

**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-088/15

**Prishtinë/Priština,
1 February 2017**

In the proceedings of:

M. V. B.

Appellant

vs

N/A

Appellee

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/241/2014 dated 30 April 2014 (case file registered at the Kosovo Property Agency under the number KPA34169 after deliberation held 1 February 2017, issues the following

JUDGMENT

1. **The Appeal of M. V. B. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/241/2014 dated 30 April 2014 with regard to the claim registered under the number KPA34169 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/241/2014 dated 30 April 2014 with regard to the claim registered at the Kosovo Property Agency with the number KPA34169 is confirmed.**

Procedural and factual background:

1. On 11 April 2007, M. V. B. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (henceforth: the KPA) seeking repossession over the business premises composed of the basement with the surface of 35m² and roof space with the surface of 30m², located at the street “Branka Radičevića bb”, cadastral parcel number 3434/7, Municipality of Peja/Peč (henceforth: the claimed property). The Appellant stated that he is the owner of the claimed property and that the loss of the possession is related to the armed conflict that occurred in Kosovo in 1998/99, indicating 15 June 1999 as the date of loss.
2. To support his claim, the Appellant provided the KPA with the following documents:
 - The Decision on Allocation No 463-1246/98-1 issued by Municipal Assembly of Peja/Peč on **22 December 1998** based on which the Appellant was allocated cadastral parcel number 3434/7 (the urban construction land) for the permanent use. The purpose of the allocation was the construction of the building of the permanent character. Article number three (3) of the Decision specifies that the Appellant is obliged to complete the construction within one (1) year otherwise the Right on Use of the claimed property will be considered as lost.
 - Decision No 01-952-02-1-99/1 issued by Municipality of Peja/Peč, Department for Cadastre and Real Estate on **19 February 1999** according to which, the

Appellant was given the permission for the changes at the Cadastre Registry, hence, the claimed property had to be registered on the name of the Appellant as the Use Right Holder. The legal basis for the permission was the Decision No 463-1246/98-I.

- Copy of Plan no 45 issued by Geodesic Institute of R. of Serbia, Office for Real Estate and Cadastre on **26 February 1999**. The Appellant was registered at the capacity of the User over the claimed property.
 - The Construction Permission No 01-351-267 issued by Municipality of Peja/Peč, Department for Urbanism on **2 March 1999** through which the Appellant was given the permission to construct a business premises of the immovable character on the cadastral parcel no 3434/7 with the surface of 35 m².
3. The initial Notification of the claim was performed on 2 September 2008. According to the Notification Report, the claimed property was of the movable character and it has been removed by the Municipality of Peja/Peč.

Due to the technical error during the initial notification, the claim was notified again on 1 July 2010. The notification process was performed by publishing the claim at the KPA Notification Gazette No 3 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Municipality of Peja/Peč, Municipal Court of Peja/Peč and KPA regional office of Peja/Peč as well as to DRC, OSCE, UNHCR and the office of Ombudsperson. The correctness of the notification was confirmed on 22 February 2011. No interested party filed the response on the claim within 30 days deadline, thus, the claim was considered as uncontested.

4. According to the Verification Reports the Executive Secretariat of KPA:

The Decision on Allocation No 463-1246/98-1 based on which the Appellant was allocated the cadastral parcel number 3434/7 for permanent use was rendered by the interim measures during the 1998-1999 conflict, the cadastral parcel 3434/7 does not exist at all. The Decision No 01-952-02-1-99/1 and the Construction Permission No 01-351-267 were positively verified while regarding the Copy of Plan, the Department for Cadastre of Peja/Peč Municipality, confirmed that cadastral parcel no 3434/7 does not exist as such but it is divided under the cadastral parcel number 3434/1 and cadastral parcel 3434/2 being registered as the Socially Owned Property under the name “Rrugët dhe Rrugicat” (Roads and Alleys).

5. The Kosovo Property Claims Commission through its Decision KPCC/D/C/241/2014 dated on 30 April 2014 decided that the claim is to be dismissed by indicating that according to the evidence the Claimant had acquired only a temporary Use Right over the claimed property and was therefore only authorised to build a movable structure on the property.
6. The Decision was served to the Appellant on 20 October 2014. He filed an appeal on 18 November 2014.

Allegations of the Appellant

7. The Appellant alleges that the KPCC has incompletely established material facts and has made wrongful implementation of substantial law.
8. According to the Appellant, the reasoning of the KPCC that the claimed property was of the movable character is not true. This because he had acquired the Right of the permanent Use of the cadastral parcel no 3434/7 and as such he was registered as a Use Right Holder at the Cadastre. Article no three (3) of Allocation Decision specifies that the cadastral parcel 3434/7 was given for permanent usage also Article no five (5) of the same Decision specifies that the purpose of the allocation of the cadastral parcel no 3434/7 was the construction of the apartment or the business premises of a permanent character, therefore, there is no discussion on some temporary use of the claimed property or the object of a temporary character.
9. The Appellant states that the business premises subject of the claim were built from solid material by noting the definition of the immovable property according to the law.
10. Further, the Appellant gives a detailed presentation of the documents that he had presented in order to confirm his Property Right and seeks Supreme Court to accept the Appeal and make a new decision through which it would be established his Property Right.

Legal reasoning:

Admissibility of the appeal

11. The Supreme Court reviewed the appealed decision pursuant to provisions of Article 194 of Law on Contested Procedure No. 03/L-006 (henceforth: LCP) and after evaluating the appeal statements found that:

The Appeal is admissible because it was filed within the legal time limit pursuant to the Article 12.1 of the Law No. 03/L-079, which stipulates that a party may file an Appeal against a Commission Decision within thirty (30) days from the day parties were informed about the Decision.

Merits of the appeal

12. Supreme Court of Kosovo reviewed the appeal pursuant to provisions of Article 194 of LCP and after the assessment of allegations in the appeal it found that the appeal is unfounded.

13. The KPCC based its Decision on the fact that according to the evidence the Claimant had acquired only a **temporary Use Right** over the claimed property and was therefore only authorised to build a movable structure on the property.

14. The Supreme Court finds that the KPCC has rendered a correct decision when dismissed the claim due to its Jurisdiction; yet, the Court is of different opinion regarding the reasoning of the KPCC decision.

15. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property or use rights of the private immovable property, but also 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.

16. Firstly, according to the Decision on Allocation No 463-1246/98-1, dated on 22 **December 1998**, the Appellant was allocated the socially-owned construction land (cadastral parcel no 3434/7) for the purpose of construction of a business premise of the immovable structure within a year of the issuance of the Decision. Following the

Decision on Allocation the Appellant was allowed to perform the changes at the cadastre office of the Municipality of Peja/Peč and finally, the Appellant gained the Construction Permission on **2 March 1999**.

17. According to Articles 2, 3, 5, 8 and 24 of the Law on Land for Construction (Official Gazette SAPK no. 14/80 and 42/86), the land for constructions serves as the good of the common interest, and is considered as socially-owned property once the relevant municipality determines the borders of the construction land. Further, it is clearly stated in the Law on Land for Construction that the owner of a building on the urban land for construction has the right to use the land under the building within the borders of the construction parcel. This means that the Appellant had only the right on use over the cadastral parcel 3434/7 which according to the documents presented by him was a socially owned land.
18. Secondly and as far as it concerns the business premises, the Appellant alleges that he constructed it on the cadastral parcel no 3434/7 and this way he gained the ownership right over the building. According to Article 41 of the Law on Construction of facilities for Commercial Purposes (Official Gazette SAP of Kosovo No.5/86) the construction of an object can start after acquiring the construction permission. The Appellant had obtained the construction permission on **2 March 1999**, thus, he should have start a construction after 2 March 1999. Further, Article 77 and 78 of the Law on Construction of facilities for Commercial Purposes stipulates that after the object construction is ended before starting to utilise, respectively before starting in to function, the technical control of the constructed object will be conducted in order to verify its technical regularity. Technical control of the object includes technical control of the construction work, technical control of installations, equipment and plants. Professional commission conducts the technical control. Administrative authority that issued the permission for construction of the object based on the request by the investor and contractor established the commission.
19. The Appellant did not submit the document showing that the technical control of the constructed object was performed in order to have obtain the permission for using the property in accordance with the Article 82 of the Law on Construction of facilities for Commercial Purposes which stipulates that the permission for the utilization of an object can be issued after the technical control of an object is conducted. The fact that these

proceedings were continued during the armed conflict as well as based on the Executive Secretariat of KPA the object has been removed by the Municipality of Peja/Peč and does not exist leads to the conclusion that the construction of an object was not finalized in accordance with the Law.

20. Finally, the Executive Secretariat of the KPA did not found the cadastral parcel 3434/7 before the relevant institutions despite the fact that the Appellant submitted a Copy of Plan no 45 which was issued by Municipal Cadastre of Peja/Peč on **26 February 1999** updated on his name. According to the Verification report of 2014 the cadastral parcel no. 3434/7 does not exist at all. Again, this raises the question related to the validity of the Copy of Plan No. 45 considering that it was issued during the conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
21. The Certificate for the Immovable Property Rights, obtained *ex officio* by the Executive Secretariat of KPA reflects the claimed property divided only on two parts (cadastral parcel no 3434/1, cadastral parcel no 3434/2) and registered as Socially Owned Property under the name “Rrugët dhe Rrugicat” (Roads and Alleys).
22. As a consequence, the Appellant has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80) which stipulates that the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law were not fulfilled according to the findings.
23. Based on all above mentioned points, the Supreme Court finds that the KPCC instead of dismissing the Appellant’s claim as outside the scope of its jurisdiction because the Appellant had acquired only a temporary Use Right over the claimed property and was therefore only authorised to build a movable structure on the property should have dismissed the claim due to lack of Jurisdiction as the establishment of **right over socially owned properties** is not within the jurisdiction of the KPCC (according to the provision 3.1 (b) of the Law no. 03/L-079), respectfully the KPA Appeals Panel.
24. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.
25. This Judgment has no prejudice to the Appellant’s right to purpose his rights for compensation before the ordinary courts in Kosovo

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar