

**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-027/14

Prishtinë/Priština, 12 February 2016

In the proceedings of:

A.S.

Letanc/Letance

Podujevë/Podujevo

Appellant

vs.

1. D.R.

Mileve Divac 17

34000 Kožujevo

Kragujevac

Serbia

2. K.B. (Agricultural Cooperative) P. in Podujevë/Podujevo

Street Zahir Pajziti

Podujevë/Podujevo

Representative: director J.S.

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/188/2013 dated 13 February 2013 (case file registered at the Kosovo Property Agency (henceforth: KPA) under No. KPA24674), henceforth also: the KPCC Decision, after deliberation held on 12 February 2016, issues the following

JUDGMENT:

The appeal of A.S. against the decisions of the Kosovo Property Claims Commission no. KPCC/D/A/188/2013, dated 13 February 2013, as far as it concerns claim no. KPA24674, is dismissed as belated.

Procedural and factual background:

1. On 21 February 2007, D.R. (henceforth: the Appellee 1), filed a claim at the KPA, seeking confirmation of ownership and repossession over a parcel of land, at Dumnice e Poshtme/Donja Dubnica, cadastral zone Dumnice e Poshtme/Donja Dubnica, Municipality of Podujevë/Podujeva, number 1882/3, with a surface of 01.08.41 ha (henceforth: the claimed property). She also claimed compensation for usage of the claimed property without approval. She alleged that by a decision of the Municipal Commission for conducting the procedure and deciding upon a request for land restitution, dated 14 August 1993, the claimed property that was confiscated from him was given back to her grandfather.

2. On 12 September 2007 and on 11 April 2012 KPA officers went to the place where the claimed property allegedly is situated and put up a sign indicating that the property was the subject matter to a claim and that interested parties could file their response within 30 days. The KPA noted the first time that the parcel was occupied by Agricultural Cooperative P., represented by J.S., Director of the Cooperative (hereinafter: Appellee 2), who claimed a legal right, and the second time occupied by J.S. and used by the S. family. The photos taken of the claimed property show that the property is arable land.

3. On 25 October 2007, J.S. signed a 'Declaration from the Responding Party', claiming a legal right to the claimed property. On 6 November 2008 he submitted a 'Form of response to the claim' and alleged that the claimed property is property of the Appellee 2, but that the claimed property has been land of his father and grandfather. He requests to have the claimed property restituted.
 On 25 October 2007 the Appellant submitted also a Response, dated 25 September 2007, to the KPA claiming that (a part of) the claimed property has been land of his

father and grandfather. He requests to return the claimed property and to recognize his ownership.

4. The KPCC decided in the KPCC Decision to dismiss the claim. In the reasoning (paragraphs 11, 18-22 and 80 of the Cover Decision) the KPCC concluded that the Appellee 1 failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict and therefore KPCC does not have jurisdiction to decide on the claim. KPCC further explained that the Appellant in support of her claim has submitted the decision from 1993 by the Commission for Land Restoration in Podujevë/Podujevo. That Commission recognized the ownership of Appellant's father over the claimed property, but the Appellant also explicitly admitted to the KPA that the alleged property right holder never entered into possession of the claimed property on the basis of the Decision of 1993.
5. The decision was served on the Appellee 2 on 15 August 2013 and on the Appellant on 5 September 2013. According to a notification table, dated 24 September 2013, named "Notification of KPCC decisions which have not been picked up", the Appellee 1 did not come on the date of appointment 16 August 2013 to pick up the KPCC Decision.
6. The Appellant filed an appeal against the KPCC decision on 6 December 2013. He requests to accept the appeal and to be recognized as property right holder to the claimed property.
7. The appeal was served on Appellee 2 on 11 February 2014. According to an email memo dated 29 May 2014 the Appellee 1 visited the office of the Representative of KPA but refused to sign or accept any document. Neither Appellee 1 nor Appellee 2 participated in the appeal procedure before the Supreme Court.
8. The Supreme Court sent a Court Order, dated 20 October 2015, to the Appellant. The Supreme Court asked the Appellant to clarify who is meant to be the Appellant, as with the letter of appeal was sent a copy of the identity card of M. S. and not of A.S. and the case file does not contain any identity document of A.S.. Furthermore, Appellant is given the opportunity to clarify why he did not submit the appeal within the 30 days

appeal term after receiving the KPCC Decision. Thirdly he is given the opportunity to clarify on what basis his request to be recognized as property right holder can be granted, while he was not original claimant in the proceedings before KPCC.

9. The Appellant in his answer to the Court Order, dated 18 December 2015, states that he, A.S., is the party in this proceedings. He submits a copy of his identity card. He further states that he did not file the appeal within the deadline because he was very ill at the time. He submits two Neurologic Specialist's reports on him from doctors B. T. and B. S., one dated 2 June 2011 and one 18 December 2015. The one of 18 December 2015 reads: 'The patient comes regularly for a check-up because of the headaches, dizziness, lack of the willingness to live, insomnia, unhappiness, fear. He is a regular patient since 2011 and he has temporary deteriorations of the sickness.'

Allegations of the Appellant

10. The Appellant challenges the KPCC decision considering that it contains essential errors or failure to apply substantive or procedural law and due to the erroneous confirmation of the decision and insufficient facts.
11. The Appellant explains that based on the decision no. 08-01/611, issued by the Cadastral, Geodesy and Property Directorate of the Municipality of Podujevë/Podujevo on 19 December 2012, the claimed property is registered in the name of "Ndermarrja e Re", i.e. the Agricultural Cooperative Slloga, Podujevë/Podujevo. He requests the Supreme Court to approve his property right.

Legal reasoning:

12. The appeal is belated.
13. 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 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 decision was served on the Appellant on Thursday 5 September 2013. 30 days later was Saturday 5 September 2013. The time limit for submitting the appeal therefore ended on Monday 7 October 2013. The appeal was submitted by the Appellant on 6 December 2013. This is outside the time limit.
15. The Appellant did not present a justified reason for this delay. The allegation that he has been very ill at the time is not sufficient for another decision, because from the submitted reports cannot be concluded that he during the period 5 September 2013 till 7 October 2013 on medical grounds was unable to file the appeal or have it filed by a representative.
16. Therefore, pursuant to Section 13.3 (b) of UNMIK Regulation 2006/50 and Article 195.1(a) and 196 of the LCP, the Supreme Court decides as in the enacting clause.

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.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar