

**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-078/2015

Prishtinë/Priština,
2 November 2016

In the proceedings of:
Xh.B.

Appellant

vs.

S. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no.

KPCC/D/R/247/2014 dated 18 June 2014 (case file registered at the Kosovo Property Agency under No. KPA00336), henceforth also: the KPCC Decision, after deliberation held on 2 November 2016, issues the following

JUDGMENT:

The Appeal of Xh. B. against the Decision of the KPCC no KPCC/D/R/247/2014, dated 18 June 2014, as far as it concerns claim no KPA00336 is dismissed as belated.

Procedural and Factual background

1. On 9 February 2007 Xh. B. (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (KPA), seeking repossession of the basement, situated in Prishtinë/Priština, Mikronaselje no. C/15, entrance no. VII, with a surface of 14 m² (henceforth: the claimed basement).
2. In support of his claim the Appellant submitted before KPA
 - The Contract on purchase concluded between him and Z. V. J. dated 24 September 1999 about the apartment in Prishtinë/Priština, Mikronaselje no. C/15, entrance no. VII, first floor, no. 4 with a surface of 57.60 m² and the basement to that apartment, with a surface of 14 m².
3. KPA notified the claim on 20 July 2007 and found out that the property was occupied by S. M.(henceforth: the Appellee).
4. The Appellee participated in the proceedings before KPCC. He claimed legal right to the claimed property. He stated that he occupied the claimed basement in September 1999 and converted it into an apartment.
5. The KPCC with its Decision dismiss the claim. In its reasoning (paragraphs 9 and 19), as far as relevant, KPCC stated that the Appellant failed to show that his claim involves circumstances directly related or resulting from the 1998-1999 conflict and accordingly the claim falls outside the jurisdiction of the KPCC.
6. The decision was served upon the Appellant on Wednesday 1 October 2014 and on Appellee on 16 October 2014.

7. The Appellant filed an appeal against the KPCC decision on Tuesday 4 November 2014.
8. The Appellee responded to the appeal.

Allegations of the parties

9. The Appellant alleges that he submitted all the legal evidences about the purchase of the apartment and the claimed basement. He further states that he understands that the legal term for submission of an appeal is one month from the receipt of the KPCC decision, but that he due to health reasons could not file an appeal.
10. The Appellee disputes that the Appellant has legal evidences for the purchase of the claimed basement. He proposes to dismiss the appeal as the appeal was filed after the legal deadline.

Legal reasoning

Admissibility of the appeal

11. 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) 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*”.
12. From the established facts follows that the Appellant filed the appeal on the 34th day after receiving the KPCC decision. As the Appellant also admits, this means that he did not file the appeal within the deadline of 30 days as prescribed by the abovementioned provision.
13. The Appellant alleges that due to health reasons he was not able to file the appeal timely, but he did not substantiate this allegation nor filed any evidence to support it. Therefore this allegation does not constitute a justifying excuse for filing the appeal past the deadline.
14. Therefore the appeal has to be dismissed as belated pursuant to Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 and article 195.1 (a) of the Law on Contested Procedure.

Legal Advice

15. 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

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar