

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-177/2015

Prishtinë/Priština,
29 November 2017

In the proceedings of:

M. D.

Represented by:

I. O. (lawyer)

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014 (case files registered at the KPA under number KPA21378), after deliberation held on 29 November 2017, issues the following

JUDGMENT

The appeal of M. D. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 regarding case file registered at the KPA under the number KPA21378, is dismissed as belated.

Procedural and factual background

1. On 20 April 2007, M. D. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession over Cadastral Parcel No 872, pasture with the surface of 0.22.12 ha and Cadastral Parcel No 873, forest with the surface of 01.57.68 ha, both parcels located at the village “Drsnik”, Municipality of Klinë/Klina.(hereinafter: the claimed properties).
2. The Appellant declared to be the sole owner of the property that she acquired based on the Decision of Municipality of Klinë/Klina. According to the Appellant, the claimed properties are occupied by unknown person. The loss of the possession over the property was as the result of the circumstances of 1998/1999 that accrued in Kosovo.
3. To support her Claim, the Appellant provided the KPA with the following documents:
 - Decision No 04-463-54/92-2, issued by Municipal Assembly of Klinë/Klina, Department for Urbanism, Housing, Utilities and Immovable Property Affairs on 5 March 1997 whereby:
 - it was approved the request of the Appellant and it was annulled the final Ruling No 215 issued by Second Municipal Commission on Review of Property Relations deriving from arbitrary usurpation of socially owned land dated on 1 December 1963,
 - it was established that the Appellant is the owner of Cadastral Parcel No 873, pasture with the surface of 0.22.12 ha and part of the Cadastral Parcel No 872; forest with the surface of 1.57.68 ha. The Decision became final since 8 April 1997.
4. The Notification of the Claim occurred on 21 Jun 2010 by publishing it in the KPA Notification Gazette No 2 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left at the Municipality of Klinë/Klina, the Cadastral Office and Municipal Court of Klinë/Klina, KPA Regional Office of Peja/Peč. In addition, the List and Gazette were distributed to the UNHCR, Ombudsperson, DRC, Kosovo Privatization Agency ect.
5. The Decision No 04-463-54/92-2 was neither found at competent institutions in Kosovo nor in dislocated organs. With regard to the claimed properties, the Executive Secretariat of KPA found Cadastral Parcel No 872 divided into two sub parcels. Parcel No 872/1 forest with the surface of 00.93.74 ha, registered on the name of Z. D. Parcel No 872/2 forest with the surface of 00.93.94 ha, registered on the name of T.D. and Parcel No 873 registered on the name of T.D.
6. The Appellant declared that she was not aware that the claimed properties was registered on the name of her sister in law and her step daughter; after she got this information she stated that she has no interest on the claim (page no 055 and page no 056 of the case file)

7. On 30 April 2014, the KPCC with its decision KPCC/D/A/236/2014 refused the Appellant's claim with the reasoning that the she has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
8. The Decision was served on the Appellant on 24 November 2014, while he filed an appeal on 14 January 2015.

Allegations of the Appellant

9. The Appellant challenged the KPCC Decision on the grounds of substantial violation of the provisions of the Law on KPA, violation of the Law on Ownership, violation of the European Conventions on Property Matters, on the grounds of incompletely determination of the factual situation and erroneous application of material law.
10. According to the Appellant, the KPA rendered its Decision without analysing and reviewing the proofs attached to the Claim, because the Appellant is the owner of the claimed properties based on the Decision No 04-463-54/92-2 which became final on 8 April 1997. Based on the mentioned Decision, the Directory for Cadastre has been authorized to perform the changes at the Cadastre; this means that if competent authority failed to perform its duties this cannot affect the Appellants rights over the claimed properties.
11. Finally, the Appellant seeks Supreme Court of Kosovo to approve as grounded her appeal and to recognize her as owner of the claimed properties.

Legal reasoning

12. The Appeal is belated.
13. Section 12.1 of 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 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*".
14. The KPCC's Decision was served on the Appellant on 24 November 2014. So the time limit to file an Appeal elapsed on 24 December 2014. Yet the Appellant filed his Appeal on 14 January 2015. This is outside the time limit.
15. The Court found that the delivery was done in person in compliance with article 110.1 of the Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008). The Appellant did not provide any reasons for the delay in filing of the Appeal, and the Court could not find any reason for the delay in the case files either.

16. Therefore the Appeal is to be dismissed on procedural grounds as belated pursuant to Section 13.3 subparagraph (b) of the Law No 03/L-079 and Article 195.1 (a) and 196 of the Law on Contested Procedure No 03/L-006.

Legal Advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Timo Eljas Torkko, Actin EULEX Registrar