

**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-181/2014

Prishtinë/Priština, 27 July 2016

In the proceedings of:

N.J.A.

Zicka 34
36000 Mataruska Banja
Kraljevo
Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/R/223/2013 (case file registered at the Kosovo Property Agency under the number KPA47648), dated 27 November 2013, (henceforth: the KPCC Decision) after deliberation held on 27 July 2016, issues the following:

JUDGMENT

The appeal of N.A. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/223/2013, dated 27 November 2013, as far as it concerns claim no. KPA47648 is dismissed as inadmissible.

Procedural and factual background:

1. On 3 September 2007, J.N.A., (henceforth: the Claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of co-ownership right (1/2) over a house and a yard in a surface of 5 Are, in Street Duge Livade, Savska no. 10, in Ferizaj/Uroševac, Cadastral parcel no. 1075/5 registered in Possession List No. 3715, Cadastral Zone Ferizaj/Uroševac, Municipality of Ferizaj/Uroševac (henceforth: the claimed property). The claimant also claimed compensation for damage as the buildings and the yard are destroyed. He claimed to have lost the claimed property as a result of the circumstances in 1998/1999, indicating as date of loss 19 June 1999, and that the property is occupied by S.B.

2. In order to support his claim the Claimant submitted the following documents:
 - A copy of the Claimant's ID No. 1907936960021, issued on 14 June 2001;
 - A copy of the Possession List No. 3715, issued by the Republic Geodesy Office, Centre for Immovable Property, Cadastre Prishtinë/Priština, Cadastral Municipality of Ferizaj/Uroševac, on 22 January 2002; according to this Possession List the Claimant was registered as co-owner of the claimed property and the property consisted of a house and buildings, third class field and a yard with a total surface of 10 are;
 - A copy of Plan No. 995-2/2002-26, issued by the Cadastral Municipality of Ferizaj/Uroševac on 23 January 2002 containing the same information as the Possession List;
 - A copy of the Certified Decision of the Housing Property Claims Commission (HPCC) no. HPCC/D/87/2003/C dated 29 August 2003 on claim DS307009; parties in this proceedings were Claimant and S.B. ; the HPCC ordered possession to be given to the Claimant and eviction of S.B. ; according to KPA's referral report – by which the KPA sent the claim later for decision of the KPCC - this claim was about the same parcel 1075/5 and S.B. was evicted around 2009.

3. On 14 July 2009, the KPA Notification Team notified the claim by putting signs on the claimed property. From the notification it was found that the claimed property is a house, a destroyed house and a yard. It was also found that the claimed property was occupied by S.B. . He was present at the claimed property. He signed a Declaration from

the Responding Party stating that he does not claim any legal right to the claimed property.

S.B. did not join proceedings before KPA/KPCC.

4. Upon verification of the Possession List No. 3715 the KPA added *ex officio* to the file the Certificate for the Immovable Property Rights UL-72217092-03715 of the Municipal Cadastral Office of Ferizaj/Uroševac, dated 30 January 2008. According to this document the parcel No. 3715-5 with a surface of 10 are is registered in the name of the Claimant as 1/1 owner.
5. On 28 October 2013 the KPA contacted the Claimant. According to the memo of this contact 'The Claimant confirmed that he sold the claimed property in 2009/2010 but he does not remember the name of the buyer'.
6. On 27 November 2013, the KPCC through its Decision KPCC/D/R/223/2013 dismissed the claim with the reasoning (paragraphs 16, 17 and 58) that the Claimant did not lose the possession of the claimed property as a result of the 1998-1999 conflict, but rather as a result of a voluntarily sales transaction after the conflict, which shows that the Claimant is now able to exercise his property rights. Therefore the KPCC concludes that the claim falls outside the KPCC's jurisdiction. The KPCC Decision in the paragraph 58 refers to the compensation claim for physical damage or loss of use of the claimed property. In regard to this claim the KPCC reasons that according to the 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: Law No. 03/L-079) the KPCC has no jurisdiction over such claim.
7. The KPCC Decision was received by the Claimant on 17 April 2014.
8. N.J.A. (henceforth: the Appellant) filed an appeal against the KPCC Decision on 13 May 2014. With his letter of appeal he submitted:
 - A copy of the Certificate on Cadastral Unit P-72217092-01075-6, issued by the Municipal Cadastral Office of Ferizaj/Uroševac on 11 March 2014; according to this certificate parcel no. 1075-6 (*bolding by the Supreme Court*) with a surface of 620 m² is co-owned by the Appellant.

- A copy of a Certificate of the tax collection officer of Ferizaj/Uroševac, dated 3 November 2014 in the name of the Appellant; according to the letter of appeal this Certificate refers to taxes paid for parcel 1075/6;
- Copies of identity cards of the Claimant and of the Appellant.

Allegation of the Appellant

9. The Appellant alleges that the KPCC Decision involves a fundamental error or serious misapplication of the applicable material and procedural law. The Appellant also alleges that the said decision is based and rendered pursuant to an erroneous and incomplete determination of facts.

Legal reasoning

Admissibility of the appeal

10. The Supreme Court notes that the appeal is filed by the Appellant and not by the Claimant. The letter of appeal, in the part that refers to the presentation of evidences, seems to indicate that the Claimant is the father of the Appellant, but the Appellant does not state anything about a family relation nor submits evidences on any relation between the Claimant and him. Accordingly, party to the appeal is not the Claimant but the Appellant.
11. Section 12.1 of Law No. 03/L-079 stipulates the following: *“Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit [...] an appeal against such decision”*.
12. The Appellant was not a party to the claim in the proceedings before the KPCC. Therefore, the Appellant’s appeal has to be assessed with regard to Article 186 paragraph 3 and Article 196 of the Law on Contested Procedure (LCP).
13. The Appellant in his appeal does not mention that he is representing another person, i.e. the Claimant, nor presents any legal ground for such representation. The Appellant with his appeal does not even present any documents which can show the relationship between him and Claimant. The Supreme Court further notes in this regard that the Cadastral Certificate that the Appellant presents in appeal does not refer to the claimed

property with cadastral parcel number 1075/5 but to another parcel with number 1075/6. So also this document – that is submitted without any explanation - cannot substantiate a legitimate position of the Appellant in this appeal.

14. As a consequence, the Court does not find any reason why the Appellant should be entitled to file an appeal either as a party for his own interest nor as a representative of the Claimant.
15. The Appellant's appeal therefore is inadmissible on procedural grounds (Section 13.3 (b) of Law No. 03/L-079).
16. On the basis of the above and in accordance with section 13.3 (b) of Law No. 03/L-079 the Court decides as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar