

**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-070/15

**Prishtinë/Priština
19 October 2016**

In the proceedings of:

L. R. S.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylajemna Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 (case file registered at the KPA under the number KPA06559), dated 30 April 2014, after deliberation held on 19 October 2016, issues the following:

JUDGMENT

1. The appeal of L. R. S. against the decision of Kosovo Property Claims Commission KPCC/D/C/240/2014, dated 30 April 2014, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/C/240/2014, dated 30 April 2014 regarding the claim registered at the KPA under the number KPA06559, is confirmed.

Procedural and factual background

1. On 2 February 2007, L. R. S. (henceforth: the Appellant) filed a claim with Kosovo Property Agency, seeking confirmation of user right over business premises- shop of 13,5 m², located on parcel nr.2161 of Ferizaj/Uroševac Cadastral Municipality, street "Filipa Višniča" (henceforth: the claimed property). He alleges that he lost the possession due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
2. To support the claim, the Appellant *inter alia* submitted the following documents:
 - Construction permit No.351-340 dated 28 August 1998 stated that the Appellant is permitted to construct a temporary structure for his business.
 - Decision No.464-08-54817/98 dated 13 October 1998 states that the Appellant is given a part (13,5 square meters) of cadastral parcel nr.2161 in Ferizaj/Uroševac for use.
 - Consent No.01-19 issued on 30 January 1997 by which the Appellant was granted with a working permit.
 - Description of the claimed property dated 30 January 1997.
3. The Kosovo Property Agency (KPA) found *ex officio* Certificate for the Immovable property rights listing the Municipality of Ferizaj/Uroševac as a sole owner of the cadastral parcel No.2161.
4. On 2 March 2007, the KPA officers carried out the physical notification of the claimed property and found that the business premises were occupied by B. B. who signed the Notice of Participation but did not claim any right over the property.

5. Within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, no one expressed any interest to take part in the proceedings regarding the property that is subject of the claim; hence, the claim remained uncontested.
6. On 30 April 2014, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/240/2014, dismissed the claim due to the lack of jurisdiction. In the reasoning of its decision, the KPCC indicates that according to the evidences, the Claimant was entitled to temporary user right over the claimed property and was therefore only authorised to build a moveable structure on the claimed property. Pursuant to paragraph 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Commission's jurisdiction is limited to claims for repossession of private immovable property including commercial one.
7. On 24 October 2014, the Decision was served on the Appellant. He filed an appeal before the Supreme Court on 13 November 2014.

Allegations of the claimant/appellant

8. The appellant alleged in his appeal that the claimed property is usurped and he wants the complete documentation to be reviewed by the Supreme Court and the factual situation to be determined.

Legal reasoning:

Admissibility of the appeal

9. The appeal was filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal

10. Following the review of the case file and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
11. KPCC has accurately evaluated the evidence when it decided that the claim falls outside its scope of jurisdiction. KPCC gave full, comprehensive, clear, accurate and consequently lawful explanations and clarifications on crucial facts for a correct decision.
12. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Appellant is entitled to an order from the KPCC for repossession of the property if he not only proves ownership right or user right over 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. In view of this provision, it follows that the jurisdiction of the KPA Property Claims Commission and hence of the Supreme Court is limited exclusively to resolution, adjudication and settlement of property right claims for **private immovable property**, including agricultural and commercial immovable property.
13. The Supreme Court notes that according to the documents provided by the Appellant, he was given a part of parcel nr.2161 in Ferizaj/Uroševac to erect a temporary construction- shop, which is considered as a movable object.
14. The land itself is socially owned property as it could be seen in the abovementioned Certificate for the Immovable property rights. According to Article 9, paragraph 1 of the Law on Property and Other Real Rights (Law No. 03/L-154) provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered immovable objects.
15. 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 erroneous and incomplete determination of factual situation.
16. Consequently the appeal according to Section 13.3 (c) of Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as is related to the case which had to be decided upon in this judgement (KPA06559).

Legal Advice

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

Sylejam Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar