

**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-014/14**

**Prishtinë/Priština,  
5 November 2015**

In the proceedings of:

**M.M.**

Knjaževačka Street no. 151/1-1  
Niš, Serbia

***Claimant/Appellant***

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) nr. KPCC/D/C/177/2012 (case file registered at the KPA under the number KPA36503), dated 24 October 2012, after deliberation held on 5 November 2015, issues the following:

## JUDGMENT

1. The appeal of M.M. against the decision of Kosovo Property Claims Commission nr. KPCC/D/C/177/2012, dated 24 October 2012, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/C/177/2012, dated 24 October 2012, regarding the claim registered at the KPA under the number KPA36503, is confirmed.

### Procedural and factual background:

1. On 30 April 2007, M.M. filed a claim with Kosovo Property Agency (henceforth: KPA), seeking confirmation of ownership right of the hut/kiosk with the surface 20 m<sup>2</sup> located at cadastral parcel nr. 2132, street "Bratstva Jedinstva", Municipality of Ferizaj/Urševac (henceforth: the claimed property). He alleges that the claimed property was located on the private property owned by J.P.. He declared that he lost possession of the claimed property due to circumstances related to the armed conflict that occurred in Kosovo in 1998/1999, indicating 16 June 1999 as the date of loss.
2. To support the claim, he submitted the following evidences:
  - Copy of Plan issued by Geodesy Office of the Municipality of Ferizaj/Uroševac on 4 April 1989, listing the parcel on which the claimed property was located as a socially owned property while R.P. (J's wife) was entitled to use it. On the copy of plan is put a remark, that reads: 'Planning consent is given for the installation of a temporary prefabricated construction with the surface area of 15.75 m<sup>2</sup> [underlining by the Supreme Court].
  - Decision of the Commercial Court of Prishtinë/Priština dated 2 December 1993 registering M.M. as founder and director of the private company "Val Promet".
  - Possession List no 3462 issued by Geodesy Office of the Municipality of Ferizaj/Uroševac on 16 June 1994 listing parcel number 2132 in the name of R.P..
  - Minutes on technical description for construction of the prefabricated kiosk issued by Municipal Assembly of Ferizaj/Uroševac on 5 October 1994.
  - Receipt No. 79/VR, dated 25 January 1995, showing that M.M. has paid the company who performed the construction of the claimed property.

3. On 26 November 2007, KPA carried out the physical notification of the claimed property and found that the kiosk was removed while the cadastral parcel on which the kiosk was located was found to be unoccupied.
4. KPA found *ex officio* the Certificate for Immovable Property Rights no. UL-72217092-00687, dated 26 October 2009, showing the cadastral parcel no. 2132 in the name of Agron Bucaliu. The transfer of the property right was performed based on the Purchase Contract no 555/01 in 2001 and 2002. According to this report between 1998/1999 holder of the parcel was S.A.J.
5. On 24 October 2012 KPCC dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision (paragraphs 24-26), KPCC indicates that according to the evidence the claimant acquired only a temporary use right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property. KPCC further states that pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the KPCC has no jurisdiction to decide on movable properties.
6. On 23 October 2013, the Decision was served on M.M. . He (henceforth: the appellant) filed an appeal before the Supreme Court on 1 November 2013.

#### **Allegations of the claimant/appellant**

7. The appellant alleges that the KPCC decision relies on a violation of the material and procedural law as well as incomplete determination of the factual situation.
8. He refers to incomprehensible paragraphs in the Certified Decision where in the first paragraph is stated that his claim is dismissed, whereas in the second paragraph is stated that where the property was illegally occupied the decision does not confer any rights on the respondents or current occupant.
9. Appellant further points out that he is the only and exclusive owner of the prefabricated building in which he worked for 4 years and it could not at all be treated as movable property because it had been built from hard materials and it was firmly erected.
10. The appellant asks the Supreme Court to reverse the decision of the KPCC and confirm ownership right to the appellant.

#### **Legal reasoning:**

##### **Admissibility of the appeal**

11. The appeal 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 (henceforth: Law UNMIK 2006/50). The appeal is admissible.

### **Merits of the appeal**

12. After reviewing the case file and appellant's allegations the Supreme Court finds that the appeal is unfounded.
13. KPCC has accurately evaluated the evidence when it decided that the claim falls outside its scope of jurisdiction.
14. Regarding the allegation of the appellant that the KPCC decision is incomprehensible, the Supreme Court notes that KPCC in the certified decision, dated 4 February 2013, made a reference to the "relevant paragraphs" in the Cover Decision. A special reference is made to the paragraphs 24-26.
15. The Supreme Court will give a short summary of the reasons the KPCC gave for its conclusion that it does not have jurisdiction in the case and evaluate whether this reasoning is sufficient.
16. The KPCC explains in the decision that it has no jurisdiction and therefore dismisses the claim, because KPCC concludes that the claim of appellant refers to a movable and not an immovable property.
17. According to Section 3.1 of the Law UNMIK 2006/50 a claimant is entitled to an order from the KPCC for repossession of the property if the claimant not only proves an ownership right or an use right of a 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. From this provision follows that the jurisdiction of the KPCC is limited exclusively to resolution, adjudication and settlement of property right claims for private immovable property.
18. The burden of proof whether the claimed hut/kiosk was an immovable property is on claimant.
19. The Supreme Court notes that the only evidence appellant provided on the nature of the hut/kiosk is the Copy of Plan, issued on 4 April 1989 and the technical description for the prefabricated construction. On the Copy of the Plan is written the remark that the consent was given to install a temporary prefabricated construction on a part of parcel no. 2132, in street "Bratsvo Jedinstva", cadastral zone and Municipality of Ferizaj/Uroševac.
20. According to Article 9, paragraph 1, of the Law on Property and Other Real Rights (Law No. 03/L-154, henceforth: LPaORR) a moveable object is an independent corporal object that is

not permanently attached to the ground and is generally capable of being moved. According to Article 10 of that same law – as far as relevant - an immovable property is a building that is firmly connected to the ground.

21. The evidences that the appellant submitted, do not provide sufficient prove that the hut/kiosk that allegedly was built, was an immovable property. Appellant did not provide any other evidence on the actual situation regarding the hut/kiosk when he allegedly lost the possession. KPCC could not investigate that, because at the time of the notification of the claim no building was found. Therefore cannot be concluded that the claimed property was an immovable property.
22. Besides that, the Supreme Court does not find it necessary to elaborate on whether the hut/kiosk that was actually erected on the parcel was a temporary or a permanent object in the sense of articles 9 and 10 of LoPaORR. From the evidences submitted by appellant the only conclusion can be that appellant only was given permission to construct a temporary, movable object. According to well established case law of the Supreme Court when a person was given only permission to install a temporary construction, the property right to this construction cannot be considered as a property right to an immovable property.
23. Law UNMIK 2006/50 clearly defines that only ownership right, lawful possession of or any lawful right of use of a private immovable property can be subject to the proceedings in front of the KPCC.
24. 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 an erroneous and incomplete determination of the factual situation, as alleged by the appellant.
25. Consequently the appeal according to Section 13.3 (c) of Law No. 03/L-079 has to be rejected as unfounded and the decision of the KPCC has to be confirmed.

### Legal Advice

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

*Sylejman Nuredini, Presiding Judge*

*Rolandus Bruin, EULEX Judge*

*Krassimir Mazgalov, Judge*

*Urs Nufer, EULEX Registrar*