

**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-109/13

Prishtinë/Priština,
19 March 2014

In the proceedings of:

M R
K 27 V
11 M
O
S

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/176/2012 (case file registered at the KPA under the number KPA00171), dated 24 October 2012, after deliberation held on 19 March 2014, issues the following:

JUDGMENT

1. The appeal of M R against the decision of Kosovo Property Claims Commission KPPC/D/C/176/2012, dated 24 October 2012, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/176/2012, dated 24 October 2012 regarding the claim registered at the KPA under the number KPA00171, is confirmed.

Procedural and factual background:

1. On 8 August 2006, M R filed a claim with Kosovo Property Agency, seeking confirmation of user right and repossession of the premises on parcel no 1529, in the cadastral zone of Kamanicë/Kamenica in the Municipality of Kamenicë/Kamenica. He claims that he was permitted to build a temporary prefabricated construction on socially owned land over that parcel. The business premises have a surface of 15 m².
2. The business premises are located on Adem Jashari Street in Kamenicë/Kamenica, plot no. 1529. The claimant asked for repossession of the kiosk.
3. To support his claim, he submitted a copy of decision no. 01-06-353-1/95, dated 18 January 1995, of the Municipality of Kamenicë/Kamenica. This copy of decision establishes that the claimant was given the permit to install a temporary prefabricated construction for fast food preparation and sale of grill food, next to the existing kiosk owned by A S. He also attached the decision of Kamenicë/Kamenica Municipal Assembly, Department for Urbanism, Housing, Utilities and Construction, number 03-351-4/1, dated 17 November 1995 and a copy of another contract, number 03-464-018-L/98, for the lease of socially owned cadastral parcel no 1529, registered in the possession list number 431, CM Kosovska Kamenica, Street "Cara Lazara", in surface of 24,91 m². Article 2 of the contract states that the contract is for a limited period of time starting from 1 January 1998 ending on 31 December 1998 which will be no longer valid after then.
4. The claim was registered at the KPA under KPA00171. The claim is not contested.
5. On 24 October 2012, Kosovo Property Claims Commission (KPCC), through its decision KPPC/D/C/176/2012, 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 submitted the claim relates to movable property rather than a private immovable property. KPCC emphasizes that its jurisdiction is limited to the repossession of an immovable property.
6. On 15 March 2013, the decision was served on the claimant M R and he filed an appeal before the Supreme Court on 11 April 2013 (henceforth: the appellant).

7. In his appeal, the appellant claims that the KPCC decision is grounded on erroneous and incomplete determination of fact and failed to establish the built construction was an immovable property and not movable property. The appealed decision also relies on misapplication of material and procedural law.
8. On the other hand, the Supreme Court observes, in the request addressed to the Interim Administration, Municipality of Kamenicë/Kamenica, dated 8 August 2005, which is attached to his claim, that the claimant acknowledges that he started using the prefabricated construction located on socially owned property, the cadastral parcel no 1529, on 18 January 1995. The fact that the property is a prefabricated construction was not contested by the appellant by then.

Legal reasoning:

Admissibility:

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. 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. 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 decision no. 01-06-353-1/95 of the Municipality of Kamenicë/Kamenica, issued on 18 January 1995, the claimant was given a permit to install a temporary prefabricated construction. The land is defined as a social land. Moreover, the permit to use it is set for a limited period of time which in the documents appears as 31 December 1998 for the last time.
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 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 the 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. Accordingly, 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.

14. Therefore, the appealed decision neither contains any essential violation nor any erroneous application of material and procedural law.
15. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.
16. 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

17. 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

Shukri Sylejmani, Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar