

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEÇE KAI**

GSK-KPA-A-129/14

Prishtinë/Priština,

9 June 2016

In the proceedings of

M.N.

Gračanicë/Gračanica

Tel. 049/333-731

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 (case file registered at the KPA with number KPA93099) dated 21 August 2013, after the deliberation held on 9 June 2016, issues the following:

JUDGMENT

The appeal of M.N. filed against the Decision of KPCC /D/A /212/2013 dated 21 August 2013 with regard to the claim registered with KPA under number KPA 93099, is dismissed as belated.

Procedural and factual background:

1. On 13 December 2007, M.N. , filed a claim with the KPA registered under KPA10478, in the capacity of the property right holder. The claimed property is located at cadastral parcels No 1436 and 1437, -Cadastral Zone Graçanicë/Gračanica, Municipality of Prishtinë/Priština (now Municipality of Graçanicë/Gračanica) with the surface of 0 hectare, 20 Ar and 244 square meters.

2. The Kosovo Property Agency based on structure of the claimed property has separated the claim by keeping the original number KPA10478 for the land parcel 1436, consisting of a house, yard and meadow, whereas the latest claim under number KPA93099 land parcel 1437 of meadow culture, located at the place called “Selo”, with the surface of 0 hectare 11 Ar 22 square metres (hereinafter: the claimed property). The Appellant stated that he was the co-owner of ideal part of the land that he had acquired through the inheritance and that B.V. usurps the claimed property without any legal right.

3. To support his claim, M.N. provided the KPA with the following documents:
 - The identification card issued by the Serbian authorities, dated 3 September 1999.
 - The Inheritance decision, issued by the Municipal Court in Prishtina No 268/84 dated 4 December 1990 proving that the claimant inherits 1/5 of the ideal part of the entire property after S.N. , including the claimed property.
 - The Inheritance decision, issued by the Municipal Court in Prishtina with No 38/97, dated 9 September 1997 proving that the appellant inherits together with others the property after the deceased S.N. .
 - The description of the possession list no.69 dated 20 July 2004 issued by the Geodesy Institute of Serbia – Cadastre and Property Service.
 - The copy of plan dated 28 July 2004, issued by the Geodesy Institute of Serbia-Cadastre and Property Service.
 - The Ruling of the Municipal Court in Prishtina C. No 2590/2010 dated 19 June 2013, wherewith the lawsuit for obstruction in possession filed by the appellant is dismissed as belated.

- Submission submitted to the KPA on 25 May 2008, wherewith the Appellant states that B.V. usurped the property from 2003.
4. On 24 July 2008, the KPA Notification team visited the property and put a sign identifying the property. The KPA team has noted in its verification report that the property was in possession of N.N., the co-owner. On 23 July 2013, the property was identified, checked and compared based on the GPS coordinates, and orthophotography and it was concluded to have been correct.
 5. According to the verification report dated 24 July 2008, N.N. in the capacity of the respondent signed the participation notice and stated that he was the co-owner of the ideal parts. Furthermore, he did not respond to the notification and did not cooperate with the Agency.
 6. In the Consolidated Verification Report, dated 22 July 2013 it is concluded that the documents attached to the claim were positively verified.
 7. The Kosovo Property Claims Commission (KPCC) with its decision KPCC/212/2013 regarding the claimed properties, with reference to the case registered at the KPA under number KPA93099, dated 21 July 2013 decided to dismiss the claim, with the reasoning that the claimant has initially stated that he lost the possession as a consequence of armed conflict but based on the identification of the property, the information received from the current user and statements of claimant, it resulted that the property was not lost as a consequence of conflict or circumstances directly related to or resulting from the conflict.
 8. In paragraph 18 of the decision KPCC/212/2013 which refers to the case registered at the KPA with the number KPA93099 dated 21 July 2013, the Commission concluded that according to the verified documents obtained *ex officio*, by the Secretariat, and to the statements of the claimant, it appears that he failed to prove that the loss of possession is connected to the circumstances directly related to or resulting from the armed conflict during 1998-1999. Consequently, the claim falls outside the jurisdiction of Commission, and therefore, it has to be dismissed.

Legal reasoning:*Admissibility of the appeal:*

9. The Appellant was served with the decision of the Commission on 18 February 2014, but filed an appeal on 31 March 2014. Therefore, the Court finds the appeal as belated according to the law.
10. The respondent in the first instance, N.N. received the Commission's decision on 5 February 2014 and did not file an appeal. N.N. received the notification and copy of appeal against the Commission's Decision, on 22 October 2014, but did not respond to the appeal.
11. Upon the review of case files and appeal's allegations pursuant to Article 194 of the Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008) (hereinafter: LCP), The Court with regards to the review of judgment, *ex officio* and based on the mentioned reasoning finds the following:

The appeal is belated.

12. Pursuant to Article 186 paragraph 1 in conjunction with Article 196 of the LCP, the Supreme Court decided the appeal as belated. Since M.N., in the capacity of the appellant received the appealed decision on 18 February 2014, but filed the appeal on 31 March 2014.
13. The Court based on the case files finds that the decision was served on the appellant pursuant to Article 110.1 of LCP, which provides that the documents are presented to the addressee in person.
14. The appellant has not mentioned in the appeal any circumstance, which prevented him from exercising legal remedy on time.
15. Consequently, it is concluded that the appeal was filed after the deadline of 30 days as provided by the provision of Section 12 para 1 of UNMIK Regulation 2006/50 as amended

by Law No. 03/L-79. With this legal provision it is foreseen that the appeal against the KPCC decision may be appealed within deadline of 30 days from the day of its receipt.

16. In the light of what was mentioned above, pursuant to Section 13 para 3 sub-para b) of the UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079, by dismissing the appeal as belated, the Court did not review the merits of appeal but decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar