

**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-083/14**

**Prishtinë/Priština,  
13 May 2015**

In the proceedings of:

**S.A.**

Zvečan – Nova Kolonija no .25

***Claimant/Appellant***

**v. s.**

**N/A**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Willem Brouwer, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA10755), dated 18 April 2013, after deliberation held on 13 May 2015, issues the following:

## JUDGMENT

1. **The appeal of S.A. against the decision of Kosovo Property Claims Commission KPCC/D/C/200/2013, dated 18 April 2013, is rejected as unfounded.**
2. **The decision of Kosovo Property Claims Commission KPCC/D/C/200/2013, dated 18 April 2013 regarding the claim registered at the KPA under the number KPA10755, is confirmed.**

### Procedural and factual background

1. On 23 November 2006, S.A. filed a claim with Kosovo Property Agency, seeking confirmation of user right over the property, business premises as well as compensation for the loss of use of the property. She claims she has the user right over the shop of 25 m<sup>2</sup>, located on parcel nr. 1807 of Mitrovicë/Mitrovica Cadastral Municipality, street "Miladin Popović no. 4". She alleges that she lost possession due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 1 June 1999 as the date of loss.
2. To support the claim, she submitted the following documents:
  - The Approval, no. 841/200 dated 28 December 1981 issued by Utilities Company "Standard" in Mitrovicë/Mitrovica through which the request of S.A. for the construction of the prefabricated object in the street "Miladin Popović" was approved.
  - The Contract on ceding of the construction land for compensation, no. 2717 dated 29 December 1981 concluded between Public Housing Enterprise in Mitrovicë/Mitrovica (henceforth: the SIZ) and S.A. . The contract establishes that to S.A. was given the location for temporary use (with two years duration) to set up a temporary prefabricated kiosk for carrying out the activity as the hairdresser. Article 3 of the Contract states that if the location is needed for the

realization of urban plans the user of the location has to remove the prefabricated kiosk with her expense and without the right for reimbursement.

- The Decision 08. No. 351/753 dated 6 January 1982 issued by Municipal Assembly of Mitrovicë/Mitrovica, Secretariat for Urban Planning, Utilities and Housing Affairs which grants S.A. the right on use of the location and to construct a temporary prefabricated structure in street "Miladin Popović". The use of the location was granted for period of two years since the date of serving the Decision after which the investor was obliged to extend the contract with SIZ. The Decision specifies that the investor is obliged to remove the prefabricated structure within eight (8) days since the date of the receipt the decision without any compensation if the location is needed for the execution of the urban plan.
  - The Copy of Plan issued by Cadastral Municipality of Mitrovicë/Mitrovica dated 20 September 1983 listed the parcel no 1807 in the name of M.A..
  - The Decision 08.No.351-1088 dated 20 November 1984 issued by Municipal Assembly of Mirtovicë/Mitrovica, Secretariat for Urban Planning and Housing Affairs that determinates the technical and urbanistic requirements which has to be followed by the investor.
3. On 9 March 2011, the KPA officers carried out the physical notification of the claimed property and found that the business premises were occupied by R.K. who signed the Notice of Participation but did not claim any right over the property.
  4. Within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, no one expressed any interest to take part in the proceedings regarding the property that is subject of the claim; hence, the claim remained uncontested.
  5. The Contract on ceding of construction land for compensation, no. 2717, the Decision 08. No. 351/753 and Decision 08. No. 351/753 were positively verified by the KPA verification team, while regarding the Possession List, the Directory for Geodesy, Cadaster and Property of the Municipality of Mirtovicë/Mitrovica through its written response No. 1065/2011 dated 20 November 2011 confirmed that parcel no. 1807 was registered in the name of Public Housing Enterprise until year 2004, whereas based on the registry No. 138/2004 and according to Decision of the Municipal Assembly No. 01/06-48/3 dated 31 May 2004 the parcel was transferred on the name of Municipal Assembly.

6. On 18 April 2013, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/200/2013, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the evidences, the Claimant was entitled to temporary user right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property. Pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property including commercial one. The Claimant also seek, in addition to ownership, compensation for physical damage to or for loss of use of the claimed property. Under UNMIK/REG/2006/50 as adopted by Law No.03/L-079 the Commission has no jurisdiction over such claim.
7. On 8 January 2014, the Decision was served on S.A. She filed an appeal before the Supreme Court on 3 February 2014 (henceforth: the appellant).

#### **Allegations of the claimant/appellant**

8. The appellant alleged that the KPCC decision relies on fundamental error, serious violation of the applicable material and procedural law and incompletely established factual situation. The appellant, furthermore, alleged that the KPCC decision is unclear and incomprehensible due to lack of the reasoning, the KPCC decision do not establish whether the claim was rejected because it sought compensation over concerned property or a possibility to use the property. The KPCC decision was wrong because the claim was classified in one of the groups which sought compensation for the sustained damage or possibility to use the concerned property and not in the group of establishing property rights over private immovable property. The appellant asks the Supreme Court to modify the first instance decision or annul the decision and return the case to the first instance for consideration.

## Legal reasoning:

### **Admissibility of the appeal**

9. The appeal was filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

### **Merits of the appeal**

10. Following the review of the case file and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
11. KPCC has accurately evaluated the evidence when it decided that the claim falls outside its scope of jurisdiction. KPCC gave full, comprehensive, clear, accurate and consequently lawful explanations and clarifications on crucial facts for a correct decision.
12. Regarding the allegation of the appellant that the KPCC decision is unclear, the KPCC has given a certified decision dated on 18 April 2013, the decision made a reference to "relevant paragraphs" in the Cover Decision. A special reference is made to the paragraphs 9, 26-28 and 47. The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have the jurisdiction in the case
13. According 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 right or user right of private immovable property, including agricultural and commercial 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. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is limited exclusively to resolution, adjudication and settlement of property right claims for **private immovable property**, including agricultural and commercial immovable property.
14. The Supreme Court notes that according to the Contract on ceding of the construction land for compensation, no. 2717 dated 29 December 1981, Decision 08. No. 351/753

dated 6 January 1982 issued by Municipal Assembly of Mitrovicë/Mitrovica, Secretariat for Urban Planning, Utilities and Housing Affairs and Decision 08.No.351-1088 dated 20 November 1984 issued by Municipal Assembly of Mirtovicë/Mitrovica, Secretariat for Urban Planning and Housing Affairs, it is established that S.A. was given land for temporary use (with two years duration) to erect a temporary prefabricated kiosk on parcel no. 1807, in street "Miladin Popović", cadastral zone and Municipality of Mitrovicë/Mitrovica. The permission was given for provisional placement of the premise in that parcel, which is considered as movable object.

15. The land itself is socially owned property. The Supreme Court also considers that the claimed property erected over this social land, according to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights (Law No. 03/L-154), is a moveable object. According to this legal provision, it results that provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered immovable objects. Moreover, Article 14 para 1 and Article 26 para 2 of Law on Construction Land (Official Gazette of SAPK no. 14/80) provides that when the competent body makes an allocation on provisional use for provisional needs of applicants for placement of temporary prefabricated structures, then that body has the right, in line with the needs of urban planning, to dislocate that structure on personal expenses of the user. Provisional premises cannot even be a matter for recognition of property right and neither can be registered in the property register of cadastral office.
16. S.A. has made the allegation that the property-business premises were a private immovable property. The Supreme Court does not find it necessary to elaborate on whether the business premises that were actually erected on the parcel were a temporary or a permanent object in a physical sense. It is clear from the evidence submitted that Aleksić only was given permission to construct a temporary object.
17. On the other hand the appellant has claimed property right, a right to possession of a building that was built on socially owned property. As the claim relates to the right of use of the socially owned property and not privately owned property, the Supreme Court finds that the claim does not fall within the jurisdiction of KPCC. The Law clearly defines that only ownership right, lawful possession of or any lawful right of use of private immovable property could be subject to the proceedings in front of the KPA. According to well established jurisprudence of the KPA Appeals Panel of the

Supreme Court, a temporary object cannot be considered as immovable property leaving the matter outside of jurisdiction.

18. Therefore, the appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law. This decision also does not rely on erroneous and incomplete determination of factual situation, as alleged by the appellant.
19. Consequently the appeal according to Section 13.3 (c) of Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as is related to the case which had to be decided upon in this judgement (KPA10755).
20. Regarding the Appellant's request for compensation for the use of the property, under the Law No 03/L-079 neither the Commission nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such request.
21. This judgment has no prejudice to the claimant's right to pursue his rights for compensation, if there is any, before the competent courts.

#### **Legal Advice**

22. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Sylejman Nuredini, Presiding Judge**

**Esma Erterzi, EULEX Judge**

**Willem Brouwer, EULEX Judge**

**Urs Nufer, EULEX Registrar**