

**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-108/13

**Prishtinë/Priština,
23 April 2014**

In the proceedings of:

A.J

Claimant/Appellant

vs.

M.M

and

Chamber of C.

Respondents/Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 (case file registered at the KPA under the number KPA11140), dated 14 December 2012, after deliberation held on 23 April 2014, issues the following

RULING

1. The appeal of A.J is accepted.
2. The case is send back to the KPCC for adjudication on the claim for repossession (case file registered at the KPA under the number KPA11140).

Procedural and factual background:

1. On 2 October 2007 the appellant, then claimant A.J filed a claim at the Kosovo Property Agency (KPA), seeking repossession over commercial property of 100 sq m on 20 “Vidovdanska” str. in Pristina. He also claimed compensation for not using his property and wanted to be paid compensation for the destroyed inventory.
2. He presented a contract concluded in December 1996 with the Chamber of C. of Kosovo and Metohija. The subject of the contract was the renting of the disputed property from the Chamber of C. to him for the exercise of catering business. The contract was for 5 year period, starting as of 1 December 1997 until 2001 (art.3 of the contract). The contract was subsequently amended and turned into a contract with indefinite duration.
3. He presented numerous other documents related to the usage of the premises after 1997: *e.g.*, a food hygienic certificate from the sanitary inspection, contract for the heating of the place, etc.
4. It is not disputed that the claimant used the premises from 1998 till 1999 when he had to leave Kosovo because of the armed conflict.
5. The premises were notified and M.M responded to the claim. He explained that a third person allowed him to use the property. From the documents in the file becomes clear that M.M pretends to have been given the right to use the property from the Kosovo Chamber of C..
6. A second respondent was included in the procedure - the Kosovo Chamber of C. The Chamber of C. on its turn disputes the right of M.M to use the property.
7. Whatever disputes there may be between M.M and the Kosovo Chamber of C. they are irrelevant for this case, because the current subject is the alleged right requested by the claimant A.J not the disputes between M.M and the Kosovo Chamber of C.
8. At certain point of the procedure in front of the KPCC the Executive Secretariat considered that the claimant has modified his claim and is no longer claiming repossession, but only

- compensation. According to the report of the Secretariat, they contacted the claimant and in telephone conversation he stated that he only claims monetary compensation.
9. The KPCC dismissed the claim for compensation as falling outside the competence of the Commission.
 10. The KPCC did not render a decision with regard the claim for repossession because it considered the claim to have been withdrawn.
 11. The decision was served on the claimant on 27 March 2013. He filed an appeal the same day.
 12. The respondents/now appellees did not respond to the appeal.

Allegations of the appellant:

13. The appellant asserts that he did not withdraw his request for repossession. He asked KPA to present him with evidence that he has done so. Afterwards someone from the Agency called him and confirmed that there was no written request for the withdrawal of his claim for repossession.

Admissibility of the appeal:

14. The appeal is admissible. It has been filed the same day the decision was served on the claimant, now appellant.
15. As long as the judgment of the KPCC is only appealed on grounds that the KPCC has not adjudicated on the claim for repossession, the appeal should be considered as a request to render a supplemental judgment – argument after art. 164.3 of the Law on Contested Procedure from 2008 (hereinafter LCP), applied *mutatis mutandis* to the procedure in front of the Supreme Court by referral of section 12.2 of the UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by Law 03/L-079 from 2008 (hereinafter Law 03/L-079).
16. It is true that the decision of the KPCC was only rendered with regard to the claim for compensation. There is no adjudication regarding the claim for repossession. In addition to that there is no data in the file that the claimant withdrew this claim.
17. Law 03/L-079 does not explain what is the required form of a withdrawal, it prescribes explicitly only for a special written form of the claim - section 2 of Annex II of UNMIK/DIR/2007/5 as amended by Law 03/L-079.
18. However the Law on Administrative Procedure (Law No. 02/L-28), applicable *mutatis mutandis* in front of the KPCC by referral of section 11.1 of the Law 03/L-079, in art. 51.1

- prescribes that withdrawal of the request to commence an administrative proceeding should be made through a written declaration.
19. Even without this provision a withdrawal from a property claim under Law 03/L-079 could not be accepted as validly made if not done in written form. If the Law (section 2 of Annex II of UNMIK/DIR/2007/5 as amended by Law 03/L-079) prescribes for a written form of the claim itself, the withdrawal should be made in written as well (argument by analogy), unless prescribed otherwise, which is not the case.
 20. Therefore the appeal/request for the supplement of the decision of the KPCC, together with the decision and the file have to be send to the first instance, which is the KPCC, for adjudication on the claim for repossession.
 21. On the basis of the above and in accordance with section 12.2 of Law 03/L-79 and art 164.3 of the LCP the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the 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

Erdogan Haxhibeqiri, Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar