

**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-041/14

Prishtinë/Priština,

2 December 2015

In the proceedings of

L.V.

Ulpiana S-11 2 /166
Prishtinë/Priština

Appellant

vs.

1. S.K.

Str. "NATO" No. 42
Pejë/Peć

2. B.M.

Str. "29 Nëntori" No. 8/4
Pejë/Peć

3. T.I.

Str. "Selman Riza" No.22
Gjakovë/Đakovica

4. S.R.

Str. "Ali Pashë Tepelena", w/n
Gjakovë/Đakovica

5. R.C.

Lakrishte, Entrance 1, No.4
Prishtinë/Priština

R.C. is also representing SaideKelmendi, Bashkim Mulliqi, T.I. and S.R.

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/215/2013 (case file registered at the KPA under the number KPA00845) dated 21 August 2013 after deliberation held on 2 December 2015, issues the following

JUDGMENT:

- 1. The Certified decision of the Kosovo Property Claims Commission is amended as follows: besides R.C. the respondents in first instance are also S.K. , B.M. , S.R. and T.I. .**
- 2. The appeal of L.V. against the decision of the Kosovo Property Claims Commission KPCC/D/R/215/2013 dated 21 August 2013 regarding case file registered at the KPA under the number KPA00845 is dismissed as belated.**

Procedural and factual background:

1. On 29 May 2007, L.V. (hereinafter: the Appellant) submitted a claim to the Kosovo Property Agency (hereinafter: KPA) seeking repossession of the apartment located in Prishtinë/Priština, Str. Beogradska 52, No.1, with a surface of 45.25 m² (hereinafter: the claimed property) by claiming to be the owner of the claimed property and to have lost the ability to exercise her property right due to circumstances which resulted from the armed conflict that occurred in the years 1998/99.
2. On 3 January 2008, the KPA has identified the claimed property which turned out to be usurped by R.C. . He signed a declaration of participation and states also to represent S.K. , B.M. , S.R. and T.I. (henceforth together: the Appellees).
3. The Appellees took part in the procedure in front of the KPA, by emphasizing that the Appellant is not the property right holder regarding the claimed property.
4. The claimed property has been subject of revision and decision by the Housing and Property Commission (hereinafter: HPCC). The HPCC by the decision HPCC/D/106/2003/B & C

approved the claim of the Category B (DS008075) of S.K. (sister of E.G.) who is now an Appellee. The claim of category C (DS003476 and DS606736) of V.R. (where the Appellant was an interested party) was dismissed. The request for revision by V.R. (first Claimant) and L.V. (second Claimant) of the first instance decision on the category C claim was rejected by the decision HPCC/REC/ 61/2006 dated 19 March 2006.

5. In paragraphs 29 and 30 of the cover decision, which according to the verified decision applies in particular for the claim, it is stated that V.R. (first Claimant) and L.V. (second Claimant and now the Appellant) alleged that E.G., the sister of the Claimant of the category B claim (in this case before the Supreme Court the Appellee S.K.), was never the owner of the claimed property since the privatisation procedure was not completed because the Ministry of Finance did not allow the privatisation of the property because the sister of the Appellee died in January 1995. The late E.G. had only the right of residence which could not be transferred to the Appellee, since she was not a family member of the head of the household. Further on, the claiming parties in that procedure alleged that there was no discrimination in the procedure before the Ministry of Finance, since the purchase was not interethnic. The Claimants in that procedure emphasized that the Appellee falsified the signature of the deceased sister since the request was submitted in February 1995, after the death of the sister. In the end, the claiming parties stated that the Ministry of Finance has not refused to grant permission for the privatisation of the claimed property but the Claimant of the category B (the Respondent) failed to complete the further documentation required by the Ministry of Finance. The second Claimant stated that she bought the claimed property from the first Claimant in 2001 (the Claimant of the category C).
6. The HPCC found that the deceased sister of the Appellee purchased the claimed property in 1994 and has paid completely the purchase price. The HPCC further reasoned that the fact that the denial of permission by the Ministry of Finance was still in force cannot harm this conclusion even if the sale was not interethnic. The only reason why the sale was not legal and completed was because it was within the sphere of the Law on Transfer of Property under certain conditions (Official Gazette of SRS 30/89) as amended by the law published in the Official Gazette of the SRS 42/89. In these circumstances the case should be decided as it was not necessary for the Appellee or her sister to seek permission from the Ministry of Finance. Since V.R. could not have acquired in a legal way the ownership of the claimed

property as the tenancy right holder has sold preliminarily the property to the sister of the Appellee, the Appellant was not in a position to transfer the ownership to her.

7. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter: KPCC) by the decision no. KPCC/D/R/215/2013 dismissed the claim of the Appellant as an adjudicated case or *res judicata* with the reasoning that the same claim, regarding the same apartment, registered in the HPCC under claim nos. DS606736 and DS003476, has been reviewed and decided by the final decision of the HPCC No. HPCC/REC/61/2006, dated 19 March 2006.
8. On 13 November 2013, the decision was handed to the Appellant and the Appellees. The Appellant wrote 12 December 2013 as the date of appeal but, according to the stamp on the documents, the KPA received the appeal on Monday 16 December 2013 and according to another stamp on 19 December 2013. On 26 March 2014, the Appellees received the appeal, but they did not submit any response.

Legal reasoning:

9. The KPCC mentioned on the Certified Decision only R.C. as Respondent. As he provided powers of attorney of S.K. , B.M. , S.R. and T.I. , the Supreme Court *ex officio* concludes that those four also has to be considered as Respondents and as Appellees. The Supreme Court amends the certified decision *ex officio* according to this conclusion.
10. The appeal is inadmissible. It has not been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 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 (hereinafter: UNMIK Regulation 2006/50).
11. The KPCC decision was served on the Appellant on 13 November 2013. The end of the 30 days period is then Friday 13 December 2013. However, according to the stamp on the documents, the KPA received the appeal (and the Appellant filed the appeal at the KPA) earliest on 16 December 2013. The date the Appellant wrote on the letter of appeal, 12 December 2013, as date of appeal, does not prove that the appeal was filed on that day.
12. The Court could not find any reason why the Appellant should be excused for this delay. She was sufficiently warned of the deadline and the Appellant herself gave no reason for the delay. The appeal therefore has to be dismissed as belated.

13. In the light of foregoing, pursuant to Section 13.3(b) of UNMIK Regulation 2006/50 and Article 196 of the Law on Contested Procedure, it was decided as in the enacting clause of this Judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen EULEX Judge

Urs Nufer, EULEX Registrar