

**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-61/12

**Prishtinë/Priština,
17 December 2013**

In the proceedings of

S. H.

Claimant/Appellee

vs.

R. J.

Respondent/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KKPK/D/C/125/2011, case file registered at the KPA under the number KPA00448, dated 7 September 2011, after deliberation held on 17 December 2013, issues the following

JUDGMENT

- 1- The appeal of R. J. from Peja/Peć, dated 28 May 2012, is rejected as ungrounded.
- 2- The Decision KKPK/D/C/125/2011, dated 7 September 2011, regarding case files registered at the KPA under the number 00448, is confirmed.

Procedural and factual background:

On 28 February 2007, S.H., filed a claim with Kosovo Property Agency (KPA), seeking repossession of a commercial premises, located in Peja/Peć, built on parcel no. 4741/16, with a surface of 48 m². According her the loss of possession over the claimed property is a result of the conflict. She adds that the owner of the claimed property at the time of loss of the possession was her sister-in-law E. B.. She states that she and E. B. jointly invested on the commercial premises as well. Furthermore, she declares that based on the Contract on Gift, verified before the Municipal Court of Pejë/Peć VR.Nr. 4806/06 dated 15 August 2006, E. B., has given the claimed property to her. The claimed property is occupied by R. J.

To support her claim, she provided KPA with the following documents:

- Contract on gift VR.Nr. 4806/06 dated 15 August 2006, verified before the Municipal Court of Peja/Peć; whereby E. B., in the capacity of the donor, delivered the claimed business premises to S. H., the donee;
- Immovable Property Right Certificate UL-71611071-08843 dated 13 April 2011, issued by Cadastral Office in Peja/Peć; whereby it is established that parcel no. 4741-16, at the place called “Gradina”, with a surface of 48 m², is registered in the name of the claimant;

The claimant also presented some other evidences which are not relevant for adjudication of this legal property dispute. The notification of the claimed property is done on 13 December 2010. The KPA notification team went to the place where the claimed property was allegedly located and put up signs, indicating that the property was subject of a claim and that interested parties should submit their responses within 30 days.

On 31 July 2008, R. J. responded to the filed claim. He stated that the commercial premise was built according to a construction permit issued by the Department of Urbanism of Municipality of Peja/Peć, on 11 April 2000. He also stated that the building’s construction is financed from the foundations and that he was

not aware that the plot/parcel was allocated to E. B.. This permit does not refer to the subject matter of the claim.

The Kosovo Property Claims Commission (KPCC) by its decision KPCC/D/C/125/2011, dated 7 September 2011, recognized the claimant's property right over the claimed property and returned the same into her possession.

On 5 December 2011, the KPCC decision was served to the claimant.

On 5 March 2012, the KPCC decision was served to the respondent. He filed an appeal on 27 March 2012.

The appellant filed an appeal with the Supreme Court, challenging the KPCC decision on the grounds of erroneous and incomplete determination of factual situation and misapplication of substantive law, and proposed that KPCC decision be amended and claim filed by S. H. be rejected. This is because initially E.B. was the owner of the business premises built on parcel 5755/19, shop no. 2 with surface of 46 m², and it is unclear how the latter acquired the ownership over the shop subject of the claim which she later transferred to the claimant.

Legal reasoning:

Admissibility of appeal:

The appeal is admissible, because it was filed within 30 days as foreseen by Section 12.1 of the UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, which provides that a party may file an appeal against the Commission's decision within thirty (30) days of notification of parties of the decision.

The Supreme Court of Kosovo after the review of the KPCC decision and the assessment of the appealed decision ascertained that the appeal filed by the appellant is ungrounded and therefore the court confirms first instance decision. This conclusion of the Supreme Court is justified by the fact that the claimed commercial property according to the Immovable Property Right Certificate UL-71611071-08843, dated 13 April 2011, issued by Cadastral Office in Peja/Pec, is registered in the claimant's name. Therefore, the claimant acquired the property right over the claimed property by registration pursuant to Article 33 of Law on Basic Property Relations.

The Supreme Court considered and assessed the appellant's allegations that initially E. B. was the owner of the business premises built on parcel 5755/19, shop no. 2 with surface of 46 m² and that it is and it and it is

unclear how the latter acquired the ownership over the shop subject of the claim which she later transferred to the claimant. The Court considers that appellant's allegations are ungrounded.

This is because according to the immovable property right certificate UL-71611071-08843, dated 13 April 2011, issued by Cadastral Office in Peja/Pec, it is established that the parcel 4741/16 and the shop with surface of 48 m² is registered under the name of the claimant, acquired according to the contract on gift. Therefore, pursuant to Article 7 paragraph 2 of Law 2002/5 on Establishment of Immovable Property Right Registry, it is assumed that these data are accurate, authentic and lawful as long as they are not changed based on procedures established by Law. Hence, in case the appellant deems that the Immovable Property Right Registry in Cadastral Office of Peja/Peć violates his rights, and then based on Article 5.4 of the same Law, appellant is entitled and obliged to initiate court proceeding in order to verify these allegation.

In the light of foregoing, pursuant to Section 13.3 under (C) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this judgment.

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.

This judgment is without prejudice to the respondent's right to refer the claims to competent courts outside the jurisdiction prescribed by provisions of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law 03/L-079.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar