

**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-190/13

Prishtina,

6 May 2015

In the proceedings of:

F. F.

Istog

Appellant

Vs.

D. A.

Serbi

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi, EULEX Judge and Rolandus Bruin, EULEX Judge, members of the trial panel, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/133/2011, dated 7 December 2011, concerning the case KPA40955, after deliberation held on 6 May 2015, issued this

JUDGMENT

The appeal of F. F. against the decision of the Kosovo Property Claims Commission KPCC/D/A/133/2011, dated 7 December 2011, regarding the cases KPA40955, is dismissed as inadmissible.

Procedural and factual background:

1. On 30 May 2007, D. A. (hereinafter: the claimant) in the capacity of the property right holder filed a claim at the Kosovo Property Agency (KPA) for confirmation of his property right and repossession of parcel no. 393, with a surface of 0ha 4ar 40m², Possession List no. 4, Cadastral Zone Mojstir, Istog Municipality (hereinafter: the claimed property).
2. The claimant states that he had inherited the claimed property from his grandfather M. A., and that it was usurped by unknown persons. Among others, he also claimed compensation for use of the claimed property.
3. To support his claim, the claimant provided the KPA with the following documents:
 - Possession List no. 4 dated 1 February 2002 issued by the Directorate for Cadastre of Istog Municipality;
 - Decision on Inheritance T.nr.195/06 dated 28 March 2006, issued by the Municipal Court of Bor, Republic of Serbia. According to this decision, the claimant is declared as inheritor of his grandfather M. A., among others also for the claimed property (cadastral parcel no. 393);
 - Claimant's birth certificate no. M-07-200-8/4066 dated 17 November 2005 issued by the Republic of Serbia;
 - Death certificate of M. A. (claimant's grandfather) no. 07-203-5-98/2008-III dated 24 September 2008, issued by the Republic of Serbia;
 - Identification Card no. P 118.464 issued on 16 October 2000 by the Republic of Serbia.
4. KPA Notification Team positively verified all these documents, except the Inheritance Decision.
5. On 2 April 2008, the KPA notification team went to the place where the claimed property was located and placed a sign indicating that the property was subject of the claim, and that the interested parties should file their responses within 30 days. The property (commercial land without buildings, land/forest) was found unusrped. On 1 July 2010, the KPA, through publication in the KPA Notification Gazette no. 3 and the Bulletin of the UNHCR Office, confirmed the notification of the claim.
6. According to the correspondence report dated 19 May 2009, it is clear that the claimant had agreed that the claim filed by him before the KPA be processed in the name of his grandfather M. A. (because the

claimant had not presented any evidence to document his grandfather's death). This means that in the further proceedings before the KPA/KPCC the property right holder was considered M. A. (hereinafter: the property right holder) and not the claimant. Whereas according to the other report dated 15 October 2010, it can be seen that the claimant declared that Ć. A. – his father, was the only son of M. A. and that he had no other inheritors.

7. Since nobody responded to the notification, the claim was treated as uncontested.

8. On 7 December 2011, the Kosovo Property Claims Commission (KPCC) rendered a cover decision KPCC/D/A/133/2011, confirming the property right of the property right holder over the claimed property, as well as confirmed his right for the possession of the said property.

9. The KPCC decision was served on the claimant on 18 October 2012. On the same day, the claimant filed a claim before the KPA for the claimed property to be put under administration.

10. On 18 July 2013, F. F. (hereinafter: the appellant) filed an appeal against the KPCC decision KPCC/D/A/133/2011, dated 7 December 2011 concerning the claimed property. From the form of his appeal, it is clear that he appeals against the KPCC decision in entirety.

11. The appellant enclosed in his appeal a statement of himself (without date and number) and signed by 5 (five) persons [A. (R) M., S. (A.) A., B. (I.) Z., H. (I.) Z. and N. (I.) M.] from the village of Mojstir, Municipality of Istog, all in the capacity of witnesses.

12. In his statement, the appellant states that in 1980, when their father (V.F.) was alive, his family had moved for permanent residence to Mojstir village, Municipality of Istog (at the place where the claimed property is found). Afterwards, the appellant states that sometime at the beginning of the 80-ies his family had purchased the claimed property (but also the other parcel no. 394) from the sellers: G., M, M, I, R, J and R.A. (hereinafter: the sellers). Before his family had purchased the claimed property (and the other property) from the sellers, the appellant states that in 1954-1956 it (the claimed property) had been purchased by M. A. (sellers' father) from their cousins M. A.(property right holder) and Ž. A..

13. The claimant also states that in fact the property claimed and purchased by his family from the aforementioned sellers had been in the name of M. A. (property right holder) and Ž. A. (likely his brother). The sale and purchase price (the sum of 240.000,000 dinars) of the claimed property according to the appellant was paid in entirety at that time (i.e. at the beginning of the 80-ies).

14. What is more, the appellant states that for the sale and purchase of the claimed property, they had had a private contract in writing, but it disappeared during the war of 1999. According to him, they had fulfilled all contractual conditions as foreseen. He further adds that because of the political situation in Kosovo they were not able to conclude a formal contract certified before the competent Court. Since that time, according to him, the claimed property was handed over to them in possession, use and factual ownership. At the end of the appellant's statement, the signatures of five (5) aforementioned persons in the

capacity of witnesses were added (the identification cards of these undersigned persons were attached to this appeal).

15. As stated above, except for the information that the appeal was filed against the KPCC decision in entirety, in his submitted appeal the appellant stated the same allegations as before the KPA. Furthermore, in his appeal the appellant neither seeks nor motions anything to the Court.

16. The appeal was served on the claimant's brother (hereinafter: the appellee) R. A. on 21 October 2013 and not to him because of his health condition. On 4 November 2013, the appellee's brother, R. A., submitted the extract no.241 dated 26 October 1981, from the matrix book of birth for him and his identification card no. 461803 issued on 10 March 2008 by the Republic of Serbia. The appellee and his brother did not file a response to the appeal.

Findings of the Court:

17. The appeal is inadmissible.

18. Pursuant to Section 12.1 of UNMIK Regulation on resolution of claims relating to private 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 (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim. In addition, Articles 176.1 and 177.1 of the Law no. 03/L-006 on the Contested Procedure stipulate that the right to file an appeal belongs to the *parties* in the first instance proceedings.

19. In the particular case, the appellant was not a party in the first instance proceedings before the KPCC.

20. Therefore, the appellant's right to file an appeal against the contested decision depends on whether he/she was duly notified about the claim. The manner of notification of a claim in these proceedings is foreseen by Section 10.1 of UNMIK Regulation 2006/50 amended by the Law no. 03/L-079. According to this provision, the Executive Secretariat notifies and sends 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 the subject of the claim and makes reasonable efforts to notify any other person who may have a legal interest in this property.

21. On 2 April 2008, the KPA placed the notification sign on the property with legally required information concerning the claim in the Albanian, Serbian, and English languages. This is documented by the report of the KPA notification team, photos, and the drawn sketch of the location of the claimed property. The photos prove that the sign was placed on a flat surface in an open placed where the sign could be seen clearly.

22. The appellant alleges that the claimed property had been in his family's possession the whole time. As a result, there is no indication that they could not have noticed the sign and not be aware about the claim.

23. Reaching the conclusion based on all aforementioned circumstances, the Supreme Court considers that the appellant had the opportunity to be aware of the proceedings and present a defence in the first instance. Since he did not respond to the claim within the legal time limit and consequently did not become a party in the proceedings before KPCC, he is not permitted to file an appeal against the KPCC decision before the Supreme Court. Therefore, the appeal is dismissed as inadmissible pursuant to Section 13.3 (b) of UNMIK Regulation 2006/50 amended by the Law no. 03/L-079 (see also Articles 196 and 195.1 (a) of the Law on Contested Procedure).

24. Consequently, the Supreme Court of Kosovo 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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar