

**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-209/14

Prishtinë/Priština,

1 February 2017

In the proceedings of:

The Enterprise “K.” Prizren/Prizren

Represented by the Director F.Q.

Appellant

vs

P.J.

Street “Tase Živančevića” no 27/A

Beograd

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed by Judges: Beshir Islami, as Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/229/2014 (the case file registered at the KPA under the number KPA13297) dated 13 March 2014, after the deliberation held on 1 February 2017, issues the following:

JUDGMENT

The Appeal of F.Q. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/229/2014, as far as it concerns the case registered at the KPA under the number KPA13297, is dismissed as belated.

Procedural and Factual background

1. On 22 August 2008, P.J. (hereinafter the Appellee) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking re-possession of the apartment in the surface of 70 m², located in street “Otobarske Revolucije” lam 2C/10, Municipality of Prizren/Prizren (hereinafter: the claimed property). The Appellee stated that he is the owner of the claimed property and that the possession over the same has been lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 13 June 1999 as the date of loss.
2. To support his Claim, the Appellee presented the following documents:
 - Payments dated 7 March 1994, 15 April 1994, 10 May 1994, 6 July 1994 and 24 August 1994. There are no details about the payment, except for the sentence: *“Payment based on the Contract on Sale”* and the amount of the money that was paid.
 - Decision on Allocation of the Apartment No 521 issued by the Enterprise “Prizren Prevoz” on 2 October 1995. According to the Decision, the Appellee was allocated the claimed property for permanent use. In the point 1 of the Decision it was specified that the Appellee was co-owner with regard to the surface of 14.058 m² over the claimed property.
 - Utility Bills from the year 1997 and 1998 proving that the Appellee had used the claimed property.
 - Contract on Sale of the Apartment No 40/2001 concluded between the Enterprise “Prizren Prevoz” represented by the director Z.S. in capacity of the seller and the Appellee in a capacity of the buyer. The Contract on Sale was certified before Parallel Court of Prizren/Prizren on 4 October 2001.
 - Power of Attorney certified before the First Basic Court of Belgrade on 13 September 2010 with the No 118522/2010. The Appellee authorized S.P. to represent him before the KPA and all relevant institutions regarding the claimed property.
3. The KPA notified the Claim according to the standard procedure by placing a notice on the property on 17 July 2008. The claimed property was found to be occupied by unknown person.

On 5 December 2013, F.Q., the Director of the Urban Transport Enterprise “K.” claimed the legal right over the property (hereinafter: the Appellant).

4. To support his allegations, the Appellant presented the following documents:
 - Objection of the Urban Transport Enterprise NTU “K.” No 168, filed before the Executive Secretariat of the KPA on 25 June 2009 in which he alleges the Enterprise “K.” is the only title right holder over the claimed property and that the Appellee at no point had gained the ownership right over the same.
 - Response No 213 filed on 6 September 2011 through which the Appellant declared that the Appellee had only the Right on Use of the claimed property. According to the Appellant, since the year 1999 the Appellee never appeared at the working place and as a consequence he lost the Right on Use of the claimed property, while regarding the Contract on Sale the Appellant alleges that it was certified before a Court that is illegal considering the stamp that shows the year 2001.
5. The Allocation Decision was positively verified by the Executive Secretariat of the KPA while the Contract on Sale, due to legalization before the Parallel Court of Municipality of Prizren/Prizren, was not verified at all.
6. By its Decision KPCC/D/R/229/2014, the Kosovo Property Claims Commission (hereinafter the KPCC) granted a permanent Use Right in favor of the Appellee.
7. The Decision of the KPCC was served on S.B. on 13 June 2014. He received the Decision on behalf of the Appellee and submitted the Power of Attorney Ov.Br. 5250/2012 certified before the Municipal Court of Prishtinë/Priština, branch of Graçanicë/Gračanica on 26 September 2012.
8. The Decision of the KPCC was served on the Appellant on 9 June 2014. His son, T.Q. received the KPCC’s Decision. The Appellant, appealed the KPCC’s Decision on 12 August 2014.
9. The Appeal was served on the Appellee on 15 October 2014, while he Response to the Appeal on 28 October 2014.

Allegations of the Parties

The Appellant

10. The Appellant states that the Decision taken by the KPCC is based on the violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation.
11. The Appellant alleges that the Appellee provided the Executive Secretariat of the KPA with the suspicious documents that had been obtained at the time when the Enterprise was under the interim measures and each Decision issued during the period of the interim measures cannot be considered as valid, because cases for allocation of the apartments including the one in the present case, had been decided arbitrary.

12. According to the Appellant, the Appellee did not complete financial obligations to the Enterprise that granted him tenancy right.

The Appellee

13. The Appellee alleges that he gained the use right over the claimed property in a legal manner and presented in detail the documents that had been submitted by him before the first instance in order to confirm his use right.

Legal reasoning

14. The Appeal is belated.

15. 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*”.

16. The KPCC’s Decision was served on the Appellant on 9 June 2014. So the time limit to file an Appeal elapsed on 8 July 2014. Yet the Appellant filed his Appeal on 12 August 2014. This is outside the time limit.

17. On 24 May 2016 a Court Order was served on the Appellant. It says:

F.Q., is requested that within two weeks of receiving this order:

- *Is requested to clarify the relation between DP “Prizren Prevož” and NTU “K.”*
- *To provide the evidence that he is entitled to represent NTU K.. In this regard the F.Q. has to explain, provided with evidence, what kind of legal person NTU “K.” is, how the representation for this legal person is regulated and in what position F.Q. can represent the NTU “K.” in this appeal and to provide a certified power of attorney.*
- *According to the delivery report the KPCC Decision KPCC/D/R/229/2014 dated 13 March 2014 and the Certified Decision on claim KPA13297, dated 27 May 2014, were served on the Appellant through T.Q. (son of F.) on 9 June 2014, who provided to KPA a copy of the identity card of F.Q. on that delivery. The Appeal of the Appellant is received by KPA on 12 August 2014. F.Q. is given the opportunity to explain why the appeal is not filed within the obligatory legal 30 days’ time limit after 9 June 2014.*

18. The Appellant responded to this Court Order on 21 June 2016 by attaching the detailed explanation on the questions raised by the Court. About the question why the Appeal is not filed *within the obligatory 30 days’ time limit* the Appellant explained that he had no knowledge of the possibility of filing of the Appeal as he received no instructions on this legal issue.

19. The Supreme Court of Kosovo does not accept this excuse of the Appellant. This is because:

- At first, from the case file evidence it can be seen that while the Appellant's son received the KPCC's Decision, he attached the Identity Card of the Appellant, as a prove that the Decision was received, so the Appellant was informed about the Decision.
- Secondly, the last page of the KPCC's Decision that was received by the Appellant says:
Within thirty (30) days of the notification 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 Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

20. 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 Article 13.6 of the Law No 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar