

**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-192/2015
GSK-KPA-A-196/2015
GSK-KPA-A-197/2015**

**Pristina
17 January 2018**

In the proceedings of:

N. D.

Appellant

Vs.

L. M.

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter “KPCC”) KPCC/D/A/211/2013 (case file registered in KPA under KPA23644, KPA23640 and KPA23639), dated 21 August 2013, after deliberation held on 17 January 2017, issues this:

JUDGMENT

1. The appeals filed by N.D, registered under GSK-KPA-A-192/2015, GSK-KPA-A-196/2015 and GSK-KPA-A-197/2015, concerning the cases registered with Kosovo Property Agency under KPA23644, KPA23640 and KPA23639, are joined into a single case under GSK-KPA-A-192/2015.
2. The appeals filed by N. D. against the decision of the Kosovo Property Claims Commission KPCC/D/A/211/2013 dated 21 August 2013 concerning the cases registered with Kosovo Property Agency under KPA23644, KPA23640 and KPA23639, are dismissed as belated.

Procedural and factual background

1. On 22 January 2007, L. M.(hereinafter “the appellee”), filed several claims with the Kosovo Property Agency (hereinafter: KPA) through which he requested the repossession of properties located at the place called “staro selo” and “vise selo”, village of Milloshevë, Municipality of (hereinafter “claimed property”). The appellee alleges that the loss of possession of the claimed property occurred on 28 June 1999 due to the circumstances of 1998-1999, and that currently properties are occupied by N.D. In addition to repossession, the appellee seeks compensation for the use of the property without his consent.
2. To support his claims, the appellee provided the KPA with the following documents:
 - Copy of plan no.176 issued by the Cadastre Department of Prishtina Municipal Assembly on 22 June 1995, which shows that the claimed properties are registered in the name of the appellee;
 - Possession list no.176 issued by displaced Cadastre Department of Prishtina Municipality on 21 December 2006, which shows that the claimed properties are registered in the name of the appellee.
3. On 23 December 2009, the KPA Executive Secretariat notified the claim KPA23644, whereas the notification for the claim KPA23640 was on 16 November 2009 and for the claim KPA23639 was on 13 November 2009. The claimed properties were found occupied by N. D. who claimed legal interest over them (hereinafter “the appellant”).
4. The appellant states that he purchased the claimed properties from the appellee himself.
5. To support his allegation, the appellant provided the KPA with the following documents:
 - Sale and purchase contract concluded on 6 September 2006 through L. M.(represented by lawyer B. Ç.) in the capacity of seller of the claimed properties and N. D. in the capacity of the buyer. The contract was certified in September of 2006 and acquired the reference number 773/2006;

- Extract of possession list no. 176, issued by the Department for Cadastre, Geodesy and Property of Obiliq Municipality on 7 September 2006, which shows that the claimed properties are registered in the name of the appellee;
 - Certificate on immovable property rights no. 00341 issued by the Cadastral Office of Obiliq Municipality on 12 September 2006, which shows that the claimed properties were updated in the name of the appellant.
6. The appellee, through his written statement submitted to the KPA on 20 May 2010, strongly denied that he had sold the claimed properties to the appellant, insisting that he never signed the sale and purchase contract and that the authorization through which he allegedly authorized the lawyer to act on his behalf in relation to the transaction is forged.
 7. The Executive Secretariat of the KPA reacted regarding the written statement of the appellee by addressing the issue of forged authorization at the Ministry of Internal Affairs, with Kosovo Forensics Agency. To its request, the KPA attached the following:
 - Authorisation certified by the Lipjan Municipal Court on 7 February 2006 with reference number 472/2006, through which L. M. authorised the lawyer B. Ç. to sell his properties and to undertake all necessary actions pertaining to the transfer of his property rights onto the buyer's name, to accept the purchase amount and to obtain all documents from competent institutions.
 8. At the request of the KPA Executive Secretariat, the Kosovo Forensics Agency issued the report no.AKF/2012-3169/2012-2783 dated 11 March 2013. According to the report, the signature of L. M. in the document titled "Authorisation" and in the samples used for this expertise may not have been signed by the same person.
 9. The Verification Department of KPA Executive Secretariat positively verified the Authorisation no. 472/2006 and the Sale and Purchase Contract no.773/2006, whereas the Immoveable Property Rights Certificate no.00341 issued by the Cadastral Office of Obiliq Municipality was found updated in the name of the appellant. Cadastral changes were made based on the sale and purchase contract no. 773/2006 dated 7 September 2006.
 10. On 21 August 2013, the Kosovo Property Claims Commission through its decision KPCC/D/A/211/2013 (hereinafter "Decision of KPCC") confirmed the appellee's property rights and right of re-possession over the claimed properties and decided to return the claimed properties to the possession of the appellee. In the reasoning of the decision, KPCC stated that the authorisation cannot be considered as sufficient piece of evidence that lawyer B. Ç. was duly authorised by the appellee to sell the claimed properties on his behalf and as such, the alleged sales transaction must necessarily be considered as invalid. It follows from this that the Certificate on immovable property rights in which the appellant is identified as owner of the claimed properties is wrong and cannot be considered as evidence for the appellant's property rights.
 11. The KPCC decision was served on the appellee on 24 December 2013.
 12. The KPCC decision was served on the appellant on 10 December 2013. The appellant received the KPCC decision in person; however, he refused to sign the acknowledgment of receipt. On 18 December 2014, he filed appeals against the KPCC decision in relation to the following claims:

Appeal number and case number at KPA	Information pertaining to the claimed parcel	<i>Number and date of decision</i>
GSK-KPA-A-192/2015 (KPA23644)	Cadastral parcel 305/1, cultivated land with a surface of 3.01.81 ha, staro selo, Milloshevë village.	KPCC/D/A/211/2013 21 August 2013
GSK-KPA-A-196/2015 (KPA23640)	Cadastral parcel 657, orchard with a surface of 00.16.93 ha, staro selo, Milloshevë village.	KPCC/D/A/211/2013 21 August 2013
GSK-KPA-A-197/2015 (KPA23639)	Cadastral parcel 303/1, class VI field with a surface of 00.41.99 ha, staro selo, Milloshevë village.	KPCC/D/A/211/2013 21 August 2013

Allegations of the appellant

13. The appellant alleges that the KPCC decision contains substantial errors and misapplication of the substantive and procedural law, and is based on wrongful or incomplete determination of facts.
14. The appellant claims that he was summoned by KPCC on 15 December 2014 and in the presence of his lawyer he was informed that allegedly he rejected receiving the KPCC Decision. The appellant added that according to the case file submissions, the pieces of evidence were handed over to him: the KPCC decisions on 10 December 2013. The appellant declared that he never received the KPCC decisions; therefore, he had no possibility and no reason to reject them. According to the appellant, he filed an appeal after receiving the KPCC decision through his lawyer.
15. The appellant strongly objects to the KPCC decision stating that he purchased the claimed properties. This fact can be confirmed through the sale and purchase contract which was certified in the Municipal Court of Pristina.
16. According to the appellant, there are ongoing criminal proceedings against his lawyer B. Ç. and other persons based on the Indictment PP.nr. 319-8/11 of the Municipal Prosecution Office dated 3 March 2012. Therefore, the KPCC had no right to render a decision until the criminal proceedings reached its final stage.

Legal reasoning

Joining of the appeals

17. Section 13.4 of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the Commission pursuant to Article 11.3 (a) of the law. This article allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues
18. The Provisions of the Law on Contested Procedure no. 03/L-006, that are applicable in the appeal proceedings before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, as well provisions of Article 408.1 in conjunction with Article 193 of the LCP, provide the possibility of joining of all claims through a ruling if that would ensure court-effectiveness and efficiency of the case
19. In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in all 4 (four) claims. Only the parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
20. The appeals registered under GSK-KPA-A-12/2015, GSK-KPA-A-196/2015, and GSK-KPA-A-197/2015, are joined in a single case registered under GSK-KPA-A-192/2015.

Admissibility of the appeal

21. The appeal is belated.
22. The Supreme Court of the Republic of Kosovo examined all the case file submissions and found two (2) acknowledgments of receipts which show that KPCC decisions were twice served on the appellant. The first time, on 10 December 2013, the appellant received the decision but refused to sign the acknowledgment of receipt. The second time, the decision was served on 28 October 2014. The decision was received by the appellant's son, L. D.
23. Article 12.1 of the Law no. 03/L-079 provides as follows: "*Within thirty (30) days of notification of parties by the Kosovo Property Agency of the Commission's decision on the appeal, the party may file an appeal against such decision with the Supreme Court of Kosovo through the Executive Secretariat of the Kosovo Property Agency*".
24. The decision of KPCC was served on the appellant for the first time on 10 December 2013 and the second time on 28 October 2014. Thus, the deadline to file an appeal expired on 13 January 2014 or on 29 November 2014, if the court would consider the last receipt as valid. Nevertheless, the appellant filed his appeal on 18 December 2014, almost 1 (one) year after receiving the decision for the first time and 2 months after his son received the decisions. This is outside the time limit.

25. Although the appellant was continuously active during proceedings in the first instance, he alleges that he never received the KPCC decisions otherwise it is not in his legal interest to refuse to sign the acknowledgments of receipts and receive the decisions.
26. Section 6.3 in conjunction with Section 6.5 (b) of Administrative Direction 2007/5 on implementation of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, stipulates that: *“The Kosovo Property Agency's Executive Secretariat ensures that the service is made at the address for execution of deliveries of that party, either by sending a copy of the document by official post, which provides the certificate, or by the personal delivery of the copy, for which also a certificate is issued for service the document. In case of personal delivery of the document, if the receiving party has refused to accept the document or to sign the acknowledgment of the receipt on the day the service was attempted, the person submitting the document shall note that the document was not received and is returned to the Executive Secretariat”*.
27. In this case, the official from the KPA Executive Secretariat notes that the appellant received the KPCC decision, but he rejected to sign the receipt on 10 December 2013. On this basis and based on the explanations above, the Supreme Court considers that the service of 10 December 2013 was lawful and according to provisions of Article 212 of the Law no. 03/L006 on the Contested Procedure which foresees that if the requirements are fulfilled *“The communication carried out in this manner is called lawful”*.
28. Regarding the appellant's allegation that he received the KPCC's decision through his lawyer, the Supreme Court is of the opinion that such an allegation does not stand.
29. In accordance with Section 5.3 of Administrative Direction 2007/5 on implementation of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, *a lawyer acting for a party must submit to the Executive Secretariat or the Registry of the Supreme Court a copy of the power of attorney granting the authority to represent such party in the proceedings before the Commission or the Supreme Court*.
30. From the case file submissions, it is clear that the appellant never hired a lawyer to act on his behalf neither during the first instance proceedings nor during the appeal stage. There is absolutely no authorisation attached to the case file submission or to the appeal.
31. The Supreme Court shall not examine other allegations of the appellant not because of their relevance, but because the appeal is belated. Article 195.1 exclusively foresees that the Court of Appeals in the panel session shall *“dismiss the appeal as belated”*.
32. Therefore, the appeal had to be dismissed for procedural reasons as belated in accordance with Article 13.3, sub-paragraph (b) of the Law no. 03/L-079 and Article 195.1 (a) and 196 of the Law on Contested Procedure no. 03/L-006.

Legal advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting Registrar EULEX