

**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-112/13

**Prishtinë/Priština,
20 November 2014**

In the proceeding of:

N. B.

Appellant

vs

J. H.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case file registered at the KPA under No. KPA01307) dated 22 June 2011, after deliberation held on 20 November 2014 issues the following:

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case file registered at the KPA under the number KPA01307), dated 22 June 2011 is annulled, because it is rendered in the absence of jurisdiction.
2. The claim of J. H. registered at the KPA under the number KPA0130 is dismissed because of lack of jurisdiction.

Procedural and factual background:

1. On 29 November 2007, J.H. in the capacity of the holder of the property right over the cadastral parcel no. 627/2, 2nd class pasture, in the place called "Livadhi i Begut", with a surface of 0.04.48 ha, has filed a claim with the KPA which was registered as KPA01307. He claims the property right over this immovable property, return of possession, and its registration in the Cadastral Office of the Municipality of Glogovac/Glogovac.
2. To support his claim he provided the KPA with the following documents:
 - A copy of plan issued by the Cadastral Office of the Municipality of Glogovac/Glogovac on 3 June 2003 (parallel body);
 - A copy of the Possession List no. 67 extract issued by the Department for Cadastre, Geodesy and Property of the Municipality of Glogovac/Glogovac on 3 June 2003. With this possession list extract it is established that the cadastral parcel 627/2 has been registered with ½ of ideal part as co-ownership under the names of E. H. and R. H.
 - A copy of the Possession List no.67 extract issued by the Department for Cadastre, Geodesy and Property of the Municipality of Glogovac/Glogovac on 3 June 2003. With this possession list extract it is established that the cadastral parcel 627/2 has been registered with ½ of ideal part as co-ownership under the names of E.H. and R.H.
3. The Executive Secretariat of the Kosovo Property Agency acting *ex officio* has obtained the possession list no. 67 of the Department for Cadastre, Geodesy and Property of the Municipality of Glogovac/Glogovac issued on 31 March 2009, which is identical to the possession list dated 03 June 2003.
4. The abovementioned evidence has been verified as valid by the KPA Executive Secretariat and the same is relevant for this legal contested case.

5. In 2010, KPA made a notification regarding the claim by announcing the claim in the Notification Gazette no. 3 and in the Bulletin of the UNHCR Property Office. The gazette and the list were also sent to the Municipal Court and Municipal Assembly of Gillogovc/Glogovac.
6. The Kosovo Property Claims Commission (KPCC) in respect to the claimed properties, with its decision KKPK/D/A/112/11 dated 22.06.2011 decided to recognize the property right of the claimant regarding the claimed parcel and return it under his possession its ideal part of 1/2 of the claimed property.
7. The claimant received the appealed decision on 31 October 2011 whereas N.B. received the same decision on 29 April 2012 and he filed an appeal on 10 May 2013.

Allegations of the appellant:

8. The appellant N.B. has challenged the appealed decision on the grounds of erroneous determination of the factual situation, misapplication of the material right and essential violations of the provisions of the contested procedure and he has proposed to reject the claim of J. H. as ungrounded and cancel the appealed decision.
9. The appellant claims that the KPCC is not competent to decide for this legal case because the dispute is not related to the circumstances and the period of the armed conflict in Kosovo during 1998/1999. In order to support his allegations he has submitted the Ruling C.nr.64/2002 dated 15 May 2003 of the Municipal Court in Gillogovc/Glogovac. According to this ruling J.H. claim for obstruction of possession caused by N. B. in the parcel which is subject of the claim, has been rejected. N. B. has been using the parcel 627/2 since 1985/86. Given that the Ruling Ac.nr.362/2007 issued by the District Court in Prishtina on 26 February 2008 has annulled the ruling on to this legal case, the dispute is now pending.

Legal reasoning:

10. Pursuant to Section 12.1 of UNMIK Regulation no. 2006/50 as amended by Law nr.03/L-079 on resolution of claims relating to private immovable property, including agricultural and commercial property, a party may file an appeal within thirty (30) days of the notification of the parties about the decision.
11. The appeal is admissible although the appellant was not a party in the proceedings before the KPCC. This circumstance cannot go in the detriment of the appellant because he was not properly informed of the claim. The notification was done through the publication of the claim in the KPA Notification Gazette and in the UNHCR Bulletin. This, however, constitutes “reasonable efforts” to notify the

claim as provided by Section 10.1 of the Regulation only in the extraordinary cases. Such a case cannot be considered as an extraordinary case. As the court cannot exclude that the appellant was not aware of the claim, he must be accepted as a party in the proceedings and his appeal is therefore admissible.

12. Additionally, in the case file there is no credible evidence that the appellant has received the notification on the claim filed by the claimant regarding the stated private property. Therefore, even in this stage of the proceedings he is accepted in the capacity of the appellant who has legal interest in this legal case of confirmation of ownership.
13. The Supreme Court establishes that the appealed decision of the KPCC was taken in essential violation of the provisions from Article 182 par 2 subpar b of LCP and Section 18 of UNMIK Regulation 2006/50 as amended by Law Nr. 03/L-079 and these violations are of absolute nature, which violations are *ex officio* observed by the court. Therefore, on this legal ground the appealed decision is annulled by dismissing the statement of claim of the claimant because of the lack of jurisdiction of this court and thereby of the KPCC pursuant to Article 198 par 1 of LCP.
14. Pursuant to Section 18 of UNMIK regulation 2006/50 as amended by Law Nr. 03/L-079, the KPCC jurisdiction is excluded if a court proceeding has started before 16 October 2006, when the UNMIK Regulation 2006/50 came into force. Given that court proceedings regarding the claimed property started in 2003, and this results from Ruling C.nr.64/2002 issued on 15 May 2003 by the Municipal Court in Glogovac/Glogovac, this claim is not under the jurisdiction of the KPCC and consequently of the Supreme Court.
15. Therefore, the appealed KPCC decision had to be annulled and claim dismissed (Section 13 par 3 (a) of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079)

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Willem Brouwer, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar