

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

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

GSK-KPA-A-137/15

**Prishtinë/Priština,
28 February 2018**

In the proceedings of

M. of K./K.

Appellant

Vs

C. L.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission, KPCC/D/R/245/2014 (case file registered at the Kosovo Property Agency under the number KPA51220) dated 18 June 2014, after deliberation held on 28 February 2018 issues the following:

JUDGMENT

The appeal of Municipality of Klinë/Klina against the Decision of the Kosovo Property Claim Commission KPPC/D/R/245/2014 (as much as it regards the case file registered at the KPA under the number KPA51220) dated 18 June 2014, is dismissed as inadmissible because the Appellant did not take part in the proceedings in the first instance.

Procedural and factual background

1. On 12 November 2007, C. L. (henceforth: the Appellee) acting as successor of her deceased husband – the alleged property right holder P.L., filed a claim with the KPA, seeking confirmation of the ownership right and repossession of an apartment with the surface of 46.74 m², situated in Klinë/Klina, street ~~Qytet e Ardenica~~ (henceforth: the claimed property). The Appellee stated that P. L. used to be the owner of the claimed property and he lost the possession over it on 12 June 1999 as a result of circumstances of 1998/1999 in Kosovo.
2. To support his claim, the Appellee provided the KPA with:
 - Copy of the Marriage Certificate No 200/343 issued by Civil Registration Office of the Municipality of Klinë/Klina on 18 March 1993 confirming that the Appellee and the alleged property right holder got married on 16 February 1970.
 - Allocation Decision No 102 issued on 16 March 1993 by Special Hospital for treatment of Tuberculosis and other lung diseases, whereby a two-room apartment located in building ATD Klina, street ~~Qytet e Ardenica~~ has been allocated to the alleged property right holder P.L. for use. Article number 2 of the Allocation Decision specifies that P.L. is obliged to conclude the Contract on Use of the apartment with the Housing Enterprise.
 - Purchase contract concluded in Peja/Peč on 31 March 1993 by which the alleged property right holder P. L. has bought the claimed property from Special hospital for treatment of Tuberculosis and other lung diseases. The contract has been verified and confirmed by Municipal Court in Klinë/Klina on 5 April 1993 under the number 391/1993
 - Copy of the Death Certificate No 3 issued by Civil Registration Office of Municipality Adrjejeviq/ Andrejevića on 2 June 2004 confirming that the alleged property right holder P. L. passed away on 27 May 2004.
3. On 19 November 2008 and subsequently on 26 December 2012 the Executive Secretariat of KPA performed the notification of the Claim. The apartment was found occupied by the Fire Department of Municipality of Klinë/Klina (henceforth: the Appellant). The chief of the Fire brigade ~~E~~

Z~~xxxx~~ declared that the Municipality has decided to allocate the apartment to the Fire brigade after a renovation, but he refused to sign a Notice of Participation.

4. All of the documents presented by the Appellee have been positively verified by the Executive Secretariat of KPA.
5. On 18 June 2014, the KPCC with its Decision KPCC/D/R/245/2014 decided that the Appellee has established that P. L. is the owner of the claimed property and the Appellee is entitled to possession of the said property.
6. The Decision was served on the Appellant on 31 October 2014. The appeal was filed on 14 November 2014 by Ali Shala

Allegations of the Appellant:

7. The Appellant states that the KPCC Decision contains fundamental error or serious misapplication of the material and procedural law and it rests upon erroneous or incomplete assessment of facts and factual situation.
8. The Appellant alleges that the land, on which the claimed property has been constructed, has been expropriated by the Municipality of Klinë/Klina from the previous owner G~~xx~~ M~~xx~~ P~~xx~~ in 1964. The purpose of the expropriation was the construction of the premises of the Department of the Fire Brigade. The former owner has been given land for compensation.
9. Among others, the Appellant expressed further allegations:
 - The KPA did not properly and timely inform the Municipality about the case at hand and the Municipality has not been given the chance to make its statements and clarifications and to present its evidences.
 - before the Appellee gain any eventual right of privatization of the claimed property there should be proceeded a valid Right of Use by legal person which in this case is Self-Governance Association of Interest (BVI)
 - the subject case does not fall at all under the competence of the KPA, due to the decisive and well known fact that the Appellee neither before the conflict nor after did not have at all valid possession of the subject residential property and he did not have the possibility to lose it
 - The Purchase Contract No 132 concluded on 31 March 1993 is not valid
 - The Appellee did not enjoy the right of the legal possession of the claimed property according to the article 71 of the Law on Basic Property Relations (off.Gaz. of SFRY No 6/80) in conduction with the article 29 of the same law due to the fact that the Appellee was not at all the employee of the hospital

10. Supporting his appeal the Appellant provided the Supreme Court with the documents that does not relate the claimed property.

Legal reasoning

Admissibility of the appeal

11. The Appeal is inadmissible because it was filed by a person who was not a party in the proceedings in the first instance before the KPCC.
12. Pursuant to Article 12.1 of the Law no. 03/L-079, a party may file an appeal within thirty (30) days from the notification to parties by the Kosovo Property Agency about the Decision of the Property Claims Commission.
13. Article 10.1 of the Law no. 03/L-079 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.
- Article 10.2 of the same provides 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 [...]”*.
14. Only the party in the proceedings in the first instance has the right to file an appeal against the KPCC Decision. Based on the practice of the KPA Appeals Panel of the Supreme Court, the only exception to this rule appears if the person who may seek a right over the disputed property was not aware that the Claim was filed before the KPA due to improper notification and therefore he/she is unable to present the notification of participation during proceedings in the first instance.
15. In the case at stake, the Supreme Court is of the opinion that the Appellant was aware of the proceedings in the case KPA51220 because the department of the Fire Brigade in Klinë/Klina functions under the umbrella of the Directorate for Public and Emergency Services of the Municipality of Klinë/Klina. The claimed property was notified three times and it was found to be occupied by Fire Department of Municipality of Klinë/Klina. The chief of department, ~~Er~~ ~~Z~~ ~~er~~ ~~Z~~ ~~er~~ ~~Z~~ declared that the claimed property has been given to them on use by the Municipality of Klinë/Klina after renovation of the building but refused to sign a Notice of Participation before the KPA as well as did not submit any document in support of his allegation.

16. The Supreme Court notes that based on the abovementioned facts, the Appellant had all possibilities to become aware of the proceedings being developed in the first instance given that the notification was done properly by placing the respective signs on the stated parcel.
17. The Appeal stands to be dismissed as inadmissible pursuant to Article 12.1 and 13.3 (b) of the Law No. 03/L-079 and Article 195.1 subparagraph (a) of the Law on Contested Procedure. Therefore, the KPA Appeals Panel decided as in the enacting clause.
18. This Judgment does not prejudice the right of the Appellant to seek her alleged right before the competent court if deems it necessary.

Legal advice:

Pursuant to Section 13.6 of the Law no. 03/L-079 this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar