

**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-99/13

**Prishtinë/Priština,
11 December 2013**

In the proceedings of

M.Z

Claimant/Appellant

vs.

E.Z

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/146/2012 (case file registered at the KPA under the number KPA00883) dated 29 February 2012, after deliberation held on 11 December 2013, issues the following

JUDGMENT

1. The appeal of M.Z against the decision of the Kosovo Property Claims Commission KPCC/D/C/146/2012, dated 29 February 2012, regarding case file registered at the KPA under the number KPA00883, is rejected as unfounded.
2. The the decision of the Kosovo Property Claims Commission KPCC/D/C/146/2012, dated 29 February 2012, regarding case file registered at the KPA under the number KPA00883, is confirmed.

Procedural and factual background:

1. On 05 June 2007, M.Z filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a commercial premises located in Prishtinë/Priština, “Dardania” 6/6 with a surface of 80 m², no. 2. He enclosed the sale contract no. 1718 dated 18.11.1991 and the certificate no. 1863 issued by the Meat Industry from Çoka, which proves that the claimant paid the entire sale price. This contract was not legalized by a competent court. On 17 November 2009, the Municipal Court of Prishtinë/Priština rendered its judgment C.nr. 1445/2006, by which M.Z’s lawsuit filed on 10 August 2006 is rejected. With this lawsuit he requested the court to oblige E.Z from Prishtinë/Priština to hand over to him the claimed commercial premises. These two pieces of evidence were positively verified.
2. He claims to have lost the immovable property due to circumstances related to the war of 1998/99 that occurred in Kosovo.
3. Notification of this commercial premise was done by the Executive Secretariat on 01 August 2008 and it was found occupied by E.Z.
4. The respondent claims that he uses the premises based on a lease contract dated 01 June 1993 concluded with the Meat Industry “Çoka” from Çoka and that the lessor is the owner of the business premises. This lease contract was not positively verified.
5. The PCCK dismissed M.Z’s claim due to the lack of jurisdiction. This is because pursuant to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the PCCK jurisdiction is exempted if the judicial proceedings related to the claim commenced prior to 16 October 2006, when this Regulation entered into force. As according to the claimant’s claim, the judicial proceedings commenced on 10 August 2006, his claim was dismissed.

6. The PCCK decision was served on the respondent on 14 June 2012 and on the claimant on 20 May 2013, who filed an appeal on 23 January 2013.
7. M.Z (henceforth: the appellant) appealed the KPCC decision, alleging that he bought the business premises. The premise was occupied by the respondent and who used a falsified lease contract. He wants the Supreme Court to reinstate his possession over the business premises.
8. The appeal was served on the respondent on 27 June 2013, who filed a response to the appeal on 25 July 2013. In his response he stated that the disputed premises is owned by the Meat Industry “Çoko” from Çoko and that he had a lease contract with it. He therefore proposed to the Court to confirm the KPCC decision and reject his appeal.

Legal reasoning

9. The appeal is admissible. It was filed within the time limit of 30 days as set in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.
10. Following the review and assessment of case files, the appealed decision and the appellant’s allegations, the Supreme Court decided that the appeal was unfounded and that the appealed decision is fair and lawful. This KPCC decision does not contain essential violations of legal provisions of LCP which are ex-officio observed by the Court pursuant to provisions of Article 90 of LCP.
11. The Supreme Court finds that the appealed KPCC decision was lawful when it dismissed M.Z’s claims as it does not fall within the Commission’s jurisdiction according to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. According to this legal provision, the KPCC jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/RG/2006/50 entered into force. Therefore, since judicial proceedings commenced on 10 August 2006 based on the claimant’s filed lawsuit before the Municipal Court, the KPCC had no jurisdiction and dismissed the filed claim. This KPCC decision is of procedural nature and it was not decided on the merits of the claimant’s claim.
12. Furthermore, the claimant in his statement given on 15 December 2010 affirms the fact that in October 1993 he handed the keys of the business premises over to his brother S. and to his son E., when he had to leave Kosovo. This statement does not show that the loss or the impossibility to exercise such property right is a result of the armed conflict that occurred in 1998/99 as set forth in provision of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. According to this legal ground, both the KPCC and the

Supreme Court have no jurisdiction to resolve claims that do not refer to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

13. The Supreme Court considers that the appealed KPCC decision is fair when it decided to dismiss the claim in absence of jurisdiction pursuant to Section 11.4 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, and it upholds it as such.
14. In the light of foregoing and pursuant to Section 13.3.c of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 it is decided as in the enacting clause of this judgment.

Legal advice

Pursuant to Section 13.6 of UNMIK 06, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar