

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-017/14

Prishtinë/Priština,

17 December 2014

In the proceedings of

L. B. N.

Serbia

Appellant

vs.

G. D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA25012) dated 18 April 2013, after deliberation held 17 December 2014, issues the following

JUDGMENT

1. The appeal of Lela B. N. against the decision of the Kosovo Property Claims Commission KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA25012) dated 18 April 2013 is rejected as unfounded.
2. The decision of the Kosovo Property Claims KPCC/D/C/200/2013 (case file registered at the KPA under the number KPA25012) dated 18 April 2013 is confirmed.

Procedural and factual background

1. On 01 February 2007, B.L. N. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a business premises. He claims he is the owner of the kiosk of 4.00 m², located on parcel nr. 2025 of Cadastral zone Prizren, street “Kralja Petra I Oslobodioca b.b”, Municipality of Prizren and got permission to put the kiosk on that location. He alleges that he lost possession of this kiosk due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 17 June 1999 as the date of loss.
2. To support his claim, he submitted the following documents:
 - Decision of the Municipal Assembly of Prizren, Department for economy, budget and finances No.04/1-330-92 dated 26 March 1996. By this decision B. L. N. is given an approval to start a sole proprietorship business - kiosk as well as the Certificate No. 04/1-330-92 issued by the same institution confirming that claimant performs the commercial activity of retaining cigarettes, stationary and school materials in Prizren at the address “Kralja Petra I Oslobodioca”.
 - Decision of the Municipality of Prizren, Department for urbanism, utilities, housing affairs and construction, No. 04/4-418, dated 20 May 1997. By this decision, B. L. N. was obliged to pay the fee for 12 months for using of the construction land at territory of the Prizren Municipality
 - A copy of the plan of Cadastral Municipality of Prizren, issued on 30 July 1997. This copy of plan establishes that the claimant had placed a kiosk on a part of parcel 2025 of cadastral zone of Prizren.
 - Decision on the Construction the Municipality of Prizren, Department for urbanism, utilities, housing affairs and construction, No 04/4-351-157 , dated 7 December 1998 permitting B. L.N.

to change the existing kiosk with a new one of the type “ Mak Internacional” on the part of plot no 2025, Cadastral Municipality of Prizen for period of 5 years.

3. The claim was registered at the KPA under KPA25012.
4. On 6 May 2007 KPA determined that at the place where the contested kiosk should be located, there is a kiosk. It is occupied by G. D.
5. G.D. participated proceedings before the KPA by sending a reply on 28 September 2011. She denied the claimant’s allegations and states that the old kiosk was removed from the Municipality of Prizren and by permission of the Municipality she has placed a new kiosk.
6. According to the cadastral records (UL-71813068) parcel 2025 is socially owned property and registered in the name of the "Social Accounting Service."
7. On 18 April 2013 the Kosovo Property Claims Commission (KPCC) with its Cover Decision KPCC/D/C/200/2013, dismissed the claim. In the reasoning of its decision, the KPCC indicated that according to the evidence the claimant had acquired only a temporary use right over the claimed property and was therefore only authorised to build a movable structure on the property. The KPCC states further that the claim relates to movable property and not to private immovable property, so the KPCC has no jurisdiction.
8. B. L. N. died on 21 February 2013. On 19 September 2013, the KPCC decision was served on L.B. N, claimant’s daughter. She filed the appeal before the Supreme Court on 11 October 2013 (henceforth: the appellant). G. D. received the decision on 12 August 2013 in capacity of appellee but she did not file a response to appeal.

Allegations of the appellant

9. The appellant alleges that the claim was not reviewed in accordance with the law but it is based on an erroneously and incompletely established factual situation. She states that the claim was dismissed on the ground that the movable property, the kiosk, is socially owned property.
10. The appellant additionally presented:
 - Decision on the Construction Permit, of the Municipality of Prizren, Department for urbanism, utilities, housing affairs and construction, No 04/5-354-6, dated 11 February 1997 ordering the STR “IVA” to remove the temporarily installed object since it should be replaced by a new one in accordance with the type determined for that street.

Legal reasoning

Admissibility of the appeal

11. The appeal was filed within 30 days as foreseen by Section 12.1 of the 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

12. According to Section 3.1 of the 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 a 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. This also goes for use rights on immovable property.
13. Since there is no doubt that there was a right in 1999 and that the loss of the ability to use that right is resulting from the armed conflict, the Appellant therefore has to prove that the subject matter is an immovable object.
14. The KPCC decision reads that the property is of a movable character. Apparently this decision is based on the copy of the decisions that were filed by the Appellant when filing the claim. These decisions refer to the nature of the property as prefabricated object.
15. Whether the building is or is not of an immovable character therefor has to be established by comparing the factual situation with the requirements for the status of a building as such. Article 10 of Law No.03/L-154 on Property and other Real Rights describes immovable property as follows:
 1. *Immovable property is a part of the earth's surface that is or can be enclosed. Immovable property includes plants enrooted in the ground and buildings firmly connected to the ground, but do not include natural resources in the subsoil.*
 2. *Immovable property includes*
 - 2.1. *a building that belongs to a person other than the owner of the immovable property on which it is built;*
 - 2.2. (...);
 - 2.3. (,,);
16. The Decision No. 04/4-418, dated 20 May 1997 says B. L. N. was obliged to pay the fee for 12 months for using of the construction land at territory of the Prizren Municipality as well through the

Decision No.04/1-330-92 dated 26 March 1996, B. L. N. was given an approval to start a sole proprietorship business – *kiosk*

17. The second requirement would be that the building is “*firmly connected to the ground*”. The photographs in the file show a small kiosk – prefabricated object that is not inextricably attached to the ground and of such a size (4 m²) that it can be removed at a nominal cost and with no damage to the land or to the existing structure.”
18. According to provision of Article 9, paragraph 1 of the Law on Property and Other Real Rights (Law No. 03/L-154), the kiosk is a moveable object. According to this legal provision provisional prefabricated buildings, kiosks, and provisional prefabricated structures, such as in the concrete case, are not considered as immovable objects.
19. 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 the appellant’s claim due to the lack of jurisdiction, as far as appellant claims repossession of the kiosk. As far as appellant meant to claim a property use right at the ground on which the kiosk was located, KPCC dismissed the claim right and lawful because according to the copy of plan and other submitted evidence, the appellant was granted no more than a temporary right to provisional use of a socially-owned property in part of parcel 2025 of cadastral zone of Prizren
20. 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, as alleged by the appellant.
21. Consequently the appeal according to Section 13.3 (c) of Law No.03/L-079 has to be rejected as unfounded and the decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this judgement (KPA25012).
22. This judgment has no prejudice to the claimant’s right to purpose her rights for compensation before the ordinary courts in Kosovo.

Legal Advice

Pursuant to Section 13.6 Law No. 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini , Judge

Urs Nufer , EULEX Registrar