

**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-102/13

Prishtinë/Priština,

11 December 2013

In the proceedings of

S.S

Claimant/Appellant

vs

A.M

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/184/2012 (case file registered at the KPA under the number KPA 14149), dated 14 December 2012, after deliberation held on 11 December 2013, issues the following

JUDGMENT

- 1- The appeal of S.S against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 (case file registered at the KPA under the number KPA 14149), dated 14 December 2012, is rejected as unfounded.
- 2- The decision of KPCC/D/C/184/2012 regarding case file registered at the KPA under the number KPA 14149, dated 14 December 2012 is confirmed.

Procedural and factual background:

1. On 14 September 2006 S.S (the claimant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession over a commercial building, described as a building with surface indicated as 15+11 square meters, situated in parcels 3435, 3295/2 in the Peje/Peć. The claimant declared that he is the owner of the property, which is usurped.
2. To support his claim he presented a decision of the Municipality of Peje/Peć, Department of urbanisation, housing and property–legal affairs from 16 September 1991. The decision allowed the claimant to build a temporary prefabricated object with dimensions of 2.20x5.00 meters. The temporary facility was to be used for craft activities. The decision stated that if the location is needed for the realization of urbanization plans the beneficiary of this permit (i.e. the claimant) will remove the facility without the right of compensation and insurance to that other space will be given to him for installation of the prefabricated object. It is not disputed that instead of installing a temporary prefabricated object the claimant has built two solid buildings, one of 15 and another of 11 square meters.
3. The KPA processed the claim by putting on a poster on 17 July 2007. The respondent A.M claimed he had the permission to use the property.
4. With cover decision KPCC/D/C/134/2012 regarding case file registered at the KPA under number KPA 14149 the KPCC has decided that the claim falls outside the mandate of the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as amended by Law No 03/L-079.
5. The Commission noted that the claimant seeks repossession of a building erected on the basis of a temporary allocation decision. The allocation decision was for the construction and the use of prefabricated structure on municipal land and as such did not allow the user to construct a permanent immovable object. The building of the permanent structures therefore is in breach of the permit.
6. The claimant was notified of the decision and filed an appeal with the Supreme Court against the aforementioned decision.

Legal Dispute

7. The appellant asserts that the decision of the KPCC was taken on the basis of erroneous and incompletely established facts. He claims that the building was of permanent nature that is not a movable structure (which is not disputable). He claims that he had owned the premises and was in a legal possession of the land. He alleges that UNMIK/REG/2006/50 and UNMIK/DIR/2007/5 do not require that the right of use awarded to be of permanent nature. Temporary right of use is not excluded from the jurisdiction of the KPCC. He had lost this right due to the armed conflict. In addition he asserts that lawful possession is not conditioned with the permanent right of use. In the cities the land was socially owned and no private person had ownership over the land, but only a right of use the land. He claims that it is uncontested that he had ownership over the construction.

Legal Reasoning:

8. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.
9. However, the appeal is ungrounded. The decision of the KPCC is correct; the case is not within the jurisdiction of the KPCC.
10. According to section 2.1 of UNMIK Administrative direction 2007/5, implementing UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural land and commercial property as amended by Law No. 03/L-079, hereinafter the Administrative direction (AD) “any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.
11. The Law clearly defines that only ownership right, lawful possession of or any lawful right of use of private immovable property could be subject to the proceedings in front of the KPA. This means that property that was not private remains outside of the scope of UNMIK/REG/2006/50, respectively UNMIK/AD/2007/5.
12. In this case the parcels were not part of the subject matter of the current case, which subject matter is defined by the claim that was filed with the KPA. The claimant requested repossession over a building (in fact two adjacent buildings one of 15 and the second of 11 square meters surface), situated in the parcels. Therefore it is irrelevant whether the claimant, now appellant was in possession of the parcel (*as he asserts in the appeal*).
13. Regarding the two adjacent buildings

As noted above according to section 2.1 of UNMIK Administrative direction 2007/5 “any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.

14. The Law clearly states that the subject matter of claims in front of the KPA, respectively the Supreme Court in the appeal proceedings could be only rights related to immovable property. Movable objects are outside the scope of application of this specific procedure.
15. In this regard the KPCC has rightfully accepted that the claimant was given the right to erect a temporary prefabricated object that could have been removed at any time when this would be necessary for the implementation of the city regulation plans. Exceeding the right given to him, the claimant has built a permanent building which he did not have right to. In this regard the claimant did not have “an ownership right, lawful possession of or any lawful right of use”, in the meaning of section 2.1 of UNMIK Administrative direction 2007/5, of the existing building as long as it was built in breach with the right given to him by the Municipality. It is an established principle in law that no one shall be permitted to profit from his own wrongdoings. The claimant had acquired neither the right of property nor the lawful possession, nor the use right over the building (because he did not have the right to build it in the first place) and no one can lose something he/she never had.
16. What the claimant had was the right to erect a temporary facility on a municipal land that could have been removed at any time (i.e. he had the right to use a movable object) and this right could not be pursued within the procedure in front of the KPA, because this procedure does not relate to either a movable object or factual situations like usage established without any right to it (which was the case of the claimant, who had the right to put a prefabricated construction on the land but instead he erected a permanent building). The procedure in front of the KPA is applicable only to lawful possession or lawful right of use of or to private immovable property. The established possession in the case was not lawful, because, as indicated the claimant did not have the right to erect a permanent building – see also section 2.1 UNMIK/DIR/2007/5, as amended by Law 03/L-079).
17. As seen from the above the claim regarding the building is outside the jurisdiction of the KPCC, as the Commission has accepted.
18. The claimant might have some legitimate claims towards the respondent A.V if he uses the *de facto* erected building in the framework of “acquiring without ground”, as defined in chapter II, section 3 of the Law of contracts and torts, for the material and labour the claimant had invested in the building, but if such claims would be legitimate, as regular obligation claims they should be decided upon by the regular courts and not by the KPCC, respectively the Appeals Panel, whose mandate is to resolve the property disputes as described in section 2.1 of UNMIK/DIR/2007/5.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, 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