

**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-238/2014

Prishtinë/Priština,
16 November 2016

In the proceedings of:

A. S.

Appellant

vs.

The legal person **I. J.S.C.**
Fushë Kosovë/Kosovo Polje

Appellee

Representative: G.H.,
Manager of the Legal Office

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Anna Bednarek Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (henceforth: the KPCC) No KPCC/D/R/239/2014 dated 30 April 2014 (the case file registered at the Kosovo Property Agency under the No KPA46166, henceforth: the KPCC's Decision), after the deliberation held on 16 November 2016, issues the following

JUDGMENT

1. **The Appeal of A. S. against the Decision of the KPCC No KPCC/D/R/239/2014, dated 30 April 2014, is rejected as unfounded.**
2. **The Decision of the KPCC No KPCC/D/R/239/2014, dated 30 April 2014, as far as it concerns the Claim with the No KPA46166, is confirmed.**

Procedural and Factual background

1. On 15 November 2007 A.S. (henceforth: the Appellant) filed a Claim at the Kosovo Property Agency (henceforth: KPA), seeking the confirmation of her property right over and repossession of an apartment in the railway station, entrance 2, first floor, No 1 of Gllgovc/Glogovac, located in Zeleznicka Stanica, Drenicë/Drenica, with a surface of 51 m² (henceforth: the claimed apartment).
2. The Appellant submitted, *inter alia*, to the KPA:
 - A Decision on Lease of an apartment for official purposes, issued by the Public Railway Transport Company in Belgrade on 4 December 1997, No 15/97-341/2; according to this Decision to the Appellant employed as cashier in railway station in Dranicë/Drenica, it was granted the use of the claimed apartment as long as she was conducting duties and official tasks, which foresaw granting of apartments for official needs;
 - A Contract on Lease of the apartment for official purposes, concluded between the Public Railway Transport Company in Belgrade (henceforth: the Railway Company) and the Appellant, dated 4 December 2014, No 15/97-341/2 (henceforth: the Lease Contract). According to Article 1 of the Lease Contract to the Appellant it was granted the use of the claimed apartment. According to Article 9 of the Lease Contract the parties agreed that the use of the claimed apartment was related to performing of official duty in the Railway Company, and conditioned the use of the apartment for official purposes, and therefore the Appellant was obliged, in the event of termination of her duty, to vacate the apartment within 30 days from the date of termination of the Contact. The KPA verified these documents as genuine.

3. The KPA notified the Claim on 20 November 2012. I. M., the Operative Director of I. signed a notice of participation in the proceedings.
4. On 22 April 2013, the Public Enterprise I. J.S.C. (henceforth: the Appellee) submitted a Response to the Claim. The Appellee states that the building in which the claimed apartment was located, was destroyed during the war, and that the Appellee did not have means to renovate it. The building was given in concession to a third party in 2007. The Appellee submitted to the KPA the Contract, dated 17 and 18 April 2007, concluded between Hekurudhat e Kosovës J.S.C. and the third party on Adaptation of the Building in which the claimed apartment had been located.
5. The KPCC decided through its Decision to refuse the Claim. In its reasoning (paragraphs 9 and 25 of the Cover Decision) the KPCC established that the Appellant seeks confirmation of a use right of the claimed property, which right was temporary and related to her employment at the railway enterprise. The KPCC further reasons that there is no evidence that the temporary use right had been renewed or extended. The KPCC also considers that a mere temporary use right falls short of establishing a right of use over the claimed property that is capable of restitution under Section 3.1 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.
6. The Decision was served upon the Appellee on 4 July 2014 and on the Appellant on 14 July 2014.
7. The Appellant filed an Appeal against the KPCC's Decision on 13 August 2014.
8. The Appellee submitted a Reply to the Appeal.

Allegations of the parties

9. The Appellant alleges that the Lease Contract was not temporary and was still in force. The Legal Department of Serbian Railways confirmed her that the Contract was still valid. She states that she is the owner of the claimed property.
10. The Appellee contests that the Lease Contract is still effective. The building in which the claimed apartment was located, was completely burnt, demolished and destroyed during the war.

Legal reasoning:

Admissibility of the Appeal

11. The Appeal is filed within the 30 days deadline provided by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 and therefor admissible.

Merits of the Appeal

12. Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 reads as follows:

The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:

(a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and

(b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,

Where the claimant is not now able to exercise such property rights.

13. The Supreme Court apprehends the reasoning of the KPCC that either the Lease Contract is no longer in force as the Contract has not been renewed or extended since the Appellant abandoned the apartment during the war, or the use right that was granted by the Railway Company is not a property use rights as meant in Section 3.1 of UNMIK Regulation 2005/60.
14. The Appellant contends in the Appeal that the Contract is still valid. She substantiates this allegation (only) with her statement that the Railway Company approved this stance.
15. According to the provisions of the Lease Contract, as paraphrased here fore in paragraph 2, the lease of the claimed apartment was agreed as lease for official

- purposes related to performing official duties in the Railway Company. Further, it is stipulated that the Appellant had to vacate the apartment after termination of duty.
16. According to Article 7 of the Law on Housing Relations (Official Gazette of SAPK no. 11/83, 29/86 and 42/86), which law was in force in Kosovo at the moment of conclusion of the Lease Contract and also at the end of the armed conflict in 1999, that law does not apply to apartments used for official purposes. This means that the protective provisions of that law for occupancy right holders and tenants do not apply for these kinds of apartments. That means that termination of the Contract is only regulated by the provisions in the Lease Contract.
 17. In this case, according to the Lease Contract, the use right depends on continuation of the position of cashier at the railway station of Drenicë/Drenica.
 18. The Appellant, who bears the burden of proof, did not provide any evidence that she, after she had abandoned the claimed apartment, maintained her position of cashier at that railway station. The fact that she had to leave the position due to the circumstances of the war in Kosovo in 1999 is not a valid argument to conclude otherwise.
 19. Therefore, the KPCC decided rightfully that the Lease Contract is no longer in force. This means that the Appellant no longer has use right of the claimed apartment.
 20. As the Claim already has to be refused on this ground, there is no need to evaluate whether the use right to the claimed apartment is a property use right in respect of private immovable property as meant in Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 or not.

Conclusion

21. Consequently, pursuant to Section 13.3 sub (c) of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 the Supreme Court decides as in the enacting clause of this Judgment.

Legal Advice

22. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar