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-002/15 **Prishtinë/Priština**
12 October 2016

In the proceedings of:

V. K.
Peja

Appellant
On behalf of the claimant
V. K.

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KKPK/D/A/204/2013 (case file registered at the Kosovo Property Agency under KPA17840), dated 11 June 2013, after the deliberation held on 12 October 2015, issues the following:

JUDGMENT

1. **The appeal of V. K. against the Decision of the Kosovo Property Claims Commission KPCC /D/A /204/2013, regarding the case file registered at the KPA under KPA 17840 dated 11 June 2013, is dismissed as belated.**

Procedural and factual background:

1. On 18 January 2007, V. K. filed a Claim with the Kosovo Property Agency registered under the no KPA17840, in the capacity of family member of the Property Right Holder. The claimed property is cadastral parcel no 1, cadastral zone Barane, Peja /Peč Municipality, with a surface of 06 19 26 ha. He asserted that his mother S. F. (the court notes that in the claim it is S. whereas in the civil document it is S.) as Property Right Holder, now deceased, is owner of the immovable property located in Barane village, Peja/Peč Municipality, with culture forest. In the claim he asserted that his deceased mother initiated a legal dispute with the Public Enterprise for Agriculture "Barane" in 1961, which has not been concluded according to the claimant's assertion. The claimant V. K. passed away on 06 November 2012 and on his behalf in the capacity of family member V. K. filed an appeal against the Commission Decision.
2. To support his claim, the deceased V. K.submitted the following documents at KPA:
    - Identification Card from the Secretariat of Internal Affairs in Peja/Peč dated 24 March 1989
    - Submission to the Peja/Peč , District Court for expansion of the claim G.Br. 206/60 from the alleged property right holder without the stamp of being received by the court.
    - Identification Card issued by the Ministry of Internal Affairs of Kosovo – Prishtinë/Priština (document submitted by the Appellant).
    - Correspondence with the Sector of Property Matters of the Republic of Serbia.

3. KPA verification unit, based on the verification report dated 06 September 2012, ascertained that according to the said Possession List the claimed property is registered as a Socially-Owned Property and that it was subjected to administration by the Kosovo Trust Agency – now Privatisation Agency of Kosovo and as such it was subjected to the process of privatisation and leasing for 99 years. Following the conclusion of the process, the property was transferred from the Trust Agency to Rr. Sh. for use through leasing.
4. On 04 March 2009, a KPA team went to the property and placed a sign in order to identify the property. In its notification report, the KPA indicated that the property was a forest and was not found occupied by anyone. The Notification of the claimed property was checked and compared based on GPS coordinates and Orto-photos and it was ascertained that the identification had been carried out correctly.
5. The Kosovo Property Claims Commission (KPCC), in relation to the claimed properties, through its decision KPCC/203/2013, referring to the case registered in KPA under KPA 17840 dated 11 June 2013, decided to reject the claim with the reasoning that the claimant had initially declared that he lost possession as a consequence of the armed conflict, but based on the submitted documents and "ex officio" inquiries by the Secretariat, it resulted the property was not lost as a consequence of the conflict or circumstances related directly or resulting from the conflict.

Appeal allegations

6. V.K., in the capacity of the Appellant, son of the Claimant, now deceased, received the Decision of the Commission on 11 December 2013, while he filed the appeal on 08 September 2014.
7. The appellant alleges that he could not obtain the respective documentation but asserts that there is documentation which proves that the claimed property belongs to the K. family and for this fact the neighbours whose properties are next to the claimed property can testify. Despite the repeated requests of the KPA Executive Secretariat, the Appellant did not provide documents proving the appeal allegations. The Executive Secretariat of the KPA requested the submissions of the civil case G.Br. 206/60 but they were not found in the archive of the respective court.

Legal reasoning

Admissibility of the appeals

8. Following the examination of case file submissions and appeal allegations pursuant to Article 194 of the Law no. 03/L-006 on the contested procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter LCP), in relation to the examination of the Judgment ex officio and for the mentioned reasons in the appeal, the Court found that:

The appeal is belated.

9. The Supreme Court of Kosovo dismissed the Appellant's appeal as belated pursuant to Article 186, paragraph 1, in conjunction with Article 196 of LCP. This is because V.K., in the capacity of appellant received the appeal decision on 11 December 2013, while he filed the appeal on 08 September 2014.
10. In the case file submission, the Court found that the Commission served the decision to the Appellant pursuant to Article 111.1 of LCP, which foresees the possibility of serving submissions to the adult family member.
11. The Appellant did not specify in the appeal any circumstance that prevented him from exercising the legal remedy within the time limit.
12. Based on this, it can be ascertained that he filed the appeal after the time limit of 30 days as foreseen by the provision of Section 12, paragraph 1, of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-79. This legal provision foresees that an appeal against a KPCC decision can be filed within 30 days of receiving it.
13. Consequently, according to the provision of Section 13 paragraph 3, subparagraph b), of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-79, by dismissing the appeal as belated the Court did not examine the merits of the appeal but decided as in the enacting clause of this Judgment.

Legal advice:

14. Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, **Presiding Judge,**

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar