

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-065/13

Prishtina, 28 May 2015

In the proceedings of:

R. J.

Serbia

Appellant

vs.

M of K/Klina

Representative: Y. M, lawyer

Klinë/Klina

Kosovo

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011 (case files registered at the KPA under number KPA49216) dated 26 October 2011, after deliberation held on 28 May 2015, issues the following:

JUDGMENT:

- 1. The appeal of R. J. is rejected as ungrounded.**

2. The decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011 (regarding case file registered at the KPA under number KPA49216) dated 26 October 2011, is confirmed.

Procedural and factual background:

1. On 3 December 2007 R. J. (hereinafter: the appellant), filed a claim before the KPA, seeking ownership right over business premises and compensation for usage of the property without his consent. The claimed property is a tinsmith workshop with a surface of 60m², located in parcel no.585, Municipality of Klinë/Klina (hereafter referred as: the property). He stated that he lost possession over the property due to the armed conflict in 1998/99, indicating 12 June 1999 as the date of loss. He claims it is now illegally usurped.
2. To support his claim the appellant submitted the following documents:
 - Ruling no.365-471 issued by the Department for Urban Planning, Communal and Property/Legal Affairs of the Municipality of Klinë/Klina on 26 February 1997. With the ruling the appellant was given permission to build a permanent type facility made of hard materials. This document was negatively verified at Department of Urbanism in Municipality of Klinë/Klina(the documents were missing);
 - Ruling no.351-678 issued by the Secretariat for Economy of the Municipality of Klinë/Klina on 21 October 1987, with which the appellant was given permission to build temporary fabricated premises for tinsmith workshop. This document was negatively verified at Department of Urbanism in Municipality of Klinë/Klina (the documents were missing);
 - Ruling br.no.313-1140 issued by the Secretariat for Agriculture of the Municipality of Klinë/Klina on 25 September 1990, which allowed the appellant to open a tinsmith workshop as a self-employed tinsmith worker. This document was negatively verified at Department of Urbanism in Municipality of Klinë/Klina(the documents were missing);
 - Ruling no.353-461 issued by the Department for Urban Planning, Communal and Property/Legal Affairs of the Municipality of Klinë/Klina on 19 December 1997, showing that a land with surface of 60 m² located on cadastral parcel no.585 was allocated to the appellant. This document was negatively verified at Department of Urbanism in Municipality of Klinë/Klina(the documents were missing);

- Decision no.468, dated 26 July 1991 issued by PUC “Elektrokosovo” Pristina to connect the workshop of the appellant with the electric power network of the company.
- A customer application showing that the appellant paid the financial obligations for electric energy.

According to the Consolidated Verification Report of KPA dated 7 October 2011, all of the above mentioned documents were negatively verified by Executive Secretariat.

3. The claim was registered with the KPA under case no KPA49216.
4. On 12 November 2008 the KPA notification team notified the claim by putting a sign where the business premises were allegedly located. The property was found occupied by I.B., who declared that he did not claim any legal right over the property, but he had a permission to stay in the property. He referred to a renting contract concluded between him and the appellant.
5. On 30 August 2010, Y. M. (hereinafter: the appellee) approached KPA as a responding party. He signed the Notice of Participation and contested the claim on behalf of the Municipality of Klinë/Klina. With authorisation no.464-4286, dated 19 August 2010, given by the Municipality of Klinë/Klina he was authorised by Municipality of Klinë/Klina to represent the municipality in the legal proceedings before the KPA.
6. He asserted that the claimed property is owned by Municipality of Klinë/Klina. To support his assertions he submitted a Certificate for the Immovable Property Rights no.UL-71006024-00768, dated 7 July 2010 issued by Municipal Cadastral Office of Klinë/Klina. This document lists the Municipal Assembly of Klina as the Property Right Holder of parcel no.585.
7. On 26 October 2011, with decision KPCC/D/C/132/2011, the KPCC decided to refuse the claim with the reasoning that the claimant failed to prove his alleged ownership right over the property.
8. The decision was served on the appellant on 17 December 2012.
9. On 15 January 2013, the appellant submitted an appeal to the Supreme Court, challenging the KPCC decision.

Allegations of the parties

10. The Appellant invokes an incomplete establishment of the facts and an erroneous application of the substantive law. The Appellant stated that he used the mentioned property in accordance with the regulations in force and that he built initially a prefabricated business premises in 1987. In 1997 he renovated it using hard materials and used it till 1999, when he left Kosovo. In his allegations he listed all the Rulings of the Municipality of Kline/Klina in accordance with which he gained his rights over the property and a Possession List no.447, which was not found by the KPA Executive Secretariat. He asked from the Supreme Court to accept his appeal and to decide to recognize his right to repossession of the claimed property.

The appellee allegations

11. The Appellee declared that the claimed property is owned by the Municipality of Klinë/Klina as it is described in the Certificate for the Immovable Property Rights no.UL-71006024-00768, dated 7 July 2010 issued by Municipal Cadastral Office of Klinë/Klina and as such cannot be subject of restitution to any other party.
12. Furthermore, the appellee stated that the evidences submitted by the appellant are contradictory, because initially he was allowed to build a permanent type facility made of hard materials (Ruling no.365-471 of the Department for Urban Planning, Communal and Property/Legal Affairs of the Municipality of Klinë/Klina issued on 26 February 1997), and then the same competent body decided to allocate the property subject of the dispute to the appellant (with Ruling no.353-461 of 19 December 1997). Moreover he does not submitted the contract concluded with the Municipality of Klinë/Klina, regarding the use of municipal urban land as it was required by the law. Therefore, the appellee claims that the evidences submitted by the appellant might be false.

Legal reasoning

Admissibility of the appeal

13. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

14. The Supreme Court has jurisdiction to examine the appeal.

Merits

15. In this case, based on the assertions in the appeal, the appellant was in possession of a part of the parcel no.585 and had the ownership and was in possession of the building he has erected on it.
16. According to article 2 of the UNMIK Regulation 2007/5 “*any person who **had** an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right*” has the right to submit a claim before KPA. 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. The claimant was given use right over a municipality parcel with the right to build initially a temporary facility and then a permanent facility made of hard materials.
17. The appellant might have some legitimate claims regarding the material and labour he invested in the building, but in case such claims would be legitimate as regular obligation claims, they should be decided upon by the regular courts, not by the KPCC.
18. Regarding the allegations of representative of the Municipality of Klinë/Klina that the claimed property is owned by the Municipality, it has to be clear that the parcel itself was not part of the subject matter of the case, which subject matter is defined by the claim filed with KPA. The appellant requested repossession over the tinsmith workshop with a surface of 60m² situated in the parcel. The Supreme Court based on Law on Contested Procedure article 2, paragraph 2.1 “*A court adjudicating in contested proceedings shall decide within the scope of the claims submitted by the parties to litigation*” can adjudicate only over the subject matter which was included in the claim.
19. The appellant with his appeal submitted the same evidences and repeated the same allegations he made before the KPCC. No new evidence was submitted with the appeal and no new facts could have been established. Thus the allegation that the decision is incorrect based on the incomplete establishment of the facts is without merit. Unmeritorious is as well the allegation for erroneous application of the substantive law. The claimant/now appellant did not prove the alleged right of property, therefore his claim was refused. He did not present any evidence that at any moment prior to the conflict of 1998/1999 he had acquired the right of property over the immovable in question.

20. The Supreme Court notes that KPCC based its decision on the fact that the KPA Executive Secretariat made a negative verification of the documents on which the appellant based his claim. Furthermore, the Executive Secretariat established that the parcel where the claimed property is located is registered in the name of the Municipal Assembly of Klinë/Klina. Based on this the KPCC found that the appellant failed to prove the alleged ownership right over the disputed property. As a result the Supreme Court found that the KPCC's decision was correct and based in factual and procedural grounds. Based on article 13.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 which foresees that "*The Supreme Court of Kosovo as a rule decides on the appeal based on the facts presented to and considered by the Commission*", the Supreme Court decided to reject the appeal as ungrounded.
21. On the basis of the above and according to the provision of section Section 13.3 under (c) of the Law 03/L-079, it has been decided as in the enacting clause of this judgment.

Legal Advice

1. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar