

**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-094/2014

Prishtinë/Priština,
16 December 2015

In the proceedings of:

D.H.U.

Pejë/Peć

Appellant

Vs.

V. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/192/2013 dated 13 February 2013 (case files registered at the Kosovo Property Agency under Nos.13176 and 44318), after deliberation held on 16 December 2015, issues the following:

JUDGMENT

1. The appeals filed by D. U., registered under the numbers GSK-KPA-A-094/2014 and GSK-KPA-A-101/2014, are joined in a single case under the number GSK-KPA-A-094/2014.
2. The appeals of D. U., filed against the decision of the Kosovo Property Claims Commission KPCC/D/C/192/2013 (case files registered at the Kosovo Property Agency under Nos.13176 and 44318), dated 13 February 2013, are dismissed as inadmissible.

Procedural and factual background:

1. On 2 August 2006 and on 21 June 2007, V. M. (hereinafter: the Claimant) filed two separate claims at the Kosovo Property Agency (KPA), seeking for the repossession of the business premise (shop) of 130 m² located on socially owned urban parcel 3416/1 with address Patrijarsijska no.1, Pejë/Peć (hereinafter: the claimed property). The claims were registered at the KPA under No. KPA13176 and KPA44318.
2. The Claimant provided the KPA with the following documents to support his claims:
 - Constructions permit no.01-351/2377 issued on 11 July 1997 by Municipality of Pejë/Peć.
 - Administrative Decision no.001-351/2377 issued on 28 August 1997 by Municipality of Pejë/Peć.
 - Allocation Decision no.01-353-1212/98 issued on 25 August 1998 by Municipality of Pejë/Peć.
 - Administrative Decision no.03-351/2439 issued on 25 January 1999 by Municipality of Pejë/Peć
 - Administrative Decision no.06-313/1958 issued on 30 July 1987 by Municipality of Pejë/Peć
 - Taxation booklet no.455005
3. All the documents above were positively verified by the KPA.
4. The KPA obtained ex officio a partial possession list no.2606, dated 30 January 2007, listing the Municipality of Pejë/Peć as an owner of the parcel no.3416/1.

5. The claim was notified on 22 October 2010 at first. The notification team again visited the property on 1 November 2010 and on 8 November 2010. During the last visit the property was found occupied by Nj. B. who claimed legal rights over the property but did not sign the Notice of Participation, did not submit any evidences proving his property rights and did not take part in the proceedings before the Kosovo Property Claims Commission (KPCC).
6. The KPCC granted the claims with the decision KPPC/D/C/192/2013 dated 13 February 2013.
7. The decision was served upon the Claimant on 5 July 2013 and on 27 January 2014 upon D. U. who was found occupying the claimed property. On 14 February 2014 D. U. (hereinafter: the Appellant) filed two separate appeals against the decision KPPC/D/C/192/2013 dated 13 February 2013 regarding claims nos. KPA13176 and KPA44318.
8. The appeals were served upon V. M. (hereinafter: the Appellee) on 4 July 2014 and he replied on 30 July 2014.

The allegations of the parties:

9. The Appellant asserts that the claimed property is not constructed on parcel 3416/1 but on parcel 2256CZ in Pejë/Peć which is possessed and owned by him. With the appeal he invokes an erroneous determination of the facts and asks the appealed decision to be suspended.
10. The Appellee alleges that the appeals are inadmissible because the Appellant was not a party in the proceedings before the KPCC. He also alleges that the parcel which is mentioned in the appeals is totally different and it is located in front of the claimed property. He asks the KPA Appeals Panel to dismiss the appeal as inadmissible or to reject the same as unfounded.

Legal reasoning:

Joining of the appeals

11. According to section 13.4 of 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: UNMIK Regulation 2006/50), the Supreme Court may decide upon joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the law. This section allows the Commission to take into consideration the joining or consolidation of claims in order to review and render decisions when there are common legal and evidentiary issues.

12. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as well as provision of Article 408.1 as read in conjunction with Article 193 of the Law No. 03/L006 on Contested Procedure (hereinafter: LCP), provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
13. 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 cases. 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.
14. The appeals registered under the numbers GSK-KPA-A-094/2014 and GSK-KPA-A-101/2014 are joined in a single case under the number GSK-KPA-A-094/2014.

Admissibility of the appeals

15. The appeals are inadmissible because they were filed by a person who was not a party in the proceedings at first instance before the KPCC.
16. According to Section 12.1 of UNMIK Regulation 2006/50, a party may file an appeal within thirty (30) days of the notification of the party by the KPA of the decision of the KPCC.
17. Section 10.1 of UNMIK Regulation 2006/50 provides that upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim. Section 10.2 of the same regulation stipulates that *“Any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property shall be a party ... provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat [...]”*.
18. Only a party in the first instance proceedings has the right to file an appeal against the decision of the KPCC. According to the jurisprudence of the KPA Appeals Panel of the Supreme Court, the mere exception of this rule comes to the surface if and when the person who may claim a right over the property in dispute has not been aware of the claim filed with the KPA due to lack of proper notification and thus is unable to file a notice of participation within the course of proceedings at the first instance.

19. In the case at hand, the Supreme Court notes that the Appellant was aware about the proceedings as the claim was properly notified according to the law. Another person- Nj.B. - claimed legal rights over the claimed property but he did not file a notice of participation as required in Section 10.2 of UNMIK Regulation 2006/50, either.
20. Nevertheless, the Supreme Court finds it useful to note that the subject matter of the claims, concluded with the appealed decision KPPC/D/C/192/2013 dated 13 February 2013, relates to a business premise (shop) of 130 m² located on socially owned urban parcel 3416/1 with address Patrijarsijska no.1, Pejë/Peć and not to parcel 2256CZ. In this respect there is no legal interest for the Appellant to challenge the abovementioned decision of the KPCC.
21. The appeals should be dismissed as inadmissible pursuant to Section 12.1 and 13.3 (b) of UNMIK Regulation 2006/50 and Article 195.1 subparagraph (a) of LCP. Therefore, the KPA Appeals Panel decided as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Anders Cedhagen, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar