

**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-214/14

Prishtinë/Priština

5 October 2016

In the proceedings of:

L.V.Z.

Kolonija, Djurdjevo
35000 Jagodina
Serbia

Appellant

Vs.

**Municipality of I.
represented J.B.**

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Presiding Judge, Sylejman Nuredini, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPPC/D/C/233/2014 (the case file registered at the KPA under the number KPA25479) dated 13 March 2014, after the deliberation held on 5 October 2016, issues the following:

JUDGMENT

1. The appeal of L.V.Z. filed against the Decision of the Kosovo Property Claims Commission No KPPC/D/C/233/2014 dated 13 March 2014 as far as it regards the case registered at the KPA under the number KPA25479 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission No KPPC/D/C/233/2014 dated 13 March 2014 as far as it regard the case registered at the KPA with number KPA 25479 is confirmed.

Procedural and Factual background:

1. On 27 April 2007, L.V.Z. filed a claim with the Kosovo Property Agency (henceforth: the KPA), in the capacity of the alleged property right holder, seeking the re-possession of the property-business premise. She alleged that with the Decision of the Executive Council of the Municipal Assembly of I. No 01-463-379, dated 15 April 1991 a part of the cadastral parcel No 1779/2 with the surface of 20m² was given to her for temporary use. This Decision was positively verified according to the Verification Report.
2. The Claim was registered at the KPA with number KPA25479.
3. The Claimant alleges that possession of this business premise was lost due to the circumstances related to the armed conflict which occurred in Kosovo in 1998/99, indicating 24 June 1999 as the date of loss.
4. To support her claim she provided the Contract concluded on 15 November 1991 between the Municipal Assembly of I. and the Claimant on a Temporary Use of the cadastral parcel, which is the subject of the claim. According to paragraph 1 of this Contract, the claimant had the right to temporary use of the part of this cadastral parcel with the surface of 20m² and also the obligation, upon the request of the competent authority, to remove the premise at his own cost.
5. According to the Possession List No 828 issued on 08 July 2008 by the Directorate for Cadastre, Geodesy and Property in the Municipality in I., the parcel No 1776/2 is registered as a Socially- Owned Property under the name of Municipality of I.. This document was positively verified.

6. On 31 May 2011, the KPA officials visited the place where the business premise-kiosk was located and found that the premise was being used by the Municipal Assembly of I.. The representative of the Municipal Assembly of Istog/ Istok, J.B. claimed the legal right over the claimed property, stating that the property was a Socially - Owned Property. During the notification it was concluded that the claimed property was of prefabricated temporary character.
7. By its Decision of 13 March 2014 No KPCC/D/C/233/2014, the Kosovo Property Claims Commission (henceforth: the KPCC), dismissed the Claim due to lack of jurisdiction. In the reasoning of the Decision, the KPCC concluded that the property right holder requesting the business premise had only gained a temporary use right and consequently was authorised to construct an object of prefabricated temporary character, which was qualified as a movable property.
8. Therefore, the claimed property should have been considered as a movable property pursuant to Article 9 of the Law on Property and other Real Right (Law No 03/L-154). Whereas according to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079, the KPCC had no competence to decide on movable properties.
9. On 20 May 2014, the Appellant received the KPCC's Decision and she filed an Appeal to the Supreme Court on 12 June 2014

Allegations of the Appellant

10. The Appellant explained that the appealed decision was not formulated clearly and it does not contain clarifications on legal and factual grounds. Therefore, the KPCC's Decision is based on incomplete and erroneous establishment of facts and their erroneous evaluation. Also, the appealed decision was rendered with erroneous application of material and procedural law. The Appellant alleged that the business premise was constructed with solid material according to the project of the respective authority. The Appellant requested the Supreme Court to review the Decision and grant the Appellant's rights to repossess and to use of the property.

Legal reasoning:

11. The Appeal was filed within the 30 days deadline foreseen by the Law (Article 12.1 of UNMIK Regulation No 2006/50 as amended by the Law No 03/L-079).
12. Upon review of the case file and Appellant's allegations, pursuant to legal provision of Article 194 of LCP, the Supreme Court finds that: the Appeal is ungrounded.
13. The KPCC evaluated the evidence correctly while deciding that the Claim was not under its jurisdiction. The KPCC provided correct, thorough, comprehensible, clear and consequently lawful explanations and clarifications on decisive fact for a just decision.
14. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079, the claimant is entitled by the Commission to repossession of property if the claimant proves the property right or the private property use rights, including agricultural and commercial property and that he or she is not able to exercise such property rights due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. From this legal provision it results that, the jurisdiction of the KPA Property Claims Commission and of the Supreme Court is exclusively limited to resolve, adjudicate and decide on property right claims relating to private immovable property, including agricultural and commercial immovable property.
15. It is not disputable that with the Decision of the Executive Council of the Municipal Assembly of I. No 01-463-379, dated 15 April 1991 a part of the cadastral parcel No 1779/2 with the surface of 20m² was given to the Appellant for a temporary use for construction of a kiosk of prefabricated type.
16. Therefore, based on this established state of facts the Supreme Court assesses that the Decision of the Kosovo Property Claims Commission was correct and lawful when it decided to dismiss the Appellant's Claim as inadmissible due to lack of jurisdiction, because in the light of the present Judgment the claimed property is a kiosk of prefabricated type, which is treated as a movable object.
17. Therefore, the Supreme Court considers that the claimed property, pursuant to legal provision of Article 9 § 1 of the Law on Property and other Real Right, is treated as a movable object. Pursuant to this provision the temporary objects constructed in a construction on a land given for a temporary use, as in the current case, are not considered as immovable objects. Moreover, pursuant to Article 14 par.1 and the Article 26 par.2 of the Law on Construction Land, Official Gazette of SAPK No 14/80 when

the competent authority gives the right for a temporary use to place temporary objects of prefabricated type, then the same authority has the right to dislocate that object, for urbanistic planning purposes, with personal expenses of the user. Furthermore, the temporary object may not be subject to property right or may not be registered in the property register of the Cadastral Office.

18. The Supreme Court reviewed the Appellant's allegation that the KPCC's Decision was not formulated clearly and that it does not contain explanations on legal and factual grounds, because the business premise was built with solid materials. The Supreme Court concludes that these allegations do not reflect the facts, as the KPCC's Decision was formulated clearly and it contains clear, full and comprehensible explanations of its legal and factual grounds. The Supreme Court evaluated other allegations of the Appellant and finds that they remain without effect and may not lead to decide otherwise on this legal matter. Moreover, the Appellant failed to present legally valid evidence to support those allegations.
19. Consequently, based on the aforementioned, the appealed decision does not contain any serious error or misapplication of the material and procedural law. Also, this decision is not based on erroneous and incomplete determination of factual state, as alleged by the Appellant.
20. This Judgment does not prejudice the right of the Appellant to pursue his rights in competent courts.
21. Consequently, based on the aforementioned and pursuant to Section 13.3 of UNMIK Regulation UNMIK 2006/50 as amended by the Law No 03/L-079 it is decided as in the enacting clause of this Judgment.

Legal Advice

22. Pursuant to Section 13.6 of Law UNMIK 2006/50 amended by the Law No 03/L-079 this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar