

**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-274/13

**Prishtinë/Priština,
14 May 2014**

In the proceedings of:

M.M

Claimant/Appellant

vs.

N/A

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/200/2013 (case file registered at the KPA under the number KPA 06531) dated 18 April 2013, after deliberation held on 14 May 2014, issues the following:

JUDGMENT

1. The appeal of M.M filed against the decision of Kosovo Property Claims Commission KPPC/D/C/200/2013, dated 18 April 2013, regarding the claim registered at the KPA under the number KPA 06531, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/200/2013, dated 18 April 2013, regarding the claim registered at the KPA under the number KPA 06531, is confirmed

Procedural and factual background:

1. On 26 January 2007, M.M, as a family household member of the alleged property right holder – his son, filed a claim with the Kosovo Property Agency (KPA), seeking repossession of property-business premises. He claims that according to the Judgment C.nr.224/90 dated 17 May 1990, issued by the Municipal Court of Ferizaj/Uroševac, his son S.M is the owner of the claimed part of a prefabricated barrack located at “Njegos̃i” Street no. 14 in Ferizaj/Uroševac, with a surface of 8 m².
2. This business premises served for exercising a business activity. It was occupied by unknown persons. The claim is registered at the KPA under the number KPA065531.
3. He lost possession of this business premises due to the circumstances related to the armed conflict that occurred in Kosovo in 1998/99, stating that the date of loss was 15 June 1999.
4. To support his claim, he submitted the Judgment C.nr.224/90 dated 17 May 1990, issued by the Municipal Court of Ferizaj. With this judgment it is ascertained that S.M is the owner of 1/2 of ideal part on the western side of the prefabricated barrack located at “Njegoshi” Street no. 14 in Ferizaj/Uroševac.
5. According to the KPA notification report, dated 08 March 2007, the judgment from the previous paragraph is final and it has been positively verified by the KPA Verification Team.
6. On 06 April 2007, the KPA officers went to the place where the business premises-kiosk was located and found that the premise was occupied by O.SH, who was present but was not willing to participate in the proceedings and he did not claim the property right over the business premise. In the course of notification, it was found that the premise was not build with material of a permanent character.
7. On 18 April 2013, the Kosovo Property Claims Commission (KPCC), through its decision KPPC/D/C/200/2013, dismissed the claim due to the lack of jurisdiction. Justifying its decision, the KPCC concluded that the property right holder - claimant was entitled only to

temporary use of that object and he was therefore authorized only to build a provisional prefabricated object which should be considered a movable object.

8. Therefore, the claimed property should have been considered as a movable object pursuant to Article 9 of Law on Property and Other Real Rights (Law no. 03/L-154). Whereas to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 (hereinafter: Regulation 2006/50), the KPCC is competent to decide only on immovable properties.
9. On 20 August 2013, the decision was served to the appellant M.M and he filed an appeal with the Supreme Court on 23 August 2013.
10. The appellant explained that the appealed decision was not clearly outlined and it does not contain a legal explanation of its legal and factual grounds. He was not contacted by the KPA Secretariat. There is no evidence that the claimant has alienated this property and where and to whom he alienated the same, as decided by the Secretariat.
11. Therefore, the KPCC decision is grounded on incomplete determination of facts and their misjudgment. The appealed decision is also relies on misapplication of material and procedural law. The appellant requests the Supreme Court to reconsider the KPCC decision and recognize the appellant's rights for restitution and use of property as a lawful owner.

Legal reasoning:

12. The appeal has been filed within 30 days as foreseen by Section 12.1 of Regulation 2006/50 and is therefore admissible.
13. 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.
14. KPCC has accurately evaluated the evidence when it decided that the claims falls outside its scope of jurisdiction. KPCC gave full, comprehensive, clear, accurate and consequently lawful explanations and clarifications on crucial facts for a fair decision.
15. According to Section 3.1 of Regulation 2006/50, 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 legal 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 Judgment C.nr.224/90 dated 17 May 1990, issued by the Municipal Court of Ferizaj/Uroševac, S.M is recognized as the owner owner of 1/2 of ideal part on the western side of the prefabricated barrack located at “Njegoši” Street no. 14 in Ferizaj/Uroševac, with surface of 8 m².
17. Therefore, in light of these factual conclusions, the Supreme Court considers that the appealed decision of the Property Claims Commission was right and lawful when it decided to dismiss as impermissible the appellant’s claim due to the lack of jurisdiction, because according to this judgment the claimed property is a prefabricated barrack that should be considered to be a movable object.
18. The Supreme Court also considers that the claimed property according to the provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights is considered to be 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 to be 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 determines an allocation to be used for provisional needs by applicants to place temporary prefabricated objects, then that body has the right, in line with the needs of urban planning, to dislocate that object on the personal expenses of the user. A provisional premises cannot even be a subject to recognition of property right and neither can it be registered in the property register of the cadastral office.
19. Subject of consideration and assessment by the Supreme Court were also the appellant’s allegations that the appealed decision is not clearly outlined and that it does not contain an explanation of its legal and factual grounds, that there is no evidence that the claimant alienated this property, as decided by the KPA Secretariat. The Court found that these allegations are unfounded, inadmissible and consequently unlawful. This is because the decision is clearly outlined and it contains clear, complete and comprehensible explanations of its legal and factual grounds, appropriate for a procedural decision – decisions making due to the lack of jurisdiction.
20. The appealed decision did not decide on the merits of the claim regarding alienation or non-alienation of the claimed property, and the KPA Executive Secretariat has not decided on the appellant’s claim related to the claimed commercial property, as it is not competent for that.
21. The Supreme Court has also assessed the other allegations of the appellant, but they have no impact on rendering a different decision on this legal case. Furthermore, the appellant has not even submitted legally valid evidence to support such allegations.
22. 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.

23. This judgment has no prejudice to the claimant's right to pursue his rights before the competent courts.
24. 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:

25. 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

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar