

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

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

GSK-KPA-A-122/2014

Prishtinë/Priština, 1 June 2016

In the proceedings of:

The legal entity **U.K. DOO**

Oraska 45

11320 Velika Plana

Republic of Serbia

Appellant

Representative: A.Q.V. , lawyer

Prishtinë/Priština

vs.

N.H.

Dardanija Su 4/7 D-1 7

Prishtinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin, and Anna Bednarek, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/C/216/2013 (the case file registered at the KPA under the number KPA14330) dated 21 August 2013, after the deliberation held on 1 June 2016, issues the following

JUDGMENT

The appeal of U.K. DOO against the decision of the Kosovo Property Claims Commission KPCC/D/C/216/2013, dated 21 August 2013, as far as it concerns the claim number KPA14330 is dismissed as belated.

Procedural and factual background:

1. On 10 October 2006 M.R. as authorized representative of the legal entity U.K. DOO (henceforth: the Appellant) filed a claim at the Kosovo Property Agency (the KPA), seeking confirmation of its ownership right, repossession and compensation for the unlawful use of the commercial buildings (auxiliary and other facilities) located in the military area (fuel storage) in Hani i Elezit/Elez Han (formerly known as: Đeneral Jancovic), in the border crossing of Kačanik/Kaçanik, with the surface of 200 m² (henceforth: the claimed property).
2. The claim was notified on 4 March 2009 by putting a sign on the claimed property. During the notification it was found that the claimed property was of commercial character with buildings and occupied by Kosova Petrol. At that time K.P. did not claim any legal right over the property.
3. N.H. sent a reply to the claim. He alleged that K.P. is the property right holder of the claimed property.
4. By its decision of 21 August 2013 no. KPCC/D/C/216/2013, the KPCC decided to dismiss the claim with the reasoning that the claim relates to movable property rather than to private immovable property, and as such the claim falls outside of the jurisdiction of the KPCC. Regarding the Appellant's requests for compensation the KPCC explained that this request could be addressed to the local competent court. On the last page, the KPCC decision contains the information about the possibility to file an appeal within 30 days of the notification of the decision.
5. On 20 December 2013, the KPCC decision was served on the Appellant.

6. The KPA served the KPCC decision on 18 December 2013 to N.H. . He refused to accept the decision stating that he only acted as the representative of the property right holder.
7. The Appellant filed the appeal against the KPCC decision at the Supreme Court on 31 January 2014.

Allegations of the appellant

8. The Appellant states that the challenged decision contains fundamental errors in the assessment of the claim due to an erroneous establishment of the facts which led to an erroneous application of the substantive law. Therefore, the Appellant requests the Supreme Court to quash the appealed decision and to accept the claim submitted before the KPA as grounded.

Legal reasoning

Admissibility of the appeal

9. The appeal is belated.
10. 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*”.
11. The KPCC decision was served on the Appellant on Friday 20 December 2013. So the time limit of 30 days ended on Sunday 19 January 2014, but is prolonged to Monday 20 January 2014 according to Section 7.2 of the Administrative Direction No. 2007/5 Implementing UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 to Annex 1 to that law.

12. Yet the Appellant filed his appeal on 31 January 2014. He was sufficiently instructed of the time limit, as the decision contained an advice on this deadline.
13. The Appellant did not present any legitimate excuse for this delay. This means that he filed the appeal outside the time limit of 30 days.
14. Therefore the appeal has to be dismissed on procedural grounds as belated pursuant to Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50.

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.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar