

**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-105/14

Prishtinë/Priština
9 March 2016

In the proceedings of:

L.B.

Dardania SU -9/4

Bld.4, Basement

Prishtinë/Priština

Appellant

Vs

R.J. (Authorised Representative of V.A.)

Boscë/Bosce, Kamenicë/Kamenica

Kosovo

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Anders Cedhagen, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, (case file registered at the KPA under the number KPA00151), after the deliberation held on 9 March 2016, issues the following:

JUDGMENT

1. **The Appeal of L.B. against the Decision KPCC no. KPCC/D/C/224/2013 (case file registered at the KPA under the number KPA00151), dated 27 November 2013, is dismissed as inadmissible.**

Procedural and factual background

1. On 18 January 2007, V.A. (henceforth: the Claimant), filed a claim with the Kosovo Property Agency (KPA), seeking re-possession of a business premise (storehouse) with a surface of 43.64 m², located at Nikola Pašić St., BB, Suburb “Kroi i bardhë/Bela Česma”, no.14 in Prishtinë/Priština (henceforth: the claimed property).
2. With his claim he submitted among others the following documents:
 - Contract on the construction of the storehouse, d No.02-2828/1 concluded on 22 November 1996, between the Public Housing Enterprise in Prishtinë/Priština and the Claimant.
 - Invoice dated 22 November 1996, issued by the Public Housing Enterprise based on which the Claimant has paid 50 % of the foreseen amount for the claimed property as per the Contract No. 02-2828/1.
 - Invoice No. 2828/96, dated 16 December 1996, issued by the Public Housing Enterprise based on which the Claimant has paid 20 % of the foreseen amount for the claimed property as per the Contract No. 02-2828/1.
 - Invoice No. 2828/97, dated 11 April 1997, issued by the Public Housing Enterprise based on which the Claimant has paid 30 % of the foreseen amount for the claimed property as per the Contract No. 02-2828/1.
 - Invoice dated 17 March 1998 issued by the Public Housing Enterprise in Prishtinë/Priština proving that the Claimant has paid the amount of 752 000 Dinars (Serbian currency) for the claimed property as per the Contract No. 02-2828/1, dated 22 November 1996.

- Invoice dated 23 April 1998, issued by the Public Housing Enterprise in Prishtinë/Priština proving that the Claimant has paid the total amount for the claimed property as per Contract No. 02-2828/1, dated 22 November 1996.
 - Annex Contract No. 02-1125/1, concluded on 22 May 1998 between the Public Housing Enterprise in Prishtinë/Priština and the Claimant through which Sections 3 and 4 of the Contract No. 02-2828/1 were amended.
 - Confirmation Letter No.02-1125/8 issued by the Public Housing Enterprise in Prishtinë/Priština on 22 May 1998 which confirms that the Claimant has purchased the claimed property as per the Contract No. 02-2828, dated 22 November 1996.
 - Record No. 02-1253/2, dated 15 July 1998, with regards to handover of keys to the claimed property.
 - Power of Attorney No.1221/2002, certified before the Municipal Court in Kamenicë/Kamenica, dated 21 December 2002, through which V.A. authorises R.J. to represent him before the relevant institutions with regards to the claimed property.
3. All the abovementioned documents have been **positively** verified by the KPA.
 4. Initially the notification of the claimed property was carried out on 20 June 2007. The notification report described the property as not occupied storehouse. Nevertheless, according to the case file submissions, L.B. presented herself as an interested party. At first, she has stated that she received the claimed property under possession and she had legal interest over the property (page 106 of the case file) and later she stated that she does not claim a legal right over the claimed property (page 105 and 216 of the case file).
 5. The KPA carried out once again the notification of the property on 25 January 2013. During the notification process which was also attended by the Claimant, the claimed property was found occupied by an unknown person.
 6. Given that no party filed a response within the period of 30 days as foreseen under Article 10.2 of the Law no. 03/L-079, the Claim was considered as uncontested.
 7. The KPCC approved the claim through the Decision KPPC/D/C/224/2013, dated 27 November 2013.
 8. The Decision was served on L.B. on 6 February 2014. On 5 March 2014, she filed an appeal against the Decision.

Allegations of the Appellant

9. L.B. alleges that the claimed property is not the property where she lives. She states that the claimed property is located opposite to the building where she lives. In her Appeal she refers to incomplete determination of the factual situation and she seeks confirmation of the factual situation.

Legal reasoning:*Jurisdiction*

10. The Supreme Court has jurisdiction to review the Appeal.

Admissibility of the Appeal

11. The Appeal is inadmissible because it was filed by a person who was not a party in the proceedings in the first instance before the KPCC.
12. Pursuant to Article 12.1 of the Law no. 03/L-079, a party may file an appeal within thirty (30) days from the notification to parties by the Kosovo Property Agency about the decision of the Property Claims Commission.
13. Article 10.1 of the Law no. 03/L-079 provides that upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to 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. Article 10.2 of the same provides that *”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 shall be a party ... , 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 [...]”*.
14. Only the party in the proceedings in the first instance has the right to file an appeal against the KPCC Decision. Based on the practice of the KPA Appeals Panel of the Supreme Court, the only exception to this rule appears if the person who may seek a right over the disputed property was not aware that the Claim was filed before the KPA due to improper

notification and therefore he/she is unable to present the notification of participation during proceedings in the first instance.

15. In the case at stake, the Supreme Court notes that the Appellant was aware of the proceedings in the case KPA00151 because she was notified in person on 13 July 2007. However, she did not allege any legal right over the claimed property which is subject of review (pages 105 and 213 of the case file). She also did not present a notification of participation as required by Article 10.2 of the Law no. 03/L-079. The Supreme Court notes that the identification of the claimed property was properly carried out. Moreover, the Claimant had participated in person during the process of identification of the claimed property. Given that the Appellant had stated that she did not allege any legal interest over the claimed property, now she does not have the legitimacy to file an Appeal with the Supreme Court against the Decision of the first instance court.
16. However, the Supreme Court deems as useful to stress out that the subject of review in the claim KPA00151 is related to a storehouse with a surface of 43.64 m² at the place “Kroi i Bardhë/Bela Česma”, no.14 in Prishtinë/Priština rather than a residential premise which the Appellant alleges to reside in.
17. Given that the Appeal is inadmissible, the Supreme Court is not obliged to decide on the merits of the Appeal.
18. The Appeal stands to be dismissed as inadmissible pursuant to Article 12.1 and 13.3 (b) of the Law No. 03/L-079 and Article 195.1 subparagraph (a) of the Law on Contested Procedure. Therefore, the KPA Appeals Panel decided as in the enacting clause.
19. This judgment does not prejudice the right of the Appellant to seek her alleged right before the competent court if she deems it necessary.

Legal advice

20. Pursuant to Article 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar