

**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-192/13

**Prishtinë/Priština,
19 March 2014**

In the proceedings of:

N. Š.

U. 4. a

B.

S.

Claimant/Appellant

vs.

N/A

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/192/2013 (case file registered at the KPA under the number KPA13944), dated 13 February 2013, after deliberation held on 19 March 2014, issues the following:

JUDGMENT

1. The appeal of N. Š. filed against the decision of Kosovo Property Claims Commission KPPC/D/C/192/2013, regarding the claim registered at the KPA under the number KPA13944 dated 13 February 2013, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/192/2013, regarding the claim registered at the KPA under the number KPA13944 dated 13 February 2013, is confirmed.

Procedural and factual background:

1. On 08 November 2006, N. S., as a family household member of the property right holder – her father, filed a claim with Kosovo Property Agency (KPA), seeking repossession of a property-business premise. She claims that her father, M. K. was the owner of the premise located at parcel 942/1 in Pejë/Peč, with a surface of 20 m².
2. To support her claim, she submitted the following documents:
 - Decision of the Municipal Assembly of Pejë/Peč, no. 02-463/83-2, dated 29 March 1985. By this decision, K. M. was permitted to place a provisional prefabricated object at parcel 942/1, with a surface of 20 m² in Pejë/Peč.
 - Decision of Secretariat for Urbanism, Municipal Services and Housing, no.05-351/1, dated 13 May 1985, by which K.M. from Pejë/Peč was entitled to erect a prefabricated object at parcel 942/1 in Pejë/Peč,
 - Copy of plan of Municipal Geodesic Department in Pejë/Peč, dated 12 October 1984, indicating the sketch of placement of a provisional object at parcel 942/1, with a surface of 20 m²,
 - According to Kosovo Cadastral Agency base information no. 3273 dated 14 June 2011, parcel 942/1 is a socially-owned property and the Managing Authority of Markets was entitled to its use.
3. She claims that she lost the property due to circumstances related to the armed conflict in Kosovo in 1998/1999. The claim is registered under KPA34226.
4. On 06 May 2010, the KPA officers went to the place where the business premise was located and found that it was occupied by an unknown person and that no person reported to participate in proceedings.
5. According to the notification report dated 14 June 2011; all the abovementioned documents were positively verified by the KPA verification team.
6. On 13 February 2013, Kosovo Property Claims Commission (KPCC), through its decision (KPPC/D/C/192/2013, dismissed the claim in absence of jurisdiction. Justifying its decision,

the KPCC underlined that according to the documentation and evidence presented thereof, the claimant was entitled only to erection of a provisional object and temporary use of that object and that the claimed property should have been considered as a movable object.

7. Pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the KPCC was competent to decide only on the immovable properties.
8. On 11 June 2013, the decision was served on N. Š. and she filed an appeal with the Supreme Court on 11 July 2013 (hereinafter: the appellant).
9. The appellant explained that the business premise was an immovable object, as it was permanently attached to the ground. The object built there is of solid material. Therefore, the appealed decision was issued in essential violation of procedural law and erroneous application of material law.
10. The appellant requests from the Court to annul the KPCC decision on this case and to send the same back to KPCC, or to reconsider the decision and recognize the appellant's rights for restitution of property user right.

Legal reasoning:

11. The appeal is admissible because it has been filed within 30 days as foreseen by law (Section 12.1 of UNIK Regulation 2006/50 as amended by Law No. 03/L-079).
12. 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.
13. 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.
14. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is exclusively limited to resolution, adjudication and settlement of property right claims for private immovable property, including agricultural and commercial immovable property. It is not disputable that according to the documentation (decisions) submitted by the appellant, she was entitled to the right of use over the object until the change of destination of urban land, and after the change of destination she was obliged to dislocate the prefabricated object. The claimant-appellant was entitled to place a prefabricated object of provisional character at parcel 192/1, with a surface of 20 m² in Pejë/Peč, which is an urban land. The appellant was obliged to dislocate this prefabricated structure of provisional character pursuant to the order issued by the competent body for adjustment of construction

land at his own expenses, without compensation and without granting the right to another surface.

15. Therefore, in light of these factual conclusions, the Supreme Court considers that the appealed decision of the Property Claims Commission was rightful and lawful when it decided to dismiss as impermissible the appellant's claim due to lack of jurisdiction. This is because according to the decisions of the competent body, the appellant or her successors had the right to set up a provisional prefabricated object for temporary use of that prefabricated object, which is considered as a moveable object. 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 is treated as moveable object. According to this legal provision, provisional prefabricated buildings, kiosks, and provisional prefabricated objects, such as in the concrete case, are not considered as immovable objects. Moreover, the provisional object cannot be a matter for recognition of property right and neither can be registered in the property register of cadastral office. Therefore, the appellant's allegations that the provisional prefabricated structure is an immovable property are ungrounded, inadmissible and unlawful.
16. This is because according to the facts established and the evidence disposed, it certainly results that the appellant in capacity of urban land user enjoyed only the temporary user right and subsequently the erection of a provisional prefabricated object.
17. The appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law.
18. In the light of foregoing and pursuant to Law (Section 13.3.C of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079), it is decided as in the enacting clause of this decision.

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.

Willem Brouwer, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar