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-41/13

Prishtinë/Priština,
25 June 2013

In the proceedings of

V.M.

Serbia

Claimant/Appellant

vs.

B.M.

Prizren

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 (case file registered at the KPA under No. KPA28536) of 19 April 2012, after deliberation held on 25 June 2013, issues the following

JUDGMENT

1- **The appeal of V. M. against the decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 of 19 April 2012, as far as it regards the claim registered at the KPA under No. KPA28536, is rejected. The appeal insofar as the appellant claims damages is dismissed as impermissible.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 of 19 April 2012, as far as it regards the claim registered at the KPA under No. KPA28536, is modified and the claim rejected as unfounded.**

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 45 (forty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 5 March 2007, B.M. filed a claim with the Kosovo Property Agency (KPA), seeking repossession. She claimed that her son, V. M., was the owner of a shop with a surface of 6 m² located in Prizren on parcel No. 1075. To support her request, she submitted a decision of the Department for Urbanism, Communal and Housing Service and Construction of Prizren – No. 04/4-351-33 of 4 April 1996 – with which V. M. was allowed to temporarily set up a kiosk "*until the allocation of the mentioned parcel for any other purpose*". The claim was registered at the KPA under no. KPA28536.

On 21 June 2007, KPA officers went to the place where the kiosk was situated. They found the kiosk in use by B. M. who declared that the parcel on which it was situated had belonged to her family and taken by the state. So she was interested in the use of the property and signed a note of participation.

On 14 June 2010, the notification was repeated. This time the KPA officers found that the kiosk did

not exist anymore and that the place was converted into a parking lot.

On 19 April 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/C/153/2012 dismissed the claim for lack of jurisdiction. The KPCC declared that in the light of Art. 9 of the Law on Property and other Real Rights (Law No. 03/L-154) the kiosk had to be considered a movable structure. According to Section 3.1 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC, however, had the competence to decide on immovable property only.

On 23 November 2012, this decision was served on B. M. On 21 December 2012 V.M.(from here on: the appellant) filed an appeal with the Supreme Court. He explained that the kiosk was an immovable structure, as it was permanently connected to the ground by a concrete foundation with a sewage connection to the city sewers and a water connection, it was constructed from massive wood beams and the roof was tiled. The appellant stated that as this kiosk represented capital which the M. family had invested, the property should be subject of damage compensation.

The appellant requests the Court to annul the KPCC's decision as far as it regards the case in question and return the case to the KPCC, or revise the decision and establish the appellant's right to repossession or to compensation of damages.

The appeal was served on B. M. on 28 March 2013. She did not reply.

Legal Reasoning

The Court wants to note that V. M. is not only appellant but also claimant. The claim was filed by his mother on behalf of him, with the appeal he has implicitly approved all her legal actions before the KPCC.

The appeal is admissible, yet without success.

1. The Court, however, agrees with the appellant that the case is within the jurisdiction of the KPCC and the KPA Appeals Panel of the Supreme Court. The claimed kiosk cannot be considered as movable property. Immovable property includes "buildings firmly connected to the soil" (Art. 10.1 of the Law on Property and other Real Rights). As the kiosk was not only

solidly built but according to the appellant also had a concrete foundation and a connection to the sewage network of the city, the Court finds that the kiosk was firmly connected to the soil and therefore has to be considered immovable. That the appellant only had a permit for temporary use does not change this assessment. When erecting the kiosk the appellant planned to use it as long as possible and chose a durable structure.

2. Nevertheless the appeal remains without success.

    a. As far as the appellant claims to have a temporary use right of the part of the parcel where the kiosk was situated, this temporary use right had ended when the kiosk was destroyed and the parcel was transferred into a parking lot. With these acts - or allowing these acts - the Municipality implicitly has withdrawn the permit for temporary use. As the contract foresees the withdrawal, the Court finds no fault with it. The right of the appellant to use the parcel therefore does no longer exist.

    b. As far as the appellant claims ownership of the kiosk, this means of the building itself, and requests repossession or compensation of damages, the Court finds the following:

        i. Repossession is factually impossible as the kiosk does not exist anymore. The Court therefore cannot grant repossession.

        ii. Insofar as the appellant with his appeal for the first time claims compensation of damages, the appeal is impermissible as KPCC and KPA Appeals Panel do not have the jurisdiction to decide on claims for damages (Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Claims for damages have to be filed with the regular civil courts.

This decision does not prejudice the right of the claimant to pursue his rights before courts of competent jurisdiction.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- court fee tariff for the issuance of the judgment (10.21 and 10.1 of AD 2008/2), considering that the value of the request on which the Court decided could be reasonably estimated as being comprised at € 500: € 15 .

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment for a person living outside Kosovo may not be less than 30 days and no longer than 90 days. The Court decides that a deadline of 90 days is given. Article 47 Paragraph 3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice

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.

Anne Kerber, EULEX Presiding Judge **Sylejman Nuredini, Judge**

Elka Filcheva-Ermenkova, EULEX Judge **Urs Nufer, EULEX Registrar**