

**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-125/13

**Prishtinë/Priština,
7 February 2014**

In the proceedings of:

V.Z.
Serbia

Claimant/Appellant

vs.

K. R.
Prizren

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/168/2012 (case file registered at the KPA under the number KPA25456), dated 05 September 2012, after deliberation held on 7 February 2014, issues the following:

JUDGMENT

1. The appeal of V. Z. filed against the decision of Kosovo Property Claims Commission KPPC/D/C/168/2012, dated 05 September 2012, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/168/2012, dated 05 September 2012 regarding the claim registered at the KPA under the number KPA025456, is confirmed.

Procedural and factual background:

1. On 23 April 2007, V. Z. filed a claim with Kosovo Property Agency, seeking repossession of property-business premises. He claims that he bought a kiosk from Mak International from Niš through the Municipality of Prizren, where he exercised a business activity thereafter. The kiosk has a surface of 4.2 m² and he bought the same in 1997.
2. This kiosk is located in Prizren, street UÇK, without number and it is occupied by L. R. from Prizren. He lost possession of this business premises due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 16 June 1999 as the date of loss.
3. To support his claim, he submitted a copy of plan of Cadastre and Immovable Property Service of Municipality of Prizren, issued in Kragujevac on 27 May 2008. This copy of plan establishes that the claimant had placed a kiosk on a part of parcel 4792 of cadastral zone of Prizren, registered in possession list no. 8415 with a surface of 4.2 m².
4. The claim was registered at the KPA under KPA25456.
5. On 15 January 2008, the KPA officers went to the place where the business premises – kiosk was located and found that the premises were occupied by K.R., who claimed the ownership right and expressed her readiness to participate in proceedings.
6. On 20 November 2008, the respondent, participating in proceedings before the KPA, denied the claimant's allegations.
7. To support her allegation, she submitted the Decision no. 04/4-353-3 issued by the Municipality of Prizren on 14 September 2001. According to the decision, the respondent is allowed to place the kiosk no. 3 at location 34 in a part of parcel 4792, on a road which is a socially-owned property at UÇK Street in Prizren. She states that she has legally placed the kiosk and that she bought the same from a third party, without specifying the seller's identity.
8. On 10 November 2011, the claimant appealed the respondent's allegations, stating that the kiosk was occupied by L.R. and asking him to be evicted from that premises and not K. S.-R.. He, therefore, asked to have K.R. response dismissed.
9. According to the verification report dated 04 October 2011, all said documents were positively verified by the KPA verification team.

10. On 05 September 2012, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/168/2012, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the decision of the competent body the claimant was entitled to provisional user right over a part of cadastral parcel no. 4992, which is a road in the city of Prizren and consequently to a prefabricated movable kiosk-business premises with a surface of 4.2 m².
11. Therefore, the claimed property should be considered as a movable object according to Article 9 of Law on Property and Other Real Rights (Law no. 03/L-154). On the other hand, pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC has no jurisdiction to decide on movable properties.
12. On 22 February 2013, the decision was served on V.Z. and he filed an appeal before the Supreme Court on 23 April 2013 (henceforth: the appellant). Whereas K. R. received the decision on 29 January 2013 in capacity of appellee and she did not file a response to appeal.
13. The appellant explained that he placed the kiosk according to the technical documentation issued by the competent body and that he legally acquired the user right over a part of cadastral parcel no. 4992, which is a road in the city of Prizren and consequently the property right over business premises with a surface of 4.2 m². Once these business premises were placed and constructed on construction land, they have become its integral part and they are therefore considered as an immovable object.
14. Therefore, the KPCC decision is grounded on incomplete determination of facts and their erroneous evaluation. The appealed decision also relies on misapplication of material and procedural law. The appellant wants the Supreme Court to annul the KPCC decision regarding this legal property case and send the case back to KPCC, or reconsider the decision and recognize the appellant's rights by returning the property under his use as a legal owner.

Legal reasoning:

15. The appeal has been filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).
16. Following the review of the case files and appellate allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
17. KPCC has accurately evaluated the evidence when it decided that the claims falls outside its scope of jurisdiction. KPCC gave full, comprehensive, clear, accurate and consequently lawful explanations and clarifications on crucial facts for a fair decision.
18. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the

claimant not only proves ownership right or user right of private immovable property, including agricultural and commercial property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is limited exclusively to resolution, adjudication and settlement of property right claims for private immovable property, including agricultural and commercial immovable property.

19. It is not disputable that according to the copy of plan of Cadastre and Immoveable Property Service of Municipality of Prizren, under the number 953-1/2008-204 issued on 27 May 2008 in Kragujevac, Republic of Serbia, it is established that the claimant had placed a kiosk on one part of parcel 4792 of cadastral zone of Prizren, registered in possession list no. 8415 with a surface of 4.2 m².
20. Therefore, in light of these factual conclusions, the Supreme Court considers that the appealed decision of the Property Claims Commission was right and lawful when it decided to dismiss as impermissible the appellant's claim due to the lack of jurisdiction, because according to the copy of plan, the appellant was granted the right to provisional use of a socially-owned property designated as a road in parcel 4792 of cadastral zone of Prizren, and a permit for provisional placement of that object in that parcel, which is considered as a movable object.
21. The Supreme Court also considers that the claimed property according to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights (Law No. 03/L-154) is a moveable object. According to this legal provision, it results that provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered as immovable objects. Moreover, Article 14 para 1 and Article 26 para 2 of Law on Construction Land (Official Gazette of SAPK no. 14/80) provides that when the competent body makes an allocation on provisional use for provisional needs of applicants for placement of temporary prefabricated structures, then that body has the right, in line with the needs of urban planning, to dislocate that structure on personal expenses of the user. A provisional premise cannot even be a matter for recognition of property right and neither can be registered in the property register of cadastral office.
22. Therefore, the appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law. This decision also does not rely on erroneous and incomplete determination of factual situation, as alleged by the appellant
23. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.

Legal Advice

24. 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

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar