

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-019/14

Prishtinë/Priština, 4 November 2015

In the proceedings of:

L.S.

Vidikovački Venac 67/II, stan no. 11

Beograd

Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/C/208/2013 (case file registered at the KPA under the number KPA13454) dated 11 June 2013, after deliberation held 4 November 2015, issues the following

JUDGMENT

1. The appeal of L.S. against the decision of the Kosovo Property Claims Commission no. KPCC/D/C/208/2013, dated 11 June 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims no. KPCC/D/C/208/2013 no. KPA13454 dated 11 June 2013 is confirmed as far as it concerns KPA13454.

Procedural and factual background:

1. On 13 September 2006, L.S. (hereinafter “the Claimant” or “the Appellant”) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession of a business premises. He claims he is the owner of the shop/kiosk no. 6 of 10.00 m², allegedly located on parcel nr. 19819 of Cadastral Zone Prishtinë/Priština, street “Vidovdanska” opposite the post office, Municipality of Prishtinë/Priština (hereinafter “the claimed property”). He further requested compensation of the damage of the claimed property and rent for the occupied period.
He alleges that he lost possession of this kiosk on 31 July 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
2. To support his claim, he submitted the following documents:
 - Decision of the Secretariat for Urbanism, Construction and Environment of the Prishtinë/Priština Town Assembly 02.No.353-2654 dated 28 January 1997 (henceforth: the Construction permit). According to this document the Claimant is given approval to install-construct kiosk no. 9 at location Street “Vidovdanska” at parcel nr. 19819. The decision is valid for two years;
 - Agreement between the Claimant and a person named L.J. , dated 14 April 1997 (henceforth: Agreement on exchange). By this agreement they agreed to make an exchange of the place for installation of the kiosk in “Ulpiana” in part of the cadastral parcel no. 19819 Cadastral Zone of Prishtinë/Priština. They agreed that the kiosk no. 6 will be used by the Claimant and no. 9 by L.J. .

3. On 8 October 2007, KPA notified the claim by putting a poster on the claimed property. KPA found the claimed property occupied by N.H. He did not claim a legal right to the property. On 24 September 2010 and 9 February 2011 KPA confirmed the accuracy of the previous notification of the claimed property.
4. On 12 March 2007 and 5 October 2007, KPA tried to verify the Construction permit submitted by the Claimant. The Department of Urbanism confirmed on 12 March 2007 the authenticity of the document and the signature of the authorized person, but stated on both occasions that they do not have the document. In the Consolidated Verification Report, dated 3 March 2010 KPA concluded that the verification is negative. KPA could also not verify the Agreement on exchange positively. KPA further established *ex officio* on 18 February 2010 at the Department of Cadaster that parcel No. 19819 does not exist within the cadastral records.
5. On 11 June 2013, the Kosovo Property Claims Commission (KPCC) with its Cover Decision KPCC/D/C/208/2013 dismissed the claim. In the reasoning of its decision (paragraphs 27, 28 and 41), the KPCC indicated that according to the submitted evidences the Claimant had acquired only a temporary use right over the claimed property and was therefore only authorised to build a movable structure on the property. The KPCC states further that accordingly the claim relates to movable property and not to private immovable property, so the KPCC has no jurisdiction. The KPCC further reasons that regarding the claim for compensation for physical damage and for loss of use of the claimed property KPCC has no jurisdiction. KPCC also dismissed this claim.
6. On 27 August 2013, the KPCC decision was served on Claimant. He filed the appeal before the Supreme Court on 3 September 2013.

Allegations of the Appellant:

7. The Appellant alleges that the KPCC decision (hereinafter “the appealed decision”) is based on an erroneously and incompletely established factual situation and erroneously implementation of substantive law. He states that the dismissal of his claim was based on the

establishment that he acquired only a temporary right to use the claimed property and therefore was authorised to build a movable structure on it (the kiosk). Het states that this ground is not legally substantiated.

8. The Appellant explained that all books related to real rights in the territory of the Socialist Federative Republic of Yugoslavia (SFRY) define movable property as that what can be moved easily from one place to another, without changing its nature. The “structure” (kiosk) built by him is incorporated in the ground on which it was built and it cannot be moved without changing its nature. So it is an immovable property.
9. Further, the Appellant states that even if the structure would be disregarded he has the right to use the land on which the structure was built. The fact that the right to use the land was provisional cannot be taken as basis for dismissal of the claim. The Appellant states also that the decision ordering him to remove the claimed property has never been made. He adds that because of the circumstances directly related to or deriving from the armed conflict that occurred in 1998/1999 and because of the illegal occupation by another person he was prevented to use the claimed property.
10. Finally, the Appellant proposes to the Supreme Court to grant his appeal and make a decision confirming that he is entitled to repossess the claimed property. He does not challenge in appeal the decision of KPCC on the claim for compensation.
11. In order to support his appeal, the Appellant submitted the same documents presented in the proceedings before the KPA/KPCC. He further requests the Supreme Court to schedule a hearing.

Legal reasoning:

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law

UNMIK 2006/50). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the Appeal

13. The Supreme Court denies Appellant's request to schedule a hearing because the interests of justice do not require holding a hearing (Section 12.10 Law UNMIK 2006/5). Furthermore there is no need to establish new facts or collect new evidence through a hearing (Article 190.2 Law on Contested Procedure).
14. According to Section 3.1 of the Law UNMIK 2006/50 KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.
15. In this case Appellant claimed before KPCC only ownership right and repossession of the kiosk no. 6, the claimed property, and not repossession of the parcel. KPCC decided only on the claim on the kiosk. As far as the grounds in appeal are related to the use right on the parcel, these grounds are outside the scope of the appellate review and the Supreme Court cannot take these grounds in consideration (Article 194 Law on Contested Procedure).
16. KPCC concluded on the basis of the presented evidence that Appellant acquired a temporary use right on the parcel (a socially owned parcel) and was therefore only authorized to build a movable structure.
17. This reasoning of KPCC is not sufficient in this case. KPA could not verify the Construction permit. But even more relevant in this case is that the (alleged) Construction permit only relates to another kiosk (no. 9), while Appellant is claiming a property right for kiosk no. 6. Also the Agreement on exchange was not verified positively. Besides, for transfer of an

(immovable) property on the basis of a contract like the Agreement on exchange in 1997 was needed a contract in writing and the signatures of the contracting parties certified by the competent court (Article 4.2 of the Law on Transfer of immovable property, OG SRS 43/81). The alleged Agreement on exchange does not even contain a certification by the competent court. This means that Appellant did not prove to have any property right to the claimed property (kiosk no. 6). On this basis the claim had to be rejected by KPCC.

18. In article 203 of the Law on Contested Procedure is stipulated that the Supreme Court deciding in second instance may not amend the decision of the KPCC in first instance to the detriment of Appellant if he is the only party that has filed an appeal. This provision is applicable mutatis mutandis in this situation according to Section 12.2 of Law UNMIK 2005/60. Since changing the decision from dismissal on the basis of lack of jurisdiction to refusal of the claim is to the detriment of Appellant, the Supreme Court cannot amend the KPCC decision in this case.
19. Consequently the appeal has to be rejected as unfounded and the decision of the KPCC to be confirmed according to Section 13.3 (c) of Law UNMIK 2006/50.

Legal Advice:

Pursuant to Section 13.6 Law UNMIK 2006/50, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anders Cedhagen, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar