

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- 133/2013

Prishtinë/Priština,

4 August 2014

In the proceedings of:

S. P.M.

Nis Serbia

Claimant/Appellant

vs.

P. R.

Prishtinë/Kosovë

Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Dag Brathole, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPPC/D/C/176/2012 (case file registered at the KPA under the number KPA34343), dated 24 October 2012, after deliberation held on 4 August 2014, issues the following:

JUDGMENT

1. **The appeal of the appellant S. P. M. against the Decision of the Kosovo Property Claims Commission KPPC/D/C/176/2012, dated 24 October 2012, as it regards to case KPA34343 is rejected as ungrounded.**

2. **The Decision of the Kosovo Property Claims Commission KPPC/D/C/176/2012, dated 24 October 2012 with regard to case KPA34343 is confirmed.**

Procedural and factual background:

1. On 9 May 2007, the claimant S. P. M., as the spouse of D. D. M., filed a claim asking for the repossession of the business premises located at the address of Vidovdanska 26 C Street, Prishtinë/Priština on the cadastral parcel no 6226 with a surface of 69.1 m².

2. Together with the claim, she submitted, *inter alia*, the copy of the marriage certificate issued on 27 March 2008; driving licence dated 27 October 1992; a judgement of 3 April 1998 of the Municipal Court in Nis (P.br.1240/98) and the copy of a “Contract on the sale of socially-owned capital by the method of public auction” dated 11 November 2003 concluded between Privatization Agency in Belgrade and D. M.

3. KPA notified the claimed property on 2 January 2008.

4. P.R. filed a notice of participation to the proceedings on 14 October 2008. He claimed property rights over the said business premises. Apart from the same judgment of Municipal Court in Nis dated 3 April 1998 on which the claimant also relied, he submitted a copy of the judgment of the Municipal Court in Prishtinë/Priština dated 16 October 2006, numbered C.nr 77/2005; a copy of the Decision of the District Court in Prishtinë/Priština, issued on 22 October 2008, numbered AC.nr.217/2007, annulling the Judgment C.nr 77/2005 and referring it back to the Municipal Court and the second Judgment of the Municipal Court in Prishtinë/Priština dated 23 February 2009, numbered C.nr.2002/2008.

5. On 24 October 2012, KPCC, with the Decision KPCC/D/C/176/2012, dismissed the claim due to the lack of jurisdiction based on Section 18 of UNMIK Regulation No 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 03/L-079). In its reasoning, KPCC noted that “the alleged property right holder filed prior to 16 October 2006 a lawsuit with the competent court seeking for the confirmation of his ownership right over the claimed property.” Accordingly, KPCC

pointed out that the Commission's jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force.

6. The Decision of the KPCC was served on the claimant on 2 April 2013. She filed an appeal against the said Decision, via UNHCR Office, on 7 May 2013.
7. The appeal was served on the respondent R. P. on 6 November 2013. He filed a response on 22 November 2013.

Allegations of the claimant/appellant

8. The appellant alleges that her husband is the majority owner of privatised property- Enterprise 22 December Nis, and thereby the business premises located at the Vidovdanska 26 C Street which he bought with his own means.
9. In her appeal, she alleged that the KPCC made a wrong decision while dismissing the claim due to lack of jurisdiction. She did not deny that she had filed a claim before the Municipal Court in Prishtinë/Priština against the respondent R.P. for the ownership-repossession of the same premises in 2005; however, she argued that since those proceedings were still pending and did not come to an end, KPCC should have adjudicated her claim.

Allegations of the respondent

10. The respondent states that the claimed business premises on the Vidovdanska no 26 C with surface of 69.19 m² were in the past a property of Enterprise 22 Decembar seated in Nis. He claimed that it was purchased by "R. C." owned by R. family in Prishtinë/Priština which is confirmed by the judgment of Municipal Court in Nis, numbered P.nr. 1240/98, dated 3 April 1998.
11. He stated that the claimant initiated court proceeding in 2005 before the Municipal Court in Prishtinë/Priština for the same subject matter for the property restitution. He further stated that the Municipal Court rejected that claim as ungrounded which was quashed by the District Court and sent back for retrial. He mentioned that the Municipal Court once again rejected the claim on 22 October 2008 against which an appeal was filed by the claimant. As to the status of those appeal proceedings, he expressed that they were still pending at the Court of Appeals.

Legal reasoning:

Admissibility of the appeal

12. The Supreme Court has jurisdiction over the appeal against the decision of the KPCC.
13. The appeal was filed on 7 May 2013 whereas the attacked Decision of the KPCC was served on the claimant on 2 April 2013. The deadline for filing an appeal expired on 2 May 2013, Thursday. However, the appellant provided a document together with the appeal, issued by the M-Industry JSC Nis on 26 April 2013, which states that by this decision the employees are entitled to join the First May Holiday and Easter Holiday and that the business shall be closed from 29 April 2013 to 6 May 2013.
14. The Supreme Court notes that the appeal was not filed within the 30 days' time-limit as foreseen by law (Section 12.1 of Law 03/L-079). According to Article 7 of UNMIK AD 2007/5, the time-limit is only extended until the end of the first following working day if the last day of time-limit falls on Saturday, Sunday or an official holiday. The last day of filing an appeal was 2 May 2013, Thursday which was not an official holiday in Kosovo. However, the Supreme Court takes a note of that the appellant resides in Serbia and the Decision attacked was also served on her in Serbia. She provided a document showing that the holidays during the closure of business in Serbia until 7th May 2013. She filed the appeal with the UHCR Office on 7th May. The check via internet reveals that the whole period from 1st May, the Labour Day to 6th May, the Orthodox Easter Monday was declared as official holiday in Serbia. Accordingly, the appellant could not have the chance to file an appeal with the UNCHR Office in the country she resides which should be taken into account in her favour. The Supreme Court considers that under these justified reasons, her appeal was in time and admissible.

Merits of the appeal

15. The KPCC in the attacked decision dismissed the claim due to lack of jurisdiction based on the fact that there were proceedings initiated before the Municipal Court in Prishtinë/Priština prior to the date UNMIK/REG/2006/50 came into force on 16 October 2006. None of the parties denied the existence of court proceedings which had been commenced in 2005 between the same parties for the same relief asking for the property right and possession of the same business premises. It is not contested by any party that those proceedings were still pending at the time of filing of the claim as well as that of this appeal at hand. However, unlike the respondent, the appellant maintains that the KPCC should have decided on her claim on the merits since the previous court had not finalised the adjudication of the claim yet. This is the mere contestation of the appellant as to the attacked decision.

16. The Supreme Court concludes that the KPCC reached a correct conclusion while dismissing the claim filed before the KPA due to the clear wording of Section 18 of Law No 03/L-079. Since the claimant had already commenced judicial proceedings against the same person for the same subject matter before the Municipal Court in Prishtinë/Priština on which the said Court decided twice of whose Judgements were appealed, the Law No 03/L-079 explicitly excludes the application of the said Law to the matter at hand and accordingly, the jurisdiction of the KPCC. The fact that those proceedings were not finalised yet is not a reason to assume the jurisdiction of the KPCC. Nonetheless, the second claim filed with the KPCC for the same subject matter would in any case cause *litis pendence* which would require its dismissal.

17. The Decision of the KPCC does not involve any fundamental error or misapplication of the applicable material or procedural law or erroneous or incomplete determination of the facts. Therefore, the appeal of the appellant is rejected as ungrounded pursuant to Section 13.3(c) of the Law No L/03-79 and the Decision of the KPCC is to be confirmed.

18. This judgment is without prejudice to the outcome of the proceedings pending before the Court of Appeals or in any court competent to deal with such a claim.

19. On the basis of the above and in accordance with section 12.2 of Law 03/L-079 and art 195.1 (d) of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar