

**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-171/14

**Prishtinë/Priština,
9 March 2016**

In the proceedings of

S.M.B.

Norvezanska 33/4

Leskovac, Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 (case files registered at the KPA under the numbers KPA16096 and KPA16097), dated 27 November 2013, after the deliberation held on 9 March 2016, issues the following

JUDGMENT

1. The Appeals filed by S.M.B. , registered under the numbers GSK-KPA-A-171/2014 and GSK-KPA-A-172/2014, are joined in a single case under the number GSK-KPA-A-171/2014.

2. **The Appeals filed by S.M.B. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, with regard to the Claims registered with KPA under Nos. KPA16096 and KPA16097 are rejected as unfounded.**

3. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, with regard to the Claims No KPA16096 and KPA16097, is confirmed.**

Procedural and factual background

1. On 22 September 2006, S.M.B. (henceforth: the Appellant) filed two separate Claims with the Kosovo Property Agency (hereinafter: the KPA), registered under the case No. KPA16096 and case No. KPA16097, seeking the repossession of two business premises, both in a parcel No.1024/1 with surface of 56 square meters (Claim registered under No.KPA16096) and 38 square meters (Claim registered under No.KPA16097) located on 43 Trg Republike str. in Pejë/Peć (hereinafter: the claimed property).
2. With the Claims the Appellant submitted *inter alia* to the KPA:
 - Allocation Decision No.463-1244/98-I/8 issued by Municipal Assembly of Pejë/Peć on 22 December 1998 on allocation for permanent use without compensation the city construction land to the Appellant, namely cadastral parcel No.1024/1 on two plots of total surface of 47 square meters on which he constructed two business premises: on western side of the parcel with surface of 28 square meters and on eastern side of the parcel with surface of 19 square meters. According to the enacting clause of the decision the land is allocated for use with aim to legalize parcels for permanent use of above business premises where the user is conducting services registered with the competent economic body in Pejë/Peć.
3. The KPA obtained *ex officio* Certificate for Immovable Property Rights No.2608/2007 which lists Municipality of Pejë/Peć as an owner of cadastral parcels No.1024/1 where the claimed property was built.
4. The KPA received also a confirmation from Municipality of Pejë/Peć that the abovementioned allocation decision does not exist in their archives and according to “Department for Legal and Property Issues” does not have any legal effect- the verification is negative.
5. The KPA contacted the appellant and asked for submission of additional documents proving the claimed property right. The appellant informed the KPA that he does not possess any additional documents.

6. The claims were notified on 27 June 2007, 21 July 2008, 04 August 2008, 02 September 2010, 04 May 2012 and 08 November 2012. The claimed property was found not occupied. Nobody participated as a respondent in the procedure.
7. On 27 November 2013, the KPCC with its Decision KPCC/D/C/224/2013 refused the Claims with reasoning that the Appellant has failed to establish ownership or any other property right over the claimed property.
8. The KPCC Decision was served on the Appellant on 13 March 2014. On 10 April 2014 Appeals were filed by the Appellant.

Allegations of the Appellant

9. In his Appeals, the Appellant alleges that the Decision of the KPCC involves incomplete determination of the facts and erroneous implementation of material law. The Appellant states that he submitted enough evidences on the basis of which the claimed property rights could have been confirmed. The Appellant requests the Supreme Court to recognize his right to repossession over the claimed property.

Legal reasoning

Admissibility of the Appeals

10. The Appeals were filed within the time limit of 30 days set in Article 12.1 of the Law No. 03/L-079 and it is admissible.

Joining the Appeals

11. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 states that the Supreme Court can decide upon joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This Section allows the Supreme Court to take into consideration the joining or merger of appeals in order to review and render judgments when there are common legal and evidentiary issues.
12. The provisions of Law on Contested Procedure that are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read in conjunction with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.

13. In the text of Appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective Appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in two cases. Only the parcels, subject of the property right which is alleged in each Claim, are different. The Appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Claims is the same one.
14. Therefore the Appeals registered under GSK-KPA-A-171/14 and GSK-KPA-A-172/14 are joined in a single case under the number GSK-KPA-A-155/14.

Merits of the Appeal

15. Contrary to the allegations of the Appellant, the Supreme Court is on opinion that the Appellant has not presented enough evidences for the claimed property rights to be confirmed. With the presented Allocation Decision No.463-1244/98-I/8 issued by Municipal Assembly of Pejë/Peć on 22 December 1998 the Appellant has been given the right of permanent use without compensation over cadastral parcel No.1024/1 on two plots of total surface of 47 square meters on which he constructed two business premises: on western side of the parcel with surface of 28 square meters and on eastern side of the parcel with surface of 19 square meters. The KPA obtained ex officio Certificate for Immovable Property Rights No.2608/2007 which lists Municipality of Pejë/Peć as an owner of the abovementioned cadastral parcel and also received a statement from Municipality of Pejë/Peć that the presented Allocation Decision No.463-1244/98-I/8 does not exist in their archives and according to "Department for Legal and Property Issues" does not have any legal effect. It can be concluded that the verification is negative.
16. The appellant failed to present any other evidence in support of his allegations.
17. Accordingly, the KPCC was correct to refuse the claims. Neither violation of substantive law nor an incomplete determination of the facts has been made. Therefore the Supreme Court finds the Appeals unfounded.
18. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar