

**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-207/13

Prishtinë/Priština, 21 January 2014

In the proceedings of

D. N.,
Vushtrri/Vučitrn

Appellant

vs.

M.M.
Mitrovicë/Mitrovica

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/176/2012 (case file registered at the KPA under the number KPA10681), dated 24 October 2012, after deliberation held on 21 January 2014, issues the following:

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/C/176/2012 (regarding the case file registered at the KPA under the number KPA10681), dated 24 October 2012, is annulled, and
2. The claim of M.M. regarding the case file registered under the number KPA10681 is dismissed in absence of jurisdiction.

Procedural and factual background:

1. On 28 June 2006, M. M. filed a claim with Kosovo Property Agency (KPA), seeking to be recognized as the owner of a business premises located in Mitrovicë/Mitrovica, at “Ivo Lola Ribar” street no. 14, with a surface of 34 m². He bought this business premises from B. Xh. according to the sale contract vr.nr.65/05 dated 14 January 2005 and he never had possession over this premises, because the same was occupied by the respondent. Possession of this immovable property was lost by B. Xh. as a result of circumstance in Kosovo in 1998/1999.
2. To support his claim, the claimant provided the KPA with the following evidentiary documents:
 - a. Contract of sale vr.nr.65/05, dated 14 January 2005, which under Article 1 provides that the seller B. Xh. sold to Mitrovic Milorad a part of the premises-passage located in Mitrovicë/Mitrovica, at “Ivo Lola Ribar” street no. 14, with a surface of 18 m² from the total surface of 34m²,
 - b. Annex contract vr.nr.842/11e dated 26 May 2011,
 - c. Contract of sale dated 18 February 1993.These contracts were positively verified.
3. On 28 December 2007, the KPA notified the claim by putting a sign at the place where the business premises were allegedly located. It turned out to be a commercial property and it was in possession of the respondent.
4. Through its decision KPCC/D/C/176/2012, dated 24 October 2012, the KPCC granted M. M. claim, by deciding that he had proved to be the property title holder over the business premises located at “Ivo Lola Ribar” street no. 14, a passage to the building S-3, in Mitrovicë/Mitrovica and recognized his possession right.
5. On 29 May 2013, the KPCC’s decision was served on the claimant.

6. On 05 July 2013, N. D. (henceforth: the appellant) filed an appeal with KPA, stating that according to the Judgment AC.nr.111/2006 dated 08 May 2006, by the District Court of Mitrovicë/Mitrovica, the Judgment C.nr.356/2005 dated 14 November 2005 of the Municipal Court of Mitrovicë/Mitrovica was annulled. This on grounds that according to the contract entered on 18 February 1983, B. Xh. had bought the premises-passage indicated in Article I of this contract, with a surface of 18 m², from E. S. and he therefore could not have sold the premises with a surface of 34 m² to M. M. Also, according to the claim of the claimant M. M. for obstruction of possession of the disputed business premises, the Municipal Court of Mitrovicë/Mitrovica through its Ruling C.nr. 137/2005 dated 09 March 2005, rejected the statement of claim as ungrounded, finding that the respondent did not obstruct the claimant's possession.
7. On 17 October 2013, the appeal was served on the claimant (henceforth: the appellee) whom did not file a response to appeal.

Legal reasoning:

8. The appeal is admissible.
9. Pursuant to Section 12.1 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on resolution of claims related to immovable property, including agricultural and commercial property, a party may file an appeal within thirty (30) days of notification of parties of the decision.
10. According to the notification report, dated 28 December 2007, the respondent-appellee was identified but he was not informed of the KPCC decision, and the appeal is therefore admissible. This circumstance relating to the lack of notification of the KPCC decision cannot be to the detriment of the appellant; since he actually was not informed of the appealed decision and that he has a legal interest in this case regarding confirmation of ownership according to the claimant.
11. The Supreme Court concludes that the appealed KPCC decision was rendered in essential violation of provisions of Article 182 para 2 subpara b of LCP Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, these violations are of an absolute nature and to be observed ex-officio by this court. Therefore, the appealed decision is annulled on such ground and the claimant's claim is dismissed due to absence of jurisdiction of this court and subsequently of the KPCC pursuant to provision of Article 198 para 1 of LCP.

12. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the claimant is entitled a Commission order on repossession of property if the claimant not only proves the ownership over that property but also that he or she is not able to exercise the rights over such property due to circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
13. It is established that the District Court of Mitrovicë/Mitrovica in its Judgment AC.nr.111/2006 dated 08 May 2006, annulled the Judgment C.nr.356/2005 dated 14.11.2005 of the Municipal Court of Mitrovicë/Mitrovica. This on grounds that B. Xh. bought the premises-passage from E. S. as indicated in Article I of the contract entered on 18 February 1983 in a surface of 18 m². Therefore, B. Xh. could never have sold that premises to M. M, with a surface of 34 m².
14. Furthermore, according to the claim of the claimant M. M. for obstruction of possession of the disputed business premises, the Municipal Court of Mitrovica through its Ruling C.nr. 137/2005 dated 09 March 2005, rejected the statement of claim as ungrounded, finding that the respondent did not obstruct the claimant's possession. According to the lawsuit of the claimant M. M. as well as according to the record of the main trial of Municipal Court of Mitrovica, C.nr.137/2005, dated 09 March 2005, he stated that he possessed the business premises from Article 1 of the immovable property sale contract vr.nr.65/05 dated 14 January 2005 until 15 January and after this date the same was used by N. G.. Hence, it is clear that the claimant failed to submit legally valid evidence that he was displaced from the claimed property or that he lost possession and control of such property as a result of conflict between the time period of 27 February 1998 and 20 June 1999. The record of the main trial of Municipal Court of Mitrovica, C.nr.137/2005, dated 09 March 2005, even indicates that he possessed the business premises until 15 January. Ever since, the same was used by the appellant.
15. Therefore, since the claimant failed to prove that he is the owner of the claimed property and consequently failed to establish the fact that he is not able to exercise the rights over such property due to circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, this legal case is not within jurisdiction of KPCC and subsequently of the Supreme Court.
16. In the light of foregoing, the KPCC appealed decision, as falling outside its jurisdiction, should be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

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

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar