

**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-208/13

Prishtinë/Priština, 3 June 2015

In the proceedings of:

Municipality of Pudojevë/Pudojevo
Pudojevë/Pudojevo

Appellant

Representative: Xh. R., lawyer

Pudojevë/Pudojevo

vs.

R. R.I.

Kursumlija
Serbia

Appellee

and vs.

Football club B.

Pudojevë/Pudojevo

Appellee/RP2

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/187/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA38107), henceforth also: the KPCC Decision, after deliberation held on 3 May 2015, issues the following

JUDGMENT:

- 1. The appeal of Municipality of Pudojevë/Pudojevo against the Decision of the KPCC no. KPCC/D/A/187/2013, dated 13 February 2013, as far as it concerns claim no. KPA38107 is dismissed as belated.**

Procedural and Factual background

1. On 29 October 2007, R. R. I., Appellee, filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a parcel of land at Livadicko Polje, Municipality of Pudojevë/Pudojevo, cadastral zone Livadicë/Livadica, number 235, (henceforth: the claimed property).
2. The property was positively verified by the KPA verification team on 2 June 2010.
3. On 10 August 2012 Municipality of Pudojevë/Pudojevo, Appellant, signed the notice of participation and approached KPA as a responding party (RP1). The claim was contested also from Football Club B., represented by the lawyer Xh. R.(Appellee/RP2). The responding parties participated in the proceedings before KPCC.
4. The KPCC decided in the KPCC Decision that Appellee had established to be the 1/1 owner of the claimed property, that he is entitled to possession of that property and that respondents had to vacate the property.
5. The decision was served upon Appellee on 19 June 2013 and on Appellant and Appellee/RP2 on 13 June 2013. With the decision is served an appeals information sheet.
6. Appellant filed an appeal, dated 12 July 2013, against the KPCC decision. KPA stamped on the letter of appeal 19 July 2013 as date of receipt of the appeal. The appeal was served on Appellee on 12 November 2013.
7. No other party participated in the appeal procedure before the Supreme Court.
8. The Supreme Court sent a Court Order to KPA to clarify by what means the letter of appeal reached KPA: by mail or delivering in any other way. If it was received by mail, KPA is asked to provide the envelope in which it was received in order to see on what date the letter of appeal was served by appellant on the postal office.

9. In its reply to the Order, dated 11 November 2014, KPA answered as follows. When a party sends an appeal or other document by Post service, the envelope is always kept in the case file. If a party hands over a letter in person in an envelope in the offices of KPA the envelope is not kept. In that case and also when the letter is handed over without an envelope the date of receipt is stamped on the document. In this case the letter of appeal did not arrive at KPA by Post. It seems that in this case the letter arrived through a person who put the letter of appeal in a closed envelope and the officer of the KPA at the reception had received the envelope, put a stamp on it and the responsible officer at the KPA office opened the envelope, put a stamp on the letter and registered the letter of appeal according to the date of stamp on the envelope.
10. This answer of KPA is served on Appellant.
11. The Supreme Court sent a Court Order to Appellant to substantiate, provided with evidence, that the appeal is not belated. The Court Order also contained questions on the merits of the case.
12. Appellant answered to the question in relation to the admissibility of the appeal as follows.

The KPCC decision was submitted to the office of the Director of property cadastre and geodesy of the Municipality in the period when the Director was on annual leave and none of the municipality staff had access to his office. On the occasion of opening the submitted letters by the Director who came to the office for an urgency case, the decision was submitted to the representative of the municipality for legal disputes and then the authorized representative filed immediately an appeal dated 12 July 2013 and on 15 July 2013 it was addressed to KPA. With this answer is submitted a decision on allowance of annual leave to Abaz Llugaliu, Director of the Directorate of property cadastre and geodesy, for the period from 28 June 2013 until 18 July 2013. Further Appellant states that a report on submitting the letters to PTK is submitted with this answer, but the Supreme Court did not find this report.

Legal reasoning:

Admissibility of the appeal

13. According to Section 12.1 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 (henceforth: Law UNMIK 2006/50) within 30 days of the notification to the parties of a decision of the KPCC on a claim, a party may submit an appeal against such decision.
14. The KPCC Decision was received by Appellant on Thursday 13 June 2013. The 30 days term to appeal ended on Saturday 13 July 2013 and was therefore prolonged till the next working day Monday 15 July 2013.
15. As follows from the facts and the answer by KPA stated before under paragraphs 6 and 9 the letter of appeal was received by KPA on Friday 19 July 2013. Appellant did not argue this information of KPA.
16. Appellant did not provide evidence that already on 12 July 2013, the date on the letter of appeal, or on 15 July 2013 the letter of appeal was sent to KPA.
17. The fact that the Director of the Municipal Directorate of property cadastre and geodesy was on leave when the KPCC decision was served on Appellant, is not justified for the late appeal. The KPCC decision was served on 13 June 2013. So Appellant had the possibility to file the appeal in time.
18. From these facts follows that (the representative of) Appellant submitted the appeal after the 30 days deadline. Therefore the appeal is inadmissible as belated.

Conclusion

19. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Willem Brouwer, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar