

**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-086/14

Prishtina, 13 Maj 2015

In the proceedings of:

N.M.

Xhemajl Mustafe Street

Block V, Entrance 5, Basement

Priština/Prishtinë

Appellant

Vs.

R.J.

Bosce, Kamenica/Kamenicë

Kosovo

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Willem Brouwer, 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 No. 00149), after deliberation held on 13 May 2015, issues the following:

JUDGMENT

1. The appeal of N.M., filed against Decision of KPCC/D/C/224/2013 (case file registered at the KPA under No. 00149), dated 27 November 2013, is dismissed as inadmissible.
2. The decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013 dated 27 November 2013, is confirmed, as far as it regards to KPA00149.

Procedural and factual background:

1. On 25 July 2006, R.J. filed a claim at the Kosovo Property Agency (KPA) as an authorized representative of the claimant V.A. (hereinafter: the appellee), seeking for the repossession of the business premise of 50.15 m² with address Bela česma no.35, P.Centar in Priština/Prishtinë. The claim was registered at the KPA under KPA00149.
2. The appellee, provided the KPA with the following documents to support his claim:
 - Power of Attorney Vr.no.1221/2002 given by the appellee, certified by Municipal Court of Kamenica/Kamenicë on 27 December 2002;
 - The minutes kept during the meeting held on Public Housing Enterprise on 15 July 1998 on the handover of the keys of the business premises;
 - A certificate no.02-1126/2 dated 22 May 1998 issued by Public Housing Enterprise, which shows that V.A. has met all the obligations toward Public Housing Enterprise;
 - Basic contract no.02/2827/1 dated 22 November 1996 on the construction of the business premises and acquisition of the claimed property concluded between Public Housing Enterprise and V.A.; Annex to contract no.02/1126/1 dated 22 May 1998;; A ; A certificate on citizenship no 04-204/315 dated 17 September 1998, issued by Municipality of Kosovska Kamenica/Kamenicë.
3. All the documents above were positively verified by KPA.
4. The property in dispute in case KPA00149 was physically notified on 24 April 2008 at first. The notification report of the same date related to the claimed property reveals that the property was occupied by the appellant, N.M., who was present in person during notification process. He declared that he was using this property only for residential purposes and he pretends a legal right over the claimed property.

He further declared that he did not want to submit a claim with the KPA. There is also a declaration in the case file signed by the appellant N.M. on 21.05.2008 by which he states that he is using the property for residential purpose, but he does not claim any legal right over it. Furthermore he did not take part in the proceedings before KPCC.

5. The first notification was done for the wrong property, for this reason KPA informed the appellant again on 2 August 2010. After the receipt of the KPA's notification, the appellant on 06 August 2010 submitted a statement by which he states that he does not pretend a legal right over the claimed property.
6. On the other hand, since the initial physical notification of the claimed property was wrongly done, on 24 March 2011 the property was re-notified. During the second notification of the claimed property, the notification team found that the claimed property was an office occupied by N.I., who did not sign the Notice of Participation, either.
7. The claim remained uncontested during the first instance proceedings in the sense that both persons using the property at the time of notifications waived their right to contest the claim within the 30-days period prescribed in section 10.2 of Law No. 03/L-079.
8. KPCC granted the claim with the Decision KPCC/D/C/224/2013 dated 27 November 2013.
9. The Decision was served on N.M. on 5 February 2014. On 10 February 2014, he filed an appeal against it.

The allegations of the appellant:

10. The appellant asserts that the claimed property is not the property where he lives. He declares that the claimed property is situated 50-60 m away from the premises where he lives. With the appeal he invokes an incomplete determination of facts. He requires a verification of the factual situation. He also states that on 8 August 2010, he informed the KPA about this discrepancy.

Legal reasoning:

Jurisdiction

11. The Supreme Court has jurisdiction to examine the appeal.

Admissibility of the appeal

12. The appeal is inadmissible because it was filed by a person who was not a party in the proceedings at first instance before the KPCC, since the appellant explicitly decided to not join the procedures

13. According to Section 12.1 of the 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.

14. Section 10.1 of 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 subject matter of the claim. Section 10.2 of the same stipulates 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 [...]”*.

15. Only a party in the first instance proceedings has the right to file an appeal against the Decision of the KPCC. According to the jurisprudence of the KPA Appeals Panel of the Supreme Court, the mere exception of this rule comes to the surface if and when the person who may claim a right over the property in dispute has not been aware of the claim filed with the KPA due to lack of proper notification and thus is unable to file a notice of participation within the course of proceedings at the first instance.

16. In the case at hand, the Supreme Court notes that the Appellant was aware about the proceedings in case no.KPA00149 as he was notified in person firstly on 24 April 2008. However, he did not claim any legal right over the claimed property, which as subject matter of the claim in that case. He did not file a notice of participation as required in Section 10.2 of the Law No 03/L-079, either. The Supreme Court observes that the second notification was properly conducted. The Appellant, during the notification explicitly declared that he did not claim any legal rights, interests or permission to use or occupy the claimed property. The Appellant reiterated his intentions with the statement dated 06 August 2010 by which he once again stated that he did not claim any legal right over the claimed property. Since he stated that he did not claim any legal interest over the claimed property, he does not have now the legitimacy to submit an appeal before Supreme Court against the first instance Decision.

17. Nevertheless, the Supreme Court finds it useful to note that the subject matter of the claim in case no KPA00149, concluded with the Decision no. KPPC/D/C/224/2013, relates to an office space with surface 50.15 m² with the address Bela česma no.35, P.Centar in Priština/Prishtinë, not to the residential premises where the appellant alleges to be living.

18. The Appellant's allegations as such are not subject matter of this deliberation. His appeal erroneously challenges the decision of KPCC no.KPPC/D/C/224/2013 which dates 27 November 2013. As the appeal is inadmissible, the Supreme Court does not have to decide on the merits of the appeal.

18. The appeal should be dismissed as inadmissible pursuant to Section 12.1 and 13.3 (b) of the Law No. 03/L-079 and Article 195.1 subparagraph (a) of Law on Contested Procedure. Therefore, the KPA Appeals Panel decided as in the enacting clause.

19. This judgment is without prejudice of the right of the appellant to pursue its alleged right before the competent court, if he considers it necessary.

Legal Advice

25. Pursuant to Section 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

Esmá Erterzi, EULEX Judge

Willem Brouwer, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar