

**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-20/13

**Prishtinë/Priština,
25 June 2013**

In the proceedings of

V.V.
as heir of **O. V.**

Kraljevo

Claimant/Appellant

vs.

B. D.

Podujevë/Podujevo

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under No. KPA00974) of 6 June 2012, after deliberation held on 25 June 2013, issues the following

JUDGMENT

- 1- The appeal of V.V. against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 of 6 June 2012, as far as it regards the claim registered at the KPA under No. KPA00974 is rejected.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 of 6 June 2012, as far as it regards the claim registered at the KPA under No. KPA00974 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 June 2007, O. V. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of business premises with a surface of 27 m², located at Lenjinova Street lo. No.14 in Prishtinë/Priština. She explained that she had entered into a lease contract with FEC [notice of the Court: Public Housing Enterprise] respectively UNMIK for another year after 1999, yet not gotten into possession of the property. She explained that the property was lost on 1 June 1999. The claim was registered at the KPA under No. KPA00974.

To support her allegations, the claimant provided the KPA with receipts, showing that from June 1998 until May 1999 the claimant had paid telecommunication bills and similar costs for premises in Lenjinova Street.

The documentation submitted during the proceedings shows the following:

With contract 03-2088/1 of 24 September 1997 the Public Housing Enterprise in Prishtinë/Priština let the litigious premises to O. V. for the time period from 1 October 1997 to 1 October 1998. With contract 03-1798/1 of 1 October 1998, the contract was extended for the time period from 1

October 1998 to 1 October 1999. With contract No. 03-1584/1 of 28 September 1999 the lease was prolonged from 1 October 1999 until 31 December 1999.

On 27 October 2011, V. V. informed the KPA that his mother had died on 29 April 2009 (he submitted the respective death certificate), that he was her sole heir and requested that the property should be returned into his possession. He provided the KPA with contract No. 03-2088/1.

After notification of the claim, B. D. replied to the claim stating that in 2007 he had entered into a contract about the lease of the premises (the name of the street changed and the place where the premises are situated is now called street Mbreti Justin, nr. 8/15) and that he uses the premises. He provided the KPA with the relevant contract.

With its decision KPCC/D/C/160/2012 of 6 June 2012, the KPCC dismissed the claim. As the claimant's mother had lost possession before she left Kosovo, the KPCC could not find that the loss of the property was related to the armed conflict in Kosovo in 1998/1999 but rather to the expiry of the lease contract.

The KPCC's decision was served on V. V. on 15 November 2012.

On 14 December 2012, V. V. (from her on: the appellant) through the Executive Secretariat of the KPA filed an appeal with the Supreme Court of Kosovo. He claimed that his mother had died in 2009 and that he was her sole inheritor. He explained that his mother had extended the contract on the use of the business premises on 28 September 1999. Yet the premises were not returned into her possession. As his mother had been forced to leave Pristina in mid of 2000, the appellant considers that the claim falls within the scope of jurisdiction of the KPCC. He submitted contract No. 03-2088/1 of 24 September 1997 with which the Public Housing Enterprise let the litigious property to O. V. from 1 October 1997 until 1 October 1998.

The respondent did not reply to the appeal.

Legal Reasoning

The appeal is admissible, yet unfounded.

The Court agrees insofar with the KPCC as the case is not within the jurisdiction of the KPCC.

The Court agrees with the findings of the KPCC that the case is not within the jurisdiction of the KPCC or the Court because it cannot be assumed that the Claimant's mother lost the property because of circumstances "directly related to or resulting from the armed conflict" The claimant's mother according to the claimant's statements lost the property already before the lease contract was extended for the last time in 1999, she left Kosovo after the end of the conflict in 2000. Why the claimant's mother lost the property and in which way the claimant does not state. The Court in general assumes that the loss of property is conflict-related if the property right holder had to flee from Kosovo and his/her absence is used by another person to occupy the property. In this case, however, the claimant's mother already had lost possession of the premises before she left Kosovo, allegedly even before she had the lease contract extended in 1999. And it is not clear at all under which circumstances this loss of possession came about. In this situation the case cannot be considered as being war-related.

Furthermore, the case is not within the jurisdiction of the KPCC and the Court because the claimant does not request a "property use right" in the sense of Section 3.1 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. A lease contract for temporary lease does not provide any property use right as mentioned in this Section. Property use rights are real rights of use as described in Part VII of Law No. 03/L-154 on Property and other Real Rights, for example usufruct in things or real servitudes. These are rights that can be claimed against everybody. A lease contract, however, does provide only a so-called relative right of possession which can only be claimed from the lessee, not from anybody else. The right stemming from the lease contract therefore is no right which could be claimed in proceedings before the KPCC (see also the judgment of this Court of 24 August 2011, GSK-KPA-A-8/2011, <http://www.eulex-kosovo.eu/docs/justice/judgments/civil-proceedings/Appeal-Panel/GSK-KPA-A-811/GSK-KPA-A-8-11-ENG.pdf>).

At last, the Court wants to note that the claimant only could prove a right deriving from a temporary lease which ended on 31 December 1999. This means, that his mother did not have the right to

possession of the premises after this date. And as the right ended before the death of his mother, the claimant could not have inherited this right.

Consequently, the appeal had to be rejected as unfounded.

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 foreseen by the 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 apply 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 (10.21, 10.15 and 10.1 of AD 2008/2), considering that the value of the temporary use right could be reasonably estimated as being comprised at € 5.000: € 30 (see 10.15) .

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 for a person living outside Kosovo may not be less than 30 days and no longer than 90 days. The Court decides that a deadline of 90 days is given. Article 47 Paragraph 3 provides 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 in 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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar