SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-225/13 **Prishtinë/Priština,**
4 September 2015

In the proceedings of

B. D. T.

Appellant

vs.

A.B.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Elka Ermenkova, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/C/184/2012 (case file registered at the KPA under the number KPA14816) dated 14 December 2012, after deliberation held on 4 September 2015, issues the following:

JUDGMENT

1. **The appeal of B. D. T. against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 (case file registered at the KPA under the number KPA14816) dated 14 December 2012 is rejected as unfounded.**

2. **The decision of the Kosovo Property Claims KPCC/D/C/184/2012 (as far as it concerns case file registered at the KPA under the number KPA14816) dated 14 December 2012 is confirmed.**

Procedural and factual background

1. On 5 December 2006 B. D. T. (henceforth: Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a garage with the surface of 15.93 m2, located on parcel no. 2282/1 of Cadastral zone Suharekë/Suva Reka, street Cara Dusana no.5, place called "Rasadnik", Municipality of Suharekë/Suva Reka (henceforth: the claimed property). She alleges that she has lost possession of this garage due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 13 June 1999 as the date of loss.
2. To support her claim, she submitted the following documents:

    - Decision of the Department for General, Common and Property Right Affairs of the Municipality of Suharekë/Suva Reka, No.02-464-54 dated 13 January 1997. This Decision establishes that B.T. was given for temporary use a part of the construction land, parcel no. 2282/1, located in the place called "Rasadnik", Municipality of Suhareka/Suva Reka to set up a temporary facility – a garage (henceforth: Allocation decision).
    - Decision of the Municipal Administration of Suharekë/Suva Reka, Department for Urbanism, Utilities, Construction and Housing Affairs, 03 No. 351-106, dated 23 January 1997. By this decision, B. T. (the investor) was given an approval for constructions of an object of a temporary character – garage located in cadastral parcel no. 2282/1, possession list no 421, Municipality of Suharekë/Suva Reka. Article 2 of the decision states that if the

location would be needed for realization of urbanization plans, the beneficiary of this permit will remove the facility without the right of compensation and insurance that other space will be given to her for installation of the present object (Permit for construction).

3. The claim was registered at the KPA under KPA14816.
4. On 23 February 2012 the KPA officers carried out the physical notification of the garage and found out that the same was occupied by A. B. (henceforth: Appellee). Appellee contested any legal right of Appellant over the claimed property by alleging that the garage does not belong to B. T. but to the Municipality of Suharekë/Suva Reka. However, he did not submit any evidence to substantiate his allegation.
5. The KPA verification team negatively verified the Allocation decision submitted by B. T. as it was not found at the archive of the Municipality. KPA deemed it not necessary to verify the Permit for construction. Ex officio KPA added to the file a Certificate for the immovable property rights. According to this Certificate (P-72116046), parcel no. 2282/1 is socially owned property and registered in the name of the Municipal Assembly of Suhareka /Suva Reka.
6. On 14 December 2012 the Kosovo Property Claims Commission (KPCC) with its Cover Decision KPCC/D/C/184/2012, dismissed the claim. In the reasoning of its decision (nrs. 9, 20 and 21), the KPCC indicated 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. The KPCC states that the claim therefor relates to movable property and not to private immovable property, so the KPCC has no jurisdiction.
7. A. B. received the decision on 25 March 2013 in the capacity of Appellee. On 28 June 2013, the Decision was served on B. T. She filed an appeal before the Supreme Court on 25 July 2013). Appellee refused to accept the appeal that was served on him at 28 October 2013. He did not send in a reply to the appeal either.

Allegations of the appellant

8. The Appellant states that the decision made by KPCC is based on an incomplete determination of the facts and erroneous application of the material and procedural law.
9. The appellant does not agree with the reasoning in the challenged decision KPCC/D/C/184/2012 that she has only gained a temporary right on usage of the property and due to that was authorized to build a movable object only.

10. The Appellant points out that in the territory of ex-SFRY an immovable property was defined as a property that cannot be moved from one place to another without change of its substance. A building will be considered as immovable if it fulfils two conditions:
    - The building is incorporated in the ground, and not lying on the ground,
    - The building is built as permanent structure, and not for temporary use.

    According to her, the built object fulfils both stated conditions. It is built from solid material as a permanent building, it is incorporated in the ground and cannot be moved without change of its substance. The Appellant therefore states that the claimed property is of an immovable nature and is not, as the KPCC decision concluded, a movable object.
11. The Appellant maintains that the fact that the right on the land usage was temporary cannot be the ground for refusal of the claim. According to her, in 1999 she had the right on usage of the land and according to a regular flow of things she would have that right also today if the conflict in Kosovo did not occur. In paragraph 2 of the Decision no. 351-106 (the Permit for building) is stated that "*if the location would be needed for the realization of urbanization plans, the beneficiary of this permit will remove the facility without the right of compensation and insurance that other space will be given to her for installation of the present object"*. Appellant adds that the decision upon which she would be obliged to remove the present object, was never taken and the garage is still on the same location and is being used for a parking lot.

    The Appellant therefore requests the Supreme Court to modify the KPCC decision in such a way that she will be re-installed in the possibility to exercise her property rights.

Legal reasoning

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Section 12.1 of 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: Law UNMIK 2006/50). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the Appeal

13. According to Section 3.1 of law UNMIK 2006/50 Claimant is entitled to an order from the KPCC for repossession of the property if the Claimant not only proves ownership of a 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. This also goes for use rights on immovable property.
14. The claimant requested repossession over a garage, situated in parcel nr. 2282/1 of Cadastral zone Suharekë/Suva Reka, street Cara Dusana no.5,
15. This claim cannot be awarded. KPA could not verify the Allocation decision positively. This means that the allegation of Appellant that she in 1997 gained the right to construct the garage on the parcel 2282/1 cannot be established as a fact. Therefore the claim for repossession is not founded on a factual existing right. This should lead to refusal of the claim on its merits and not to its dismissal on procedural ground, as decided by the KPCC. However this may put the claimant in a less favourable position. According to article 203 of the Law on Contested procedure, that is applicable in the current proceeding (argument after article 12.2 of Law UNMIK 2006/50), the Court in this appeal may not amend the KPCC Decision to the detriment of the appellant who is the only party who filed an appeal. Therefore the KPCC Decision stands to be confirmed.
16. The Supreme Court adds to this reasoning that in the presented Allocation Decision and Permit for construction only is written an approval for construction of an object of movable character. Therefor the garage cannot be seen as an immovable property, because when a person is given only a right to construct a movable object of a temporary character, that person cannot gain a right to an immovable property by constructing a building from solid material and a permanent character.
17. Consequently the appeal according to Section 13.3 (c) of Law UNMIK 2006/50 has to be rejected as unfounded and the decision of the KPCC confirmed.

Legal Advice

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

Sylejman Nuredini, Presiding Judge
Rolandus Bruin, EULEX Judge
Elka Ermenkova, EULEX Judge
Urs Nufer, EULEX Registrar