

**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-154/2014

Prishtinë/Priština,
6 April 2016

In the proceedings of:

S. T.

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/C/224/2013 (case file registered at the KPA under the number KPA08841) dated 27 November 2013, after deliberation held on 6 April 2016 issues the following:

JUDGMENT

1. The appeal of S. T. against the decision of the Kosovo Property Claims Commission no. KPCC/D/C/224/2013 dated 27 November 2013 regarding the case file registered with KPA under number KPA08841 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission no. KPCC/D/C/224/2013, dated 27 November 2013 is confirmed as far as it concerns claim number KPA08841.

Procedural and factual background:

1. On 1 February 2007, S. T. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession of a business premise. He alleges to be the owner of the lawyer's office, in the surface of 20 m², located in Pejë/Pec, street Jagos Rakocević bb, on parcel no. 240/2, Cadastral Zone of Pejë/Pec (henceforth: the property).
2. The Appellant stated that he lost the possession over the property on 14 June 1999 due to the armed conflict in 1998/1999 and that it is illegally usurped by S.M.
3. As legal bases through which he acquired the right over the property, he mentions the Decision No. 05-353/40, issued by the Secretariat for Urbanism, Public Utilities and Housing issues in the Municipality of Pejë/Pec, dated 12 April 1989. He emphasizes that he does not possess the document as the same was burnt during the armed conflict. However, he states that the KPA may find the decision in the claim filed by Mirko Dabetić (case file registered with KPA under the number KPA08840), since both of them have acquired business premises based on the same document. The business premises are close to each other.
4. The notification of the property and the claim was carried out initially on 11 February 2008 whereupon it was ascertained that the property was used by S. M. M. did not claim any legal right over the property and did not participate in the proceedings before the KPA. The notification of the property was checked in January 2011 based on the GPS coordinates and orthophoto and was found to be correct.
5. Because no party filed a response to the claim within the legal deadline of 30 days, pursuant to Section 10.2 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: UNMIK Regulation 2006/50), the claim was considered as uncontested.

6. As the Claimant did not submit any evidence to support this allegation, the KPA *ex officio* tried to find the possession list for the parcel on which the property is located, but with no success. Moreover, the KPA sent a letter to the Appellant seeking additional information, which was received by him on 1 August 2013; nonetheless, the Appellant did not submit any additional evidence to prove his ownership or user right over the property.
7. On 27 November 2013, the KPCC with its decision KPCC/D/C/224/2013 refused the claim due to lack of evidence. The KPCC in the reasoning of its decision indicates that the Appellant failed to provide any evidence at all, that the alleged property right holder enjoys any property right over the property, nor has the Executive Secretariat obtained *ex officio* any such evidence.
8. The decision was served on the Appellant on 5 March 2013, and he filed an appeal with the Supreme Court on 1 April 2014.

Allegations of the Appellant

9. The Appellant challenges the decision. He states KPCC erroneously and incompletely established the factual situation and applied the material and procedural law wrongly.
10. The Appellant alleges that when filing the claim with KPA he clearly indicated the decision, reference number, date and the institution which had taken the decision that is the basis for his property right; therefore, if the KPA had requested from the Secretariat for Urbanism, Public Utilities and Housing affairs in the Municipality of Pejë/Pec, the said decision could have been found. In addition, the appellant emphasizes that his request to install a temporary pre-fabricated object was granted by the said Decision. He also had the right to use the parcel where the object was installed. According to him, the fact that the right to use the parcel was of a temporary character, cannot be the ground for rejecting the claim because under normal conditions he would have enjoyed this right if the armed conflict had not occurred. The Appellant emphasizes that this is confirmed by the fact that such decisions contained a provision under which the beneficiary was obliged to relocate the object at own expenses, without compensation and without the

right to acquire another surface, according to the directive of the competent body in case of land consolidation, but he never received such decision.

11. For the aforementioned reasons, the Appellant requests from the Supreme Court to schedule a deliberation where he would be summoned to give a statement in the capacity of the Appellant and give an explanation to his right and the nature of the premise.

Legal reasoning

12. The appeal is admissible as it was filed within the period of 30 days as prescribed by UNMIK Regulation 2006/50.
13. However, the appeal is ungrounded.
14. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
15. According to this legal provision, the Appellant had to submit evidence in support to his claim to prove the ownership right to, or the right to use the immovable property.
16. The KPCC bases its decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, that he as property right holder enjoys any ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.
17. The appeal of the Appellant recalls the same allegations as he stated before the KPCC. No new evidence was provided with the appeal.
18. Regarding the allegations of Appellant on the Decision No. 05-353/40 dated 12 April 1989, taken by the Secretariat for Urbanism, Public Utilities, and Housing affairs of the Municipality of Pejë/Pec, the Supreme Court reasons as follows.
19. The Appellant did not provide that document. The KPA was not obliged to add such a document *ex officio* to the case file. Therefore the Supreme Court cannot take this allegation into account.
20. The Supreme Court finds that the KPCC has taken a correct and grounded decision in the course of a proper procedure. Consequently, the Supreme Court finds that there

were no violations of material rights or incomplete determination of factual situation.

The Supreme Court finds that the appeal is ungrounded.

21. In the light of the foregoing, pursuant to Article 13.3 sub-para (c) of Law No. 03/L-079 is decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the 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

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar