

**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-151/2015

**Prishtinë/Priština
25 October 2017**

In the proceedings of:

K. K.

Represented by V. K., lawyer from Podgorica

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, members, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/239/2014 (case file registered at the KPA under the number KPA17909), dated 30 April 2014, after the deliberation held on 25 October 2017, issues the following:

JUDGMENT

The Appeal of K. K. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/229/2013, dated 30 April 2014, with regards to the case file registered at the KPA under the number KPA17909 is dismissed as belated.

Procedural and Factual Background:

1. On 31 January 2007, K. K. (henceforth: the Appellant) filed a Claim with the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession over the property located in Miradi e Epërme/Gornje Dobrevo, cadastral parcel 1510/4, Municipality of Fushë Kosovë/Kosovo Polje, composed of an apartment with a surface of 40 square meters located in a building called “Stara Ekonomija”, (henceforth: the claimed property). She alleged that she has lost possession over the claimed property in June 1999 because of the circumstances in Kosovo during the years 1998/1999. According to the Appellant, the claimed property has been usurped by I. M.
2. Together with the Claim, the Appellant submitted at the KPA *inter alia*:
 - A Copy of Possession List no.4011 issued by the Department of Geodesy and Cadastre of Prishtinë/Priština on 31 October 1994 proving that the cadastral parcel 1519/4 was evidenced as socially-owned property belonging to the Agricultural Enterprise “Dobreva”;
 - A copy of Sales Contract concluded between the Appellant and the Agricultural Combine “Dobreva” on 17 September 1994 and certified before the Municipal Court in Prishtinë/Priština under the serial number Ov. Nr.8592/94;
 - A copy of ID card issued by the authorities of Montenegro in Bar on 5 October 2005
3. The case file was registered under the number KPA50654.
4. According to the Verification Reports dated 27 March 2014, the documents submitted by the Appellant, Possession List and Sales Contract, were not found with the respective archives and the verification was negative. While acting *ex officio* the Executive Secretariat has found cadastral data that the claimed property was evidenced as a socially-owned property.
5. The claimed property was visited by the KPA on 9 December 2010. The claimed property was found to be a damaged apartment which was usurped. I. M. filled in the form of participation in proceedings and stated that he has no legal claims over the claimed property

but only found shelter in it as a social case. He alleged that he knows very well that the stated property belongs to the Combine where he works and that the Appellant has no ownership rights over it.

6. On 30 April 2014, the Kosovo Property Claims Commission (KPCC) in its Decision KPCC/D/R/239/2014 rejected the Claim of the Appellant. In paragraph 26 of the stated Decision, the KPCC reasoned that the Appellant failed to present sufficient evidence to show that she has had any legal rights over the property, given that she failed to present evidence which could be verified by the Secretariat and the search performed ex officio by the Secretariat resulted without any success.
7. The KPCC's Decision was served onto the Appellant on 10 December 2014. On 16 January 2015, the Appellant filed in an Appeal against the KPCC's Decision.

Allegations of the Appellant:

8. The Appellant seeks from the Supreme Court of Kosovo to approve her Appeal and amend the KPCC's Decision by recognizing her rights over the claimed property. In the Appeal, she alleges that the KPCC's Decision rests on erroneous and incomplete determination of the factual situation and on misapplication of the material right.
9. The Appellant challenges the KPCC's conclusion that the Sales Contract over the claimed property cannot be considered as valid evidence. Additionally, she does not agree with the KPCC's conclusion that the submitted documents were not found with the respective archives.
10. Finally, she sought from the Court to quash the KPCC's Decision and issue a Judgment by which it recognises the ownership of the Appellant and orders the return of possession over the claimed property against her.

Legal reasoning:

11. The Appeal is belated based on Article 12.1 of the Law no. 03/L-079 on Amendment of the UNMIK Regulation 2006/50 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property which provides that: "*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 through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*".

12. On 10 December 2014 the KPCC's Decision was served on the Appellant, therefore the time limit for filing of an appeal ended on 9 January 2015. Nonetheless, the Appellant filed an Appeal only on 16 January 2015, 6 days after the expiration of deadline. This means that the Appeal has been filed after the timeframe envisaged by the law. The Appellant failed to give any reasons for the late submission of her Appeal and the Court could not find any reason for the delay.
13. From the case file it can be seen that the Appellant submitted its Appeal to the Post Office on 16 January 2015 and the Supreme Court considered this date as the date of submission. However, this date fell outside of the legal timeframe.
14. Therefore, the Appeal stands to be dismissed as inadmissible on procedural grounds based on the abovementioned law. Consequently, the Supreme Court could not review the grounds brought forward in the Appeal.

Legal Advice:

Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Isami, Presiding Judge

Shukri Sylejmani, Judge

Krassimir Mazgalov, EULEX Judge

Bjorn Olof Brautigam, Acting EULEX Registrar