

GSK-KPA-A-073/15

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA IMOVINSKA AGENCIJA, ŽALBENO VEÇE KAI**

GSK-KPA-A-073/15

**Prishtinë/Priština
2 August 2017**

In the proceedings of:

Sh.K.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 (the case file registered at the KPA under the number KPA00076), dated 18 June 2014, after the deliberation held on 2 August 2017 issues the following:

JUDGMENT

1. The Appeal of Sh. K. against the Decision of the Kosovo Property Claims Commission KPPC/D/C/248/2014, dated 18 June 2014, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPPC/D/C/248/2014, as far as it concerns the case registered at the KPA under the number KPA00076, dated 18 June 2014, is confirmed.

Procedural and factual background:

1. On 22 November 2006, Sh. K. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”), seeking the repossession of the business premises with the surface of 21.40 m², located at the cadastral parcel No 2569/1, in “Xhon Kenedi” Street in the Municipality of Mitrovicë/Mitrovica (hereinafter “the claimed property”). He alleged that the loss of possession over the claimed property occurred on 1 April 2000 due to circumstances related directly to the armed conflict in Kosovo in the period between 1998 and 1999, as well as due to security circumstances existing at North Mitrovicë/Mitrovica.
2. Together with the Claim he submitted to the KPA *inter alia* the following documents:
 - The copy of the Decision No 351/195 issued by the Municipal Assembly of Mitrovicë/Mitrovica, Secretariat for Spatial Planning, Communal and Residential Affairs on 15 June 1987, which granted to the Appellant a permission “to construct a temporary business premise for shoemaking activity with the following parameters: 4 x 3 m, with total surface of 12,00 m², on the part of the passage belonging to the residential building, located on cadastral parcel 2569/1 in Ribara Street, 7, in Titova Mitrovicë/Mitrovica.
 - The copy of the Decision No 353-52 issued by the Municipal Assembly of Mitrovicë/Mitrovica on 21 May 1987 through which Sh.K. was allocated a cadastral parcel No 2569/1 and granted the permission to start construction on the facility of temporary character. Moreover the Decision stated that “when need arises of the urban plan for that location (...) the investor is required, even before the expiration of the validity of the Decision , to remove the temporary facility at his own costs, without the right for the compensation, within 8 days from receipt of the Decision”.
 - The copy of the Contract on Compensation of the Expenses for Investment on the Construction Land No 450/71 concluded between Sh. K. and the Social Fund for Development and Management of Construction Land from Mitrovicë/Mitrovica on 16 December 1991 on the basis of which the rights and obligations between the contracting parties regarding the construction of the object of temporary character were regulated.
 - The copy of the Contract on Compensation of expenses for Investment on the Construction Land No 01-298 concluded between Sh.K. and the Social Fund for Development and Management of Construction Land from Mitrovicë/Mitrovica on 20 December 1993 on the basis of which the rights and obligations of the contractual parties regarding the construction of object of temporary character were regulated.

- The copy of the Decision No 351/326 issued by the Municipal Assembly of Mitrovicë/Mitrovica on 12 January 1994 extending the validity of the Decision No 351/378 of 26 December 1991 through which Sh. K. was granted the permission for construction of a prefabricated object of temporary character, located at cadastral parcel No 2569/1.
- The copy of the Contract on Compensation of the Expenses for Investment on the Construction Land No 01-157 concluded between Sh. K. and the Social Fund for Development and Management of Construction Land from Mitrovicë/Mitrovica on 25 December 1995 in which the rights and obligations between the contractual parties regarding the construction of the temporary facility were regulated.
- The Copy of the Receipt of 25 December 1995 showing that Sh. K. paid the amount of 406.18 Serbian dinars as compensation for the investment on the construction land.
- The copy of the Ruling No 351/200 issued by the Municipal Assembly of Mitrovicë/Mitrovica on 26 December 1995 extending validity of the Ruling No 351-378 of 26 December 1991 until 25 December 1997 and granting to Sh. K. permission for construction of a temporary facility, located at the cadastral parcel No 2569/1. Moreover the Decision stated that “when needs arise of the urban plan for that location (...) the investor is required, even before the expiration of the validity of the Decision , to remove the temporary facility at his own costs, without the right for the compensation, within 8 days from receipt of the Decision”.
- The copy of the Contract on Compensation of the Expenses for Investment on the Construction Land No 01-8 concluded between Sh. K. and the Directorate for Construction Land and Roads from Mitrovicë/Mitrovica on 30 January 1998 for the period of 2 years until 25 January 2000 in which the rights and obligations between the contractual parties regarding the construction of the temporary facility were regulated.
- The copy of the Minutes of the Commission for Urbanism of 26 January 1998 whereby it is confirmed that the object of the temporary character was constructed in accordance with the technical conditions set out by the Commission.
- The copy of the Ruling No 351/321 issued by the Municipal Assembly of Mitrovicë/Mitrovica on 30 January 1998 extending the validity of the Ruling No 351-200 of 26 December 1995 until 30 January 2000 and granting the permission for construction of the prefabricated object of temporary character, located at the cadastral parcel No 2569/1. Moreover the Decision stated that “when needs arise of the urban plan for that location (...) the investor is required, even before the expiration of the validity of the Decision , to remove the temporary facility at his own costs, without the right for the compensation within 8 days from receipt of the Decision”.
- The copy of the Contract on Compensation of Expenses for Investment on the Construction Land No 01-8 concluded between Sh. K. and the Directorate for Construction Land and Roads from Mitrovicë/Mitrovica on 30 January 1998 which regulated the rights and obligations of the contractual parties regarding the construction of the prefabricated object of the temporary character.
- The copies of various receipts showing Sh. K. has performed payments as compensation for construction land.

3. On 10 August 2007 the Claim was notified to a person called T, who was present at the property, but did not sign a Notice of Participation.
4. The Executive Secretariat of the KPA managed to verify positively the documents submitted by the Appellant, while according to the Certificate for Immovable Property Rights UL-71208072-02152 which was obtained ex officio, the cadastral parcel No 2569/1 was found to be registered under the name of third party (B. C.).
5. On 18 June 2014, the Kosovo Property Claims Commission (hereinafter “the KPCC”), through its Decision KPPC/D/C/248/2014 dismissed the Claim due to lack of jurisdiction. In the reasoning of the Decision, the KPCC stated that according to the documentation submitted by the Appellant, he was granted the right to use temporarily the claimed property, and was authorised only to construct a moveable premises on it, rather than the immovable property. Therefore, pursuant to Section 3.1 of the UNMIK Regulation No 2006/50, as amended by the Law No 03/L-079, the KPCC had no jurisdiction to decide on the moveable objects
6. The Decision was served on Sh. K. on 12 November 2014. He filed an Appeal to the Supreme Court on 9 December 2014.

Allegations of the Appellant

7. The Appellant alleges that the KPCC’s Decision relies on erroneous and incomplete determination of the factual situation and wrongful application of the material law.
8. The Appellant declares that the claimed property was built within an annex of the former social building (five floors and three entrances) now privatized and he built it legally, having obtained a permission from the Municipal Authorities of Mitrovicë/Mitrovica. The Appellant stated that the claimed property has never been the subject of any dispute with the institutions; on the other hand it is now being occupied by the usurper A. S. with the nick name “T”. He added that he has been using the business premises continuously since 15 June 1987 until 1999, when the paramilitary unites forcefully displaced him from his house and business premises. Consequently, the Appellant requested the Supreme Court to quash the Decision, to accept the Appeal as grounded and to recognize his ownership right.

Legal reasoning:

9. 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, but dismissed it due to lack of jurisdiction.
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 not grounded. As it appears from the documents submitted by the Appellant, he obtained permission from the Municipality of Mitrovicë/Mitrovica to construct a temporary structure already in 70-ties. The initial Decision was subsequently extended several times. The last extension of the first Decision submitted by the Appellant was supposed to expire in the year 2000. There are no documents in the case file indicating that any decision extending the time for which the permission was granted was subsequently rendered. For that reason after the expiration in 2000 the Appellant 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 and the land beneath.

11. According to Section 3.1 of the Law No 03/L-079, Claimant is entitled to an order from the Commission for repossession of the property if he proves ownership over the private immovable property, or the right of using over the private immovable property, including agricultural and commercial property, and 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 Property Claims Commission of KPA, hence of the Supreme Court, is limited exclusively to resolving of and deciding on property claims for private immovable properties, including agricultural and commercial property.
12. The Supreme Court notes that as it appears from the Decision No 353-52 issued on 21 May 1987 by Mitrovicë/Mitrovica Municipality, the Ruling No 351/326 issued by the Municipal Assembly of Mitrovicë/Mitrovica on 12 January 1994, and all other documents submitted by the Appellant to support his Claim he was given the urban construction land for temporary use in order to construct a temporary facility at the cadastral parcel No 2569/1.
13. Article 9 § 1 of the Law on Property and Other Real Rights (Law No 03/L-154) provides that provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the case at hand are not considered immovable objects. Moreover, Article 14 § 1 and Article 26 § 2 of Law on Construction Land (Official Gazette of SAPK No 14/80) stipulates that when the competent body makes an allocation for provisional use for provisional needs of applicants in order to construct temporary prefabricated structures, 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. Similar condition was also included in each Decision extending the validity of the permission to use the municipal land
14. Considering the above, the Supreme Court is of the opinion that the arguments presented in the Appeal are not grounded and cannot lead to accepting of the Appeal. The claimed property was a temporary structure and could have been possessed only within the time limit indicated in the Decision granting the permission. As the claimed property is not an immovable property, the Claim having it as a subject matter could not have been examined by the KPCC as it fell outside its jurisdiction.
15. Another reason leading to the same conclusion was the fact, that the loss of possession of the claimed property, as indicated in the Claim, took place in the year 2000, while Section 3.1 of the Law No 03/L-079 clearly stipulates that the competence of the KPCC and thus of the Appeals Panel is limited to cases, where the loss of possession took place between 27 February 1998 and 20 June 1999.
16. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when dismissing the Claim of the Appellant. The Commission is right while considering that the Appellant has failed to prove to have lost the property right over the premise immediately prior or during the 1998/99 conflict. Consequently, the Supreme Court concludes that the Decision of the KPCC was correct and finds its legal basis in the law in force. The Appeal thus is ungrounded and has to be rejected.
17. Consequently, the Appellant's Appeal is rejected as ungrounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

18. Regarding the Appellant's request for compensation for the use of the property, under the Law No 03/L-079 neither the Commission, nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such a request.
19. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment
20. This Judgment does not prejudice the Appellant's right to pursue his rights for compensation, if there is any, before the competent courts.

Legal remedy

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Erdogan Haxhibeqiri, Judge

Sandra Gudaityte, EULEX Registrar