

**JSUPREME 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-157/13

**Prishtinë/Priština,
29 January 2014**

In the proceedings of

N. M.

Serbia

Claimant/Appellant

vs.

Respondent/Appellee

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esmā Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/201/2013 (case file registered at the KPA under the number KPA34226), dated 18 April 2013, after deliberation held on 29 January 2014 issues the following

JUDGMENT

1. The appeal of N. M. filed against the decision of the Kosovo Property Claims Commission KPPC/D/C/201/2013, regarding the claim registered at the KPA under the number KPA34226 dated 18 April 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPPC/D/C/201/2013, regarding the claim registered at the KPA under the number KPA34226 dated 18 April 2013, is confirmed.

Procedural and factual background:

1. On 01 April 2007, N. M. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of property-business premises. He claims to have been the owner of this business premises under no. 175, with a surface of 9m² within the clothes market in Prishtinë/Priština. To support his claim, he submitted a contract on asset and labour joining dated 19 November 1997 and a certification dated 16 April 1998. His property was occupied by unknown person.
2. The claim is registered under KPA34226.
3. He alleges that he lost the property due to circumstances related to the armed conflict in Kosovo in 1998/99.
4. On 01 July 2009, the KPA officers went to the place where the business premises were located and found that the structure was destroyed.
5. According to the verification report, dated 25 September 2008, all indicated documents were negatively verified by the KPA verification team on grounds that they are not in possession of documents before 1999 and the fact that the enterprise "E. D" is not existent any longer.
6. On 18 April 2012, Kosovo Property Claims Commission (KPCC), through its decision (KPPC/D/C/201/2013, dismissed the claim in absence of jurisdiction. Justifying its decision, the KPCC underlined that according to the contract the claimant was entitled to construction of a provisional structure and temporary use of that structure – kiosk and that the claimed property should have been considered as a movable structure.
7. Pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC was competent to decide on the immovable properties only.
8. On 17 June 2013, the decision was served on N. M. and he filed an appeal with the Supreme Court on 08 July 2013 (hereinafter: the appellant).
9. The appellant explained that the business premises were immovable structure, since they were permanently attached to the ground. The structure built there is of solid material. Therefore, the appealed decision was issued in essential violation of procedural law and erroneous application of material law.

10. The appellant requests from the Court to annul the KPCC decision regarding the proceedings and send the same back to KPCC, or to reconsider the decision and recognize the appellant's rights to restitution of property user right.

Legal reasoning:

11. The appeal is admissible because it has been filed within 30 days as foreseen by law (Section 12.1 of UNIK Regulation 2006/50 as amended by Law No. 03/L-079).
12. Following the review of the case files and appellate allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
13. 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 right or user right of private immovable property, including agricultural and commercial property, but also 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.
14. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is limited exclusively to resolution, adjudication and settlement of property right claims for private immovable property, including agricultural and commercial immovable property. It is not disputable that according to the contract on asset and labour joining no. 1991 dated 19 November 1997 and a certification dated 16 April 1998 (Section 4), the appellant under the license no.353-697/1 was entitled to tenancy right over the structure until the change of destination of urban land, and after the change of destination he was obliged to dislocate the structure – kiosk from the trade centre. The claimant/appellant was allowed to place temporarily a prefabricated structure – kiosk at the trade centre under no. 175, with a surface of 9m² in Prishtinë/Priština, which is an urban land. The claimant was obliged to dislocate this prefabricated structure of provisional character pursuant to the order issued by the competent body for adjustment of construction land at his own expenses, without compensation and without granting the right to another surface, which in fact was done by the competent municipal body in Prishtinë/Priština.
15. Therefore, in light of these factual conclusions, the Supreme Court considers that the appealed decision of the Property Claims Commission was right and lawful when it decided to dismiss as impermissible the appellant's claim due to lack of jurisdiction. This is because according to the decision of the competent body, the appellant had the right to set up a provisional prefabricated structure – kiosk for temporary use which is considered as a moveable asset. The Supreme Court also considers that the claimed property according to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights is treated as moveable asset. According to this legal

provision, provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered as immovable assets. Moreover, the provisional premise can be neither a matter for recognition of property right and nor be registered in the property register of cadastral office. Therefore, the appellant's allegations that the provisional prefabricated structure is an immovable property are ungrounded, inadmissible and unlawful. The KPCC has jurisdiction over the conflict- related matters with respect to only immovable properties as set out clearly in Section 3 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079.

16. This is because according to the facts established and the evidence disposed, it certainly results that the appellant in capacity of urban land user enjoyed only the provisional user right and subsequently the construction of a prefabricated structure.
17. The appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law.
18. In the light of foregoing and pursuant to Law (Section 13.3.C of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079) it is decided as in the enacting clause of this decision.

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 appealed.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Holger Engelmann, EULEX Registrar