

**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-040/15

Prishtinë/Priština,

3 August 2016

In the proceedings of

A. M.

Represented by D. M., with power of attorney

Appellant

vs.

K. G.

Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anders Cedhagen and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013 (case file registered at the KPA under the number KPA 16204), dated 21 August 2013, after deliberation held on 3 August 2016, issues the following

JUDGMENT

1. The appeal of A.M. against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, as far as it concerns the claim registered at the Kosovo Property Agency under the number KPA16204, is rejected as unfounded.
2. The decision no. KPCC/D/C/216/2013 dated 21 August 2013, is confirmed as far as it concerns claim registered at the KPA under the number KPA16204.

Procedural and factual background:

1. On 9 October 2006, A. M. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking re-possession of the business premises – shop, located in the street “Ramiz Sadiku” neighbourhood Aktash near the Post Office, parcel N/A, cadastral zone Prishtinë/Priština, with the surface around 30 square metres (hereinafter: the claimed property). The Appellant stated that he is the user of public land and the owner of the commercial premise currently occupied. He claimed that he acquired the construction and the documents to support the claim he alleges to have left at the shop, which he lost in June 1999. He states that the person named Tefik currently occupies the property without any legal right, and he claimed the restitution of the said property.
2. To support his claim, he submitted the following document:
 - ID Card issued by the Internal Affairs Authorities in Prishtinë/Priština, on 13 November 1996
 - The electricity bill for the premise, the claimed property, on the name of Appellant.
 - Power of Attorney confirmed by the KPA Executive Secretariat, given from the Appellant to D. M..
 - Birth Certificate proving that D. M. is sister of the Appellant.
3. The KPA has published the claim according to the standard procedure on 2 July 2008 and has proceeded with the claim by placing a notification on the building wall. The property was found occupied by K. G. (hereinafter: the Respondent), who alleged legal rights over the property.
4. In the support of his allegations the Respondent submitted the following:
 - Contract on rent concluded between the Public Housing Enterprise in Prishtinë/Priština and the Respondent, on 8 July 2008 indicating renting conditions and the price for a certain period.

- Notification dated 19 January 2012, from Public Housing Enterprise in Prishtinë/Priština, for the KPA, wherewith the Enterprise notifies the KPA that it is the owner of the premise and that the Claimant now the Appellant was a tenant and that the renting period has ended.
 - Contract on rent concluded between the Public Housing Enterprise in Prishtinë/Priština and the Respondent, on 16 January 2012 indicating renting conditions and the price for the certain period
 - Contract on rent submitted by the Public Housing Enterprise, wherewith is proven that the Appellant rented the claimed property for the period from 1 January 1995 until 1 January 1996
 - Contract on rent submitted by the Public Housing Enterprise, wherewith is proven that the Appellant rented the claimed property for the period from 1 March 1997 until 1 March 1998
5. The submitted documents from the Appellant and the Respondent were positively verified and the Public Housing Enterprise confirms the contract on rent concluded with the Appellant for the certain periods.
 6. With its cover decision KPCC/D/C/216/2013, as far as it concerns the claim registered at the KPA under the number KPA16204, the Kosovo Property Claims Commission (hereinafter: the KPCC) decided that the Claimant in the respective case according to the reasoning provided in paragraph 37 of the decision, failed to prove any ownership right, nor the *ex officio* attempts of the KPA could find any evidence in the support of Appellant's allegations. Therefore, the claim was refused.
 7. The Appellant was notified with the decision on 25 August 2014. He filed an appeal with the Supreme Court against the said decision on 26 August 2014. The appeal was filed at the Supreme Court on 22 January 2015.

Allegations of the Appellant:

8. The Appellant alleges that the KPCC decision (hereinafter "the appealed decision") is based on an erroneously and incompletely established factual situation and erroneously implementation of substantive law. He states that the refusal of his claim was based on the establishment that he acquired only an occupancy right over the claimed property.

9. Further, the Appellant states that they had established occupancy right over the claimed property and proposes to the Supreme Court to grant his appeal and make a decision confirming that he is entitled to repossess the claimed property.
10. The Respondent was notified of the appeal on 30 January 2015, but did not respond.

Legal Reasoning:

11. The appeal is admissible. It was filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079.
12. However, the appeal is unfounded. The decision of the KPCC is correct, because initially the Appellant did not submit any evidence to prove that he had any ownership right. Later on, the Executive Secretariat and the Appellant with the appeal have submitted evidence that he had a social owned shop and rented it, with owner's consent. Moreover, even if the Commission would conclude on this matter, this case is not under the jurisdiction of KPCC.
13. Pursuant to Section 2.1 of UNMIK Administrative Direction 2007/5, on implementation 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, hereinafter Administrative Direction (AD) "any person **who had** an ownership right, lawful possession of or any lawful right of use of or to private immovable property, [...] who at the time of filing the claim is not able to exercise his/her property right due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999, [...] is entitled to reinstatement as the property right holder in of his/her property right".
14. The law clearly determines that only the ownership right, lawful possession or any lawful right of use of **private** immovable property is subject to KPA proceeding. This means that the property, which is non-private, remains outside the scope of UNMIK Regulation 2006/50, respectively UNMIK Administrative Direction 2007/5.
15. In this case, based on the allegations of claim, the Appellant was in possession of the social owned shop and has constructed a building with his own means, which he used based on the tenancy for certain periods. The Public Housing Enterprise has submitted evidence showing it to be the owner of the shop and that the tenancy period is over for the Appellant.

16. Although the decision of the KPCC was based on the fact, that the Appellant (then the Claimant) had no “ownership right, lawful possession or any other use right”, as read with Section 3.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, the Court found that neither the evidence presented with the appeal confirm any ownership right, lawful possession of the private property. This is because of the fact that all evidence proves that the claimed property was socially owned.
17. Consequently, the court finds that the Commission’s decision is correct and grounded on law and therefore the appeal should be rejected as without merits.

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 Nuredin, Presiding Judge,

Beshir Islami, Judge

Anders Cedhagen, EULEX Judge

Sandra Gutaityde, EULEX Registrar