

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-120/2014
GSK-KPA-A-126/2014

Prishtinë/Priština, 14 July 2016

In the proceedings of:
in case GSK-KPA-A-120/2014:

The legal entity **U. K.DOO**

Appellant

Representative: A. Q. V.

Laywer in Prishtinë/Priština

vs.

K. P.

Prishtinë/Priština

Respondent before KPA/KPCC, not joining proceedings in appeal

and in the case GSK-KPA-A-126/2014:

M.of H. I E./E. H.

Appellant

Representative: B.L.

vs.

the legal entity **U. K.DOO**

Represented by its director M. R.

Appellee

and vs.

K. P.
Prishtinë/Priština

Respondent before KPA/KPCC, not joining proceedings in appeal

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeals against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/C/216/2013 dated 21 August 2013 (case file registered at the Kosovo Property Agency (henceforth: the KPA) under No. KPA14320), henceforth also: the KPCC Decision, after deliberation held on 14 July 2016, issues the following

JUDGMENT:

- 1. The appeal of U. K. DOO against the Decision of the Kosovo Property Claims Commission no. KPCC/D/C/216/2013, dated 21 August 2013, as far as it concerns the claim no. KPA14320 is dismissed as belated.**
- 2. The appeal of the M. of H. I E./E. H. against the Decision of the KPCC no. KPCC/D/C/216/2014, dated 21 August 2013, as far as it concerns claim no. KPA14320, is dismissed as inadmissible, because the Municipality does not have a legal interest in the appeal.**

Procedural and factual background

1. On 10 October 2006 M. R. as authorized representative of the legal entity U. K. DOO (henceforth: the Claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of its use rights and repossession and compensation for the unlawful use of military storage warehouse facilities nos. 2 and 22 with a total surface of 481 m² on the border crossing 'Đeneral Janković' (henceforth: the claimed properties). It claimed to be the permanent

lessor of the claimed properties and stated that it lost the claimed properties on 12 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.

2. The Claimant submitted *inter alia* to the KPA:

- A decision of the Commercial Court of Prishtinë/Priština, dated 15 May 1997, no. FI-403/97, on the registration of the Claimant;
- A decision of the Business Register Agency of the Republic of Serbia, dated 4 August 2005, no. 87619/2005; according to this decision M. R. is registered as director and representative of the Claimant;
- A decision of the Municipal Assembly of Kaçanik/Kacanik, Department for urbanism, residential, communal and property-legal affairs, dated 26 April 1995, no. 351-51/95; according to this decision the Claimant was permitted to use temporarily the claimed properties; the permission is valid until the expiration date of the contracts on lease, dated February 1995, of the claimed properties concluded between the military post office and the Claimant.

3. The KPA notified the claim on 6 February 2009 by putting a poster about the claim at the address Objekti Caringskog 2 and 22 in H.I E./E.H., formerly known as Đeneral Janković, North Grid 1 0524375/North Grid 2 4666546. During the notification KPA found that the claimed properties are commercial buildings and occupied by Kosova Petrol.

4. Kosova Petrol (henceforth: the Respondent) filed a reply to the claim.

5. The KPCC with the Decision KPCC/D/C/216/2013, dated 21 August 2013, refused the claim with the reasoning (in paragraph 37) that the Claimant failed to provide evidence to show its alleged property rights over the claimed properties. On the last page the KPCC decision contains information about the possibility to file an appeal within 30 days of the notification of the decision.

6. The KPCC decision, together with an appeals information sheet, was served on the authorized representative of the Claimant, M. R., on 20 December 2013 and on the Respondent on 18 December 2013.

7. On 31 January 2014 the Claimant filed an appeal against the KPCC decision. This appeal is registered at the Supreme Court under number GSK-KPA-A-120/2014. With the appeal it submitted a power of attorney. This power of attorney authorizes the lawyer A. Q. V. to represent the Claimant in appeal.

8. On 4 April 2014 the M. of H. I E./E.H.(henceforth: the Municipality) also filed an appeal against the same KPCC decision. This appeal is registered at the Supreme Court under number GSK-KPA-A-126/2014.
9. In answer to a Court Order dated 28 April 2016, the Municipality submitted a decision of the Mayor of the Municipality dated 14 February 2014, 02.No.1084/2014, to file ‘appeals related to properties of the former army’ for the competent court ‘in relation to parcels in the KPCC decision listed in Certificates on immovable property rights as the cadastre parcels 16-0, 17/1 and 20-0’, and a power of attorney dated 16 May 2016 authorizing B.L., Head of the Legal Office and a Legal Representative of the Municipality to represent the Municipality in case 126/2014.

Allegations of the Appellants

10. The Claimant challenges the KPCC decision as containing a fundamental error and serious violation of the procedural law and being based on an incomplete determination of the facts. Therefore, it asked from the Supreme Court to accept its appeal and annul the KPCC decision as ungrounded and unlawful. The Claimant states it is the indisputable owner of the claimed properties.
11. The Municipality in its appeal alleges that the claimed properties are located on Cadastral parcel no. 16. This parcel was handed over to the Municipality by the Kosovo Protection Corps on 16 January 2009. The Municipality requests to quash the KPCC decision and to refuse the claim as ungrounded.

Legal reasoning:

Admissibility of the appeal of the Claimant in case no. 120/2014

12. Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50, as amended by Law No. 03/L-079) provides as follows: “*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the [KPCC] 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 KPCC decision was served on the Claimant on 20 December 2013 and the Claimant should submit the appeal within the deadline of 30 days as prescribed by the abovementioned provision. The Claimant filed the appeal only on Friday 31 January 2014. This date is the 42nd day after the notification of the KPCC decision and falls outside the deadline prescribed by the law.
14. The Claimant did not give any justifying excuses about filing the appeal past the deadline.
15. He was sufficiently warned of the deadline, as the decision contained a warning on this deadline.
16. Therefore the appeal of the Claimant in case number 120/2014 has to be dismissed as belated pursuant to Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 and article 195.1 (a) of the Law on Contested Procedure.

Admissibility of the appeal of the Municipality in case no. 126/2014

17. The Municipality in its appeal requests the claim no. KPA14320 of the Claimant before the KPA/KPCC to be refused.
18. In the appealed decision the KPCC already refused the claim. As the appeal of the Claimant in case 120/2014 is dismissed, the KPCC decision has become final.
19. In these circumstances the Municipality does not have a legal interest in filing an appeal, because with the appeal the Municipality cannot gain a better position with regard to the claim KPA14320. Therefore, as the Municipality does not have a legal interest, the appeal has to be dismissed according to Article 186.3 of the Law on Contested Procedure that is applicable in these proceedings due to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079.

Conclusion

20. Consequently, pursuant to Section 13.3 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 the Supreme Court decided in both cases as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Sandra Gudaityte, EULEX Registrar