

**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-223/14

Prishtinë/Priština,

1 February 2017

In the proceedings of

S.B.

Appellant

vs

S. S.

The KPA Appeals Panel of the Supreme Court of Kosovo composed by Judges: Sylejman Nuredini, as Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 (case file registered at the KPA under the number KPA92055) dated 29 February 2012, after the deliberation held on 1 February 2017, issues the following

JUDGMENT

The Appeal of S. B. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012, as far as it concerns the case registered at the KPA under the number KPA92055, is dismissed as belated.

Procedural and Factual background

1. On 26 December 2006, S. S. (hereinafter: the Appellee) filed a Claim with the Kosovo Property Agency (the KPA) on behalf of his late father M. S. seeking re-possession of the cadastral parcel no 1977, with the culture cultivated land with the surface of 00.43.86 ha, located at the place called “Kovilevine”, Municipality of Klinë/Klina (hereinafter: the claimed property). The Appellee stated that his father is the owner of the claimed property which is occupied by unknown person.
2. To support his Claim, the Appellee presented the following documents:
 - Birth Certificate No 200-1034 issued by Civil Registration Office of Municipality of Klinë/Klina on 10 June 1999 showing the relationship between the Appellee and M.S.
 - Death Certificate No 203-548 issued by Civil Registration Office of Municipality of Klinë/Klina on 25 March 1997 showing that M. S. passed away on 22 July 1991 at Kijevë/Kijevo, Municipality of Klinë/Klina.
 - Possession List No 46, issued by Republic Geodesy Office, Centre for Immovable Property Cadaster of Prishtinë/Priština, Immovable Property Cadaster Office of Klinë/Klina on 28 August 2002 listing the claimed property on the name of M. S.
 - Certificate for the Immovable Property Rights UI-72310037-00046 issued by Municipal Cadastral Office of Malishevë/Mališevo on 17 May 2007 showing the claimed property registered at the name of three co owners (N., S. and N. S.).
 - Death Certificate No 203-1-700/2011-VII issued by Civil Registration Office of the Municipality of Kragujevac showing that N. S. passed away on 5 February 2011 at Municipality of Kragujevac.
3. The KPA notified the claim on 28 December 2010. The notification process was performed by publishing the claim at the KPA Notification Gazette No 10 and the UNHCR Property Office Bulletin. The Gazette and the list were left in all Municipalities and Municipal Courts in Region and Cadastre Office, UNHCR, CPRK, EULEX, OMBUDSPERSON and ICO.

4. No interested party filed the response on the claim within 30 days deadline, thus, the claim was considered as uncontested.
5. The Executive Secretariat of the KPA, obtained *ex officio* the Certificate for Immovable Property Right UL-72310037-00046, issued by Municipal Cadastral Office of Malishevë/Mališevo on 10 September 2007, reflecting the claimed property on the name of the Appellee and his brothers N. and N. S. in a capacity of co-owners each over 1/3 equal parts. The changes were done in 2007 based on the Ruling on Inheritance No.5/2007.
6. On 29 February 2012 the Kosovo Property Claims Commission with its Decision KPCC/D/A/140/2012 granted the claim on the name of the Appellee's brother N.S. by stating that the Appellee has established that his brother N.S. is co-owner of 1/3 equal part of the claimed property.
7. The Decision of the KPCC was served on the Appellee on 2 July 2012.
8. The Decision of the KPCC was served on the S. B. in a capacity of interested party on 14 August 2014. He filed an Appeal on 17 September 2014 (hereinafter: the Appellant)

Allegations of the Appellant

9. The Appellant states that the decision of the KPCC is based on violation of the material and procedural law, also, erroneous and incomplete determination of the factual situation.
10. The Appellant alleges the information's presented at the KPCC decision are ungrounded because S. S. has sold the claimed property to H.K. from the village Bubaves on 1 July 1997 based on the Contract on Sale. The purchase price was 12.000 DM (Deutsch Marks). The Contract on Sale was signed by the Seller, Byer and the following witnesses: N. S., V.V., R. K. and Ž. V.
11. According to the Appellant, the essential violation of the legal provisions rest on the fact that the KPCC Decision has been taken erroneously in the absence of the party which has the possession and use of the property ever since the Contract on Sale was signed. After a while the byer of the claimed property, H.K. swaps the claimed property with the Appellant who is in possession and use of the property since 1997 but because of the Serbian regime was not able to transfer the claimed property on his name.
12. Based on the above, the Appellant seeks the Supreme Court after the assessment of the evidences to render a Judgment based on the merits and recognizes the ownership right on the name of the Appellant based on the Contract on Sale of the cadastral parcel no 1977 with the surface of 00.43.86 ha registered under the Possession List no 45, located at street "Kovilevine", Municipality of Malishevë/Mališevo.

13. To support his allegations the Appellant submitted the following evidences:
- The Contract on Sale. The Contract in is not visible.
 - Identity Card of the Appellant issued on 16 February 2010 issued by Ministry of Internal Affairs of Republic of Kosovo.
 - Power of Attorney LRP No 2811/2014 legalized before the Notary I. E. on 23 June 2014 through which the Appellant authorizes the Lawyer A.K. to represent him before the competent institutions and Court regarding the Confirmation of the Ownership Right.
14. The Appeal was served on the Appellee on 29 October 2014. He did not repose at the Appeal.
15. On 6 April 2016, the Court Order was served on the Appellant requesting the latter one to provide the Supreme Court with the readable copy of the Purchase Contract concluded between the Appellee (S. S.) and H. K.
16. On 5 May 2016 the Appellant responded to the Court Order by submitting the Contract on Sale, however, the Contract is not certified at the Court, but which is of crucial importance, the claimed property is not object of Contract, beside the surface of 00.12.00 ha there is nothing specified at the Contract.

Legal reasoning

17. The appeal is belated. Article 12.1 of the Law No 03/L-079 amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, prescribes 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”*
18. The Appellant personally received the KPCC’s Decision on 14 August (Thursday) 2014; the deadline to file an Appeal elapsed on 15 September 2014, as the 30th day was a nonworking day. However, the Appellant filed the Appeal only on 17 September 2014, two days after the deadline elapsed. This means that the Appeal was filed outside the deadline prescribed by the Law.
19. The Court found that the delivery was done in person in compliance with article 110.1 of the Law No 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/2008). The Appellant did not provide any reasons for the delay in filing of the Appeal, and the Court could not find any reason for the delay in the case files either.
20. Therefore, the Appeal is dismissed as inadmissible based on the article 186 in conjunction with article 196 of the LCP. Consequently, the Supreme Court could not review the merits of the Appeal.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar