

**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-160/13

**Prishtinë/Priština,
5 March 2014**

In the proceedings of:

S. D.
D. 17 16
23000 Z.
S.

Claimant/Appellant

vs.

N/A

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/193/2013 (case file registered at the KPA under the number KPA13927), dated 13 February 2013, after deliberation held on 5 March 2014, issues the following:

JUDGMENT

1. The appeal of S. D. against the decision of Kosovo Property Claims Commission KPPC/D/C/193/2013, dated 13 February 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/193/2013, dated 13 February 2013 regarding the claim registered at the KPA under the number KPA13927, is confirmed.

Procedural and factual background:

1. On 6 November 2006, S. D. filed a claim with Kosovo Property Agency, seeking confirmation of user right and repossession of property-business premises. She claims she was permitted to build the business premises on a parcel no. 7074, Cadastral Zone of Prizren, Municipality of Prizren. The business premises have a surface of 35 m².
2. The business premises are located in Prizren, street "Metohijska", in a place called Železnička Stanica, plot no. 15. She stated that the claimed property is occupied by R. K. from M./M., Municipality Prizren. She lost possession of the business premises due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 12 June 1999 as the date of loss.
3. To support her claim, she submitted a copy of Decision no. 04/4-351-195, issued on 1 October 1992 by the Municipality of Prizren. This copy of decision establishes that the claimant was given the location to set up a temporary building in a part of the cadastral parcel no. 7074, Cadastral Zone of Prizren, street "Metohijska", in a place called Railway Station, a land plot no. 15, in order to carry out with activities (not specified) and for a duration of 10 years, since the day the decision is passed.
4. The claim was registered at the KPA under KPA13927.
5. On 26 March 2007, the KPA officers went to the place where the claimed property was located and found that the premises were occupied by F. M., who did not claim a legal right to the claimed property and signed a notice of participation. In 2010, the KPA again issued the information regarding the claim, this time by publishing the claim in the Notification Gazette no. 3 and in the Bulletin of the Property Office of UNHCR. The Paper and the List were left in all Municipality and Municipal Courts in Region and Cadastral Office in Prizren. The samples of the same were also left to Regional Offices of UNHCR, Ombudsperson, ICO and CPRK.

6. According to the verification report dated 15 October 2007, the said Decision no. 04/4-351-195, issued on 1 October 1992 by the Municipality of Prizren, was positively verified by the KPA verification team. While searching for the parcel no. 7074, the KPA has found only parcel no. 7074/3, which according to the Certificate for the Immovable Property Rights no. P-71813068-07074-3, issued on 31 May 2011 by the Cadastral Zone of Prizren, Municipality of Prizren, is socially owned property.
7. On 13 February 2013, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/193/2013, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the evidence the claimant was entitled to provisional user right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property.
8. 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.
9. On 21 May 2013, the decision was served on S. D. and she filed an appeal before the Supreme Court on 20 June 2013 (henceforth: the appellant).
10. The appellant explained that she built the business premises with a solid material as a permanent building, incorporated into the ground, based on the Decision No. 01-011-84, issued on 8 December 1992 by the Municipality of Prizren, by which she was allocated with the land for 10 years and Decision No. 04/4-351-195, issued on 1 October 1993 by Department for Urbanism, Communal and Housing Services and Civil Engineering, by which the location for erecting of a business building was given to her.
11. Therefore, she claims that the KPCC decision is grounded on erroneous and incomplete determination of fact and failed to establish the built construction was an immovable property, and not movable property. The appealed decision also relies on misapplication of material and procedural law. The appellant wants the Supreme Court to render the decision by which would establish that she will be entitled to a repossession of a said business premise.

Legal reasoning:

12. 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).
13. Following the review of the case files and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.

14. KPCC has accurately evaluated the evidence when it decided that the claim falls outside its scope of jurisdiction. KPCC gave full, comprehensive, clear, accurate and consequently lawful explanations and clarifications on crucial facts for a correct decision.
15. 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.
16. It is not disputable that according to the Decision No. 04/4-351-195, issued on 1 October 1992 by the Department for Urbanism, Communal and Housing Services and Civil Engineering of the Municipality of Prizren, it is established that the claimant was given the location for erecting of a business premises on a parcel no. 7074, in street "Methoijska", in a place called Železnička Stanica, plot number 15. The permission was given for provisional placement of the premises in that parcel, which are considered as movable object-premises.
17. 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 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.
18. 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
19. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.

Legal Advice

20. 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

Esmā Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar