

**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-093/13

Prishtinë/Priština,

12 February 2014

In the proceedings of

B.M.

Montenegro

Claimant/Appellant

vs.

H. H.

Prizren/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 (KPCC) KPCC/D/C/184/2012 (case file registered at the KPA under No. KPA 28538), dated 14 December 2012, after deliberation held on 12 February 2014, issues the following:

JUDGMENT

1. The appeal of B. M. filed against the decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012 (case files registered at the KPA under KPA28538) dated 14 December 2012, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/C/184/2012, as it relates to the claim in case file registered at the KPA under KPA28538, is confirmed.

Procedural and Factual Background:

1. On 5 March 2007, the claimant B. M., in her capacity as the member of the family household of V.M, filed a claim with the Kosovo Property Agency (KPA) asking for the repossession of the business premises located in the Street “Cara Dušana” No. 60 in Prizren. The claim was registered with the KPA under case no KPA 28538. Together with the claim, she submitted, *inter alia*, the copy of the rental contract No. 265 dated 19 February 1998, concluded between “Joint Stock Company Liria” from Prizren and “Company Bela” for the period starting from 19 February 1998 to 19 February 1999 and the copy of the minutes of extrajudicial settlement (without date and number) concluded between those two. Those documents are negatively verified by the Kosovo Property Agency (KPA).

2. KPA notified the claim on 31 July 2007. The property was being used by H.H. who claimed that he bought the property from the tender of privatization process. He filed a notice of participation claiming ownership and right to use. He submitted the copy of the “*Declaration of Transfer by the Kosovo Trust Agency*”, No. 1112/2008 dated 30 April 2008, “*acting for and on behalf of the Socially Owned Enterprise (SOE) ‘Liria’ Regarding the Transfer of Certain Assets and Obligations of SOE ‘Liria’ to Newco Liria Sheshi i Lidhjes së Prizrenit Shops L.L.C.*”, and the “*Agreement for the Sale of Ordinary Shares in Newco Liria Sheshi i Lidhjes se Prizrenit Shops L.L.C.*”, No. 1113/2008 dated 30 April 2008, “*by and between the Kosovo Trust Agency acting as trustee for and on behalf of SOE ‘Liria’ and N.T. Brev Petrol SH. P.K.*”. The documents submitted by the respondent are positively verified by the KPA.

3. During the proceedings, the claimant amended her initial claim stating that her son, who is the owner of the Company Bela, had invested in the conversion of the claimed property. She acknowledged that the property was sold to a third party during the privatization. Instead, she asked for compensation in the amount of 66.427 Euro as of as of 1st March 2000.

4. KPCC, with its Decision of 14 December 2012, dismissed the claim due to the lack of jurisdiction.
5. The KPCC Decision was served on the claimant on 26 March 2013. She filed an appeal challenging it on 2 April 2013.
6. The appeal was served on the respondent/appellee on 1 July 2013. He did not file a response to the appeal.

Legal Reasoning:

Admissibility of the Appeal:

7. The appeal has been submitted within the legal time frame of 30 days prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 and is admissible.

Jurisdiction:

8. The appellant maintains that the KPCC has jurisdiction to deal with such a claim. In order to conclude that the KPCC has jurisdiction over a claim: (1) such a claim should be related to a private immovable property; (2) the relief sought in the claim is to be recognition of ownership right or right of use over an private immovable property and/or re-possession of it; (3) the loss of possession should derive from the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. None of those conditions are met in the case at hand.

As for the initial claim asking for the repossession of the business premises:

9. First of all, if the appellant had ever concluded such a rental contract with SOE Liria and extended it even after 19 February 1999, such a claim does not fall under the jurisdiction of KPCC. Her letter addressed to the Kosovo Property Agency indicates that, even according to the standing of the appellant, the loss of possession of the rented premises does not derive from the circumstances of armed conflict as she asserts to have used it implicitly even after the conflict ended.
10. Secondly, despite of the fact the appellant defines the status of the Enterprise “Liria” as a Joint Stock Company, the documents in the file reveal that the Enterprise “Liria’ is not a private company.

11. “Liria” was a socially owned enterprise which was transformed into “Newco Liria Sheshi I Lidjes Se Prizrenit Shops L.L.C.” by the Kosovo Trust Agency. Eventually, the said assets were sold to the current possessor of the property via privatization process. The premises were not private immovable property but assets of a socially owned enterprise. As of filing of the claim with the KPA, the claims, including creditor or ownership claims, brought against an Enterprise or Corporation or claims involving recognition of a right, title or interest in the property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Kosovo Trust Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency, fall under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo pursuant to Section 4.1.c and 4.1.d of UNMIK Regulation No 2002/13. Furthermore, the new Special Chamber Law No 04/L-033, replacing UNMIK Regulation 2002/13 and UNMIK Regulation 2008/4, regulates the jurisdiction of the Chamber in the same way. It is stipulated in Article 4.1.5 of the Special Chamber Law that a claim alleging a right, title or interest with respect to any asset or property over which the Privatization Agency of Kosovo or the Kosovo Trust Agency has or has asserted administrative authority falls under the jurisdiction of the Special Chamber. KPCC does not have jurisdiction to deal with claims asking for recognition of ownership right over or repossession of an asset of a socially owned enterprise.

As for the amended claim asking for reimbursement of investments allegedly made:

12. In the amended claim, the appellant asked for the payment of 66.427,00 Euro as of 1 March 2000. A creditor claim asking for compensation for the investment made in an asset of a socially owned enterprise before its privatization does not fall under the jurisdiction of KPCC but that of Special Chamber of the Supreme Court.

13. Assuming that the appellant maintains and intends to prove that “Liria” is not a socially owned enterprise but a private company, a claim asking for reimbursement of the investment made would not fall again under the jurisdiction of the KPCC but that of a regular court. KPCC cannot deal with creditor claims in respect of private property according to Section 3.1a and 3.1.b of UNMIK Regulation 2006/50, as amended by Law No 03/L-079.

14. The Supreme Court considers that KPCC has no jurisdiction over a claim related to the rent of a socially owned enterprise or a creditor claim for investment allegedly made in such premises of a socially owned enterprise. Neither the initial claim nor the amended one is related to an ownership or usage right in respect of a private immovable property. The loss of possession does not derive from the circumstances involving or related to the armed conflict, either. Therefore, the appellant’s appeal is rejected as unfounded according to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079

Legal Advice:

15. 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 remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar