

**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-139/13

**Prishtinë/Priština,
19 March 2014**

In the proceedings of:

G M
LI B H2 17 3
1P/P
Claimant/Appellant

vs.

N/A

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Dag Brathole and Shukri Sylejmani Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/192/2013 (case file registered at the KPA under the number KPA01241), dated 13 February 2013, after deliberation held on 19 March 2014, issues the following:

JUDGMENT

1. The appeal of G M against the decision of Kosovo Property Claims Commission KPPC/D/C/192/2013, dated 13 February 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/192/2013, dated 13 February 2013 regarding the claim registered at the KPA under the number KPA01241, is confirmed.

Procedural and factual background:

1. On 16 November 2007, the claimant G M filed a claim with Kosovo Property Agency, seeking for repossession of the premises on parcel no 2520/3 of the Kosovska Mitrovicë/Mitrovica, in the cadastral district called Rudarske Čete. He claims he was permitted to build the business premises on parcel no 2520/3 in Municipality of Mitrovicë/Mitrovica. The business premises have a surface of 27 m². He also asked for compensation for the monthly rent from the Agency.
2. The business premises are located in Mitrovicë /Mitrovica, in a place called Rudarske Čete, plot no. 2520/3. He stated that the claimed property is occupied by an unknown person and he lost possession of the business premises due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 24 March 1999 as the date of loss.
3. To support his claim, he submitted a copy of Decision no. 08. No.361/136, issued on 18 July 1994 by the Municipality of Mitrovicë/Mitrovica, Division of Urban, Communal, Housing and Property Affairs, Inspection Section. This copy of decision establishes that all legal requirements are fulfilled for construction and utility connection as well as for the equipment of the commercial space located in Rudarske Čete Street, without number, and the commercial space was built in line with the approval no 351/13/91 dated 1 July 1994. The decision 08 No 351/13/91 dated 1 July 1994, of which copy is also provided, states that G M is granted a legalization of an unlawfully constructed building, commercial space are of 24 square meters located on lot no 2520/3. The validity of that decision starts on 27 June 1994 and ends on 27 June 1996. The claimant also submitted the copy of the decision of the Municipality of Mitrovicë/Mitrovica, Division of Urban Planning, Construction and Housing Affairs, 08 No. 351/175/966 dated 28 May 1997 on the extension of construction permit for a temporary building commercial space with an area of 27 square meters, on the basis of Article 2, 5, 6 and 8 of the Decision on Temporary Buildings for which a construction license has expired or is to expire. That decision stipulates that the validity of the Decision no. 08-351-L3-91 dated 01.01.1994 (*possibility a typo as to the month*) located on lot 2520/3 is extended from 25 July 1996 to 25 July 1998.

4. The claim was registered at the KPA under KPA01241. No notice of participation was filed.
5. On 13 February 2013, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/192/2013, 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 temporary user right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property. 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.
6. On 14 June 2013, the decision was served on G M and he filed an appeal before the Supreme Court on 11 July 2013 (henceforth: the appellant).
7. The appellant explained that he had the right on temporary municipality property use, then, it is fact that he used this property for commercial purposes until April 1999. He maintained that the Commission has full jurisdiction for these kinds of claims and it should approve the claim on the verification the right on temporary use of this immovable property. He reiterated that Municipality of Mitrovicë/Mitrovica provided him with temporary use permit. Therefore, he claims that the KPCC decision is grounded on erroneous and incomplete determination of fact and it is unfair, confused, unclear, incomplete and unlawful.

Legal reasoning:

Admissibility of the appeal

8. 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. The appeal is admissible.

Merits of the appeal

9. Following the review of the case files and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
10. 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.
11. 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.

12. It is not disputable that according to the Decisions submitted by the appellant mentioned above in paragraph 3 of this judgment, the claimant was given the right to construct/legalize a temporary building over the parcel no 2520/3. This fact is not contested by the appellant, either. What appellant's contest is yet the KPCC should have jurisdiction to deal with such claims.
13. The Supreme Court 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 temporary 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. Temporary premises cannot even be a matter for recognition of property right and neither can be registered in the property register of cadastral office.
14. Furthermore, in the case at hand, the right to use over a temporary building is extended only until 25 July 1998. There is no document in the file indicating that this permit is extended beyond that period. Accordingly, the right to use of this temporary building ceased to exist due to the ending of a contract but not the conditions of the armed conflict. Finally, the request for compensation does not fall under the jurisdiction of the KPCC either since only claims related to ownership rights or user rights are covered by Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.
15. 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
16. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.
17. In the light of foregoing and pursuant to Section 13.3 (c) of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, it is decided as in the enacting clause of this decision.

Legal advice

18. 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

Dag Brathole, EULEX Judge

Shukri Sylejmani, Judge

Urs Nufer, EULEX Registrar