

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-188/15

Pristina
17 January 2018

In the proceedings of:

D. Š.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Erdogan Haxhibeqiri, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/236/2014 (the case file registered at the Kosovo Property Agency under the numbers KPA34324) dated 30 April 2014, after deliberation held on 17 January 2018, issues this:

JUDGMENT

The Appeal of D. Š. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 dated 30 April 2014, as far as it regards the Claim registered under the number KPA34324, is dismissed as inadmissible.

Procedural and factual background:

1. On 3 May 2007, N. S. Š. (hereinafter “the Claimant”), filed a Claim with the Kosovo Property Agency (hereinafter “the KPA”) seeking the return of possession over a property located in Gërlicë village in Ferizaj/Urosevac Municipality, at the cadastral parcel No.376 in the Cadastral Municipality Gërlicë/Grlica, an orchard with a surface of 0.16.38 h (hereinafter “the claimed property”). He claims that his father-in-law N. N. K. was the owner of the parcel that was lost as a consequence of the armed conflict, indicating - 11 June 1999 as the date of loss. Further, he claims that the property was usurped and he requests the return of possession.
2. To support the Claim, he provided the KPA with the following:
 - A copy of the Possession List No. 2 issued on 6 December 1999 by Ferizaj/Urosevac Cadastral Service displaced in Serbia showing that the claimed property was listed under the name of his father-in-law N.K.
 - A copy of the identification Card issued by Gjilan/Gnjilane Municipality on 16 May 1997.
 - A copy of the Death Certificate of N. K, issued on 11 February 1967 showing that he had died on 8 February 1967.
3. The notification of the Claim was carried out on 9 December 2009; the property was found to be a cultivated land, and nobody appeared at the time of visit.
4. Since no parties filed any Response to the Claim within the legal time limit of 30 days, pursuant to Article 10.2 of the Law No.03/L-079, the claim was considered as uncontested.
5. The KPA’s Executive Secretariat informed the Appellant that he should bring a valid authorisation from possible inheritors of the deceased N, but he failed to deliver it within the required frame.
6. Since the Claimant failed to bring the authorisation or the inheritance decision, the Executive Secretariat, through the Order No.ES/46/2010, decided to dismiss the claim pursuant to Section 4.3 of the Administrative Direction 2007/5, as amended by the Law No. 03/L-79. The Claimant received the Decision on 26 April 2010 and he appealed that Decision on the same day. The Executive Secretariat referred the claim to the Kosovo Property Claims Commission.

7. The Kosovo Property Claims Commission, through the Decision KPCC/D/C/236/2014, dated 30 April 2014, decided to dismiss the claim explaining that the Claimant was not a family member (as defined in Articles 1 and 5 of the Administrative Direction 2007/5, as amended by the Law No. 03 / L-079), in order to be able to file a claim on behalf of the alleged property rights holder. In addition, the Claimant does not hold a valid and duly executed Power of Attorney which authorizes him to act on behalf of the alleged property right holder. Furthermore, according to the KPCC, the Claimant did not provide evidence that he himself enjoys any ownership rights over the claimed property, and neither did the Executive Secretariat obtain any such evidence *ex officio*. The KPCC's Decision in the reasoning given in paragraph 36 clarifies that the Secretariat had dismissed the claim for the same reason.
8. The Decision was served on the Claimant on 17 October 2014. On 14 November 2014, D. Š, maiden name K. (hereinafter "the Appellant") filed an Appeal.

Allegations of the Appellant

9. The Appellant claimed that nobody from the Agency requested from her to prove the family relationship with the Claimant. She states that her husband filed a claim in the name of husband for the claimed property of her deceased father.
10. The Appellant explained that the KPA's Executive Secretariat had not requested documents from her and that she was notified of the KPCC Decision on the day it was received.

Legal reasoning

11. The Supreme Court, after having examined the Appeal, content of the case file and submissions, concludes that the Decision of the KPCC does not contain any essential violation or serious misapplication of the applicable substantive law, nor is it based on erroneous or incomplete determination of facts. The Appeal was filed by a natural person who did not participate in the first instance proceedings. For the reasons below, the Appeal is inadmissible on the basis of Section 13.3 (b) of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079 (hereinafter "the Law No. 03/L-079"), because the Appellant did not participate in the first instance proceedings.
12. Article 10.2 of the Law No. 03/L-079 foresees that any person other than the Appellant who is currently seeking to gain rights over the property which is the subject of this claim and/or any person who may have a legal interest in the claimed property shall be a party to the claim and to proceedings thereof, provided that such person informs the KPA of his or her intention to participate in the proceedings.
13. Article 12.1 of the Law No. 03/L-079 stipulates that: "within thirty (30) days of notification of parties by the KPA of the KPCC's Decision on the claims, the party may file [...] appeal against such decision."

14. The Appellant was not a party in the first instance proceedings before the KPCC and does not justify why she did not participate in the first instance, so that she could be accepted as a party to the proceedings at the current stage.
15. The Court notes that the notification of the Claim during the first instance proceedings was made properly. The KPA team placed a notification sign in three languages - Albanian, Serbian and English - at the place where the claimed property was (see case file submissions page 27).
16. There is no justification why the Appellant did not inform the KPA of her intention to take part in the proceedings despite the fact that the KPA had several times contacted the Appellant's husband who acted in the capacity of the Claimant. The Court cannot take as credible the Appellant's assertion that at the time her husband communicated with the KPA she did not know about the claim or did not authorize her spouse.
17. Therefore, the Appeal has to be dismissed as inadmissible (Article 13.3 (b) of the Law No. 03/L-079; Articles 176.1 and 195.1 of the Law on Contested Procedure).
18. As the Appeal is inadmissible, the Supreme Court cannot examine the merits of it and cannot decide neither on the issue of jurisdiction of the KPCC/KPA, nor on other legal matters pertaining to the property rights for the claimed property.

Legal advice:

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

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, EULEX Registrar