

**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- 106/14

**Prishtinë/Priština,
21 January 2016**

In the proceedings of:

J.N.B.

Djuro Djakovica

11000 Beograd

Republic of Serbia

Appellee

v.s.

Municipality of P.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/67/2010 (case file registered at the KPA under the number KPA20101), dated 25 February 2010, after deliberation held on 21 January 2016, issues the following:

JUDGMENT

- 1. The Appeal of Municipality of P., against the Decision of the Kosovo Property Claims Commission KPCC/D/C/67/2010, regarding the case file registered at the KPA under the number KPA20101, dated 25 February 2010, is accepted as grounded;**
- 2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/67/2010, regarding the case file registered at the KPA under the number KPA20101, dated 25 February 2010 is modified as follows:
“The Claim of J.N.B. is refused”.**

Procedural and factual background:

1. On 24 November 2006, J.N.B. (henceforth: the Appellee), filed a Claim with the Kosovo Property Agency (KPA) claiming the confirmation of the ownership rights and the repossession of the commercial property (shop) located in street “23, Metohijska” in P. on the land parcel No. 7074, with the total surface of 16 m². The Appellee indicated that the loss of the possession took place on 16 June 1999.
2. To support his Claim he provided the KPA with:
 - The Decision rendered by the Municipality of P., Department of Urban Planning, Housing /Utilities Affaires and Construction dated 7 May 1993 on the basis of which the Appellee J.B. was given the permission to set up a temporary construction in the part of the parcel No. 7074, located in Metohijska Street, for the period of 10 years from the issuance of the Decision. Point VI. of the Decision stated that “the building is of temporary character and therefore, in case of urban development the structure will be removed (...)”.
 - The Minutes taken during the inspection conducted by the Municipality of P., Department of Urban Planning, Housing/Utilities Affairs and Construction on 9 October 1996. The inspection referred to the investment: construction of “a temporary structure”.
 - The Order for Payment dated 9 April 1993 to the municipal authorities for “the allocated temporary structure”.
3. The documents submitted by the Appellant were positively verified by the KPA.
4. The notification of the Claim was carried out on 18 June 2007. The shop was found being occupied by K.K., who was present at the property, but did not sign a notice of participation and did not claim the legal rights over the property. No-one has submitted Reply to the Claim.
5. On 25 February 2010 the Kosovo Property Claims Commission granted the Claim establishing that J.N.B. is the owner of the claimed property in the Decision number KPCC/D/C/67/2010.
6. On 18 March 2013, the Decision was served on the Appellee. The Municipality of P. was served with the Decision on 25 February 2014 and on 22 April 2014.
7. On 19 May 2014 the Municipality of P. filed an Appeal to the Kosovo Property Agency on the grounds that the Decision rests upon an erroneous determination of facts and involves incorrect application of substantive law.

Legal reasoning:

8. The Appellee requested to confirm his ownership rights over the claimed property and to order its repossession. During the proceedings before the KPA no Reply to the Claim was filed and no one expressed his intention to participate in the proceedings. The Commission considered the Claim as uncontested and granted it by establishing that the Appellee is the owner of the claimed property and is entitled to possess it. The

Municipality of P. challenged the Decision stating that there were no proofs in the file which would allow for establishing the ownership rights over the claimed property. For that reason the Supreme Court reviewed the evidence gathered by the KPA and came to a conclusion that the Decision indeed rests upon the erroneous (incomplete) establishment of facts. The only fact that there was no Reply to the request of the Appellee may not lead to a conclusion that a person gained an ownership rights over the commercial property.

9. It is important to underline here, that notwithstanding the fact that from the documents submitted by the Appellee himself it appears that there was a Decision issued by the Municipal authority in P. accepting the request for construction of a temporary object, the KPA did not find it necessary to notify the Claim to the Municipality of that town. The latter was served with the Decision though and filed the Appeal, which according to the Supreme Court is admissible, as the Municipality of P. (henceforth: the Appellate) has a legal interest in the claimed property mentioned in Article 10.2 of the of the UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. As the authority having a legal interest in the Claim, the Municipality of P. shall be admitted as a party at any point of the proceedings (Article 10.3).
10. After having reviewed the evidence gathered during the proceedings before the KPA and the content of the Appeal the Supreme Court contends that the allegations of the Appellant are grounded. In 1993 the Appellee obtained permission from the Municipality of P. to construct a temporary structure. The constructing works were supposed to start within 12 months from the issuance of the Decision, otherwise the permission expired. The Appellee was given a permission to use the land and run activities during 10 years (until 2003). There are no documents in the case file indicating that any decision extending the time for which the permission was granted was ever rendered. For that reason after the expiration of 10 years the Appellee was not entitled anymore to use the municipal land and as a consequence has no effective legal remedy to ask for the repossession of the temporary structure.
11. Considering the above, the Supreme Court is of the opinion that the arguments presented in the Appeal are founded and should lead to the modification of the Decision of the KPCC. In the mentioned Decision indeed the factual situation was not established properly: the facts were determined incompletely, not reflecting the evidence gathered. The KPCC omitted the fact that the claimed property was a temporary structure and could have been possessed only within the time limit indicated in the Decision granting the permission. It was then up to the Appellee to ask for the extension or file any other request based in the law in force, but that was not done, as the documents show. Not considering the character of the constructed premise allowed the KPCC for incorrect conclusions. The fact that “the claim was not contested” could not constitute the sole legal basis for the acquisition of the property rights over the claimed property and subsequently does not justify the request for the repossession.
12. The Supreme Court concludes that for the above mentioned reasons the Appeal stands to be accepted as grounded (Article 13.3(a) the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) and the Decision of the KPCC to be modified by refusing the Claim.

Legal Advice)

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Urs Nufer, EULEX Registrar