

**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-102/2014

**Prishtinë/Priština,
27 January 2016**

In the proceedings of

B. M.

acting on behalf of

V.M.

Appellant

vs.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 (case file registered at the KPA under No. KPA28537), dated 27 November 2013, after deliberation held on 27 January 2016 issues the following

JUDGMENT

1. **The Appeal of against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA28537.**

Procedural and factual background:

1. On 5 March 2007, the Appellant B. M. filed a Claim on behalf of her son V.M., who was the alleged property right holder, with the Kosovo Property Agency (KPA), seeking the confirmation of his ownership right over the commercial premises with the surface 16.80m² (a shop) located in Prizren/Prizren at Narodno Oslobodjenje Street No 141 (hereinafter referred to as: the claimed property). The Appellant submitted a Contract on Lease of Commercial Premises No 04/4-361-34 of 12 July 1996 and claimed the repossession of the property. She stated that the loss of it took place on 12 June 1996.
2. The case was registered under the number KPA28537.
3. According to Verification Report dated 28 May 2007 and the Consolidated Verification Report dated 2 April 2012 the Purchase Contract submitted by the Appellant was negatively verified by the KPA.
4. Initially the claim was notified on 23 April 2007 and re-notified on 28 January 2008. At the time of the visit the premise was occupied by D. M., who refused to accept any document from the KPA's notification team, did not sign a notice of participation and did not file any Response to the Claim – was not claiming any legal rights over the claimed property.
5. On 5 September 2012, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/C/224/2013 (hereafter to be referred to as: the KPCC's Decision) refused the Claim. In the reasoning of the Decision, the KPCC underlined that the Appellant had submitted a contract on lease of a commercial premise concluded in 1996 with the Appellant as the lessee and the Municipality of Prizren/Prizren as a lessor, based on which the Appellant allegedly was granted the right to use the claimed property. The Commission noted that the contract had expired in 1999 and had not been subsequently renewed. According to the KPCC the Appellant failed to submit any further evidence in support of his property right. Obtaining any evidence that would support his Claim ex officio was impossible for the Commission. In these circumstances the Commission concluded that the Appellant had failed to show any property right over the claimed property.
6. The KPCC's Decision was served upon the Appellant on 25 February 2014. On 10 March 2014 the Appellant filed an Appeal against the KPCC's Decision.

Allegation of the parties

7. The Appellant requests the Supreme Court of Kosovo to annul the KPCC's Decision, revise it and acknowledge the property rights over the claimed property of B.M. and V. M.. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves fundamental error and serious

breach of substantive and procedural law To support the Appeal the Appellant submitted birth certificate of V. M., copy of the lawsuit filed by V. M. to the Municipal Court in Prizren/Prizren against the Municipality in Prizren/Prizren for the compensation, minutes from the site visit that took place on 16 July 1996, opinion of the forensic expert estimating the value of the investments made in the claimed property.

Legal Reasoning

8. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied; therefore, the Appeal is rejected as unfounded.
9. The Appellant alleged to have the ownership rights over the property and indicated as a basis the Contract on use of commercial premise, concluded between himself as a lessee and the Municipality of Prizren/Prizren as a lessor. The lecture of the text of that Contract leads to a conclusion that it was signed on 12 July 1996 and the parties to it agreed for the limited period of the validity of the Contract. The parties decided that the Contract would expire on 12 July 1999. The Appellant did not claim that at any moment in time after the expiration of the Contract, it was renewed or amended. Requested by the Executive Secretariat of the KPA to submit any evidence proving the ownership right over the claimed property, the Appellant failed to comply with the invitation. Together with the Appeal the party provided the Supreme Court with the copies: of the claim for the compensation to the Municipal Court in Prizren/Prizren and of the expertise on the cost of investments. Both documents do not proof though the ownership rights over the property.
10. The Supreme Court is of the opinion that the Appellant did not prove that he still has the legal title to possess the claimed property. The Appellant is not, and according to the evidence gathered, has never been the owner of the claimed property. The title to use it for the Appellant was the Contract on use, which expired. The party to the Contract, after the expiration was obliged to vacate the premise and give it back to the lessor. This Contract though may not be considered as the legal basis for the Claim for the repossession. On the basis of that Contract the Appellant is not entitled to repossess the premise.
11. Furthermore, the claim submitted to the local court for the compensation of the costs invested in the shop does not prove that a claimant has the ownership right over the premise. It only indicates that the claimant used the premise and alleges to have made some investments in it. So the documents submitted by the Appellant together with the Appeal may not lead to an assessment that that a person is entitled to request the repossession of the premise that he/she claims to have invested in.
12. According to Article 595 (1) of the Law on Contracts and Torts a lease contract entered into for a definite period shall be terminated by the expiration of the time covered by the contract. Henceforth, the contract on use of the claimed premise was terminated on 17 July 1999 at the latest. The Appellant did not submit any evidence which would allow for drawing the consequences form the Article 596 (1) of the Law on Contracts and Torts, so the Supreme Court may not consider that the Contract was implicitly renewed. The fact that the Appellant might have lost the possession of the leased premise some months before the expiration of the contract does not imply that he obtained any right (including the ownership right) over the claimed property.

13. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when dismissing the Claim of the Appellant and applying Section 18 of Law No. 03/L-079. The Commission is right while considering that the Appellant has failed to prove to have lost the property right over the premise immediately prior or during the 1998/99 conflict. The documents submitted with the Appeal, contrary to the opinion of the Appellant, could not prove those circumstances during the proceedings before the Supreme Court.
14. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

15. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.
16. This Judgment does not confirm any property right to the current occupant neither has prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

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.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anna Bednarek, EULEX Judge

Urs Nufer, EULEX Registrar