

**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-237/13

Prishtinë/Priština,
12 August 2015

In the proceedings of:

J.A.

Appellant

Vs

Z. C.T.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Elka Filcheva-Ermenkova judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 dated 29 February 2012 (case file registered at the KPA under the number 34036), after the deliberation held on 12 August 2015, issued the following:

JUDGMENT

1. The appeal filed by the Appellant J. A. against the decision of the Kosovo Property Claims Commission KPPC/D/A/140/2012 dated 29 February 2012 (as far as it regards the case file registered at the KPA under the number KPA34036) is accepted as grounded;
2. The decision of the Kosovo Property Claims Commission KPPC/D/A/140/2012 dated 29 February 2012 (as far as it regards the case file registered at the KPA under the number KPA34036) is annulled;
3. The claim filed by Z. C. T. registered at the KPA under the number KPA34036 is dismissed due to the waiver of the claim.

Procedural and factual background

1. On 23 March 2007, the Claimant Z. C.T. filed a claim with the Kosovo Property Agency (KPA) seeking re-possession over the parcel no.187 with a surface of 16ar 50m² located in the place called Rosuljapod nasipa, Cadastral Zone Drobesh, Municipality of Viti/Vitina (hereinafter: the claimed property). The Claimant states that her father was the owner of the property which is being used illegally by unknown persons and that the possession of the property was lost on 20 June 1999 as a result of the circumstances of the armed conflict 98-99. The claim is registered at the KPA under the number KPA34036.
2. In order to support her claim she submitted with the KPA the following documents:
 - Possession List no.36 dated 16 November 2006 issued by the Department for Cadastre, Geodesy and Property of the Municipality of Viti/Vitina, in which it is established that the parcel which is subject of the claim is located in the place called Rosuljapod nasipa, Cadastral Zone Drobesh, Municipality of Viti/Vitina and it is evidenced under the name of R. (J.) M., the Claimant's father as owner of the claimed property;
 - Death Certificate of M. R., issued on 9 October 2006 by the Civil Registry Office of the Municipality of Krusevac;
 - The Inheritance Decision T.nr.025-2008 dated 21 April 2008, issued by the Municipal Court in Viti/Vitinje, in which it is established that Claimant is inheritor with ¼ of her father's properties;
 - Marriage certificate of Z. C. T. dated 19 September 2003 issued by the Civil Registry Office in the Municipality of Viti/Vitinje.

According to the KPA Consolidated Verification Report dated 21 January 2009, all abovementioned documents have been positively verified by the Executive Secretariat

3. The property claim was notified firstly on 9 August 2007. Later on 30 August 2010 a new notification was made, through publication in Gazette no.7, which was left at the village, in a number of municipal offices and in the UNHCR and Ombudsperson Offices. This shows that the first notification was not correct.
4. No respondent or interested party appeared before the KPA.
5. The Kosovo Property Claim Commission (KPCC) as far as it regards the claimed property, in its decision KPCC/D/A/140/2012 dated 29 February 2012, which refers to the case file registered at the KPA under the number KPA34036, decided to establish the property right of the Claimant on the grounds that she submitted sufficient evidence to prove that she is the actual holder of the property right and that she has the possession right over the stated property.
6. The decision was served on the Claimant Z. C. T. (hereinafter: the Appellee) on 28 August 2012.
7. On 7 February 2013, upon the request filed by the Claimant the KPA decided to put the claimed property under its administration.
8. On 2 July 2013 the Claimant filed a claim with the KPA for closing the case with the justification that the property was sold to a third party.
9. On 25 July 2013, received by KPA on 29 July 2013, J.A. (hereinafter: the Appellant) submitted an appeal against the decision KPCC/D/A/140/2012 dated 29 February 2012.
10. Enclosed with his appeal the Appellant submitted the following documents:
 - Contract (verification nr.1747/2008, dated 19 September 2008) on sale of immovable property, concluded between R., I. and Z. T., S. P. and G. M., as sellers represented by lawyer S. M. and J. A. as purchaser. The Contract has been certified by the Municipal Court in Viti/Vitina.
 - Certificate on the Rights of the Immovable Property no.P-70101021-00187-0, dated 2 April 2013 issued by the Municipal Cadastral Office in Viti/Vitina, in which it is confirmed that J. A. is owner of the claimed property.
 - Copy of Plan nr.737/13 dated 4 February 2013 issued by the Department for Cadastre, Property and Geodesy.

Allegations of parties

11. The Appellant challenges the KPCC decision on the grounds that the decision was issued in the absence of evidence and that he is in possession of evidence which confirms his ownership right over the claimed property.

12. The Appellee alleges that she has requested for the case to be closed by the KPA, given that she has sold the property, and consequently there are no legal grounds to file an appeal and that there is no need to conduct other proceedings in connection to this case.

Legal reasoning

Admissibility of the appeal

13. According 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.
14. Based on the abovementioned provision only the party in the proceedings before the first instance has the right to file an appeal against the KPCC decision. According to the jurisprudence of the KPA Appeals Panel of the Supreme Court, the only exception from this rule happens if and when the person who may claim a right over the contested property was not aware about the claim filed before the KPA because of the lack of adequate notification and therefore he/she was not able to file a notice on participation.
15. In the concrete case, based on the facts and presented evidence the Supreme Court notes that the first notification was incorrect, therefore another notification was redone through publication of the claim in the KPA Notification Gazette and in the UNHCR Bulletin. This, however, constitutes “reasonable efforts” for making the notification on the request as provided by Article 10.1 of the Regulation only in exceptional cases. Such an exception cannot be found in this case given that the court cannot preclude the fact that the Appellant was not aware of the claim, therefore he has to be accepted as party in the proceedings. His appeal is admissible.

Jurisdiction

16. The Appellee herself, in her request to close the decided KPA claim and in her response to the appeal filed before the Supreme Court, admitted that the property has been sold and that there are no more reasons for the legal proceedings with regards to this property to continue. This statement has to be considered as a waiver of the claim according to articles 149 and 198.1 of the Law on Contested Procedure, which is applicable not only before the KPCC but also in the proceedings before the KPA Appeals Panel.
17. According to articles 149, 198 and 261 of the Law on Contested Procedure waiver of a claim implies that the claim should be dismissed. This provision is applicable *mutatis mutandis* in the procedure before the KPA Appeals Panel according Section 12.2 of Law 03/L-079.

18. After a waiver of the claim, the court without conducting any further proceedings will render a judgment dismissing the claim which the claimant has waived.
19. In the context of the proceedings in front of the KPA Appeals Panel this means that the Court has to accept the appeal and to annul the appealed decisions, by dismissing the claim.

Conclusion

20. In light of the abovementioned reasons and pursuant to Article 198.1 of the Law on Contested Procedure, the KPCC decision is annulled and the claim dismissed as inadmissible given that the appellee waived the claim.

Legal Advice

21. 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

Rolandus Bruin, EULEX Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar