

**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-063/13

**Prishtinë/Priština,
17 September 2013**

In the proceedings of

B.B

Claimant/Appellee

vs.

H.K

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/A/140/2012 (case file registered at the KPA under No. KPA50228), dated 29 February 2012, after deliberation held on 17 September 2013, issues the following

JUDGMENT

1. The appeal of H.K against the decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 (regarding case file registered at the KPA under the number KPA50228, dated 29 February 2012, is dismissed as belated.
2. The costs of the proceedings determined in the amount of € 30 (thirty) are to be borne by the appellant, H.K, and paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 24 October 2007, acting as a family household member of the deceased V.B, the claimant B.B filed a claim with the Kosovo Property Agency (KPA) in regard to the parcel numbers 25/2, 253/1, 253/2, 253/3 in cadastral zone Shalinovice/Saljinovica, Municipality of Istog/Istok, with the surface of the parcel of 2 hectares 61 ares and 49 square meters.

The claimant stated that he was the son of the deceased property owner and that the property was lost on 15 June 1999 as a result of the circumstances in 1998/99. He claimed that the property is usurped by an unknown person and requested repossession.

To support his claim, he provided the KPA with the following documents:

- Possession List no. 32 issued on 8 January 1992 by the Cadastral Office of Republic of Serbia, Municipal Geodesy Administration of Istog/Istok indicating the registration of the claimed properties under the name of V.B;
- Copy of cadastral plan, dated 8 January 1992;
- Death certificate of V.B;
- Birth certificate etc.

On 14 July 2008, the KPA went to the alleged parcels and established the type of the properties as meadow and orchard without any building on them. They noted that the properties were not occupied. Notification report of the same date was arranged, notification of the claim was located on the lands; and the claim was published on 9 September 2008. The notification through publication in the gazette was completed on 24 September 2010.

On 29 February 2012, the KPCC with its decision KPCC/D/A/140/2012 (regarding case file registered at the KPA under the number KPA50228 in the schedule) decided that the claim was grounded, i.e. that

the claimant established ownership of the deceased property right holder over the claimed properties and ordered any person occupying the properties to vacate them.

The appellant was served with the decision KPCC/D/A/140/2012 on 19 October 2012. He refused to sign the receipt for the service.

He filed an appeal on 25 January 2013 stating that he found the last warning to vacate the housing structure wherein he claimed that the lands were taken from them in Second World War. He stated they returned to their lands after the end of conflict in Kosovo where they built a house for his family. He further stated there is a civil dispute pending before the competent court under case no C.nr. 112/06. He asked the authorities to permit him to stay in the house until the final decision of the court in that case.

The appeal was served on B.B on 28 March 2013. He filed a response to the appeal dated 12 April 2013.

Legal reasoning:

The appeal is inadmissible.

Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim. For this intention to be brought to the attention of the KPA the person in question has to be informed of the proceeding that had been initiated. In the case at hand, the appellant did not file a notice of participation to the proceedings after the publication of the claim in accordance with Section 10.1 of UNMIK REG 2006/50 as amended by Law No. 03/L-079. However, he cannot be considered as having been notified properly regarding the proceedings in front of the KPA, since no physical notification took place on the right parcel in 2008 which was only carried out through publication in the gazette in 2010 in line with the jurisprudence of the Supreme Court on the interpretation of proper notification. Therefore, his right of appeal has not been precluded simply because of this reason. Yet this does not make the appeal admissible as there is another procedural impediment for the adjudication of it.

He challenged the notice of eviction order that he found in his order as he stands. Even if such submission is considered as an appeal against the decision of the Kosovo Property Claims Commission (appeal), it was filed after the time limit for filing an appeal had expired. The appeal is belated (Art. 186.2 of Law No. 03/L-006 on Contested Procedure).

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides as follows: “Within thirty (30) days of notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”.

The Supreme Court observes that the appellant H.K was not a party to the proceedings before the KPCC; however, the Executive Secretariat attempted to serve the decision in relation to case no KPA50228 on H.K on 19 October 2012. He refused to sign the receipt for service. The registry information form shows the attempt of service. According to Section 6.5 (b) of UNMIK Administrative Direction No 2007/5, in case of personal service of the document if the addressee has refused to accept the document or to sign the receipt, the service shall be deemed to have been effected on the day of attempted service. Thus, the service of the said decision of KPCC on H.K was effected on 19 October 2012.

So, the time limit ended on 19 November 2012. Yet the interested party filed his appeal only on 25 January 2013, which is outside the above mentioned time limit. He has given no excuse and the Court cannot detect any reason for the delay. Therefore, the appeal is to be dismissed as inadmissible on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (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 the Court Fees is 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;

These court fees are to be borne by the appellant who loses the case.

According to Articles 45.1 of the Law on Court Fees, the court fee has to be paid within 15 (fifteen) days. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

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