

**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-193/13

Prishtinë/Priština,

23 July 2015

In the proceedings of:

J. T.

Montenegro

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case file registered at the KPA under the numbers KPA28617) dated 5 September 2012, after deliberation held on 23 korrik 2015, issues the following

JUDGMENT

The appeal filed by J. T. dated 16 July 2013, registered under number GSK-KPA-A-193/2013 against the Decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 dated 5 September 2012 as far as it regards the claim registered at the KPA under number KPA28617 is dismissed as belated.

Procedural and factual background:

1. On 15 March 2007 the appellant, then claimant, J. T. in the capacity of the household member of the alleged property right holder filed a claim at the Kosovo Property Agency (KPA) seeking ownership right and repossession of the cadastral parcels nos. 519/10 and 520/1, with a surface 0ha 89ar 97m², Cadastral Zone Rastavicë/Rastavica, Municipality of Deçan/Deçane (hereafter: the claimed property).
2. In order to support his appeal, the claimant provided these documents:
 - Administrative decision (Background opinion) no. 07-952/2-125/95 issued by the Service of Immovable Cadaster of the Municipality of Deçan/Deçane on 19 October 1994;
 - Expert findings by Dr. Milivoje Jarovic of Republic Geodesy Administration, Real Estate Cadastral Office, dated 14 May 1996. This document purports to explain the cadastral history of the parcels *inter alia* nos. 519/10 and 520/1 and to answer the question whether the purchase price of the parcels in 1963 was a real market price;
 - Birth certificate of the appellant's mother issued by the Municipality of Nikšić (Montenegro) on 7 March 1997;
 - Birth certificate of the claimant issued by the Municipality of Cetinje (Montenegro) on 15 August 2008;
 - Commemorative publication showing that claimant's mother M.T. died on 11 January 1996; and
 - ID card of the claimant no. CG00619201 issued by the Montenegro authorities on 26 April 2006.
3. On 25 June 2008, the KPA notified the claim. The claimed property was found not occupied. On 1 July 2010 the KPA through publication in the KPA gazette confirmed the notification of the claimed property. The gazette and list were left to the leader of the village of Rastavicë/Rastavica, as well as in the entrance and in the public board in the exit of

- village. The same publication (list and gazette) is published in Deçan/Deçane Municipality-Public Lawyer Office, Cadaster Office of Deçan/Deçane Municipality, Municipal Court of Deçan/Deçane and KPA Regional Office of Peja/Peć. The KPA gazette is distributed also to DRC, OSCE, UNHCR, and the Ombudsperson.
4. According to the KPA verification report dated 15 July 2009, the Administrative decision (Background opinion) could not be found. The official of the Department of Cadaster of the Municipality of Deçan/Deçane stated that this Administrative decision (Background opinion) is issued by the Serbian parallel institutions;
According to a consolidated KPA verification report dated 24 January 2011 except the administrative decision no. 07-952/2-125/95 dated 19 October 1994, the Birth certificate and the ID card have been positively verified.
 5. Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/164/2012 dated 5 September 2012 dismissed the claim of the appellant on ground that “[...the claimant concedes that the alleged property right holder sold the claimed properties already in 1963 to the socially owned enterprise Ereniku]”. Therefore, the same decision mentions that the alleged loss of possession cannot be considered to result from the 1998-1999 conflict. This means that the claim is outside jurisdiction of KPCC.
 6. The decision was served on the appellant on 17 April 2013. He filed an appeal. KPA headquarters in Prishtinë/Priştinā received the letter of appeal, that is dated ‘03 05 2013’, on 16 July 2013. A person working at KPA, Tanja Mijatovic, states that the letter of appeal with a lawyer stamp on it was received on ‘Friday last week’ while the statement dates from Wednesday 17 July 2013. She also states that appellant could not contact KPA before as the phone lines and electricity were disconnected.

Allegations of the appellant:

7. The appellant asserts that the KPCC decision is based on an erroneous and incomplete determination of facts and on misapplication of the substantive law. This is because he alleges that on the submitted claim the chronology was wrongly examined and the claim was dismissed by the decision without facts having previously been determined.
8. He explains that his mother M. T. [(hereafter: the alleged property right holder (PRH))] is the owner of the claimed property. He alleges that the claimed property was lost on 12 June 1999 and that the loss was as a result of circumstances 1998/1999 in Kosovo. He added that he does not know who is using the claimed property.

9. The appellant alleges also that the legal ground of the KPCC decision is not completely clear. This because the conducted court proceeding for establishment of the property right over claimed properties before the Municipal Court of Pejë/Peć against the SOE Ereniku is disrupted due to conflict 1998/1999 and this has to be considered as the loss of the property resulted from it.

The appellant deems it necessary “to reverse the challenged illegal decision, establish what the claimant requests by his claim and then issue a decision upon merits”.

The appellant finally proposes the Supreme Court of Kosovo as the second instance to accept the filed appeal and after the examination of the allegations “reverses” the challenged decision and send back the case file for retrial and new decision making.

Legal reasoning:

Admissibility of the appeal:

10. The appeal is inadmissible because it was filed outside the limits pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property (hereinafter Law 03/L-079) which provides that *“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 decided on this case with its decision KPCC/D/A/164/2012 dated 5 September 2012. This decision was served on the appellant on 17 April 2013. The appellant however filed an appeal that was received by KPA not earlier than on 12 July 2013 (almost two months later than the deadline) as follows from the information of KPA in the file stated here for in paragraph 6.
12. The Court could not find any reason why the appellant should be excused for this delay. He was sufficiently warned of the deadline (the decision contained a warning in the Serbian language) and the appellant himself gave no reason for delay.
13. On the basis of the above and in accordance with Section 13.3 (b) of Law No. 03/L-079 and Article 195.1(a) of the Law on Contested Procedure the appeal has to be dismissed as belated.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar