

**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-022/14

**Prishtinë/Priština,
4 December 2014**

In the proceedings of:

V. H.

Podujevë/Podujevo

Respondent/Appellant

vs.

P. J.

Serbia

Claimant/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/196/2013 (case file registered at the KPA under the number KPA13946), dated 18 April 2013, after deliberation held on 4 December 2014, issues the following

JUDGMENT

The appeal of V.H. against the decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013 (case file registered at the KPA under the number KPA13946), dated 18 April 2013 is dismissed as belated.

Procedural and factual background:

1. On 8 November 2006 the appellee, then claimant P. J. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession over a parcel of land at Livadicë/Livadica, Podujevë/Podujevo, “Fusha e Livadicës/Livadičko Polje”, cadastral parcel no. 200/2, with a surface of 06.00.00 ha (hereafter to be referred to as: the property).
2. He claimed the property was inherited after the death of his father with 3/10 ideal part based on the inheritance decision from 1994. He stated that the state has confiscated the property during 40s but than it was restituted to his family in 1991 through court procedures. He further stated that he has left Kosovo for Belgrade 20 years ago, hence prior to conflict, but during the 90s had rented out the property to some neighbors. In addition he stated that he lost possession over the property due to the armed conflict that occurred between 1998/1999.
3. In front of the Commission the appellee presented a copy of possession list no. 152 issued on 17 August 1994 by the Geodesy Authority of the Republic of Serbia – Real Estate Cadaster Office, a copy of possession list no. 152 issued on 17 May 1995 by the Geodesy Authority of the Republic of Serbia – Real Estate Cadaster Office, showing the name of the appellee as the co-owner of the property, and inheritance decision no. II-0-1380/94 issued on 31 August 1994 by the fourth Municipal Court of Belgrade, showing the name of the appellee as one of the heirs/co-owner over the property.
4. It is not disputed that the family of the appellee used this land until 40s.
5. It is not arguable that after 40s and before the armed conflict of 1998/1999 the property was used by other people.
6. It is irrelevant for the current case on what basis these other individuals used the said property after 1940s and until the armed conflict.
7. The property was notified in 2007, 2010 and 2013 and the property was found cultivated by unknown person.

8. The appellant, then respondent V. H. signed the notice for participation into a proceeding on 19 January 2007. He did not claim property right over the property. In 2008 in the form of response to the claim he stated that the property is not the property of the appellee but belong to the Socially Owned Enterprise Agricultural Cooperative “Perparimi” from Podujevë/Podujevo. He added that property was taken from his family in 1918 “[...when the colonist came from Serbia and the Jović’s family came from Kruševac ...]”. He further stated that he cannot provide documents for the property since due to the war all the documents were destroyed. He presented several documents trying to show that he had taken part in the privatization process organized by the Kosovo Trust Agency (KTA) for selling the property in 2006.
9. The KPCC refused the claim. The KPCC accepted that “[...the claimed property is registered as socially owned in the updated possession list. As only private property can be subject of inheritance, the inheritance decision submitted by the Claimant is obviously invalid and can therefore not be taken into a consideration for the present case]”. In addition the KPCC decision stated that the appellee has failed to present the evidence that he had made any attempt to intervene in the privatization process. The KPCC concludes that the appellee has failed to show ownership right or any other property right over the claimed properties immediately prior to or during the 1998-99 conflict.
10. The decision was not served on the appellee since he refused to accept it. On 17 October 2013 the decision was served on appellant. He filed an appeal on 20 November 2013. The correspondence of the KPA shows that the filed appeal was not received by the appellee.
11. The appellee did not react to the appeal.

Allegations of the appellant:

12. The appellant asserts that the decision is unlawful and unfair because it did not recognizes his priority right of purchasing the property and enable the appellee to obstruct the transfer of the same. He added that the property was his property and that the same is usurped by the appellee and other persons in 1936. This was enabled by the Serbian Government who has brought them as settlers. He further stated that the appellee being aware of this condition, 20 years ago allowed the appellant to work this property and that he even offered to him the possibility to buy it in case they decided to sell it. He proposes that the Panel grants his appeal as founded by recognizing him the priority right to buy the property and to prevent the transfer of the claimed property by the appellee.

Legal reasoning:**Admissibility of the appeal:**

13. The appeal is inadmissible because it was filed outside the legal frame pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 (hereinafter the Law No. 03/L-079) on the resolution of claims relating to private immovable property, including agricultural and commercial property which provides that: *“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 through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”*.
14. The KPCC decided on this case with its decision KPCC/D/A/196/2013 of 18 April 2013. This decision was served on the appellant on 17 October 2013. The time limit for submitting an appeal was 18 November 2013, and the appeal was submitted by the appellant on 20 November 2013. Consequently, in accordance with Section 13.3 (b) of Law No. 03/L-079 and Article 195.1 (a) of LCP the appeal had to be dismissed as belated.
15. The Court could not find any reason why the appellant should be excused for this delay. He was sufficiently warned of the deadline (the decision contained a warning in the Albanian language) and the appellant himself gave no reason for delay.
16. On the basis of the above and in accordance with section 13.3 (b) of Law 03/L-079 and Article 195.1 (a) and the Court decided as in the enacting clause.

Legal Advice:

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

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar