

**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-265/13

**Prishtinë/Priština,
24 September 2014**

In the proceedings of:

D. P.

Kotor

Claimant/Appellant

v. s.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/209/2013 (case file registered at the KPA under the number KPA28552), dated 11 June 2013, after deliberation held on 24 September 2014, issues the following:

JUDGMENT

1. The appeal of D. P. against the decision of Kosovo Property Claims Commission KPCC/D/C/209/2013, dated 11 June 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/C/209/2013, dated 11 June 2013 regarding the claim registered at the KPA under the number KPA28552, is confirmed.

Procedural and factual background:

1. On 06 March 2007, D. P. as a family household member of the property right holder – his daughter L. P. filed a claim with Kosovo Property Agency, seeking confirmation of ownership right and repossession of property-business premises. He claims his daughter was permitted to build the business premises on a parcel no.1093/1, street “Vukmirovića”, Cadastral Zone and Municipality of Peja/Peć. The business premises according to Mr. P. have a surface of 60 m².
2. He declared lost possession of the business premises due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 12 June 1999 as the date of loss.
3. To support the claim, he submitted, *inter alia*, driving license, issued on 07 September 2006 by the Municipality of Kragujevac, Republic of Serbia; a birth certificate of his daughter 200-9567/2000-VI issued on 28 November 2000, a copy of Decision no. 03-353/347, issued on 5 June 1992 by Executive Council, Municipal Assembly of Peja/Peć. This copy of the Decision establishes that L. P. was given the location to set up a temporary prefabricated object of 32m² (not 60 m² as claimed) in a part of the cadastral parcel no. 1093, as well as, the Decision 03-351/2376, issued on 19 November 1992 by Department of Urbanisation, Housing and Property – Legal Affairs giving her a right to build a temporary prefabricated object on a part of parcel no 1093/1. The decision states that if the location is 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 prefabricated object.
4. On 26 March 2007, the KPA officers carried out the physical notification of the claimed property and found that the business premises were removed by Municipality of Peja and the

parcel no 1093/1 is being used as a park. The Municipality of Peja represented by A. S.(the director for property – legal affairs) did not sign a notice of participation but replied to the claim alleging that Mr. P. failed to submit evidence showing any property right over the property. The Municipality of Peja submitted a Possession List no 2608 issued by Department for Cadastre Geodesy and Property indicating that the claimed parcel is socially-owned property and the Municipal Assembly was entitled use it. Since no notice of participation was filed the claim remained uncontested.

5. The Decision 03-351/2376 issued on 19 November 1992 was positively verified by the KPA verification team, while the Possession List no 2608 was verified *ex officio* and parcel no. 1093/1, is found to be a socially owned property. The birth certificate that proves the family relation between claimant and his daughter as well as the capacity of claimant to file the claim was not verified by KPA verification team. The Supreme Court did not deem necessary the verification of birth certificate considering that the final outcome of the claim will not be impacted.
6. On 11 June 2013, Kosovo Property Claims Commission (KPCC), through its decision KPPC/D/C/209/2013, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the evidence the claimant was entitled to provisional user right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property. The claimed property should be considered as a movable object according to Article 9 of Law on Property and Other Real Rights (Law no. 03/L-154).Pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC has no jurisdiction to decide on movable properties.
7. On 13 August 2013, the Decision was served on D. P. He filed an appeal before the Supreme Court on 3 September 2013 (henceforth: the appellant),the Municipality of Peja was not notified about the Decision since it was not a party to the KPA proceedings, accordingly the appeal against the Decision was not served on it.

Allegations of the claimant/appellant

8. The appellant alleged that the KPCC decision relies on fundamental error and serious misapplication of the applicable material and procedural law because the Serbian version of the decision precisely the enacting clause did not indicate the number of the claim requested KPA28552 also the English version of the decision does not contain enacting clause related to the claim requested KPA28552. The appellant, furthermore, alleged that the KPCC decision is

based on an erroneous or incomplete determination of facts due to that the property-business premises is not private movable property as it is erroneously determined by the decision making body but the property is actually private immovable property. The appellant asks the Supreme Court to reverse the decision of the KPA, KPCC/D/C/209/2013 of 11 June 2013 and confirm ownership right to the appellant.

Legal reasoning:

Admissibility of the appeal

9. The appeal has been 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 11 June 2013, the decision made a reference to "relevant paragraphs" in the Cover Decision. A special reference is made to the paragraphs 19-21. 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 Decision No03-353/347, issued on 5 May 1992 by the Municipal Assembly of Peja/Peć and Decision No. 05-351/2376, issued on 19 November 1992 by the Department for Urbanism, Communal and Housing Services and Civil Engineering of the Municipality of Peja/Peć, it is established that L. P. was given land for temporary use to erect business premises on a part of parcel no. 1093/1, in street “Vukmirovića”, cadastral zone and Municipality of Peja/Peć. The permission was given for provisional placement of the premises in that parcel, which are considered as movable object.
15. The land itself is socially owned property. The Supreme Court also considers that the claimed property 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. Mr. P. 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 P. 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 has 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 No03/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 (KPA28552).
20. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.

Legal Advice

21. 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.

Esma Erterzi, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar