

**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-64/12

**Prishtinë/Priština,
17 July 2013**

In the proceedings of:

G. DJ.

Claimant - Appellee

vs.

B. Z.

Respondent – Appellant

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/139/2011(case file registered at the KPA under No 10235) of 7 December 2011, after deliberation held on 17 July 2013, issues the following:

JUDGMENT

- 1- The appeal of B. Z. from Prishtinë/Priština, dated 28 May 2012, is rejected as unfounded.
- 2- The decision KPCC/D/C/139/2011 (as far as it regards the claim registered at the KPA under KPA10235) of 7 December 2011 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 280 (two hundred eighty euro) within 30 (thirty) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 20 October 2006, G. Dj. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right and repossession of a business premise located in Prishtinë/Priština, Dardania 1, with a surface of 27, 35 m². She explained that the business premise is her own property and that the premise was occupied by unknown persons. The property was lost as a result of circumstance of 1998/1999 and the date of lost was mentioned to be 1 December 1999.

To support her claim, she provided KPA with the following documents:

- Sale contract of the business premise under credit no. 1246 dated 7 April 1992, whereby it is established that Dj. S. bought the commercial premise located in Prishtinë/Priština, Dardania 1, with a surface 27,35 m², which is subject of the claim of the property right holder;
- Judicial settlement reached between G. Dj.(claimant) and enterprise “Zenit Lizing ” which was included in the records of the main trial of Municipal Court of Prishtinë/Priština C.nr.766/01 dated 29 September 2006, whereby the Court decided to recognize the claimant’s ownership right (in 1/1 share) over the immovable property that enterprise “Zenith-Lizing” from Prishtinë/Priština was holding based on the sale contract no.1246 dated 07 April 1992 concluded between the construction company “Grading” from Prishtinë/Priština in capacity of seller and Zenit Lizing and Dj. S.
- Certificate on the purchase of business premise GIP “Grading” from Prishtinë/Priština no.1246-1 dated 17 April 1992, whereby it is established that the enterprise “Zenit Lizing” from Prishtinë/Priština has acquired the property right over the business premise located in Prishtinë/Priština in “Dardania” at the business trade centre under the number 10. The buyer “Zenit Lizing” from Prishtinë/Priština paid the full sale price for the premise as provided for under article 3 of the contract;

- Payment receipt of the enterprise “Zenit Lizing” dated 15 April 1992, whereby it is established that this enterprise in capacity of buyer paid the amount of 1.430.870.00 dinars according to the contract no. 1246 dated 7 April 1992, in the name of Dj. S. which is the total amount as determined under article 3 of this contract;
- ID card of the claimant no. 1501415720, issued on 8 October 2011 by UNMIK.

The claimed property, according to the registered claim KPA10235, was notified on 8 March 2007, and the KPA notification team went to the place where the commercial premise which is subject of the claim was allegedly located and put signs indicated that the property was subject of claim and that the interested parties should submit their responses within 30 days.

The respondent B. Z., joining the proceedings by his submission dated 25 April 2007 stated that he is the user of the claimed premise and that he is interested to buy the same if the claimant is interested to sell it and if she has valid documentation proving to be the owner.

The KPA verification team has positively verified the court settlement reached in the Municipal Court of Prishtinë/Priština C.nr.766/01 dated 29 September 2006. The commercial premises subjected to Claim No. 10235 are not parcelled out and therefore their ownership could not have been registered in the claimant’s name.

With decision KPCC/D/C/139/2011, dated 7 December 2011, the Commission has recognized the property right of the claimant over the business premise subject of the claim and returned the possession. The decision was based on a judicial settlement agreed upon in a trial before the Municipal Court of Prishtinë/Priština C.nr.766/01 dated 29 September 2006. According to the settlement G. Dj. was recognised as the owner of the property, subject of the current claim.

On 30 April 2012, the decision KPCC/D/C/139/2011, dated 7 December 2011, was served to the claimant.

On 3 May 2012, the Commission’s decision was served to the appellant, who filed an appeal on 28 May 2012. In his appeal he stated that the appealed decision was rendered by erroneous and incomplete determination of factual situation and erroneous application of the material law, proposing to have the Commission’s decision amended and G. Dj. claim rejected or have the appellate decision quashed and return the legal case for re-adjudication before the KPCC. Furthermore, he stated that the property right over the business premise which is subject of the claim was not registered in the cadastral records; S. Dj. is not presented as a party in the judicial settlement and the claimant “Zenit Lizing” in the capacity of the major intervening party

as evidenced in the Municipal Court of Prishtinë/Priština C.nr.226/07 has claimed a damage compensation since 30 September 2006 when the judicial settlement entered into force.

The appellant does not claim to be the property owner himself, he expresses his willingness to buy the property.

Legal reasoning:

The Supreme Court of Kosovo reviewed the appealed decision pursuant to provisions of Article 194 of LCP, and following the assessments of the appeal's allegations, found the following:

The appeal is admissible because it has been filed within the legal deadline set forth under Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, which provides that a party may file an appeal against the Commission's decision within thirty (30) days from the notification of the parties of the decision. This is because the decision was served to the appellant on 3 May 2012 and he filed an appeal on 28 May 2012. However, the appeal is not founded.

The Supreme Court of Kosovo found as just, founded and lawful the factual determination and legal conclusion of the KPCC's decision, when it decided to reject as unfounded the allegations of the respondent/appellant and to recognize the claimant's property right over the claimed business premise, claiming to have its repossession and use. Having completely and fairly established the factual situation, the KPCC has fairly applied the material right pursuant to Article 20 of Law on Basic Property Legal Relations when it decided that the judicial settlement of the Municipal Court of Prishtinë/Priština represents a valid legal ground for acquiring the ownership. This legal provision provides that the ownership is also acquired by a decision of a state body or a competent court, which in this case at stake is the judicial settlement of the Municipal Court of Prishtinë/Priština C.nr. 766/01 of 29 September 2006 with which the claimant/appellant's property right over the business premise which is subject of the claim, was recognised.

In the said settlement, the Municipal Court of Prishtinë/Priština determined that G.D. has the ownership right on the immovable property over which enterprise "Zenith-Lizing" from Prishtinë/Priština had previously based on the sale contract no.1246 dated 7 April 1992 concluded between the construction company(CC) "Grading" from Prishtinë/Priština as seller and Dj. S. and Zenit-Lizing. According to the letter of the director of the company Zenit-Lizing dated 17 April 1992, addressed to G.I.P Grading on attestation of purchase of premise, Zenit-Lizing had bought the business premises that was being built at location of Business-craft-centre "Dardanija" in Prishtinë/Priština and the whole price as specified in Article 3 of the sale contract in the amount of 1.430.870.00 dinars was paid by the company. It was further mentioned that the

other buyer (S. Dj.) did not fulfil her obligation deriving from Article 4 of the contract to pay the amount within eight (8) days from the signing of the contract, the second buyer acquired all ownership right on subject premises based on contract number 1246 dated 07.04.1992. The said contract in Article 7 states if the buyer does not pay the agreed price in the manner and time laid down in Article 4 of the contract, she/it shall be deemed to abandon the contract and the seller obtains a right to sell commercial property to another buyer.

The Supreme Court's subject of consideration and assessment were also the allegations of the appellant that the claimant/appellee has no legally valid evidence on acquisition of the property right over the claimed business premise. However, the Court found such allegations unfounded and inadmissible. In fact court agreement of the Municipal Court of Pristina C.nr. 766/01 dated 29 September 2006, confirms that the claimant has the ownership right. That is meaning that the claimant acquired the ownership as it foreseen within the Article 20 of the Law on Basic Property Legal Relations.

Consequently, in the light of foregoing and pursuant to provision of Article 13.3 subparagraph (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it is decided as in the enacting clause.

Costs 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 exempted 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 apply 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, considering that the value of the said property may reasonably be estimated to be over € 50.000.00: € 250 (€50 + 0.5% of 50.000.00 which is € 250.000.00 but not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than

30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 30 days from the day the judgment is served to him. Article 47.3 provides 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 within 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.

This judgment does not exclude the claimant's right to refer his claims to the competent jurisdiction outside the jurisdiction provided for under provisions of Section 31 of UNMIK Regulation 2006/50 as amended by Law 03/L-079.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar