

**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-183/14

**Prishtinë/Priština,
6 April 2016**

In the proceedings of:

D.T.B.

Str. Aleksandra Veljkovića br. 7/1
Jagodina
Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Sylejmani, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission (henceforth: KPCC) KPPC/D/A/204/2013 (case file registered at the KPA under the number KPA25881) dated 11 June 2013 (henceforth: the contested KPCC decision), after deliberation held on 6 April 2016, issues the following:

JUDGMENT

The appeal of D.T.B. against the decisions of the Kosovo Property Claims Commission KPPC/D/A/204/2013 (case file registered at the KPA under the number KPA25881) dated 11 June 2013, is dismissed as belated.

Procedural and factual background:

1. On 4 October 2007, D.T.B. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (henceforth: the KPA) as Family Household Member (FHM) of his deceased father T.M.B. (henceforth: the Property Right Holder) seeking confirmation of the ownership over parcels Nos. 14/1 and 14/2, with a surface of 4He 70Ar 11m², Cadastral Zone Kryshec/Kruševac, Municipality of Pejë/Peć (henceforth: the claimed property).
2. In the claim the Appellant stated that the claimed property was 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.
3. With the claim he submitted *inter alia* to KPA:
 - Purchase Contract, concluded on 23 May 1960 between the seller N.R. and the buyer Property Right Holder (henceforth: PRH). This document does not specify the number of the Possession List and/or any parcel;
 - Possession List No. 25, issued by the Cadastral District of the Municipality of Pejë/Peć on 31 August 1994, listing the PRH as an owner of the claimed property;
 - Death Certificate of the PRH No. 200-3/000SL/98 issued by the Municipality of Pejë/Peć, Republic of Serbia on 7 April 1998;
 - Power of Attorney (PoA) given from the Appellant to Z.B. to represent him before the KPA.
4. The notification of the claim was carried out through the publication in the KPA Notification Gazette (No. 1) and UNHCR Property Office Bulletin, on 28 May 2010. On 15 June 2010, the KPA confirmed that the previous notification of the claimed property (through publication) was accurate.
5. Following the notifications of the claim and within the legal time limit of 30 days, nobody presented himself/herself as respondent or interested party before the KPA/KPCC, thus the KPA/KPCC treated the filed claim as uncontested.
6. Based on the KPA verification reports dated 5 March and 10 June of 2008 as well as the Consolidated Verification Report dated 18 January 2013, the submitted documents

(except the PRH's Death Certificate and Appellant's ID *prima facie* verified) were not found at the Department of Cadastre of the Municipality of Pejë/Peć and Municipal Court of Pejë/Peć.

7. The KPA Executive Secretariat contacted the Appellant on 5 August 2009 (he also was contacted earlier) asking for additional documents but he has not provided any of them.
8. On 11 June 2013, the KPCC with its decision KPCC/D/A/204/2013 refused the claim. In the paragraphs 61-63 of the reasoning of the contested KPCC decision, the KPCC notes that the Purchase Contract and a Possession List identifying the alleged PRH as the owner of the claimed property, submitted by the Appellant, could not be verified by the KPA Executive Secretariat (henceforth: ES). The same decision points out that the KPA ES obtained *ex officio* an updated Possession List which lists the claimed property in the name of a third party (Municipality of Pejë/Peć). Further, the KPCC decision points out that the KPA ES as the Appellant failed to submit additional document requested him to submit additional documents. However, no additional evidence was submitted within the requested deadline. Finally, the KPCC concludes that the Appellant has failed to show ownership or any other property right over the claimed property in favour of alleged PRH, immediately prior to or during the 1998-1999 conflict.
9. The KPCC decision was served on the Appellant on 22 January 2014, while he filed an appeal on 22 May 2014.

Allegations of the Appellant:

10. The Appellant alleges in the appeal that the contested KPCC decision is based on erroneously and incompletely established factual state and on wrong application of the material law.
11. The Appellant alleges that the conclusion of the KPCC that the ES could not verify any of the documents he submitted is untrue. According him the institutions that are to perform the verification are in the possession of the evidences based on which they could confirm that the submitted documents are authentic.

12. The appellant also states that he never submitted the Possession List (mentioned in the KPCC decision) for which it is alleged that the ES had found listing the claimed property in behalf of a third party.
13. According to the Appellant the submitted evidences unequivocally establish that the PRH was a lawful owner and possessor of the claimed property and that this right was lost because of the circumstances which had arisen from the armed conflict that took place between 27 February 1998 and 20 June 1999.
14. Finally, the Appellant proposes the Supreme Court of Kosovo to accept his appeal and establish that he (the Appellant) has the right for repossession over the claimed property.

Legal reasoning:

Admissibility of appeal

15. The appeal is inadmissible because it was filed outside the legal frame pursuant to Section 12.1 of UNMIK Regulation No. 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 No. 2006/50) 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”*.
16. The KPCC decided on this case with its decision KPCC/D/A/204/2013 on 11 June 2013. That decision was served on the Appellant on 22 January 2014. The time limit prescribed for filing of an appeal expired though on 21 February 2014. The Appellant, however, filed an appeal only on 22 May 2014. The appeal therefore has to be dismissed as belated.
17. The Supreme Court could not find any reason why the Appellant should be excused for this delay. The Appellant was sufficiently instructed about the deadline to file an appeal and gave no acceptable reason for the delay.
18. On the basis of the above and in accordance with section 13.3 (b) of UNMIK Regulation No. 2006/50 and Article 195 (a) of the Law on Contested Procedure (LCP) the Supreme Court decided 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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar