

**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-081/13

**Prishtinë/Priština
20 November 2014**

In the proceedings of:

E. R.

Municipality of Shtime/Štimlje

Appellant

vs.

V. S.

Kragujevac
Serbia

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/A/126/2011 dated 26 October 2011 (case file registered at the KPA under No. KPA 40111), after deliberation held on 20 November 2014, issues the following

JUDGMENT:

1. **The appeal of appellant against the decision of the KPCC no. KPCC/DA/126/2011 as far as it concerns Claim no. KPA40111 is dismissed as inadmissible.**

Procedural background:

1. On 20 June 2007 appellee filed a claim at the Kosovo Property Agency (KPA), seeking repossession over a parcel of land at Gracko nearby Bujonc, Kraishtë/Krajište, Municipality of Lipjan/Lipljan, cadastral zone Kraishtë/Krajište number 1195, with a surface of 50 are 63 m² (the claimed property). The claim was registered no. KPA 40111.
2. No person informed the KPA of his/her intention to participate in the administrative proceedings.
3. On 19 December 2008 the Kosovo Property Claims Commission (KPCC) decided on the claim (Cover Decision KPCC/D/A/29/2008; henceforth: first KPCC decision).
4. On 8 March 2010 KPCC resolved the decision of 19 December 2008 be rescinded, because the claim was not properly processed. The claimed property was not physically identified and properly notified.
5. The KPA notified the claim through publication in KPA Notification Gazette no. 5 and UNHCR property office Bulletin. De Gazette was left with the Head of Village.
6. Again no person informed the KPA of his/her intention to participate in the administrative proceedings.
7. The KPCC decided on 26 October 2011 (Cover Decision KPCC/D/A/126/2011; henceforth: the KPCC decision) that appellee had established that V. S. is the owner of 1/1 of the claimed property and that appellee entitled to possession of the claimed property.
8. The decision was served upon appellee on 2 April 2012.

9. Appellant filed an appeal against the KPCC decision at the KPA on 5 April 2013.
10. KPA sent a copy of the appeal to appellee, but he did not send in a reply.
11. By court order of 14 November 2013 appellant was ordered to state:
 - a. the reason why he did not participate in the procedure before the KPCC
 - b. when and how he received information about the KPCC decisionand both parties were ordered to:
 - c. supply evidence concerning ownership and/or possession of the claimed property
 - d. give detailed information about possession, use and losing the claimed property during the armed conflict between 27 February 1998 and 20 June 1999 (henceforth: the war).

Factual background

12. Appellee sent with his claim a 'Copy of the possession list no. 100 from de Cadastral Centre for immovable property Lipljan, Cadastral Municipality: Krajiste', dated 23 April 1996. In this list is stated that 'S. V., widow of D.,' is owner of the claimed property.
13. KPA verified the possession list. They found it and verified it positive. KPA added to the file a Certificate for the immovable property rights from Municipal Cadastral Office of Lipljan/Lipljan, dated 9 April 2008. In that Certificate is stated that S. V. is the owner/possessor of parcel P-71409038-01195-0 in Gracko kod Bujonca, Cadastral Zone Kraishtë/Krajište.
14. V. S., born Petrović, died in Kruševac, Serbia, on 14 March 2000. Appellee is according to his marriage certificate son of D. and V. S..

Allegations of the parties

15. Appellant alleged in appeal that he bought the claimed property in 1988 from the Serbian owner Blazha/Blaža. He states he cannot bring documents about the purchase because his house was burnt during the war. He adds a statement of a witness.

Legal reasoning:

Jurisdiction

16. The Supreme Court has jurisdiction.

Admissibility

17. The appeal is inadmissible if the appellant had not taken part in the proceedings before KPA. According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision. Section 10.2 of the Regulation provides: “*Any person other than the claimant [...] shall be a party to the claim and the related proceedings, 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 the present case, the appellant did not inform the Executive Secretariat of his intention to participate in the proceedings.

In addition, pursuant to article 258 paragraph 1 and 2 of the LCP, the Appellant neither can take part in appellate proceedings nor request amendment of the appeal, since it not permitted after the hearing is held before the KPCC.

18. Appellant did not answer to the court order to state why he did not participate in the procedure before KPCC and when and how he received information about the KPCC decision. In his notice of appeal he also did not give any statement at this point. Therefore the Supreme Court cannot conclude that his non participation in proceedings before KPA can be excused. For this reasons the appealed decision stays as it is.
19. In the light of the foregoing, pursuant to provision of Section 13 par.3 sub-para (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, by dismissing the appeal is therefore decided as in the enacting clause of this judgment.

Legal Advice

20. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable 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