

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEÇE KAI**

GSK-KPA-A-043/15

Prishtinë/Priština,

12 October 2016

In the proceedings of:

S. M.

Represented by the lawyer M. B.

Claimant / Appellant

Vs.

Nobody

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/1232/2014 (case file registered with the KPA under no. KPA 10691) dated 13 March 2014, after deliberation held on 12 October 2016, issues the following:

JUDGMENT

1. The appeal of S.M. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014, with regard to the claim registered with the Kosovo Property Agency under no. KPA 10691 is rejected as unfounded.
2. The decision KPCC/D/C/232/2014 with regard to the claim registered with the KPA under no. KPA 10691 is confirmed.

Procedural and factual background

1. On 07 July 2006, S. M. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking re-possession of a commercial building premises of 46 m², located in “Meto Bajraktari” street, parcel no 616, Cadastral Zone Mitrovicë/Mitrovica. The Appellant alleged that he is a user of Publically-Owned land and owner of the hotel that has been usurped. He alleged that he has acquired the ownership right through an illegally constructed building constructed on Socially-Owned land but later he has obtained permission for temporary use of construction land and for exercising hotelier activities in the constructed building. He sought return under possession of the stated property.
2. In order to support his claim, he presented the following documents:
 - ID card issued on 18 February 2005 by the authority of the Republic of Serbia;
 - Decision 08 Br. 463-21 dated 16 January 1993 issued by the Municipality of Mitrovicë/Mitrovica, Unit for Urbanism, Housing and Legal Property Matters dated 16 October 1993. The Decision enabled the Appellant to temporary use the Socially-Owned land with a surface of 46 m². The provisional character building was to be used for hotelier services including offering of alcoholic beverages.
 - Decision 08 Br. 327-21 dated 26 February 1999, on extending the validity of allowing the use of Socially-Owned land;
 - Contract Nr.01-60/1 dated 26 May 1995 conducted between the public authority– Department for Construction Land and Roads of Mitrovicë/Mitrovicë and the Appellant, which defines the conditions for the compensation of expenditures for regulating the construction land.

- Permit 04 Nr. 332-78 dated 11.10.1993 on business development issued by the Municipality of Mitrovicë/Mitrovica, Section for Economy.
 - Decision 04 Nr.332-46 dated 30 April 1991 issued by the Section for Economy on the registration of the business activity in public records.
 - Copy of plan (urban location for the claimed property).
3. The KPA notified the claim based on the standard procedure on 16 February 2007 and proceed with the claim by placing a notification on the building wall on 13 April 2010. No one approached to the claim within the provided deadline, hence, the claim considered to be uncontested.
 4. The documents submitted by the Appellant were positively verified.
 5. In its cover decision KPCC/D/C/132/2014 as far as it regards the case registered with the KPA under no. KPA10691, the Kosovo Property Claims Commission (hereinafter: the Commission) decided that the property right holder in the concrete case acquired the provisional use right for the construction of a movable structure and therefore the claim stands to be rejected because it is out of the Commission's mandate as provided by Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.
 6. The Commission's Decision does not confirm any right over the property for parties who may be using the claimed property and neither does this Judgment.
 7. The Commission noticed that the Appellant seeks re-possession over an illegally-constructed premise constructed on public land without a construction permit, based on a decision for allowing provisional use of public land which was issued by the Municipality of Mitrovicë/Mitrovica on 16 January 1993. The Decision was of a provisional character and limited to legalization and using of a prefabricated building on public property and as such it did not enable the user to construct a building of permanent and immovable character.
 8. The Appellant was informed about the KPCC's Decision on 6 August 2014. On 22 August 2014, through his authorised representative he filed an appeal with the Supreme Court against the abovementioned decision.

Allegations of the Appellant:

9. The Appellant alleges that the Commission's Decision must be annulled with regard to the claim KPA10691 and case returned to KPCC as it rests on essential violation of procedural provisions; erroneous and incomplete determination of the factual situation and on misapplication of the substantive law.
10. In the reasoning of the appellate allegations he failed to prove any violation of the procedural law but stated that he had a Decision for using the construction land for a 5-year period from 1995 and that the same decision has been extended for another 5-year period until 2005. He

cannot use the property because it has been usurped and he adds that the use of the stated property was illegal and that the damage inflicted upon him from this use must be compensated to him. Moreover by alleging erroneous determination of the factual situation he shared the Commission's view that the constructed premises on socially-owned land was of provisional character and that the authorities reserved the right of displacing the stated premises based on needs and urban development. Nevertheless, he rejects the Commission's conclusion that the building is considered as a movable property and by raising the issue of compensation of materials that were used for the construction of the building alleged that the property – business premises were a private immovable property.

Merits of the appeal

11. After reviewing case submissions and appellate allegations pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo Nr.38/2008) (hereinafter: LCP), the Court, with regard to reviewing of the Judgment as per the official duty and for the stated and not stated reasons in the appeal, found that: the appeal is ungrounded.
12. KPCC made an accurate assessment of evidence when ruling that the claim is out of its jurisdiction. The KPCC presented complete, comprehensive, accurate, and lawful account and description on relevant facts for a correct decision.

Legal reasoning:

13. The appeal is admissible. It has been filed within the timeframe of 30 days as provided by Section 12.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.
14. However, the appeal is ungrounded. The KPCC Decision is correct; the case is not under the KPCC's jurisdiction.
15. According to Section 2.1 of the UNMIK Administrative Direction 2007/5 on the implementation of the UNMIK Regulation 2006/50 on the resolution of claims related to private immovable property including agricultural and commercial property, as amended by Law no. 03/L-079, hereinafter: Administrative Direction (AD)] “any person who **used to have** an ownership right, legal possession or any other legal right on using the private immovable property, who at the time of filing the claim cannot exercise his/her property right because of circumstances which directly relate to or result from the armed conflict which occurred between 27 February 1998 and 20 June 1999, has the right to return of his property right, as a property right holder”.
16. The law clearly provides that only the ownership right, legal possession or any other legal right of using the private immovable property may be subject of the procedure before the KPA. This

implies that the property which is not private remains outside the scope of the UNMIK Regulation 2006/50, respectively UNMIK Administrative Direction 2007/7.

17. In this case, according to the allegations in the appeal, the Claimant was in possession of the parcel 616 which is a publically-owned property and constructed a building on it and was under its possession.
18. The Commission found that by violating urbanistic legislation, the Appellant constructed a permanent character building and later acquired a provisional license on using the socially-owned land and opened a business. Namely, the Claimant had no “ownership right, legal possession or any other use right”, pursuant to Section 3.1 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, over the existing building because he constructed it in violation of the right that was issued to him by the Municipality and therefore right for provisional use was subsequently suspended based on the law. Additionally, the right of use was in violation of the law. What the Claimant had was the right of using the cadastral parcel where he was enabled to set up a provisional character object which could be removed at any time. Namely, he had the right of using the movable object.
19. It needs to be clear that the parcel was not subject of the dispute in this case, subject of the dispute which was defined by the claim filed previously with the KPA. The Claimant requested re-possession of the building – premises of 46 square meters located on the parcel. The Appellant did not claim ownership over the parcel neither in his claim nor in his appeal. Because of these reasons the Court did not review the case of ownership over the parcel.
20. As indicated above, pursuant to Section 2.1 of the UNMIK Administrative Direction 2007/5 “any person who used to have an ownership right, legal possession or any other legal right on using the private immovable property, who at the time of filing the claim cannot exercise his/her property right because of the circumstances which directly relate to or result from the armed conflict which occurred between 27 February 1998 and 20 June 1999, has the right to return of his property right, as a property right holder”. The Law clearly defines that subject of the dispute of claims filed before the KPA, respectively the Supreme Court in appellate proceedings may be only the rights related to immovable property. The movable objects are outside the scope of the implementation of this specific procedure. Therefore, the Commission acted properly because the Claimant was given the right of using a provisional-character building which could have been removed by the authorities at any time when it was needed for the implementation of the city’s regulative plan. This provisional use right ceased to exist except as loss of possession also as an expiration of the timeframe for using it. Consequently, the Claimant now has no “ownership right, legal possession or any other use right”, pursuant to Section 2.1 of the UNMIK Administrative Direction 2007/5, over the existing premises as long as it was constructed in violation of the right issued to him by the Municipality. It is clear that the claim in

relation to the premises is also outside of the KPCC jurisdiction, as it was established by the Commission.

21. The Claimant may have several legitimate requests towards the Municipality of Mitrovicë/Mitrovica if the Municipality uses *de facto* the constructed building in terms of “ungrounded acquisition”, as provided in Chapter II, Article 3 of the Law on Contracts and Torts, for materials and works he invested in the building, but if such claims were to be legitimate as regular claims by contractual obligations, they would have to be ruled by regular courts rather than by the Commission, respectively the Appeals Panel, which mandate is to solve the property disputes as provided under Section 2.1 of the UNMIK Administrative Direction 2007/5.
22. As much as it concerns the Appellant’s claim on compensation for the use of the property, pursuant to Law no. 03 / L-079 neither the Commission nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such a claim.
23. This judgment does neither preclude nor limits the right of the Claimant to seek his property rights before competent courts, if he so wishes.

Legal Advice

Pursuant to Section 13.6 of the 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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar