

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVWS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TW AKP-sw
ŽALBENO VEĆE KAI**

GSK-KPA-A-189/2014

**Prishtinë/Priština,
27 April 2016**

In the proceedings of:

P. Z.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/223/2013 (case file registered at the KPA under No. KPA50654), dated 27 November 2014, after the deliberation held on 27 April 2016 issues the following

JUDGMENT

The Appeal of P. Z. against the Decision of the Kosovo Property Claims Commission No. KPCC/D/R/223/2013, regarding case file registered at the KPA under the number KPA50654, dated 27 November 2013 is dismissed as belated.

Procedural and factual background:

1. On 23 November 2007, the Appellant P. Z. (hereinafter referred to as: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking the confirmation of property right and the repossession of the apartment number 3 located in the residential building P+4, 1st floor, in Gjurakoc/Đurakovac of the surface of 60 m² (hereinafter referred to as: the claimed property). He explained that he had lost the possession over the claimed property on 13 June 1999 due to the circumstances that took place in 1998/1999 in Kosovo. According to the Appellant the claimed property is usurped.
2. Together with the Claim the Appellant *inter alia* submitted to the KPA:
 - The copy of the Decision taken on 15 February 1993 No. 11/93 on Allocation of the two room apartment No. 3, located in residential building P+4, in Gjurakoc/Đurakovac to the Appellant. The third paragraph of the Decision stated that “The contract on terms for use of the apartment, in accordance with the Law on Housing, shall be signed by the director of enterprise, on behalf of the holder of disposal rights over the apartment”.
 - The copy of the Decision No. 599-1/83 issued on 31 January 1994 granting the claimed property for use by the employee of the Construction Enterprise “Standard” – Istog/Istok [hereinafter: the Allocation Property Right Holder (APRH)]. According to point 2 of the Decision the Appellant was to conclude an agreement on use of the apartment.
 - The copy of the Purchase Contract of the claimed property concluded between the Appellant and the APRH on 15 January 1999. On the basis of it the Appellant bought from the APRH the claimed property for the amount of 87.000 Dinars.
 - The copy of the Certificate issued by the APRH confirming that the Appellant payed the amount 69.600 Dinars for the purchase of the claimed property.

- The copy of the Decision Determining the Property Tax for Natural Persons No. 436-5/6146, dated 12 March 1998 regarding the claimed property and Utility Bills for the Year 1999 showing that the Appellant paid taxes and bills for the claimed property during the years 1998-1999.
3. The case was registered under the number KPA50654.
 4. According to the Verification Reports dated 22 April 2009 and 24 April 2013, the Decision on Allocation No. 11/93 (hereinafter: the first Allocation Decision) and the Decision on Granting the claimed property for use No. 599-1/83 (hereinafter: the second Allocation Decision) submitted by the Appellant were positively verified by the KPA. The Verification Reports dated 21 November 2012 and 13 February 2013 showed that the Purchase Contract (dated 15 January 1999) could not be found in the Registry of the Municipal Court of Istog/Istok and in the archive of the APRH.
 5. The claimed property was located by the KPA on 24 June 2008. It was found to be the damaged apartment, not occupied. Nobody participated as a Respondent in the proceedings.
 6. On 27 November 2013 the Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/R/223/2013 refused the Appellant's Claim. In paragraphs 34-35 of the mentioned Decision the KPCC reasoned that the submitted certified purchase contract could not be certified by the Executive Secretariat as being genuine and therefore the Commission did not consider the document to be valid evidence in support of the ownership right over the claimed property. Furthermore the Commission indicated that a mere allocation decision was not sufficient to establish a use right in the form of an occupancy right. The KPCC pointed out also that *"such right arises only if the party also concludes the contract on use and takes possession of the property"*. According to the Commission *"the utility bills and taxation records do not refer to the Claimant as the owner of the claimed property and, in the absence of any other corroborative evidence, are therefore not sufficient proof of the Claimant's property right over the claimed property"*. The KPCC concluded that the Appellant had failed to produce sufficient evidence to show that he had met all relevant statutory requirements as set out in the law.
 7. The KPCC's Decision was served upon the Appellant on 25 March 2014. On 25 April 2014 the Appellant filed an Appeal against the KPCC's Decision.

Allegation of the Appellant:

8. The Appellant requests the Supreme Court of Kosovo to grant his Appeal and to modify the KPCC's Decision acknowledging his rights over the claimed property. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete determination of facts, as well as, involves erroneous application of substantive law.
9. The Appellant challenges the constation of the KPCC that the Contract on of the claimed property cannot be considered as a valid proof. He also disagreed with the conclusion of the KPCC that the Decision on Allocation of the claimed property and a Decision on Use were not sufficient to prove his right of use. The Appellant also considered as ungrounded the KPCC's opinion that the property right over the claimed property cannot be determined through the submitted utility bills. The Appellant stated that the KPCC's allegations are absolutely false.
10. The Appellant noted that he could have not submitted a Contract on Lease over the claimed property since "at that time" the Public Housing Enterprise in Istog/Istok did not exist. He also added that it was not a practise to conclude such contracts over the apartments. The Appellant alleged that based on the Decision on Allocation and a Decision on Use (and not the Contract on Use) he purchased the claimed property.
11. The Appellant added that on the basis of the documents submitted by him it unequivocally could be concluded that he is the owner and legal possessor of the claimed property. He considered that even if the KPA has not been able to verify the Contract on Purchase of the claimed property, he moved into it in a legal way and the claimed property was home for him and his family until June 1999, when he and his family fled to Serbia because of the armed conflict occurred in Kosovo between 27 February 1998 and 20 June 1999.

Legal Reasoning

12. The Appeal is belated. Section 12.1 of the Law No. 03/L-079 Amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property provides as follows: "*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*".
13. The Appellant was served with the Decision of the KPCC on 25 March 2014, therefore the time limit to submit an Appeal ended on 24 April 2014. Yet the Appellant filed the Appeal only on 25 April 2014, hence one day after the deadline. That means that the Appeal was filed outside the

time limit provided for by law. The Appellant did not give any reasons for filing late Appeal and the Court cannot detect any reason for the delay.

14. Therefore the Appeal had to be dismissed as inadmissible on procedural grounds on the basis of the above quoted Law. As a consequence the Supreme Court could not examine the grounds indicated in the Appeal.

Legal Advice

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

Sulejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar