

**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- 084/14

**Prishtinë/Priština,
2 December 2015**

In the proceedings of:

TWO “N.”

with its branch

in 18000 Niš

“Pobede” road, No 42

Republic of Serbia

represented by

B.M(lawyer)

Appellant

v.s.

O.Q

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013 (case file registered at the KPA under the number KPA00068), dated 21 August 2013, after the deliberation held on 2 December 2015, issues the following:

JUDGMENT

1. **The Appeal of the Company TWO “N.” against the Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, regarding the case file registered at the KPA under the number KPA00068, dated 21 August 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, is confirmed as far as it regards the claim registered with KPA under No. KPA00068.**

Procedural and factual background:

1. On 22 November 2006, B.M. , acting as an authorized representative of the company TWO “N.” (henceforth: the Appellant), filed a claim with the Kosovo Property Agency (KPA) regarding the commercial object-shop (henceforth: the claimed property) with a surface 276.65 m², located in Dardanija street, in the Municipality of Prishtinë/Priština.
2. To support his claim he provided the KPA with the following documents:
 - The Power of Attorney dated 18 April 2006 showing that the TWO “N.” had authorized B.M. to act on behalf of the Appellant before the KPA.
 - The Contract on Joint Means for construction of the business premises No.03/2-5041/1 dated 14 July 1986, concluded between the Company TWO “N.” and Self-Managing community of interests for housing and business premises in Prishtinë/Priština.
 - The Certificate No 3693/1, dated 10 June 1987, according to which the Self-Managing community of interests for housing and business premises confirms that the Company TWO “N.” bought the claimed property as specified in a Contract on Joint Means.
 - The invoice dated 10 June 1987, issued by the Self-Managing community of interests for housing and business premises in Prishtinë/Priština showing the final calculation regarding the claimed property.
 - The request of the Company TWO “N.” to the Kosovo Trust Agency for the Agency’s consent and confirmation that there are no obstacles for the sale of claimed property.
 - The Response of the Kosovo Trust Agency dated 16 March 2006, in which the Kosovo Trust Agency did not approve the sale transaction.
 - The Pre-Purchase Contract (not certified) dated 29 November 2006 concluded between TP “N.” in the capacity of the seller and F.L. as buyer of the surface 192 m² of the claimed property.
 - A Statement dated 29 May 2007, by which TWO “N.” confirms that F.L. is using a part of the commercial object with the consent of the Company. In the statement it was specified that F.L. has made a Pre-Purchase Contract regarding the claimed property, namely he has purchased 192 m² of it, and thus, the decision should be made considering only the remaining part of the commercial object.
3. The physical notification of the claim was carried out on 09 January 2013 and reflects the property as shop which is divided into three parts (three shops). The first shop was occupied by F.L. (henceforth: the Appellee 1) who declared that he had a permission to use it, whereas the other two shops were used on the basis of rent contract by F.L. and E.F. , who declared that both of them were paying rent to O.Q. . The latter person

(henceforth: the Appellee 2) claimed a legal right to the claimed property as he had invested in the shop.

4. On 09 January 2013, the Appellee 1 and the Appellee 2 joined the proceedings before the KPA. To support their allegations, they submitted inter alia the electricity bills, however, they were not considered as substantial evidence, hence, the Executive Secretariat of the KPA has not verified them. None of the Appellees submitted neither the claim, nor reply to the Appellant's claim. Both of them though alleged to have the title to use the premises: the Appellant 1 by stating that he had bought 192 m² of it in 1986 and the Appellant 2 by stating that he entered into oral agreement with the Appellee 1 to rent parts of the property to the third persons.
5. According to the findings of the Executive Secretariat, the Appellee 1 has been using the whole of the claimed property since after the conflict: one part (shop) he has been using for himself and other two parts (shops) he had rented out to third persons through the oral agreement, inter alia to the Appellee 2. Moreover, the property is under the administration of the Privatization Agency of Kosovo, but the latter did not participate in the proceedings before the KPA, despite it was contacted and informed by the KPA timely.
6. According to the Verification Report dated 02 November 2007, the Contract on Joint Means submitted by the Appellant was verified positively.
7. On 21 August 2013 the Kosovo Property Claims Commission dismissed the claim in certified Decision number KPCC/D/C/216/2013. In paragraph 34 of the said Decision, it is stated that the claim relates to the socially-owned property and not to private property, as the Appellant has submitted the claim on behalf of socially-owned enterprise. Pursuant to Section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission's jurisdiction was limited to claims related to private immovable property.
8. On 26 June 2014, the Decision was served on A.P. (the director of the TWO "N."), since she has revoked the Power of Attorney given to B.M. . A.P. confirmed that she will continue with the proceeding before the KPA. The Appellant subsequently: on 18 February 2014 filed the Appeal through the lawyer B.M. .
9. O.Q received the Decision on 05 December 2013 and he did not file any Response to the Appeal.

Allegations of the Appellant

10. The Appellant states that the Decision issued by the KPCC was rendered in violation of the substantive and procedural law, as well as contains the erroneous and incomplete determination of the factual situation.

11. The Appellant alleges that the claimed property is under private ownership of N. and not the ownership of any socially-owned Enterprise as concluded wrongly by the Commission.
12. The Appellant additionally presented new evidence in support of his allegations:
 - The Decision No.1787/99, dated 23 February 2000 issued by the Commercial Court of Nis in regards to the registration of the transformation of the Enterprise into a joint stock company and harmonization with the Law for Enterprises.
 - The Certification No. 02-301/1, dated 11 February 2008, issued by the Public Housing Enterprise in Prishtinë/Priština, through which the Public Housing Enterprise confirms that the TWO “N.” has bought the claimed property and the latter has met all the financial obligations towards the Public Housing Enterprise.
 - The Certificate for the Immovable Property Rights No UL-71914059-07473, dated 10 December 2013, issued by the Cadastral Municipality of Prishtinë/Priština, showing as the last changes those made on 25 November 2013 in the name of the TWO “N.”.

Legal reasoning

13. The Appeal is unfounded and thus it is to be rejected for the following reasons. The Appellant requested the repossession of the claimed property underlying that, contrary to what the KPCC established, the shop is not a socially-owned property, as the Company has undergone the restructuring and was transformed into a joint stock company. The Appellant submitted the documents confirming that fact: the Decision of the Commercial Court in Niš taken on 23 February 2000.
14. The Supreme Court is of the opinion that the allegations of the Appellant may not however, have any influence on the merits of the case. The claimed property is located within the territory of the Republic of Kosovo and the law applicable in Kosovo apply to it. The claimed property was registered as the socially-owned property at the time of the alleged loss of the possession of it and for that reason it was and remains under the administration of – first the Kosovo Trust Agency, and now the Privatisation Agency of Kosovo. According to Section 5.1 (a) (ii) of UNMIK Regulation 2005/18, the Kosovo Trust Agency had the authority to administer any assets located in the territory of Kosovo, which comprised socially – owned property as at 22 March 1989.
15. It is worth mentioning that, at the moment of the alleged loss of possession of the claimed property, the status of the Appellant was: the Socially – Owned Enterprise. Any changes of the Appellant’s structure of organisational or legal character conducted before the Court in the Republic of Serbia after the conflict may not have the impact on the property situated in Kosovo.
16. Independently of what was mentioned above, the Supreme Court observes that the Appellant was aware of the fact which was the status of the property, as in 2006 it addressed the Kosovo Trust Agency the request for the accordane of it regarding the sale of the property. The request was refused by the KTA on 16 March 2006.
17. It is worth mentioning here, that the administration of the claimed property by the Privatisation Agency of Kosovo was confirmed by the latter one on 21 December 2012.

The PAK also indicated that there were two claims filed with it for the property which is object of these proceedings.

18. For all the above mentioned reasons in the view of the Supreme Court the KPCC did not have the jurisdiction to examine the case filed to it by the Appellant. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as adopted by Law No. 03/L-079 the jurisdiction of the Commission is limited to claims involving the private immovable properties. Being the claimed property the socially - owned, it is outside the scope of the jurisdiction of the KPCC. As a consequence the Decision issued on 21 August 2013 is a correct one and stands to be confirmed. The Supreme Court contends that the Decision does not involve any fundamental error or serious misapplication of the applicable substantial and the procedural law, nor it rests upon an erroneous or incomplete determination of the facts.

Legal Advice

Pursuant to Section 13.6 of Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar