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-175/14 **Prishtina,**
6 April 2016

In the proceedings of:

M. N.

Claimant / Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/208/2013 (case file registered at the KPA under no. KPA15166), dated 11 June 2013, after deliberation held on 6 April 2016, issues the following:

JUDGMENT

1. **The appeal of M. N. against the decision of the Kosovo Property Claims Commission KPPC/D/C/208/2013, dated 11 June 2013, is rejected as ungrounded.**
2. **The decision of the Kosovo Property Claims Commission KPPC/D/C/208/2013, as far as it concerns the case registered at the KPA under no. KPA15166, dated 11 June 2013, is confirmed.**

Procedural and factual background:

1. On 8 September 2006, M. N. (hereinafter: the claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the property right and repossession of the property-premise for technical inspection of vehicles. He alleges that the enterprise "B. K.", of which he is the director, is the owner of the premise located in the parcel no. 2284/1, registered in the Possession List no. 421 in the cadastral zone of Suhareka. Parcel no. 2284/1 is registered in the name of P.K.B. "Metohijavino" (hereinafter: the claimed property). The premise, according to Mr. N., has a surface area of 138 m².
2. He stated that the loss of possession over the premise occurred due to circumstances related directly to the armed conflicted in Kosovo in the period 1998/1999, indicating 12 June 1999 as the date of its loss.
3. To support his claim, he submitted the following documents:

- Notification of Classification of Organisations – Communities – Enterprises according to Activities no. 052-09 dated 22 October 1993, issued by the Sector of Statistics of the Autonomous Province of Kosovo, according to which the enterprise "B.-K." was registered as a private enterprise for wholesale and retail trade.
- Decision by Suhareka Municipality, Department for Urbanism, Municipal Services, Housing Matters and Construction 03.Nr.353-76/94 dated 24 March 1994. Through this decision, the enterprise "B. K." from Suhareka was given the temporary location in the part of parcel no. 2284/1, in order to construct the premise for technical inspection of vehicles.
- Decision by Suhareka Municipality, Department for Urbanism, Municipal Services, Housing Matters and Construction 03.Nr.353-77/94 dated 19 April 1994. Based on this decision, it is confirmed that the enterprise "B. K.", was given the permit for construction of a temporary premise in a part of the cadastral parcel 2284/1. By the said decision, it is ascertained that if the location is required for realisation of the urban plan, the beneficiary of this permit shall remove the premise within 8 days without the right to compensation and no other parcel shall be offered.

- Certificate 12355 issued by the Commercial Court in Prishtina based on which it is confirmed that V. A. and M. N. are founders of the enterprise "B.K."
- Ruling, issued by the Commercial Court in Prishtina on 22 August 1995, based on which M.N.is registered as director of the enterprise "B. K.".
- Decision, dated 23 August 1995, issued by the Commercial Court in Prishtina, in which it is stated that V. A., who is one of the founders of "B. K." enterprise, is withdrawing and that the sole founder remains M. N..
- Ruling, issued by the Commercial Court in Prishtina, dated 2 April 1996, where it is stated that "B. K." enterprise is expanding its activities.
- Copy of Plan, issued by the Cadastre Directorate, Suhareka Municipality, dated 16 July 1996. Cadastral Parcel no. 2284/1 is registered in the name of P.K.B. "Metohijavino" d.o.o. According to the remark in the copy of plan, the premise placed in the parcel 2284/1 is in possession of the enterprise "B. K.", according to the construction permit 03.Nr.351-72/94 dated 19 April 1994.

4. On 14 October 2010, KPA officials performed the identification of the claimed property and found that the premise was usurped by H. E., who stated that he is using the property with permission by the Suhareka Municipality based on a monthly rent.
5. The KPA verification team, according to the report dated 2 June 2009, had verified only the copy of plan. According to the Certificate on Immovable Property Rights P-72116046-02284-1 issued by the Cadastral Office of Suhareka Municipality on 25 May 2009, the parcel no. 02284/1 is registered as Social Enterprise in the name of Suhareka Municipal Assembly.
6. On 11 June 2013, the Kosovo Property Claims Commission (KPCC), through the decision KPPC/D/C/208/2013, rejected the claims due to lack of jurisdiction. In the reasoning of its decision, the KPCC states that based on the pieces of evidence, the claimant was given the right of temporary use of the claimed property, so he was authorised only to construct a movable premise in the claimed property. The claimed property has to be considered as a movable object and according to Section 3.1 of UNMIK Regulation no. 2006/50, amended by the Law no. 03/L-079; the KPCC has no jurisdiction to decide on movable objects.
7. The Decision was served on M. N. on 27 March 2014, and he filed an appeal in the Supreme Court on 14 April 2014 (hereinafter: the appellant).

Allegations of the claimant / appellant

8. The appellant alleges that the KPCC decision relies on essential violations and wrongful applications of the procedural and material law.

9. The appellant declares that the property-premise is not a private movable property, as decided on it by the KPCC, but that it is a private immovable property. Thus, the claim is within the jurisdiction of the KPCC.
10. The appellant supports this statement by saying that: "*the property was built with construction material and previously obtained documentation, and as such from the moment of its construction it became an integral part of the land on which it is built.*"
11. What is more, the appellant declares that he had the right of using the land where the premise was placed and the fact that he had the right of temporary use of the land could not be used as basis for dismissal of the claim.
12. According to the appellant, Article 2, paragraph 5 of the Decision no. 351-77/94, dated 19 April 1994, issued by the Suhareka Municipality, Department for Urbanism, Municipal Services, Housing Matters and Construction, says when he would be obligated to remove the premise, and adds that he never received a decision based on which he would have to remove the premise. Therefore, the inability to use it is related directly to the conflict.
13. The appellant requests from the Supreme Court to amend the KPA decision, KPCC/D/C/208/2013 dated 11 June 2013 and to confirm the appellant's right for repossession of the business premise.

Legal reasoning:

Admissibility of the appeal

14. The appeal was filed within the time limit of 30 days as stipulated by the Law no. 03/L-079. The Supreme Court has jurisdiction for the appeals against the KPCC decision. The appeal is admissible.

Merits of the appeal

15. After reviewing the case file and appeal allegations as per article 194 of the LCP, the Supreme Court found that the appeal is ungrounded.
16. KPCC conducted an accurate evaluation of pieces of evidence when it decided that the claim was outside its jurisdiction. The KPCC provided full, comprehensive, accurate, and lawful explanations, as well as clarifications for relevant facts for a just decision.
17. According to Section 3.1 of UNMIK Regulation UNMIK 2006/50, as amended by the Law no. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant proves ownership over the property, or the right of using private property, including agricultural and commercial property, and that he or she is not now able to

exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. In view of this provision, it follows that the jurisdiction of the Property Claims Commission of KPA, hence of the Supreme Court, is limited exclusively to resolving of and deciding on property claims for private immovable properties, including agricultural and commercial property.

18. The Supreme Court notes that according to the decision no. 03-351-76/94, issued on 24 March 1994 by the Suhareka Municipality and the decision no. 05-351-77/94, issued on 19 April 1994 by the Department for Urbanism, Municipal Services, Housing Matters and Construction of Suhareka Municipality, it is ascertained that M. N. was given the land for temporary use in order to erect a business premise in a part of the parcel no. 2284/1, at the place called "Gradina-Rasadnik", cadastral zone and municipality of Suhareka. The permit was given for temporary placement of the premise on that parcel, which is considered as a movable object.

19. Mr. N. alleged that the property-business premise was a private immovable property. By surpassing the right he was given, the appellant had constructed a permanent building which was contrary to the owner of the land and beyond his rights. In this way, the claimant had no "ownership right, lawful possession or any other right of use", in light of Section 3.1 of UNMIK Regulation 2006/50 amended by the Law no. 03/L-079, for the existing premise while it was constructed contrary to the right given to him by the Municipality. It is a principle upheld by law that nobody is allowed to acquire property contrary to the law. Wheat the claimant had was the right of use over the municipal parcel and a right to erect a temporary premise, which could be removed at any time (i.e. he had the right of use over the movable object).

20. On the other hand, the appellant requested the right of possession over the object which was constructed in the socially-owned property. The law clearly stipulates that only the ownership right, lawful possession, or the right of use over the private immovable property, can be subject of proceedings before the KPA.

21. Therefore, the Supreme Court finds that none of these could be treated in the proceedings before KPA; firstly, because the property was not private and secondly because it is not related to an immovable object.

22. The appellant might have some legitimate claims against the Suhareka Municipality if the Municipality *de facto* uses the constructed object in the context of "unfounded enrichment", as defined in Chapter II, Article 3 of the Law on Contracts and Torts, for the materials and labour invested in the premise, but if such claims were legitimate as regular claims from contractual obligations, they should be decided by the regular courts and not by the KPCC, namely the Appeals Panel, whose mandate is to resolve property disputes stipulated in Article 2.1 of the UNMIK Administrative Instruction 2007/5.

23. Therefore, the appeal decision does not contain any essential violations or wrongful application of the procedural and material law. In addition, this decision is not based on wrongful and incomplete determination of the factual situation, as alleged by the appellant.
24. Consequently, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, the appeal is rejected as ungrounded and the KPCC decision is upheld as far as it concerns the case for which it was decided by this Judgment (KPA28552).
25. This Judgment does not prejudice the claimant's right to seek judicial protection.

Legal remedy

26. Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar