

**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-069/13

**Prishtinë/Priština,
18 November 2014**

In the proceedings of:

Sh. A.

Duboc

Appellant

vs.

B. R.

Prishtina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/157/2012 dated 06 June 2012 (case file registered at the KPA under No. 13046), after deliberation held on 18 November 2014, issues the following

JUDGMENT

1. The appeal of Sh. A., filed against Decision of KPPC/D/R/157/2012 (case file registered at the KPA under No.KPA13046), dated 6 June 2012, is dismissed as inadmissible.

Procedural and factual background:

1. On 11 July 2006, the Claimant B. R. filed a claim at the Kosovo Property Agency (KPA), seeking for the repossession of the house of 120 m², located on the parcel no.1200 with surface of 11 ar and 58 m² in Maticane Cadastral Zone, Pristina Municipality. The claim was registered at the KPA under KPA13046.
2. The Claimant, Mr. B.R., provided the KPA with the following documents to support his claim:
 - Possession list no.43 issued by the Directorate for Cadastre, Geodesy and Property of Prishtina on 10 April 2001 showing that the claimed parcel no.1200 and 1199/2 are registered under the name of B. R.;
 - A copy of the plan issued the Pristina Municipality on 11 April 2001;
 - A copy of ID card of B. R.
3. The said possession list was positively verified by KPA.
4. The property in dispute in case KPA13046, that is to say parcel no.1200, was physically notified on 11 August 2006 at first. The notification report of the same date in relation to the parcel no.1200 reveals that the property was occupied by Mr. Sh. A., who was present in person during notification process. He declared that he was using this property only for residential purposes and he did not pretend any legal right over the claimed property. He further declared that he did not want to submit a claim with the KPA.
5. There is also a declaration in the case file signed by the responding party, Mr. Sh. A., for another property (parcel no 1199 in Maticane Prishtina) stating on the one hand that he wishes to participate in the proceedings with the KPA and KPCC bearing the date of 8 November 2006 and on the other, stating that he declares that the claimed property is only used for residential purposes and he

does not claim any legal rights to the claimed property (parcel no.1199 in Maticane, Prishtine) but he has no alternative accommodation bearing the date of 6 December 2006. The Supreme Court notes that parcel no 1199 (despite of the fact that possession list no 43 refers also this parcel) was not claimed in case no KPA13046 which covers only parcel no 1200.

6. On 21 April 2010, the property was re-notified. The notification of property was properly done based on GPS coordinates and Ortophotos. Mrs. F. A. was present during notification and stated that she did not pretend any legal rights, interests or permission to use or occupy the claimed property (parcel no.1200). She signed the notification of the claim on 21 April 2010 and declared that she would visit KPA as soon as possible.
7. The claim is uncontested during the first instance proceedings in the sense that the persons using the property at the time of notification had not contested the claim within the 30-days period prescribed in section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079
8. KPCC granted the claim with the Decision KPPC/D/R/157/2012 dated 6 June 2012.
9. On 08 February 2013, the Decision was served on Sh. A. (hereinafter the Appellant). He filed an appeal against the said KPCC's Decision on 4 March 2013. Together with the appeal, the Appellant filed the following (copies of) documents as evidence:
 - A copy of the ID Card of Sh. A.
 - A request filed by V. A., dated 20 April 2012, for review the decision on recognition of the ownership right KPA case no.13057.
12. The appeal was served on B. R. on 16 August 2013. He filed a response against the appeal on 29 August 2013.

The allegations of the parties:

13. The Claimant, Mr. B. R., in his claim asserts that the property was lost due to the armed conflict in Kosovo from 1998/1999 and is illegally usurped. The specified date of loss is 24 June 1999. In his response to the appeal, he alleges that he never sold his property during the period mentioned by the Appellant, because he was not in Kosovo. He further states that he is as an owner paying the taxes on the property, such as tax obligations, property tax bill etc.

14. The Appellant, Mr. Sh. A., alleges that the KPCC Decision in case no KPA 13046 is issued in erroneous and incomplete determination of factual situation. Despite of the fact that his appeal indicates the case no KPA 13046; the content of the appeal refers to their request, dated 20 April 2012, to review the KPCC Decision (without giving any number). That request of 20 April 2012, filed by V. A., attached to the appeal speaks about case no KPA 13057 and relates to the Decision of the KPCC dated on 29 March 2012 regarding to the parcel no 1199/2. V. A., whose relation to the Appellant Sh. A. is unknown to the Court, in that request claims the legal right only over the surface of 2.5 ari where the house is located, not over all parcel no.1199/2. Sh. A., the Appellant, explains that KPCC did not take into account that request dated 20 April 2012 and the decision was taken for 11.58 ari which does not comply with the contested object and his request.

15. The Appellant maintains that regarding to the surface of 2.5 ari along with the house he concluded a verbal agreement with B. R. in November 1999 and the payment in amount of 15 000 German Marks was made for the sale of the house in the presence of 5 (five) witnesses. He also states that his statements were given to the officials of KPA during their visits.

Legal reasoning:

Jurisdiction

19. The Supreme Court has jurisdiction to examine the appeal.

Admissibility of the appeal

21. The appeal of Mr. Sh. A. is inadmissible because he was not a party in the proceedings at first instance before the KPCC.

22. According to Section 12.1 of UNMIK Regulation 2006/50 on Resolution of Claims Related to Immovable Property, Including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter: Law No. 03/L-079), a party may file an appeal within thirty (30) days of notification of parties by Kosovo Property Agency of the decision of Property Claims Commission.

23. Section 10.1 of Law No. 03/L-079 provides that upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is subject matter of the claim. Section 10.2 of the same stipulates that “*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 shall be a party ... 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 [...]”.

24. Only a party in the first instance proceedings has the right to file an appeal against the Decision of the KPCC. According to the jurisprudence of the KPA Appeals Panel of the Supreme Court, the mere exception of this rule comes to the surface if and when the person who may claim a right over the property in dispute has not been aware of the claim filed with the KPA due to lack of proper notification and thus is unable to file a notice of participation.

25. In the case at hand, the Supreme Court notes that the Appellant was aware about the proceedings in case no KPA 13046 as he was notified in person on 11 August 2006. However, he did not claim any legal right over the parcel no 1200 which as subject matter of the claim in that case. He did not file a notice of participation as required in Section 10.2 of the Law No 03/L-079, either. The Supreme Court observes that the notification was properly conducted. The Appellant, during the notification explicitly declared that he did not claim any legal rights, interests or permission to use or occupy the claimed property (parcel no.1200). The Appellant failed to provide legally valid, reasonable and justifiable reasons to inform the KPA of his intention to participate in proceedings, which he necessarily should have done. Since there is no justification as to why he did not participate in proceedings in the first instance before KPA, such failure goes to its detriment.

23. The Supreme Court finds it useful to note that the subject matter of the claim in no KPA 13046, concluded with the Decision No KPPC/D/R/157/2012, relates to the residential building with a surface 120 m², built in parcel no.1200. The Appellant’s allegations for recognition of the ownership right over the house along with 2.5 ari located on the parcel no.1199/2 are not subject matter of this deliberation. His appeal challenges another decision of the KPCC which dates 29 March 2012, not the decision KPPC/D/R/157/2012. As the appeal is inadmissible, the Supreme Court does not have to decide on the merits of the appeal.

24. The appeal should be dismissed as inadmissible pursuant to Section 12.1 and 13.3 (b) of the Law No. 03/L-079 and Article 195.1 subparagraph (a) of Law on Contested Procedure. Therefore, the Panel decided as in the enacting clause.

Legal Advice

25. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar