

**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-152/13

Prishtinë/Priština, 12 March 2014

In the proceedings of:

P H E

P/P

Appellant

vs.

G D J

L1/L

P/P

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, EULEX Presiding Judge, EULEX Judge Willem Brouwer and Judge Sylejman Nuredini, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/139/2011 (case file registered at the KPA under the number KPA10234), dated 07 December 2011, after deliberation held on 12 March 2014, issues the following:

JUDGMENT

The appeal of P H E filed against the decision of Kosovo Property Claims Commission KPCC/D/C/139/2011 (case file registered at the KPA under the number KPA10234), dated 07 December 2011, is dismissed as inadmissible.

Procedural and factual background:

1. On 20 October 2006, G Dj filed a claim with Kosovo Property Agency, seeking confirmation of property right over business premises located at “Ilir Konushevcı” street, parcel no. 7702/2 with a surface of 69 m² in P/P. She explained that she is the owner of the business premises and that the premises are occupied by unknown persons. The premises were lost as a consequence of circumstances in 1998/1999 and the date of loss is the 1 June 1999.
2. To support her claim she provided KPA with the following documents:
 - Court settlement reached between G Dj (the claimant) and the enterprise “Z L” which was an integral part of the main trial of the Municipal Court of Prishtina C.nr.766/01 dated 29 September 2006, by which it was decided to recognize the claimant’s property right (1/1) over the immovable property of the parcel 7702/2 located at “Ilir Konushevcı” street in in Prishtinë/Priština, with a surface of 0.00.69 ha, with unregistered premises in that parcel of the enterprise ‘Z L’ from P/P.
 - Possession list no. 10011 dated 11 April 2003, issued by the Cadastral Immovable Property Service in Prishtinë/Priština.
 - Certificate of Immovable Property Rights UL.nr.71914059-11697, issued by Cadastral Office of Municipality of P/P on 26 October 2007, which establishes that the claimant is the owner of cadastral parcel 7702-2 with a surface of 69 m² located at “Ilir Konushevcı” street in P/P;
 - ID card of the claimant issued by UNMIK on 08 October 2001, under no. 1..
3. The claimed property registered under the claim KPA10234 was notified on 25 April 2008 and 17 August 2010, when the KPA notification team went to the place where the alleged business premises were located and put signs notifying that the property was subject of the claim and that the interested parties should submit their responses within 30 days. During the visit, the notification team found that the claimed property was occupied by E K, who stated that he claims the ownership right over this business premise.
4. The respondent E K, joined the proceedings based on his communication dated 25 April 2008, stating that he is the user of the premises, but he did not file any response or any other documents in support of his claim.

5. The KPA verification team has positively verified the judicial settlement C.nr.766/01 dated 29 September 2006 reached before the Municipal Court of Prishtinë/Priština and the Certificate of Immovable Property Rights UL.nr.71914059-11697, issued by Cadastral Office of Municipality of P/Pon 26 October 2007.
6. Regarding the claimed property, the Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/C/139/2011 dated 7 December 2011, recognized the claimant's property right over the claimed business premises by returning them under her possession. The decision was grounded on the judicial settlement C.nr.766/01 dated 29 September 2006 reached before the Municipal Court of P/P. According to this judicial settlement, G D's property right over the business premises was recognized.
7. On 30 April 2012, the decision KPCC/D/C/139/2011, dated 7 December 2011, was served on the claimant.
8. On 24 May 2013, the P H E filed an appeal against the Commission's decision KPCC/D/C/139/2011, dated 07 December 2011.
9. The appeal was received by the claimant (appellee) on 17 September 2013 and by the respondent (interested party) E K on 18 September 2013, but they did not file a response to the appeal.

Legal reasoning:

Position of the parties

10. In its appeal, it states that the appealed decision was issued following erroneous and incomplete determination of factual situation and misapplication of material law, proposing to have the Commission's decision modified and establish that the business premise located in P/P, "L e P" street, with a surface of 40 m² belongs to the appellant.
11. This is because according to the Ruling 08.nr.351-66 issued on 26 May 1976 by the Secretariat for Urbanism, Municipal Services and Housing in Prishtinë/Priština, its legal successor, the P H E, was entitled to place the prefabricated premises. On the other hand, according to the Ruling 08.nr.353-66 issued on 14 July 1977 by the Secretariat for Urbanism, Municipal Services and Housing in P/P, the former S-M I C was issued a permit for the use of these premises.

Admissibility of the appeal

12. The appeal is inadmissible (Section 13.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) as the appellant has not been a party to proceedings in the first instance.

13. This is because according to Section 12.1 of UNMIK Regulation 2006/50 on Resolution of Claims Related to Immovable Property, Including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter: Law No. 03/L-079), a party may file an appeal within thirty (30) days of notification of parties by Kosovo Property Agency of the decision of Property Claims Commission. Also, according to provision of Article 176 para 1 and 177 para 1 LCP, it is provided that the right to file an appeal is an exclusive right of parties to proceedings in the first instance.
14. Therefore, Section 10.1 (Section 13.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) provides that a party to the claim and the related proceedings is “any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat [...]”.
15. It is not disputable that the appellant was not a party and did not participate in proceedings in the first instance before the KPCC. The appellant failed to provide clear, complete and legally valid explanations and clarifications on justifiable and reasonable reasons that obstructed and made impossible its participation to proceedings and in order to be accepted now as a party to proceedings.
16. The Court notes that the notification was properly conducted. The KPA team put information signs in three languages – Albanian, Serbian and English at the immovable property which is subject of the claim.
17. The appellant failed to provide legally valid, reasonable and justifiable reasons to inform the KPA of his intention to participate in proceedings, which he necessarily should have done. Furthermore, the appellant as a legal entity was obliged, in the course of its scope of activities and on grounds of its business responsibilities, to undertake all legally rightful and legal actions to take care and enhance the value of the P H E in the capacity of the appellant. Since there is no justification as to why it did not participate in proceedings in the first instance before KPA, such failure goes to its detriment.
18. As the appeal is impermissible, the Supreme Court does not have to decide on the merits of the appeal, respectively of the decision.
19. Although subject of deliberation and consideration were the appellant’s allegations for granting the property right and returning under its possession the business premise located at “Lidhja e Prizrenit” street, with a surface of 40 m², the Court finds that there is no objective and subjective identity between the appeal and the appealed decision. This is because the claimant’s

property right over the cadastral parcel 7702-2, with a surface of 69 m², located at “Ilir Konushevci” street in P, was recognized by the appealed decision.

20. Therefore, the appeal should be dismissed as impermissible (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and Article 195.1 subparagraph (a) of Law on Contested Procedure).

Legal Advice

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

Esma Ertezi, EULEX Presiding Judge

Sylejman Nuredini, Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar