

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-232/13

Prishtinë/Priština,

2 April 2014

In the proceedings of

D. J.

Serbia

Appellant

vs.

I. K.

Ferizaj/Uroševac

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Dag Brathole, Presiding Judge, Elka Filcheva-Ermenkova and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA29691) dated 18 April 2013, after deliberation held on 2 April 2014, issues the following

JUDGMENT

1. **The appeal of D. J. is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA29691) dated 18 April 2013, is confirmed.**

Procedural and factual background

1. On 3 April 2007 D.J. filed a claim with the Kosovo Property Agency (KPA) seeking ownership/property right and repossession of a garage with a surface 16 m² situated on Crnogorska/B. Jedinstvo St. on parcel no. 2029 registered on possession list no. 2950, Department for Cadastre, Geodesy and Property of the Municipality of Ferizaj/Uroševac. With the claim she submitted *inter alia* a decision of the Municipal Assembly of Ferizaj/Uroševac dated 27 October 1988, according to which she was given the right to install a prefabricated garage of temporary character on the property. J. also submitted a contract on usage of socially owned construction land dated 27 October 1988.
2. In the claim the date of loss was stated to be 10 June 1999.
3. I. K. responded to the claim on 30 June 2008. He claimed that he had bought the property from a third person.
4. In the case file of the KPA it is stated that I. K. has informed the KPA that the garage was demolished by the municipality in 2012.
5. On 18 April 2013 the Kosovo Property Claims Commission (KPCC) in Cover Decision KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA29691), dismissed the claim. The KPCC stated that the claim was outside its jurisdiction because the claimant only had a temporary use right over the claimed property.
6. The decision was served on J. on 23 July 2013. On 31 July 2013 she filed an appeal to the KPA Panel of the Supreme Court. The appeal has not been served on I. K. The Supreme Court received the case file on 26 February 2014.

Allegations of the parties

7. D.J. has alleged that the decision of the KPCC is based on erroneously and incompletely established facts, and erroneous application of substantial law.
8. J. asserts that her garage was an immovable building as defined by the textbooks of former SFRY, because it was:
 1. Incorporated in the land, and not laying on the ground
 2. Built as permanent structure and not for temporary use.
9. The fact that J. had a temporary right to use the land cannot be the basis for rejection of the claim. The contract on use states that J. would have to vacate the land if by program or plan another regulation of the land was prescribed, or if another building of general social character was decided. This was not the situation in J. case, she lost possession of the land because of the armed conflict in Kosovo in 1998/1999.
10. Accordingly it is clear that the garage was immovable, and that J. had lawful ownership or possession of the garage, and lost that right due to circumstances resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
11. I. K. has not been made aware of the appeal, and he has accordingly not responded to it. Before the KPCC he stated that he had bought the garage from a third person for a sum of 1 000 DM. K. has stated before the KPA that he is disappointed that the garage that he bought has been demolished. He does not accept any obligations to any party.

Legal reasoning

Admissibility

12. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of 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*).

The right of the parties to contradictory hearing

13. The Supreme Court notes that the appeal has not been served on I. K. From the case file, and from the wording of the appeal, it seems clear that D. J. has not been made aware of the statement by K. that the garage has been demolished by the municipality. Neither K. nor J. has been given the opportunity to comment on these respective issues. The Supreme Court has not found it necessary

to hear the parties view on these issues, before, as seen below, the Supreme Court finds it clear that claim does not fall within the jurisprudence of the KPCC.

Jurisdiction

14. In the decision dated 27 October 1988 J. is given a right to “install (a) prefabricated facility of temporary character” on the cadastral parcel no. 2029. In the contract on use for socially owned city land dated 29 October 1998, it is stated that “The Municipal Assembly of Uroševac allocates for temporary use socially owned construction land” to D. J. The contract was valid for one year, with a possibility of renewal
15. Accordingly the Supreme Court finds it clear that the right given to J. was a temporary right and that it was a right to install a prefabricated facility of temporary character.
16. J. has argued forcefully that she has in fact erected an immovable building on the property, as defined by SFRY legislation and legal theory. The Supreme Court does not find it necessary to assess whether this is the case. The Supreme Court has in several cases, *inter alia* in case GSK-KPA-A-102/2013, expressed the view that a citizen cannot obtain a right to construct a permanent building by exceeding the right that was actually given to him. Even if J. did construct an immovable structure, she did not have a lawful right to do so.
17. Accordingly The Supreme Court finds that D. J. alleged right of ownership does not relate to an immovable property, and that the claim is outside the jurisdiction of the KPCC in accordance with Art. 3.1 of Law No. 03/L-079.
18. 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.
19. The Supreme Court notes that an eventual claim from D. J. in connection with alleged violations of her right to temporary use of the property has to be filed before the ordinary courts of Kosovo.

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 cannot be challenged through ordinary or extraordinary remedies

Dag Brathole, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EUELEX Registrar