

**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-19/13

**Prishtinë/Priština,
17 September 2013**

In the proceedings of:

M. D.

Serbia

Appellant/Claimant

vs.

H. D.

Pejë/Peć

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/160/2012 (case file registered at the KPA under the number KPA08840) dated 06 June 2012, after deliberation held on 17 September 2013, issues the following:

JUDGMENT

1. The appeal of M. D. filed against the decision of Kosovo Property Claims Commission KPPC/D/C/160/2012 dated 06 June 2012 as far as it regards case file registered in KPA with number KPA 08840 is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/160/2012 dated 06 June 2012 as far as it regards case file registered in KPA with number KPA08840 is confirmed.
3. The appellant has to pay the cost of proceedings in the amount of 60 (sixty) euros within 90 (ninety) days from the day this judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 01 February 2007, M. D. filed a claim with Kosovo Property Agency (KPA) seeking re-possession of the property – business premise. He claims he was the owner of an Attorney at Law Office with a surface of 20 m², located in Pejë/Peç parcel no. 240/2, Pejë/Peç Cadastral Zone. To support his claim he submitted a decision of the Department for Urbanism, Utilities, Housing and Construction of Pejë/Peç Municipality – No. 05-353/40 dated 12 April 1989. Me këtë, M. D. was allowed to set up a provisional prefabricated premises on parcel 240/2 of Pejë/Pe Cadastral Zone with dimensions 4,0x5,0 m. The claimant was obliged to remove this prefabricated premise of provisional nature at his own expenses, according to order No. 04.1354/89 dated 18 September 1989 of the competent body upon land preparation for construction, without compensation or right of allocation to a different surface. The claim was registered under KPA08840.

On 29 October 2008, the respondent participating in the KPA proceedings stated that the claimant had the premise on temporary use basis and that he is not entitled to any property claim. During the war, that premise was burned down and later he rebuilt it from scratch. The construction expenses exceeded the entire cost of the premise before it was burned down. As evidence he submitted photos of the burnt premise.

On 10 January 2012 the claimant objected to the respondent's allegations stating that even under the assumption of the premise being burned down, he had no authorisation and right to invest in its reconstruction. He has rented this premise since 1999 so he seeks compensation of damages in the amount of 300 euros per month.

According to the cadastral data per unit of the Cadastral Agency of Kosovo dated 14 June 2011, it is ascertained that parcel 240-2 of Cadastral Zone in Pejë/Peç Municipality is registered as socially owned property that is being used by SOE “Kosovatrans” in Pejë/Peç.

According to the verification report dated 14 June 2011, all mentioned documents have been positively verified by the KPA verification team.

On 6 October 2008 and 13 October 2010, KPA officers visited the site where the business premise was located and ascertained that the premises was closed and was being used as a beauty parlour.

On 06 June 2012, the Commission with decision KPCC/D/C/160/2012 dismissed the claim due to lack of jurisdiction. KPCC, in its reasoning, stated that the claimant had the right to construct a provisional premise and to use it on a provisional basis, and that the claimed property should have been considered as movable property. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, KPCC has jurisdiction to decide only on immovable properties.

On 14 November 2012, the decision was served to M. D. who lodged an appeal with the Supreme Court on 10 December 2012 (hereinafter: appellant). On 06 December 2012 the decision was served to H.D. (hereinafter: appellee).

The appellant explained that the business premise was immovable because it was permanently attached to the ground. Thus, the decision of the KPCC dealt with substantial breach of the procedural law and erroneous application of the substantive law.

The appellant requests the Court to annul the KPCC decision regarding the matter in question and to return it to KPCC, or to review the decision and acknowledge the appellant’s rights for return of property use and damage compensation.

Legal reasoning:

The appeal was filed within the time limit of 30 days as set out with the law (Section 12.1 of UNMIK Regulation No. 2006/50 as amended by the Law no. 03/L-079).

However, the appeal is ungrounded.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable 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 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.

It is not contested that according to decision of the Department for Urbanism, Utilities, Housing and Construction of Pejë/Peç Municipality – No. 05-353/40 dated 12 April 1989, the appellant was allowed to set up provisional prefabricated premises in parcel 240/2 of Pejë/Peç Cadastral Zone, which is registered as socially owned property that is administered by the Transport Company “Kosovatrans” from Pejë/Peç. The appellant was obligated to remove the prefabricated premise of provisional nature at his own expenses according to the order of competent body upon land preparation for construction, without compensation or right of allocation to a different surface.

Therefore, in light of these factual conclusions, the Supreme Court considers that the appealed decision of the Property Claims Commission was right and lawful when it decided to dismiss as impermissible the appellant’s claim due to lack of jurisdiction. This is because according to the decision of the competent body, the appellant had the right to set up a provisional prefabricated premise for temporary use which is to be considered a moveable property.

The Supreme Court also considers that the claimed property according to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights is treated as a moveable property. According to this legal provision, provisional prefabricated buildings, kiosks, and provisional prefabricated premises such as in specific case, are not considered to be immovable property. Moreover, the provisional premises cannot be a matter for recognition of property right and neither can it be registered in the property register of the cadastral office. Therefore, the appellant’s allegations that the provisional prefabricated premise is an immovable property are ungrounded. The appealed decision does not involve any fundamental errors or serious misapplication of the applicable material or procedural law.

Cost of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal

regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees shall be applicable to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- court fee tariff for the issuance of the judgment (sections 10.21 and 10.1 of AD 2008/2): € 30.

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Article 47.3 stipulates that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar