

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-032/13

Prishtinë/Priština,
10 December 2013

In the proceedings of

Ž.M

Claimant/Appellant

vs.

B.A

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under the number KPA 33936) dated 6 June 2012, after deliberation held on 10 December 2013.

JUDGMENT

1. The appeal of Ž.M against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 regarding case file registered at the KPA under the number KPA33936, is rejected as unfounded.

2. The decision of the KPCC/D/C/160/2012 regarding case files registered at the KPA under the number KPA33936 is confirmed.

Procedural and factual background

1. On 31 May 2007 Ž.M filed a claim with Kosovo Property Agency (KPA), seeking ownership and repossession of a commercial object on parcel no. 763/1, Possession List UL. 72514036-01553, with the surface of 1120m², Cadastral Zone of Fushë Kosovë/Kosovo Polje, Municipality of Fushë Kosovë/Kosovo Polje. B.A responded to the claim within the time limit, claiming that he had bought the entire property, including the building claimed by Ž.M.
2. On 6 June 2012 KPCC dismissed the claim as inadmissible on the ground that the claimed property related to a movable property rather than to a private immovable property, and that the claim therefore was outside the jurisdiction of KPCC according to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No.. 03/L-079 (hereinafter: Law No. 03/L-079).
3. The decision was served on Ž.M on 4 December 2012. He appealed the decision on 18 December 2012. The appeal was served on Ajeti on 22 July 2013. He did not reply within the 30 day deadline.
4. The Supreme Court received the case file on 1 November 2013.
5. According to a contract dated 22 August 1994 the socially owned company Sloga gave Ž.M the right to install a temporary prefabricated construction for conducting trade business. By an annex to the contract, dated 18 February 1999, the contract was extended for a time period of 20 years, from the date of the annex. Sloga was privatized by Kosovo Trust Agency in 2005. In the annex it is stated that the extension is made due to the nature of the business that would be performed by the user and due to the funds the user had invested in building of the construction. Pictures show that the building is a permanent building, and not a temporary prefabricated construction. The building was erected in accordance with permission given by the municipality.
6. On 27 December 2006 the Kosovo Trust Agency gave leasehold of the entire property to the private company Lesna for 99 years. On 10 April 2006 this right was leased onwards to B.A, who is now in possession of the property, and who is the respondent in the case.

7. Ž.M has stated that he lost possession of the object on 20 June 1999. This statement has not been contested by B.A.

Arguments of the parties

8. Ž.M claims that he has the right to use the property for 20 years that is until 18 February 2019. He assesses the value of the right to the property to EUR 500 000. He lost his right because he had to leave Kosovo due to the armed conflict in 1998/1999. If he had not have had to leave, the usage right would not have stopped, and it can be logically assumed that the right would be extended beyond 2019.
9. KPCC has due to erroneous and incomplete assessment failed to establish that Ž.M is the legal possessor and user of the present user and legal owner of the premise, which in turn led to a wrong result.
10. Ž.M asks to be freed from the court fees in accordance with Article 7.1 of the Administrative Direction nr. 2008/02 on Unification of Court fees. He states that he is a pensioner with a minimal pension of appr. 156. From this pension he supports his family. He invested everything he had in the business premise in Fushe Kosovë/Kosovo Polje.
11. B.A has not responded to the appeal. Before KPCC he based his ownership/property right claim on a purchase made in 2006 after the socially owned company that owned the property had been privatized.

Legal reasoning

12. The appeal is admissible because it has been filed within 30 days as foreseen by section 12.1 of Law No. 03/L-079.
13. The Supreme Court agrees with KPCC that the claim is not within the jurisdiction of KPCC, and hence not within the jurisdiction of The KPA Appeal Panel, however with a different reasoning.
14. At the time when Ž.M made his claim on 31 May 2007, the contested property, which concerned a socially owned property, had already been privatized by the Kosovo Trust Agency.
15. Pursuant to Section 3.1 a) and b) of Law No. 03/L-079, a claimant has a right to an order by the Commission for re-possession of private immovable property if he/she proves the ownership over

private immovable property or property use rights, and that he/she is unable to exercise these rights due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

16. In this case Ž.M has claimed property right, a right to possession of a building he has built on socially owned property, in accordance with a 20 year lease agreement. As the claim relates to the right to use of socially owned property, and not privately owned property, the Supreme Court finds that the claim does not fall within the jurisdiction of KPCC, and accordingly not within the jurisdiction of the KPA Appeals Panel of the Supreme Court.
17. Based on this reasoning, it is irrelevant whether he was entitled to build a permanent structure.

Legal Advice

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

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Dag Brathole, EULEX Judge

Holger Engelmann, EULEX Registrar