

**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-135/12

Prishtinë/Priština,
17 July 2013

In the proceedings of

S.Č.

Claimant /Appellant

vs.

V. H.

Respondent/Appellee

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 number KPA10260) dated 19 April 2012, after deliberation held on 17 July 2013 issues the following:

JUDGMENT

1. The appeal of S. Č. is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 (case file registered at the KPA under number KPA10260) dated 19 April 2012 is confirmed.
3. Costs of the proceedings determined in the amount of € 60 (sixty euro) are to be borne by the appellant and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 22 January 2007, S. Č. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of the commercial premise with a surface of 35.63 m², situated in Prishtinë/Priština, "Rruga e Sremit", Block 2, no.20. The possession over this immovability was alleged to have been lost on 1 June 1999 as a result of the circumstances in Kosovo in 1998/1999. She was seeking confirmation of her ownership right and re-possession.

To support her claim, the claimant provided the KPA with the following written evidence:

- Contract nr.02-1163/1 dated 18 April 1995 for the construction of the business premise situated in "Rruga e Sremit " Entrance II, no. 20 with a surface of 35.63 m², entered between the Public Housing Enterprise and the claimant which was not certified by the Municipal Court in Prishtinë/Priština;
- Invoice no.1103/95 dated 18 April 1995;
- ID G-411580 dated 13 July 2006, issued by the competent internal affairs authority of Kosovo;
- Some other documents which are not related to this matter.

In 2008 the KPA notified the claim by putting a notification sign in the place where the parcel and commercial premise allegedly were situated, and the notification team found that this immovable property was under the possession of V. H., who alleged that this property was located to him for use by a third party.

The respondent in order to support his property right allegations regarding the immovable property which is subject of the claim has submitted the following documentation:

- Contract on joining of funds for the construction of business premises no. 03-1409/1 dated 4 September 2000, where it is established that the Public Housing Enterprise in the capacity of the seller has sold to the buyer V.H. the business premise located in “Pal Palucaj” street L-2, nr.20, with a surface of 35.63 m², with the contracted price of 102,792.55 DM. This contract has been certified by the Municipal Court in Prishtinë/Priština, Vr.Nr. 3313/2010 on 7 May 2010 and is identical with the allegation which is subject of the claim;
- Attestation 05-2155/23 dated 14 December 2000, issued by the Public Housing Enterprise, where it is established that the respondent has fully paid the purchase price for the premise in accordance with the contract;
- Minutes from the handover of keys to the commercial premise drafted for the procedure between the Public Housing Enterprise and the purchaser of the premise dated 9 February 2011 where it is established that the purchaser-respondent has received into possession the premise no.20 located in “Pal Palucaj” street, Block 2;
- V. H.ID card, issued by UNMIK Administration on 28 June 2001;

All these documents have been positively verified by the KPA.

With its Decision KPCC/D/C/153/2012 dated 19 April 2012, the KPCC dismissed the claim with the reasoning that the Claimant has not paid the full purchase price for the premise in accordance with the contract and that this commercial premise started to be constructed in 1998-99 and that this property was not finished and neither was under her possession.

For these reasons, namely because the claimant has never been under the possession of the stated property and that she failed to pay the entire purchase price for the commercial property, she could not acquire the ownership right over this property. Furthermore, the Commission explains that the claimant has a legal right to ask for the compensation of the damage for the amount of the purchase price that she has paid to the public housing enterprise, by addressing her case to a regular court.

On 25 October 2012 the KPCC decision was serviced on the claimant.

On 29 October the respondent has received the KPCC decision but did not file a response to the appeal.

The appellant filed an appeal on 22 November 2012 where she challenged the KPCC decision alleging that it consists on erroneous and incomplete establishment of the factual situation and misapplication of material law and proposed that by granting her appeal as founded her ownership right is confirmed and the claimed property returned under her possession.

Furthermore, she states that in compliance with contract 02-1103/1 dated 18 April 1995 she has paid the majority of the purchase price for the business premise located in “Rruga e Sremit” currently “Eqrem Qabej” street, premise no.20 with a total surface of 35.63 m² and because of that the public housing enterprise has made a mistake when it sold the same premise to the respondent-appellee. The appellant alleges that she failed to pay the full purchase price based on the contract because she had moved out of Kosovo. Therefore she asks from the Supreme Court the confirmation of her property rights over the business premise and its return under her possession.

Legal reasoning:

The appeal is admissible as it has been filed within the legal deadline of 30 days from the day of the receipt of the decision, pursuant to Section 12.1 of UNMIK Regulation nr. 2006/50 as amended by Law no. 03/L-079 on the resolution of claims which relate to the immovable property, including agricultural and commercial land.

The Supreme Court concludes that the appealed KPCC decision rests on correct and complete establishment of the factual situation and accurate application of substantive law and that the same decision does not rest upon essential violation of the provisions of Section 182 paragraph 1 and 2 of LCP and provisions of Article 194 of LCP for which this court is acting *ex officio*.

Therefore by rejecting the appeal of the appellant as ungrounded this decision is confirmed as rightful and lawful.

The factual conclusions and legal standpoint of the KPCC bringing the appealed decision are fair and lawful when it decided to dismiss the claim filed by the claimant because of the lack of jurisdiction pursuant to Article 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

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 of private immovable property, but also that he or she is not now able to exercise such property rights over that immovable property 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.

The contract nr.02-1163/1 dated 18 April 1995 for the construction of the business premise was not certified by a court. The Supreme Court considers that in accordance with Section 7 of the Contract for the construction of the business premise dated 18 April 1995, it was envisaged that the commercial premise is allocated for possession after it is finalized. In Section 8 of the same contract, it is envisaged that the premise shall be allocated to the appellant under her possession after the issuance of the use permit. Additionally, the appellant confirms that this premise was constructed in 2000 whereas she had left Prishtinë/Priština in July 1999 because of the conflict. Given that the premise was finalized at the end of 2000, which is after the armed conflict, she was not in position to lose the claimed property before or during the period of the conflict.

On the other hand, the appellant admits that she did not fully pay the sale price for the commercial premise. It is not disputed that the appellee based on contract 03-1409/1 dated 04 September 2000 certified in the Municipal Court in Prishtinë/Priština, Vr.nr.3313/2010 on 7 May 2010, bought the commercial premise claimed by the appellant and paid the full price to the seller Municipal Public Housing Enterprise and according to the record on the handover of keys dated 9 February 2001, he started to have the possession over that property.

In light of the above, the legal conclusion of the Commission dismissing the claim because of the lack of jurisdiction is correct. The Supreme Court rejects the appeal of appellant as ungrounded and confirms the decision of the KPCC issuing the decision pursuant to provisions of Article 13 par 3 subpar (c) of UNMIK Regulation 2006/50 as amended by Law no. 03-L-079.

This judgment does not exclude the right of the appellant to seek legal protection before a regular court with the exception of the jurisdiction envisaged by provision of Article 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03-L-079.

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, dismissal of the claim the maximum fee is 30 Euro which is included in that amount, based on Section 10.15 in conjunction with Section 10.1 of AD no.2008/2 of the Kosovo Judicial Council on Unification of Court Fees.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees, the deadline for fees' payment by a person with residence or domicile in Kosovo is 15 (fifteen) days. If the appellant fails to pay the fees within the deadline, the fees will be collected by enforcement and a fine will be imposed on the appellant (Article 47.3 and 4 of the Law on Court Fees).

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

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar