

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-213/13

Prishtinë/Priština,

23 July 2014

In the proceedings of:

H. A. “T”

Mitrovicë/Mitrovica

Appellant

vs.

Sh. B.

Fusheë Kosovë/Kosovo Polje

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Elka Filcheva-Ermenkova and Dag Brathole, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 dated 18 April 2013 (case file registered at the KPA under No. KPA00800), after deliberation held on 23 July 2014, issues the following

JUDGMENT:

1. **The decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (regarding case file registered at the KPA under the number KPA00800), dated 18 April 2013, is annulled and the claim for private property is dismissed due to lack of jurisdiction.**

Procedural and factual background:

1. On 16 May 2007 Sh. B. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property use right over 12 m² office premises on parcel no. 1467 at Mitrovicë/Mitrovica cadastral zone, Mitrovicë/Mitrovica municipality and possession list nr. 3300, issued by Department for Cadastre, Geodesy and Property of the Municipality of Mitrovicë/Mitrovica. The premises were located on Glavaseva Street no. 8 in Mitrovicë/Mitrovica. With the claim he submitted a contract on lease of business premises dated 1 December 1993 with an annex to the contract dated 20 October 2014.
2. The possession list was verified by the KPA, but the lease agreement was not found. According to memo made by the KPA on 4 January 2013 the administrator of the H.A. "T." confirmed on 20 December 2012 before the KPA that B. was a paying tenant until 1999.
3. According to the same memo the administrator further confirmed that the property had been occupied by S.N. and A. A. i. In 2010 S.N. died and A. A. left the property.
4. The KPCC registered both S. N. and H. A. "T." as responding parties.
5. On 18 April 2013 the Kosovo Property Claims Commission by its decision KPCC/D/C/200/2013 (case file registered at the KPA under No. KPA00800) awarded the claim of property use right of the disputed premises.
6. The decision was served on the H. A. "T." represented by A. B. on 24 July 2013. A.B. submitted an appeal on behalf the h. a. on the same day. On 20 August 2013 N. M. submitted a renewed appeal on behalf of the H. A. "T".

7. The appeal was served on Sh. B. 29 October 2013. He did not reply to the appeal within the 30 days deadline.
8. The Supreme Court received the case file on 21 March 2014

The allegations of the parties:

9. The H. A. "T." states that the KPCC has violated the decision making procedure, and based its decision on erroneously applied facts and misapplication of regulations.
10. As to the decision-making procedure, the hunting association alleges that the decision does not contain reasons on the decisive facts. For this reason the reasons of the decision are undetermined, imprecise, and unclear.
11. The h. a. has forcefully argued that Sh. B. does not have a contract on lease for an indefinite time, but rather for a limited time. The lease contract refers to a single room which constitutes a smaller part of the hunting lodge. By this he has not acquired a right of permanent use as stated in the decision of the KPCC.
12. The h. a. could at any time rescind the contract with a notice period of 30 days.
13. The H. A. "T." has been an undisputed owner of the entire property for decades, and is still the owner of the property.
14. Accordingly the H.A. "T." has proposed that the Supreme Court should adopt the appeal and reject the claim as unfounded, or annul the decision of the KPCC and return the case to the KPCC for reconsideration.
15. Sh. B. has not responded to the appeal. Before the KPCC he alleged that he had the right of property use in accordance with the dated 1 December 1993 with annex dated 20 October 2014.

Legal reasoning:

Admissibility of the appeal

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

Jurisdiction

17. The Supreme Court notes that Sh. B. had a property use right of the premises on Glavaseva Street no. 8 in Mitrovicë/Mitrovica, and that he lost possession due to the armed conflict in Kosovo 1998/1999. This has not been disputed by the H. A. “T.”. The claim is therefore within the jurisdiction of the KPCC in accordance with Art. 3.1 of Law No. 03/L-079.

Merits of the Appeal

18. The claim refers to leased premises in a building owned by the H. A. “T.”.
19. In accordance with Art. 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve ownership to *private property* claims and claims involving property use rights *in respect of private immovable property*. It is therefore necessary for the Supreme Court to determine whether the the property of the H. A. “T.” is private property.
20. The H. A. “T.”, Mitrovicë/Mitrovica, is a non-governmental organization established in 1959 in Mitrovica, engaged in hunting activity. To exert its activity this association purchased the building named H. house “T.”, Mitrovicë/Mitrovica. The building is purchased with the contribution of other branches of H.A. “T.”, Mitrovicë/Mitrovica and contribution of the members. Based on testimonies of the members all association’s activities were managed from members. This means that the building is owned in common from all the members.
21. The Supreme Court notes that according to contract dated 1 January 1986, concluded between the employer hunting lodge in Mitrovicë/Mitrovica and the employee N. S., in

which is agreed that employer is obliged to provide an apartment to the employee and the use of apartment will be free of charge.

22. Based on the references above, H. house "T." Mitrovicë/Mitrovica, has all the features of a social property. The Supreme Court therefore finds that the claim from Sh. B. is not related to private immovable property. Accordingly the claim is outside the competence of the KPCC, and has to be dismissed.
23. On the basis of the above and in accordance with section 12.2 of the Law and art 198.1 of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice:

Pursuant to Section 13.6 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar