed property is sold to G.S. ;
 - The (informal) purchase contract concluded between G.S. and D.D. dated 3 December 1993; with this contract G.S. sold the claimed property to D.D.; the contract is not certified by the competent court;
 - The (informal) purchase contract concluded between the Appellant and D.D., dated 15 February 1998; with this contract D.D. sold the claimed property to the Appellant; the contract is not certified by the competent court;

- A document 'Authorization', certified by the Municipal Court in Nis, Serbia, with number I OV (VR) 3276/2002, dated 29 October 2002; according to this document G.S. as owner of the claimed property authorizes D.D. to conclude and have certified before the competent court a contract on purchase of the claimed property;
- A document 'Change of Authorization' certified before the First Municipal Court in Belgrade, Serbia on 2 November 2005, no. 17139/2005; according to this document D.D. authorizes the Appellant to conclude a contract on purchase of the claimed property.

From the last two document follows that D.D. has obtained the general Power of Attorney from G.D. and afterward transferred this power to the Appellant to conclude a contract for purchasing the claimed property.

3. The claim was notified on 2 January 2008.
4. On 6 February 2008, the Appellee) signed a notice of participation in the proceedings and she submitted *inter alia* the following documents:
 - The allocation decision from the APRH, number 02-4/13, dated 11 January 1984; with this decision the claimed property was allocated for use to the Appellee;
 - The contract on use of the claimed property concluded between the Appellee and Public Housing Enterprise (PHE), number 1193/13092, dated 17 September 1986;
 - The decision from the Housing and Property Claims Commission (HPCC), number HPCC/D/77/2003/A, B&C, dated 11 April 2003 (henceforth: the first instance HPCC decision);
 - The decision from HPCC on the reconsideration request filed by the Appellant against the first instance HPCC decision, no. HPCC/REC/61/2006, dated 31 March 2006 (henceforth: the HPCC reconsideration decision).

5. With the first instance HPCC decision HPCC granted the A category claim¹ of the Appellee, claim no. DS000682, whereas refused the B category claim² of the Appellant and the C category claim³ of D.D. . claim nos. DS000179 & DS602661. The reconsideration request filed by the appellant against the HPCC decision in the first instance is rejected by the HPCC. HPCC reasoned that D.D. was not in the position to transfer any property right on the claimed property to the Appellant. In the reconsideration request the Appellant pretended that he did not know that G.D. had acquired the occupancy right in an illegal manner. HPCC ascertained that that allegation, even evidenced, could not change the result of the decision on the claims of the Appellant and D.D. .

The first instance HPCC decision is based on the argument that the Appellee has shown that she has gained an occupancy right over the claimed property. The HPCC explained that the Appellee on 5 August 1992 forcefully lost her occupancy right as a result of discriminatory measures taken during the period 23 March 1989 and 24 March 1999.

6. KPCC dismissed Appellant's claim in the current proceedings with the KPCC decision no. KPCC/D/R/223/2013, dated 27 November 2013. The KPCC reasoned that the claim had previously been considered and decided in a final administrative or judicial decision and therefor the claim as *res judicata* stood to be dismissed. The KPCC dismissed also the claim for compensation for physical damage or loss of use. KPCC reasoned in this regard that it has no jurisdiction over such claims for compensation.
7. The decision was served to the Appellant on 26 February 2014.

¹ Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked between 23 March 1989 on the basis of legislation which is discriminatory in its application or intent. (UNMIK Regulation 1999/23, Section 1.2)

² Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989. (UNMIK Regulation 1999/23, Section 1.2)

³ Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily transferred. (UNMIK Regulation 1999/23, Section 1.2)

8. On 19 February 2014, the KPCC decision was served to the Appellee.
9. On 24 March 2014, the Appellant filed an appeal with the Supreme Court.
10. On 21 October 2014, the appeal was served on the Appellee who did not file a response to the appeal.

Allegations of the Appellant

11. The Appellant challenges the KPCC decision by alleging an erroneous and incomplete determination of facts by KPCC. He alleges he is the factual owner. He states that he proved that allegation by submitting the (informal) purchase contract between him and D.D. , and the purchase contract between G.S. and D.D. . He further refers to the allocation of the claimed property to G.S. and the purchase contract between G.S. and APRH.

Reasoning

12. The appeal is admissible. It was filed within 30 days, as foreseen by Section 12.1 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 (henceforth: UNMIK Regulation No 2006/50).
13. The Supreme Court finds that the appeal is ungrounded, as the KPCC rightfully dismissed the Appellant's claim on the ground that the first instance HPCC decision after rejection of Appellant's reconsideration request by the HPCC reconsideration decision constitutes *res judicata* between the same parties.
14. According to Section 3.1 of the UNMIK Regulation 2006/50 the KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b)

- claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.
15. According to Section 11.4 sub c of the UNMIK Regulation No 2006/50 the KPCC has to dismiss the claim where the claim has previously been considered and decided in a final administrative or judicial decision.
 16. The same matter had already been adjudicated by the first instance HPCC decision. HPCC decided both on the A category claim of the Appellee, the B category claim of the Appellant and the C category claim of D.D. . Altogether the first instance HPCC decision constitutes a final adjudication on the merits of a same claim as the claim of the Appellant in the current proceedings. In the proceedings before HPCC the B category claim of the Appellant and C category claims of D.D. together constituted an ownership claim of the Appellant as meant in Section 3.1 of the UNMIK Regulation No 2006/50, as the Appellant also in this case as in the case before HPCC claimed repossession as alleged owner of the claimed property that he lost in relation to the armed conflict in Kosovo in 1998/1999.
 17. Accordingly, the claimant cannot be allowed to have his same claim heard once again on the same matter between the same parties.
 18. The KPCC also rightfully dismissed the Appellant's claim regarding the compensation since under the UNMIK Regulation 2006/50 the KPCC has no jurisdiction over such claim.
 19. Based on the aforementioned and pursuant to Section 13.3 of the UNMIK Regulation 2006/50 the Supreme Court decides as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar