

**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-77/13

Prishtinë/Priština, 19 February 2014

In the proceedings of:

Xh.P.

Istog/Istok

Appellant

vs.

M. R. R.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/19/2008 (case file registered at the KPA under No. KPA37025), dated 20 April 2008, after deliberation held on 19 February 2014, issues the following

JUDGMENT

The appeal of Xh. P. against the decision of the Kosovo Property Claims Commission KPCC/D/A/19/2008 (case file registered at the KPA under No. KPA37025), dated 20 April 2008 is dismissed as inadmissible.

Procedural and factual background:

1. On 24 April 2007, M. R. R. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property, parcel number 264, second class field, in the area Podkućnice, Ljubozda, Istog/Istok. He stated he was the owner and requested repossession. He stated that he had lost the possession over the property on 18 June 1999 and that the loss was a result of the circumstances 1998/1999 in Kosovo. To support his claim he presented a possession list number 27, issued by the Municipality of Istog/Istok (Geodesy Administration) on 28 December 1998, certifying that the field in question is registered under the name of the claimant.
2. The KPA team notified the property by placing a sign in the field. There is no argument that the notification was properly conducted and the sign was well visible. Within the 30 day period for responding to the claim no one requested to sign a notice of participation.
3. With decision KPCC/D/A/19/2008 (case file registered at the KPA under No. KPA37025) dated 20 April 2008 the Commission granted the claim. The decision-making body considered that the claimant has proven his right of property and that the possession over the land was lost because of the armed conflict of 1998/1999.
4. The decision was served on the claimant on 16 February 2011.
5. On 22 February 2013 Xh. P. filed an appeal against the KPCC's decision. The appellant claims that new evidence exists, he presented a purchase contract number 488/2009, dated 30 March 2009. The contract is about the transfer of the land, subject of the case. On 30 March 2009 (meaning after the decision of the KPCC was made) the appellant purchased the property from the claimant.
6. The claimant did not respond to the appeal, according to a note made by an officer of the KPCC who had a telephone conversation with the claimant, the latter confirmed that he has sold the property to the appellant.

Legal reasoning:

7. The appeal is impermissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) as the appellant has not taken part in the proceedings in the first instance.
8. Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: *"Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit [...] an appeal against such decision"*. Also Art. 176.1 of the Law 03/L-006 on Contested Procedure provides that the right to file an appeal belongs to the parties at the first instance proceedings.
9. A party to the claim and the related proceedings is *"any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/ or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1"* (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).
10. The appellant has not been a party in the first instance proceedings before the KPCC. The appellant does not justify this in any way in order to be accepted as a party to the proceedings now.
11. The Court notes that the notification had been properly executed. The KPA team has placed an information sign in three languages – Albanian, Serbian and English in the field.
12. There is no reason why the appellant did not inform the KPA of his intention to take part in the proceedings, as should have done. As he has no excuse as to why he did not take part in the first instance proceedings before the KPA this omission goes to his own detriment.
13. Therefore the appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law On Contested Procedure).
14. As the appeal is impermissible, the Supreme Court is not allowed to decide on either the question of the jurisdiction of the KPCC/KPA Appeals Panel or the legal questions concerning the purchase of the parcel.

Obiter dictum:

15. The Supreme Court notes that the decision of the KPCC decides the ownership of the disputed property at the time the decision was made. Eventual transactions that have taken place after this date are not affected by the decision.

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

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar