

**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-216/2014**

Prishtinë/Priština, 10 August 2016

In the proceedings of:

**T.H.**

Reti e Posthme/Donje Retimlje

Rahovec/Orahovac

*Appellant*

vs.

**G.N.**

Mukerova Street no. 101

Smederevska Palanka

Serbia

*Appellee/Claimant*

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/100/2011 dated 23 February 2011 (case file registered at the Kosovo Property Agency under No. KPA29829), henceforth also: the KPCC Decision, after deliberation held on 10 August 2016, issues the following

**JUDGMENT:**

**The appeal of T.H. against the Decision of the KPCC no. KPCC/D/A/100/2011, dated 23 February 2011, as far as it concerns claim no. KPA29829, is dismissed as inadmissible.**

**Procedural and Factual background**

1. On 7 May 2007 G.D.N. (henceforth: the Appellee) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of property right over a parcel of land at Bajdol-Jazbine, cadastral zone Reti, Municipality of Rahovec/Orahovac, parcel number 1043/1, registered in possession list no. 25 issued by the Department for Cadastre, Geodesy and Property of the Municipality of Rahovec/Orahovac, 3<sup>rd</sup> class grazing, with a surface of 12.55 are (henceforth: the claimed property). She alleged that her in 1998 deceased father D.K. is listed as owner of the claimed property. She further states that the possession of the property was lost on 12 June 1999 due to the circumstances in 1998/1999.
2. The Appellee submitted *inter alia* to KPA Possession List no. 25, from Municipality of Rahovec/Orahovac, cadastral zone Reti, dated 9 June 2004; according to this list D.K. is registered as owner of parcel no. 1043/1 (pasture class 3) in Bajdol-Jazbine.
3. The KPA notified the claim on 2 March 2010 by putting a poster with information about the claim on the claimed property. The notification team found the claimed property as cultivated land and occupied by an unknown person. Identifying the person using the claimed property was unsuccessful as some of the local people had no information and some of them were non cooperative to tell. On 4 March 2010 KPA confirmed that the notification was accurate based on ortophoto and GPS coordinates.
4. No other party participated in the proceedings before KPCC.

5. KPA verified positively the Possession List submitted by the Appellee.
6. The KPCC decided in the KPCC Decision that *“The Claimant...has...established that D.D.K. is owner of 1/1 of the claimed property; and ordered that:  
  
D.D.K. is entitled to possession of the ...property;”*  
  
The KPCC accepts the Appellee as family household member of the deceased property right holder. The KPCC further ordered any other person occupying the claimed property to vacate the same and otherwise to be evicted.
7. The decision was served upon the Appellee on 8 August 2011. The same date she requested for administration of the claimed property. On 27 September 2012 the KPA decided to place the claimed property under KPA administration.
8. On 25 August 2014 the Appellant received from KPA the KPCC decision.
9. The Appellant filed an appeal against the KPCC decision on 5 September 2014.
10. On 8 December 2014, the Appellee sent in a reply to the appeal.

**Allegations of the parties**

11. The Appellant confirms that D.K. was the property right holder of the claimed property, but alleges that he bought the claimed property from D.K. in 1985 and after that returned to Switzerland. He further states that he used the land since 1985. He states there was a contract in written on the sale. The parties did not register the sale and the transfer in the cadastral books. The Appellant further alleges that he was not aware of the proceedings before KPA/KPCC before he received the KPCC decision and therefore was not able to respond to the claim and submit evidences at an earlier stage. He submits to support his allegations statements from two persons, his brother S.Q. and the distant relative Q.V..

12. The Appellee contests that the Appellant has a right to appeal as he was not a party in first instance before KPA/KPCC. As secondary stance she alleges to be the heir to her father, the owner of the claimed property. He did not sell the property. There was no change of ownership. Her father was kidnapped and murdered in 1998.

**Legal reasoning:**

*Admissibility of the appeal*

13. The appeal is inadmissible if the Appellant had not taken part in the proceedings before the KPCC, unless the Appellant is an interested party who did not receive a notification of the claim and otherwise was not aware and reasonably could not be aware of the claim before he filed the appeal (Section 12.1 in conjunction with Sections 10.1 – 10.3 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; see e.g. Judgments Supreme Court 12 March 2014, GSK-KPA-A-152/2013, and 13 May 2015, GSK-KPA-A-086/2014).
14. There is no indication that KPA was aware or should be aware that the Appellant was an interested party in this case. Therefore the KPA was not able and therefore not obliged to send the claim to the Appellant. The claim was notified by putting a poster on the claimed property. In the circumstances of the case this way of notifying the claim, as is decided by the Supreme Court already in previous cases, is sufficient and in accordance with Section 10 of UNMIK Regulation 2006/50.
15. At this point the Supreme Court notes, that, if it really was the Appellant who was using the claimed property since 1985 as he states, he should have noticed the poster with the information about the claim on the parcel meant here for in paragraph 3.
16. Therefore, there must be concluded that the Appellant was aware or reasonable could be aware of the claim and the proceedings before the KPA/KPCC, but failed to join proceedings in first instance. As he was not a party in first instance he cannot be a party

in appeal (Section 12.1 of UNMIK Regulation 2006/50 and Article 176.1 of Law No. 03/L-006 on Contested Procedure).

*Conclusion*

17. Consequently, pursuant to Section 13.3 sub b of UNMIK Regulation 2006/50 the Supreme Court decides as in the enacting clause of this judgment to dismiss the appeal on procedural grounds.

**Legal Advice**

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 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**

**Sandra Gudaityte, EULEX Registrar**