

**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-195/13

**Prishtinë/Priština,
19 February 2014**

In the proceedings of

B. M.

Mladenovac

Srbija

Appellant

vs.

N/A

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/201/2013 (case file registered at the KPA under the number KPA33094) dated 18 April 2013, after deliberation held on 19 February 2014, issues the following

JUDGMENT

1. The appeal of B. M. against the decision of the Kosovo Property Claims Commission KPCC/D/C/201/2013 (case file registered at the KPA under the number KPA33094) dated 18 April 2013 is rejected as unfounded.
2. The decision of the Kosovo Property Claims KPCC/D/C/201/2013 (case file registered at the KPA under the number KPA33094) dated 18 April 2013 is confirmed.

Procedural and factual background

1. On 13 February 2007 B. M. filed a claim with the Kosovo Property Agency (KPA), seeking ownership of a commercial building of 94 m² on parcel nr. 2275 registered in the possession list no. 409 in Gradina Suharekë/Suva Reka. With the claim he submitted a decision from the Municipal Assembly of Suharekë/Suva Reka dated 10 January 1997 giving him a right for temporary use of 30 m² for constructing a prefabricated object for performing business activities in Suharekë/Suva Reka. He also submitted a decision dated 9 February 1994 made by the Department of Economy and Finance of Suharekë/Suva Reka, giving him permission to run a shop.
2. On 6 April 2007 the KPA located the property and made a notification of the claim at the site. The KPA found that the parcel was used as a parking place by unknown person
3. The Kosovo Property Claims Commission (KPCC) treated the claim as uncontested. On 14 December 2012 the Kosovo Property Claims Commission (KPCC) with its Cover Decision KPCC/D/C/201/2013 (case file registered at the KPA under the number KPA33094), rejected the claim. In paragraph 19 and 20 in the cover decision, which according to the certified decision dated 24 May 2013 applies specifically to the claim, it is stated that the claim falls outside the jurisdiction of the KPCC in accordance with Art. 3.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*).

4. The KPCC decision was served on M. on 13. 25 June 2013. He appealed the decision to the KPA Appeals Panel of the Supreme Court on 5 July 2013. As no respondent has been registered, there is no appellee in the case. The Supreme Court received the case-file on 31 January 2014.

Allegations of the appellant

5. B.M. alleges that the decision of the KPCC is based on an erroneous and incomplete establishment of the facts and an erroneous application of the substantive law.
6. The KPCC has wrongly found that M. only had acquired a right of temporary use of the property. It is clear from former Socialist Federal Republic of Yugoslavia (SFRY) legislation that buildings are considered as real properties if they are incorporated in the ground, and are built as permanent premises.
7. It is undisputed that M. had legally obtained the right of use to the land, and that he had constructed a premise made of hard materials. The fact that the right of use was temporary cannot be used as a basis for rejection of the claim. He had the right of use in 1999, and would have had the same right today if there had been no conflict in Kosovo.
8. M. asks the Supreme Court to schedule a session in order to allow him to make a statement, and explain about the right of use, and what kind of premise was erected on the property.

Legal reasoning

9. The appeal has been filed within the time limit of 30 days set in Art. 12.1 of the Law No. 03/L-079, and is admissible.
10. By the decision No. 02.464-2330 made by the Department for General Administration and Property Related Matter of the Municipality of Suharekë/Suva Reka on 10 January 1997, M. was given land for temporary use. In the decision it is stated M. is obliged to remove the temporary building at his own expense if the parcel should be affected by the urban plan. M. has not indicated any evidence which could indicate that he has received permission to construct a permanent building on the property.
11. In accordance with Art. 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, ownership claims to and claims involving property use rights for private immovable property.
12. In view of this provision, it follows from the jurisdiction of the KPCC, and of the Supreme Court, that its jurisdiction is limited exclusively to resolution, adjudication and settlement of property right

claims for private immovable property, including agricultural and commercial immovable property. A right for temporary use of a property cannot be considered to be a property right to private immovable property. The Supreme Court refers *inter alia* to case GSK-KPA-A-19/2013.

13. M. has made the allegation that he has constructed a permanent building on the property, as defined by the relevant legislation of SFRY. The Supreme Court does not find it necessary to elaborate on whether the building that was actually erected on the property, was a temporary or a permanent building in a physical sense. It is clear from the evidence submitted that M. only was given permission to construct a temporary building. As stated in case GSK-KPA-A-102/2013, a citizen cannot obtain a right to construct a permanent building by exceeding the right that was actually given to him.
14. Accordingly The Supreme Court finds that M. alleged right of ownership does not relate to an immovable property, and that it is outside the jurisdiction of the KPCC in accordance with Art. 3.1 of Law No. 03/L-079.
15. In the light of foregoing, pursuant to Section 13.3 under (c) of Law No. 03/L-079, it was decided as in the enacting clause of this judgment.
16. The Supreme Court notes that an eventual claim from M. in connection with alleged violations of his right to temporary use of the property has to be filed before the ordinary courts of Kosovo.

Legal Advice

Pursuant to Section 13.6 Law No. 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer EULEX Registrar