

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-240/2015

Prishtinë/Priština,

16 May 2018

In the proceedings of:

“ J G ” j.s.c., N B,

“B. M. P” 1 a,

Represented by Z F as per the Power of Attorney

Street “S M” Street, No. 81,

B

R of S

Appellant

vs.

H Gj

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges, Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014 (case file registered at the KPA under number no. KPA27736) dated 18 June 2014, after deliberation held on 16 May 2018, issued the following:

JUDGMENT

1. The Appeal of “J G” j.s.c., under bankruptcy, N B, M. P B, 1., against the Decision of the Kosovo Property Claims Commission no. KPCC/D/C/248/2014, dated 18 June 2014, as far as it concerns the Claim registered at the KPA under no. KPA27736 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/248/2014, dated 18 June 2014, as far as it concerns the Claim with number KPA27736 is confirmed.

Procedural and Factual Background

1. On 19 February 2007, “J”, j.s.c., represented by its authorized representative Z F based on the Power of Attorney No. 230 of 16 February 2007 (hereinafter: the Appellant), filed a Claim at the Kosovo Property Agency (hereinafter: the KPA), seeking repossession over a business premise. The Appellant alleged that the Company “J” is the owner of the business premise with a surface of 53,64m², located in Prishtinë/Priština, at street “Lakrishte” suburb, Soliteri No. 4, ground floor, Premises No. 16 (hereinafter: the claimed property). Additionally he states that the claimed property has been usurped. He states that he seeks repossession over the claimed property and compensation for the use and material benefit obtained by the usurper.
2. To support his Claim, the Appellant submitted with the KPA the following evidence:
 - The Contract for Joining of Funds for Construction of the Business Premises No. 04-3183/1 concluded on 18 October 1978 Self Managing Community of Interest for Residential Matters and the Company “J”,
 - The Certificate No. 03-2787/1 dated 13 October 1992, issued by the Public Housing Enterprise (PHE), Prishtinë/Priština, as per the Request of the Company “J” Belgrade, which confirms that the Appellant has bought the claimed property, based on the Contract 03-3183/1,
 - The Power of Attorney issued 16 February 2006, whereby the company “J” j.s.c., authorizes the Appellant to represent the Company before the KPA,
 - The Ruling No. BD.10692/2005 issued on 06 May 2006 by the Agency for Commercial Registers (Register of Commercial Entities) in Belgrade, whereby the

Appellant is evidenced as Agency “J” Joint Stock Company from Belgrade, with its address as indicated above, and Z N as Executive Director.

3. The notification of the Claim was performed on 26 July 2007 founding the claimed property occupied by B Gj. The brother of H Gj (hereinafter: the Appellee) approached the KPA by signing the Notification for participation in procedure, where he stated that the claimed property is being used for residential purposes.
4. The Appellee submits no evidence in support his response.
5. The documents filed by the Appellant have been positively verified except the Certificate of No. 03-2787/1 proving that the alleged PRH has fulfilled its obligations towards the Public Housing Enterprise.
6. On 18 June 2014, the KPCC with its decision KPCC/D/C/248/2014 dismissed the Appellant’s Claim, with the reasoning provided in paragraph 32, where it is stated that the Commission notes that the Claim of the Appellant relates to a socially-owned property rather than private property. The Claimant filed a Claim on behalf of the socially-owned enterprise and the claimed property before or during the 1998-99 conflict was socially owned. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, as adopted by Law no. 03/L-079, the Commission’s jurisdiction is limited only to claims which relate to private immovable property
7. On 01 December 2014 the Decision was served on the Appellant and he filed an Appeal on 22 December 2014.

Appellant’s Allegations

8. The Appellant challenged the KPCC Decision alleging that the Decision rests on erroneous and incomplete determination of the factual situation.
9. According to the Appellant the manner in which the KPCC has decided in its Decision is contradictory when it comes to the competency of this body as provided in Section 3.1 of the UNMIK Regulation given that the Appellant was unable to use the claimed property because of the armed conflict. Additionally, he alleges that it is not disputable that the claimed property is a private property, the immovable property at hand has been privatized in 2003 and this fact is also emphasized by the Commission in its Decision.
10. Finally, the Appellant proposes that the Supreme Court of Kosovo grants the Appeal.

11. Attached to the Appeal is the Ruling on the Change of Title – Name of the Claimant, and the Ruling of the Commercial Court in Belgrade, St.-4796/2012, dated 18.12.2013, regarding the opening of the Claimant's insolvency proceedings.

Admissibility of the Claim

12. The Appeal has been filed within the deadline of 30 days, as provided under Article 12.1, of the Law No. 03/L-079 and therefore is admissible.

Legal Reasoning

13. The Supreme Court reviewed the challenged Decision in accordance with the provisions of Article 194 of the Law no. 03/L-006 on Contested Procedure (hereinafter: LCP) and after assessing the allegations of the Appellant found that the Appeal is unfounded.
14. The Supreme Court finds that the KPCC has issued a fair and legal Decision when dismissing the Claim due to its jurisdiction since it has been established that the claimed property before as well as during the armed conflict of 1998-99 was a socially-owned property.
15. According to Article 3.1 of the Law no. 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has "established" his ownership right over the private property, including agricultural and commercial property but also that he now is unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. From the provision cited in the preceding paragraph it is clear that the jurisdiction of the KPCC is limited only to claims for private immovable property rather than properties under the ownership of socially-owned enterprises.
17. The Supreme Court of Kosovo reviewed the allegations of the Appellant that the factual condition has not been established by the first instance and other allegations mentioned in paragraph 9 of the Judgment, in particular the main allegations that the claimed property cannot be used due to the circumstances of the armed conflict of 1998-99 and that this property has been privatized in 2003. The Court considers that these allegations are ungrounded and that the KPCC has issued a fair and meritorious Decision. The

documents and facts obtained by the Executive Secretariat establishes that the Enterprise ”J” j.s.c., the property of which is requested to be returned under possession and ownership was a socially-owned enterprise ever since it was established in 1947, also during the years 1998-99 and until its privatization in 2003 by the Government of Serbia.

18. As the privatization of this property, as underlined also by the Appellant, has been done in Serbia, it results that this privatization is not relevant and cannot have a legal effect with respect to the claimed property located in Kosovo because the socially-owned properties including the claimed property are under the jurisdiction of the Privatization Agency of Kosovo as provided for in Section 5 par.1.2 of the UNMIK Regulation and Law No.04/L-034. Therefore, in this regard, the allegations of the Appellant are rejected as ungrounded because the inability to exercise the right of possession is also related to the fact that with the adoption of the Regulation 2002/12 as amended by Regulation 2005/18, the socially-owned property is under the administration of the Kosovo Privatization Agency of Kosovo.
19. In light of the above, the Supreme Court finds that the factual situation has been fully and fairly established and on this basis also it results that the substantive and procedural law was lawfully applied in the appealed KPCC’s Decision.
20. This judgment does not affect the right of the Appellant or any party with legal interest, in case he/she deems necessary to seek the alleged right over the property at hand before the competent local authority or the competent court.
21. In light of the above, pursuant to Article 13.3 sub-paragraph (c), of the Law No. 03/L-079 it was decided as in the enacting clause of this Judgment.

Legal Remedy

According to Section 13.6 of the UNMIK Regulation 2006/50, as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge,

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Torkko , EULEX Registrar