

**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-059/14

Prishtinë/Priština, 9 December 2015

In the proceedings of:

A.U.

(written on the letter of appeal as: A.U.)

Dervish Hima 33

20000 Prizren/Prizren

Appellant

Vs

S.S.

Jusuf Gervalla

20000 Prizren/Prizren

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Rolandus Bruin, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013 (case file registered at the KPA under number KPA11755) dated 21 August 2013, after the deliberation held on 9 December 2015, issues the following

JUDGMENT

1. **The Appeal of A.U. is accepted as grounded;**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013 (regarding the case file registered with KPA under number KPA11755) dated 21 August 2013, is annulled;**
3. **The Claim of A.U. , registered with KPA under number KPA11755, is dismissed as inadmissible due to lack of jurisdiction.**

Procedural and factual background

1. On 9 October 2007, A.U. (hereinafter: the Appellant), filed a claim seeking the repossession of the commercial premise – shop with the surface of 48.30 m², located at street “Jusuf Gervalla” (Mazllum Kepuska), no. 1 a/b, in Prizren/Prizren (hereinafter: the claimed property). He stated that the claimed property was illegally usurped and that he lost possession over it due to the armed conflict of 1998/99, without indicating any specific date as the day of loss. The claim was registered with KPA under the number KPA11755.
2. To support his claim, the Appellant submitted the following documents:
 - The receipts of payment of three instalments by A.U. , as an advanced payment for the purchase of the premise: a) the receipt No. 002, dated 4 November 1997 for the shop No. 1. a/b at the Trade Centre of City Market in Prizren/Prizren; b) the receipt No. 27, dated 19 December 1997 of the payment for the participation in the construction of the Trade Centre in Prizren/Prizren, for shop No. 1. a/b; c) a handwritten receipt dated 4 November 1997;
 - The copy of the lawsuit against Malik Impex for non-fulfilment of the contract obligations, submitted to the Municipal Court in Prizren/Prizren, on 28 October 2003;
 - The statement of A.U. , explaining that he acquired the property. The date when the statement was given is not specified;

- The contract on joining of financial means for construction of the Market Complex of the town of Prizren/Prizren, concluded between the D.N.D Comerc and A.U. , on unspecified date;
 - The contract on joining of financial means for the construction of the Market Complex of the town of Prizren/Prizren, concluded between the D.N.D Comerc and A.U. , dated 18 August 1997;
 - The judgment C. No. 680/03 dated 15 June 2004 of the Municipal Court of Prizren/Prizren, wherewith the ownership right of the Appellant over the claimed property was confirmed. That decision was negatively verified by the KPA and it was ascertained that the judgment was not final yet and that the procedure was ongoing. With the judgment the Appellant was granted the property right over the business premise located in Prizren/Prizren, at the Trade Complex nr.1A/B, with the surface of 48.30 m2;
 - The Judgment Ac.No. 404/2004, dated 24 March 2005 of the District Court in Prizren/Prizren, wherewith the Judgment C. No. 680/03 dated 15 June 2004 of the Municipal Court in Prizren/Prizren was quashed and the case was returned to the first instance for retrial.
3. Physical notification of the claim took place on 25 January 2008. The verification showed that the property was a commercial premise – shop, being used by Xh.K. . A niece of Xh.K. was there and stated that Xh.K. was using the property not for residential purposes and that he had permission from S.S. (hereinafter: the Appellee) to use the property. The niece of Xh.K. signed that day the participation notice. Later on S.S. sent in a Response to the claim and Xh.K. did not file any further opinion on the case. Therefore Xh.K. is not to be considered as a party to the proceedings, as the KPA/KPCC decided correctly.
4. The Appellee, S.S. , who alleged the legal right over the property and who approached the KPA on 29 January 2008, as the Respondent, challenged the claim. He stated that he had purchased the claimed property from Malik Impex by concluding the contract No. 08-04 on 8 February 2004 and that he fulfilled all financial obligations towards Malik Impex and towards the Municipality of Prizren/Prizren for the transfer of the ownership right. To support his allegations, the Appellee submitted the following documents:

- The judgment C. No.307/06 dated 25 April 2006 of the Municipal Court in Prizren/Prizren, showing that the Appellee was acknowledged as the property owner. That document was positively verified by the KPA.
 - The copy of the identification card of S.S. ;
 - The copy of Contract No. 08-04 dated 8 February 2004 on joining of works and means for construction and agreement to fund the construction of the City Market of Prizren/Prizren, concluded between the SOE “Malik –Impex” and the Appellee;
 - The statement given by the Appellee on 19 January 2012;
 - The Decision on determination of municipal fees for property transfer No. 413-413/2006, dated 30 May 2006, issued by the Financial and Economy Directorate, Municipality of Prizren/Prizren.
5. The Kosovo Property Claims Commission (KPCC) considering the submitted evidence by the parties, with the Decision KPCC/D/C/216/2013, dated 21 August 2013, decided to reject the Claim of A.U. with the reasoning that the Claimant did not prove the ownership right over the claimed property before or during the conflict of 1998/99.
 6. The Decision was received by the Appellant on 9 December 2013. The Decision was served on the Appellee on 3 December 2013.
 7. The Appellant filed an Appeal against the KPCC Decision at the Supreme Court on 8 January 2014. Together with the Appeal, the Appellant submitted the same documents he had submitted before to the KPA. The Appeal was served on the Appellee on 11 April 2014, but he did not submit any Reply.

Allegations of the Appellant

8. The Appellant in his Appeal refers to the incomplete determination of facts and alleges that the requirements for issuing the KKPC’s Decision regarding the claimed property were not met. Although there is a Contract concluded between him and the D.N.D. Comerc (previous contractor), and although all obligations from that contract were fulfilled in entirety, the Company Malik-Impex had misused the post – conflict

circumstances in Kosovo, in order to occupy the property and to transfer it to the current user.

Legal reasoning

Admissibility of the Appeal

9. The Appeal is admissible. It has been filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079.

Jurisdiction

10. Upon the review of the evidence and the examination of the KPCC's Decision, the Supreme Court considers that it was issued with violation of the applicable law. The KPCC with its Decision rejected the Claim with the reasoning that the Appellant did not prove his ownership rights, but this reasoning is not sufficient.
11. During the proceedings before the KPA, the Appellant stated that he was not in the possession of the claimed property and that the possession was not lost during and due to the armed conflict, but because of non-fulfilment of the contractual obligations of D.N.D. Comerc. Since the construction of the property was not completed until 2005, the Appellant did not have the possession over the property; therefore, he did not lose the possession. After the conflict the Appellant initiated court proceedings before the Municipal Court in Prizren/Prizren by filing a lawsuit against another party, the Malik Impex, on 28 October 2003.
12. The verification team of the KPA established that the Municipal Court in Prizren/Prizren rendered a decision regarding the claimed property. With the Judgment rendered in the case C.No. 307/06 on 25 April 2006 the Municipal Court in Prizren/Prizren acknowledged the ownership right of the Appellee over the claimed property based on the purchase contract No. 08-04, concluded on 8 February 2004. In addition, there is another Judgment of the Municipal Court in Prizren/Prizren, rendered in the case No. C. 680/03 on 15 June 2004, which was quashed by the District Court in Prizren/Prizren

with the Judgement Ac.No. 404/2004 of 24 March 2005, and the case was returned to the first instance for the retrial.

13. According to Section 3.1 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 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.
14. From the allegations of Appellant follows that he had concluded a contract with D.N.D. Commerc on joining of means and construction of the business premise in a building. He had paid some instalments, but not all of them. The construction of the building and the business premise, as agreed by D.N.D. and the Appellant, was not finalised. On 2004 Malik Impex finished the construction of the business premise, but with another surface, and sold it to the Appellee. From those allegations the Supreme Court contends that the Appellant was not exercising any property right over a business premise before or during the conflict and therefore the requirement of not being able to exercise the property right due to circumstances related to the conflict is not met in the case of the Appellant. Also the lawsuit that the Appellant has filed before the Municipal Court in Prizren/Prizren against the Malik Impex shows that this claim is not related to the armed conflict. That means that the KPCC according to Section 3.1 of Law UNMIK 2006/50 does not have jurisdiction on any claim of the Appellant based on his contract with regard to the business premise.
15. Therefore, the Appellant's claim falls outside of the jurisdiction of the KPCC. In this term, the claim filed with the KPA should be dismissed as inadmissible and not rejected.
16. Based on the abovementioned reasoning, as well as pursuant to Article 13.3 (c) of Law UNMIK Regulation 2006/50 the Supreme Court decides as in the enacting clause of this Judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar