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-127/12

Prishtinë/Priština,
17 September 2013

In the proceedings of

B. M.

Appellant/Claimant

vs.

F. B.

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 (case file registered at the KPA under No. KPA01147) of 19 April 2012, after deliberation held on 17 September 2013 issues the following

JUDGMENT

1- **The appeal of B. M. against the decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 of 19 April 2012 as far as it regards the claim registered at the KPA under No. KPA01147 is rejected as unfounded.**

2- **The Kosovo Property Claims Commission Decision KPCC/D/C/153/2013 of 19 April 2012, as far as it regards the claim registered at the KPA under No. KPA01147 is confirmed.**

3- **Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the present judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 15 October 2007, B. M. filed a claim with the Kosovo Property Agency (KPA) seeking repossession of property - business premises. He claimed that in 1994 for the purposes of temporary use, he was given a part of parcel 350. He started the construction of shop but it remained unfinished. The entire construction of the business premise was finished by the appellee after 1999.

In support of his claim, he has submitted the decision of the Department for Urbanism, Communal and Housing Service and Construction of Municipality of Mitrovicë/Mitrovica – 08 No. 463-300 of 25 November 1994 – which permitted the claimant to temporarily use the part of parcel 350 registered under Possession List 3300 of Cadastral Municipality of Mitrovicë/Mitrovica in duration of 5 years by setting up a temporary building on a surface of 44 m². In addition, he was bound to enter a contract with the Municipality Fund for Construction Land from the Municipality of Mitrovicë/Mitrovica with respect to the use and adjustment of construction land.

The reasoning of the said decision specifies that there will be no implementation of the urban plan during the next five years, as is the term of the agreement, for the part of Mitrovicë/Mitrovica town and after such period he will be bound to dislocate the said temporary building.
The claim was registered at the KPA under number KPA01147.

On 31 October 2008, the KPA officers attended the site where the shop was located and found out that the said shop was occupied by F. B. who claimed right of ownership and expressed his willingness to participate in the proceedings.

On 04 March 2010, the notification was repeated and it was established that based on ortophoto coordinates and the GPS, the distance between the claimed parcel and the placed notification is 5 m.

On 20 June 2011, the respondent submitted the following evidence:

- Certificate of the Municipal Assembly of Mitrovicë/Mitrovica no. 18 dated 24 May 2004 which proves that F. B. underwent legalization proceedings of the building located in "Brigada 142" street at his own request;
- The possession list 3300 of Department for Cadastre, Geodesy and Property of the Municipality of Mitrovicë/Mitrovica, dated 02 November 2008, which establishes that parcel 350 is registered under the name of Municipal Assembly of Mitrovicë/Mitrovica as socially-owned property.

The KPA verification team has positively verified these pieces of evidence.

On 11 October 2011, the claimant objected the allegations of the respondent by stating that, according to the Ruling of the Department of Urbanism, Municipal affairs, Housing and Construction of the Municipality of Mitrovicë/Mitrovica under 08 No. 463-300, dated 25 November 1994, the municipal land was allocated to him for temporary use and construction of the temporary premise in parcel number 350. The temporary premise for construction is with surface 64 m^2. Therefore, the claimant proposed his right on use to be recognised and to have the respondent evicted from the premise.

According to the verification report, all aforementioned documents are positively verified by the KPA verification team.

On 19 April 2012, with Decision KPCC/D/C/153/2012 the Commission dismissed the claim due to lack of jurisdiction. In the reasoning of the decision it is stated that the claimant had the right to use the construction land for a period of 5 years, including the temporary premise. The claimed property had to be considered as movable premise pursuant to Article 9 of the Law on Property and

Other Real Rights (Law No 03/L-154). Therefore, pursuant to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC had no jurisdiction to decide.

On 06 September 2012, the decision was served to B. M., who lodged an appeal with the Supreme Court on 04 October 2012 (hereinafter: the appellant). The decision was served to F. B. in the capacity of the respondent on 2 October 2012.

The appellant explained that the temporary business premise was allowed by the competent body of the Municipality of Mitrovica, based on decision 08 nr. 463-300, dated 25 November 1994, which premise, being temporary, was constructed in surface of 64 m^2. He alleged that the appealed decision is based on erroneous and incomplete determination of facts. The appellant requested from the Court to annul the KPCC decision to return the case for reconsideration the decision and to recognize the appellant the right to restitute the use of property and damage compensation.

Legal Reasoning

The appeal was filed within the time limit of 30 days as set out in the Law (Section 12.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Following the consideration of submissions and the appellate allegations, pursuant to Article 194 of the LCP, the Supreme Court found the following:

The appeal is unfounded.
The KPCC has accurately assessed the evidence when it ruled that the claim is out of its jurisdiction.

Pursuant to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the claimant is entitled to an order from the Commission for repossession of the property if, the claimant shall not only evidence the ownership of private immovable property, including commercial and agricultural land, but also she or he is currently unable to exercise the ownership rights due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. Taking into account the aforementioned legal provision, the jurisdiction of the KPA Property Claims Commission, subsequently the Supreme Court, is exclusively limited to resolution, adjudication and to decide upon claims for immovable private property rights, including the commercial and agricultural immovable property. It is undisputed the fact that as per the Decision of the Department for Urbanism, Municipal Affairs, Housing and

Constriction from the Municipality of Mitrovica, dated 25 November 1994, the claimant/appellant, was allocated the municipal land followed by a construction permit of a temporary structure for commercial purpose on this parcel.

Therefore, based on such established factual situation, the Supreme Court assesses that the Kosovo Property Claims Commission Decision rightfully decided to dismiss as impermissible the appellant's claim due to lack of jurisdiction, because according to the ruling of the competent body, the appellant was granted the right on use of land for a period of 5 years with a construction permit for a temporary premise on that land which is considered as a movable item. Therefore, the Supreme Court assesses that the claimed property pursuant to Article 9, paragraph 1 of Law on Property and Other Real Rights is considered as a movable item. According to this provision, temporary premises constructed on construction land, which is given for temporary use, as in the present case, are not considered as immovable. Furthermore, pursuant to Article 14, paragraph 1 and Article 26, paragraph 2 of the Law on Construction Land, Official Gazette of KSAK, number 14/80, it is provided that when a competent body for installation of temporary objects such as prefabricated type, then the same body is entitled as per needs of the urban plan, to dislocate the object at the user's own expenses. Furthermore, the temporary premise may neither serve as a matter for recognition of the property right nor be registered in the property register before the cadastral office.

Thus, the appealed decision does not involve any fundamental error or serious misapplication of the applicable material or procedural law. Furthermore, this decision does not rest upon an erroneous and incomplete determination of the facts, as alleged by the appellant.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However, such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as set out with Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees shall be applicable to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30

- court fee tariff for the issuance of the judgment (section 10.15, 10.21 and 10.1 of the AD 2008/2): 30 €.

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days. Article 47.3 stipulates that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee within the given deadline, enforcement of payment shall be carried out.

Legal Advice

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge **Esma Erterzi, EULEX Judge**

Sylejman Nuredini, Judge **Urs Nufer, EULEX Registrar**