

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-051/13

Prishtinë/Priština,

10 December 2014

In the proceedings of:

R. S.

Novobërdë/Novo Brdo

Appellant

vs.

P. Andrijevic.

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/92/2010 dated 28 October 2010 (case file registered at the KPA under No. 40416), after deliberation held on 10 December 2014, issues the following:

JUDGMENT:

1. The appeal of R. S. against the Decision of the Kosovo Property Claims Commission KPPC/D/A/92/2010 (regarding case file registered at the KPA under the number KPA40416), dated 28 October 2010, is dismissed as inadmissible, because the appeal is belated.

Procedural and factual background:

1. On 16 August 2007 Appellee filed a claim at the Kosovo Property Agency (KPA), seeking repossession and compensation over parcel no. 925, Cadastral Zone Prekovic, with a surface 5 Ar and 57 m², located at Reka, Novobërdë/Novo Brdo Municipality (hereafter referred as: the property).
2. In presence of the Appellee KPA made a verification of the location of the property on 13 December 2007 and put a notification on that ground.
3. No responding party approached the Executive Secretariat to contest the claim prior to the expiry of the statutory 30 days deadline.
4. KPCC granted the claim and issued the decision KPPC/A/13/2008, dated 30 April 2008.
5. By Resolution no. KPCC/RES/14/2010, dated on 11 February 2010, KPCC noted that the claim was not properly processed in that the claimed property was not physically identified and properly notified. For this reason KPCC resolved that:
 - The decision of the Commission be rescinded
 - The claim be referred back to the Executive Secretariat for further processing based on a correct identification and proper notification of the claimed property
 - [...]”.
6. The claim for the property was re-notified on 22 July 2010. According to the Notification and Confirmation Report, dated 22 July 2010, the claim was notified through publication in the Gazette no.5, which was left at the village, in some municipal offices and at UNHCR and Ombudsperson Office.

7. The re-notification did not result in material change in relation to the claim that would affect the decision of the Commission and again no respondent, occupant or any party approached KPA.
8. Based on the new notification KPCC issued the decision KPCC/D/A/92/2010 dated on 28 October 2010 (henceforth: the KPCC decision). KPCC decided that:
 - The Appellee has established he is the 1/1 owner of and is entitled to possession of the property;
 - The respondent(s) if any, and any other person occupying the property, vacate the property within 30 days.
9. The decision was served to the Appellee on 22 June 2011.
10. KPA with its decision on 24 November 2011 decided to place the property under KPA property administration.
11. Appellant on 25 November 2011 sent a letter to the KPA. This letter reads:

SUBJECT: Request for obtaining a copy of the KPCC decision for the case KPA40416. I would need a copy of the decision in order to file an appeal to the Supreme Court of Kosovo. I remain thankful hoping you would meet my request within shortest time possible so that the appeal deadline does not expire.
12. KPA received that request on 1 December 2011.
13. On 13 February 2013 the Appellant filed an appeal against the KPCC decision.
14. The Supreme Court received the case file on 12 April 2013.
15. The Supreme Court issued an order to the Appellant to state a) the reason why he did not participate in the procedure of the case before the KPCC and b) when and how he received information about the KPCC decision.
16. In response of the Supreme Court order, the appellant declared that the first time he found out about the case was in a verbal way from a KPA employee in November 2011. He also stated that he went to KPA headquarters office in Gjilan/Gnjilane to ask for information about the case. The only response he got from KPA was that the claim was announced in newspapers and that he is entitled to file an appeal before Supreme Court.

The allegations of the parties:

17. The appellant states that the KPCC issued an erroneous decision due to lack of evidences. He alleges that he was not aware about the claiming process.

Legal reasoning:

Admissibility of the appeal

18. Appellant was not a party in the proceeding in first instance before the KPCC.
19. According to Section 10.2 of UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by Law 03/L-079 (hereafter: Law UNMIK 2006/50) any person who is currently exercising or purporting to have rights to the property which is the subject to the claim and/or any other person who may have a legal interest in the claimed property shall be a party to the claim and the related proceedings, provided that such person informs the KPA of his intention to participate in the administrative proceedings.
20. According to Section 12.1 of Law UNMIK 2006/50 a decision of the KPCC can be appealed by a party before the KPCC within 30 days of the notification of the KPCC decision to the parties.
21. However, when the appellant did not join proceedings before KPCC the appeal is admissible if the appellant is an interested party who was not properly notified of the claim and was not aware or reasonably could not be aware of the claim before he filed the appeal. In that case he has to file an appeal within 30 days after he is aware of the decision of KPCC and the possibility to file an appeal.
22. The Appellant states he received information about the claim and the KPCC decision in November 2011. This leads to the conclusion that he apparently became aware of the claim for the first time after KPCC decided on the claim.
23. According to the facts mentioned in paragraph 5 and 6 abovementioned, the first notification of the claim was not properly done and the second notification was done (only) through publication in the Gazette. As the Supreme Court earlier decided, a notification only in the Gazette does not implicate Appellant was properly notified of the claim and reasonable could have been aware of the claim while processed before KPCC.

24. However, in this case this does not mean the appeal is admissible. According to his letter of 25 November 2011 to KPA Appellant was at that moment aware of the KPCC Decision and the possibility to file an appeal., but he waited filing an appeal until 13 February 2013. Therefore he filed the claim after the period of 30 days meant in Section 12.1 of the Law UNMIK 2006/50 and the appeal must be dismissed as inadmissible.

Conclusion

25. On the basis of the above and according to the provision of section 13.3 of the Law UNMIK 2006/50 and art. 198, paragraph 1 of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of Law UNMIK 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Willem BROUWER, Presiding Judge

Esma ERTERZI, EULEX Judge

Sylejman NUREDINI, Judge

Urs NUFER, EULEX Registrar