

**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-013/2014

Prishtinë/Priština, 14 October 2015

In the proceedings of:

B.S.

on behalf of his spouse Tomislava Stojanović

Kosanciceva 23/3

Cuprija, Serbia

Appellant

Vs

N.S.

Kabash,

Viti/Vitija

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, members, on the appeal filed against the decision of the Kosovo Property Claims Commission (KPCC) KPCC/D/A/156/2012 dated 6 June 2012 (case file registered at the KPA under No. 06415), after deliberation held on 14 October 2015, issues the following:

JUDGMENT

The appeal of B.S. against the Decision of KPCC no.KPCC/D/A/156/2012, dated 6 June 2012, as far as it concerns claim no. KPA under No. 06415 is dismissed as belated.

Procedural and factual background:

1. B.S.S. (henceforth: the claimant) filed on 16 January 2007, as a family household member, a claim at the Kosovo Property Agency (KPA) seeking for repossession of the cadastral parcel no. 3375, situated in the place Shigoje, Municipality of Viti/Vitina (the claimed parcel). He stated that his wife inherited the claimed property from her deceased father as co-owner with her sister.
2. He provided the KPA with the following documents to support his claim:
 - a) Marriage certificate no. 202-2007-V dated 17 September 2007 issued by Civil Office in Municipality of Vitia/Vitina, which shows the relation between the claimant and T.Z. ;
 - b) Inheritance Decision O.nr. 32/05, dated 31 May 2005, of Municipal Court of Vitia/Vitina; in this decision claimant's wife is announced as inheritor of the claimed parcel together with her sister S.V. with equal parts of $\frac{1}{2}$;
 - c) Judgment P.nr. 202/2003 dated 22 May 2008, of Municipal Court of Vitia/Vitina; in this judgement a purchase contract on the claimed parcel stating D.Z. (father of claimant's wife) as the seller and F.H. as the buyer is announced null and void.
3. The claim was registered at the KPA under KPA06415.
4. KPA verified the abovementioned documents positively.
5. The claim was physically notified on 22 January 2010 by putting a sign on the claimed parcel. From the notification was found that the property is a cultivated land and occupied.
6. The claim was contested by N.S. (henceforth: the appellee). He approached KPA as a respondent party. On 2 March 2010 he signed the notice of participation and claimed a legal right to the claimed property. He stated that he purchased the claimed parcel from the H. family. That family purchased the claimed property from F.H. To support his allegations he submitted the following documents:

- Certificate for the immovable property rights no.UL-70101007-3371, dated 5 August 2005, issued by Municipal Cadastral Office in Viti/Vitina. According to this certificate the claimed property was registered under the name of the appellee N.S.;
- Purchase contract no. 660/02 dated 29 August 2002, concluded between D.Z. claimant's father in law and F.H. ; this is the contract that was subject of and annulled in the procedure meant here for in paragraph 2.c;
- A hand written formal agreement dated 6 August 2004 showing that the appellee purchased the claimed parcel from the H. family.

7. In the Verification Report, dated 19 October 2011, KPA team established that the claimed parcel is registered under two co-owners. KPA ex officio found the following document:

- Certificate for the immovable property no.UL-70101007-03243, dated 18 October 2011, issued by Municipal Cadastral Office in Viti/Vitina which lists T.S. as owner of the ½ part of claimed parcel.

8. KPCC with the Decision KPPC/D/A/156/2012, dated 6 June 2012, decided to dismiss the claim with the reasoning (in paragraphs 11 and 97-99) that the claim is *res judicata*, because on the same dispute is already decided by the Municipal Court in Viti/Vitina. In the judgment mentioned here in paragraph 2.c., KPCC explains that the contract between claimant's father in law and the predecessor of the appellee, F.H. , is declared null and void. Pursuant to this judgment the claimed property has been transferred back in the name of claimant's wife and her sister.

9. The Decision was served on the claimant, B.S. (hereinafter: the appellant), on 5 March 2013 and on appellee on 20 March 2013. On 9 October 2013 appellant filed the appeal. The appeal is served on the appellee on 20 January 2014.

The allegations of the appellant:

10.The appellant challenges the KPCC decision as incorrect and asked the Supreme Court to correct the decision and reach another decision based on the documents submitted in appeal.

Legal reasoning:

Admissibility of the appeal

11.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 (henceforth: Law UNMIK 2006/50) provides as follows: “*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the [KPCC] 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*”.

12. The KPCC decision was served on the appellant on 5 March 2013 and the appellant should have submitted the appeal within the deadline of 30 days as prescribed by the abovementioned provision. The appellant filed the appeal only on 9 October 2013. This is outside the deadline prescribed by the law.

Consequently, the appeal has to be dismissed as belated (Section 13.3 of Law UNMIK 2006/50).

13. Besides this, the appellant did not give reasonable excuses about his belated appeal.

14. He was sufficiently warned of the deadline, as the decision contained a warning in the Serbian language on this deadline.

15. Therefore the appeal has to be dismissed as belated pursuant to Section 13.3 subparagraph (b) of Law UNMIK 2006/50 and article 195.1 (a) and 196 of the Law on Contested Procedure.

Legal Advice

25. Pursuant to Section 13.6 of the Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, EULEX Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar