

**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-222/2014

Prishtinë/Priština, 10 August 2016

In the proceedings of:
N. S.

Appellant

Representative: B. R. Z.
Lawyer

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/A/220/2013 dated 27 November 2013 (case file registered at the Kosovo Property Agency under no. KPA52588), henceforth also: the KPCC Decision, after deliberation held on 10 August 2016, issues the following

JUDGMENT:

The appeal of N. S. against the Decision of the KPCC no. KPCC/D/A/220/2013, dated 27 November 2013, as far as it concerns claim no. KPA52588, is dismissed as belated.

Procedural and Factual background

1. On 31 January 2008 N. S. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (henceforth: the KPA), seeking confirmation of ownership over the cadastral parcel at Pidiç/Pidic, cadastral zone Gjilan/Gnjilane, parcel number 469/3, registered in possession list no. 97 CM Pidic/183 Vladovo, as forest in a place called 'Kodra Madle' (henceforth: the claimed property). He states that his deceased father Zivko Stephanović is property right holder over the claimed property and that the property was lost as a result of the circumstances in 1998/1999. He states as date of loss 12 June 1999.
2. The Appellant submitted *inter alia* to KPA:
 - A birth certificate, issued by the Municipality of Gjilan/Gnjilane, dated 15 June 2007, no. 200-2007-V; according to this certificate Z. S. is the father of the Appellant;
 - A death certificate, issued by the Municipality of Smederevo, Serbia; according to this certificate Z. S. died on 23 May 2007 (henceforth: the death certificate);
 - A Judgment from the District Court of Gjilan/Gnjilane, dated 21 April 1982, no. 198/80; with this judgment the claim of Z. S. is accepted and among others the respondent in that case is obliged to acknowledge the ownership of Z. S. over some immovable properties; one of these properties is the parcel with the class 'forest' in a place called 'Kodra Madle', parcel no. 439/3 registered in possession list no 97, 97 CM Pidic/183 Vladovo (henceforth: the 1982 Judgment);
 - A possession list no. 97, from the Municipal Geodesy Directorate Gjilan/Gnjilane, Cadastral District Pidiç/Pidic, dated 5 October 1977; in this list is registered Z. S. as

owner of parcel '294 469/3', with class 'forest', and a surface of 2.00.00 ha; the name of the place is illegible;

- A contract on sale, dated 26 August 1961, certified before the District Court of Gjilan/Gnjilane on 6 November 1961, under no. 909; according to this contract Z. S. bought a parcel forest in a place called 'Kodra Malle', parcel no. '29/1/469', with a surface of 2.00.00 ha (henceforth the 1961 Contract on sale).

3. KPA notified the claim, but no other party participated in the proceedings before KPCC.

4. According to verification reports, dated 24 April 2009 and 3 December 2012, the KPA found that currently the (subdivided) parcel 469/3 does not exist, but only an undivided parcel with no. 469. According to old books it is noticed that the parcel has suffered some changes but there the data are absent or are in Kruševac. The KPA added ex officio to the file two Certificates for the immovable property rights, dated 23 April 2009 and 9 November 2012, issued by the Cadastral office Gjilan/Gnjilane that refer to Cadastral unit P-70403049-00469-0. According to these Certificates parcel no. 469, with the surface of 11,148 m², and class forest, in the place 'Kodra Mola' is registered in the name of D. H. According a handwritten notice on the Certificates this registration was updated in 1990.

The KPA verified according to a Consolidated Verification Report, dated 31 October 2013, the death certificate and the 1982 Judgment positively. KPA did not verify the 1961 Contract on sale because that refers to a parcel number 29/1/469 and has a surface of 2.00.00 ha.

5. The KPCC decided in the KPCC Decision to refuse the claim. In its reasoning (paragraphs 12, 167 and 168), as far as relevant, KPCC refers to the 1982 Judgment and states that the other by the Appellant submitted documents are not relevant. KPCC states further that the KPA obtained the Certificate for the Immovable Property Rights in which the undivided parcel no. 469 is listed in the name of D. H. The KPCC concludes that the Appellant failed to show any property right to the claimed property.

6. The decision was served upon the Appellant on 18 June 2014.

7. The Appellant filed an appeal against the KPCC decision. The letter of appeal is dated 15 July 2014. KPA received it (through the UNHCR Property Office) on 21 July 2014.

Allegations of the parties

8. The Appellant states that he filed the appeal in due time. He alleges that his father acquired ownership over the claimed property based on the 1961 Contract on sale. The KPCC decisions therefor is based on an erroneously or incomplete determination of the factual situation.

Legal reasoning:

Admissibility of the appeal

9. According to 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: Law No. 03/L-079) a party may submit within 30 days of the notification to him/her by the KPA of the KPCC decision through the KPA an appeal against the decision.
10. As the KPCC decision was served upon the Appellant on Wednesday 18 June 2014 the 30 days appeal period ended on Friday 18 July 2014.
11. De letter of appeal is dated 15 July 2014 but received by KPA on Monday 21 July 2014. That is after the 30 days' time limit.
12. On the letter is written that it is 'Sent through the regular mail to the UNHCR Office for Property Matters in Belgrade'.
13. There is no evidence in the file that the Appellant filed the appeal by mail, as is written on the letter of appeal, on 15 July 2014. But if the Appellant in fact submitted the letter of appeal on that date or on 16 or 17 July 2014 to the mail, this would not lead to the conclusion that he filed the appeal timely.
14. Pursuant to Article 127.2 of the Law on Contested Procedure, that is applicable in this proceedings according to Section 12.2 of the Law No. 03/L-079, the date of submitting the letter of appeal to the post office for delivery shall be considered as the date of filing the appeal, but this goes only for registered mail and telegrams and does not go for nonregistered mail like the Appellant alleges that he did in this case.

Conclusion

15. The Appellant filed the appeal after the 30 days time limit. Therefore the appeal is belated. Consequently, pursuant to Section 13.3 sub b of the Law No. 03/L-079 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

16. Pursuant to Section 13.6 of Law No. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Beshir Islami, Judge

Signed by: Sandra Gudaityte, EULEX Registrar