

**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-36/11

Prishtinë/Priština

15 June 2011

In the proceedings of

M.K.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/84/2010 (case file registered at the KPA under the numbers KPA35627, KPA35637, KPA35638, KPA35640, KPA35647, KPA35648, KPA35651 and KPA35652), dated 2 September 2010, after deliberation held on 15 June 2011 issues the following

JUDGMENT

- 1- The appeal of M.K. is rejected as ungrounded.**

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/84/2010, dated 2 September 2010, as far as it regards the cases registered under Nos. KPA35652, KPA35651, KPA35648, KPA35647, KPA35640, KPA35638, KPA35637 and KPA35627, is confirmed.

- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 55 (fifty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 11 April 2007 M.K., acting as a family household member on behalf of his deceased father, filed eight claims with the Kosovo Property Agency (KPA) seeking to be recognized as the owner of different parcels of land acquired through inheritance, being repossessed and getting compensation for the illegal use. He explained that these parcels belonged to his late father, V.K., who was born on 19 May 1915, and that they were illegally occupied by an unknown person. He asserted that the possession of the property had been lost on 9 September 1999 as a result of the armed conflict.

To support his claim, he provided the KPA with documents related to his civil status and his parents' civil status as follows:

- His birth certificate issued on 14 January 2000 by the Federal Republic of Yugoslavia, Republic of Serbia, Municipality Rahovec/Orahovac, showing his place of birth as Zoqishtë/Zočişte, Rahovec/Orahovac, the name of his father as "K." K. and his father's birth date as 10 May 1915;
- His ID-card issued on 2 November 1999, showing the name of his father as "K."
- Death certificate issued on 11 September 2001 of V.K., stating that he was born on 19 May 1915 and died on 28 August 2001 in Kragujevac.

Concerning the parcels that he allegedly inherited from V.K., the documents he submitted to the KPA are as follows:

No. of Appeal and KPA case	Data of claimed parcel	Submitted documents
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file		
GSK-KPA-A-36/11 (case file KPA35652)	Parcel No. 778 of 1861 m ² , located at Zoqishtë/Zočişte, Rahovec/Orahovac, commercial without buildings (land/forest), 3 rd class pasture	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-37/11 (case file KPA35651)	Parcel No. 777 of 1086 m ² , located at Zoqishtë/Zočişte, Rahovec/Orahovac, commercial without buildings (land/forest), 3 rd class pasture	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-38/11 (case file KPA35648)	Parcel No. 774 (containing two parts, a 6 th class field of 5228 m ² and a 5 th class field of 12510 m ²) located at Zoqishtë/Zočişte, Rahovec/Orahovac, commercial without buildings (land/forest)	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-39/11 (case file KPA35647)	Parcel No. 2898 of 799 m ² , located at Velika Hoca, Rahovec/Orahovac, Bar, commercial without buildings (land/forest), 3 rd class vineyard	Possession list No. 346 of Rahovec/Orahovac, Velika Hoca, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-40/11 (case file KPA35640)	Parcel No. 588 of 3007 m ² , located at Zoqishtë/Zočişte, Rahovec/Orahovac, Debar/Potok, commercial without buildings (land/forest), 4 th class pasture	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-41/11 (case file KPA35638)	Parcel No. 160 of 1545 m ² , located at Retimlje, Rahovec/Orahovac, Lepse brdo – Vise reke, commercial	Possession list No. 163 of Rahovec/Orahovac, Retimlje, stating that the parcel belongs for 1/1 to V.S.K.

	without buildings (land/forest), 4 th class field	
GSK-KPA-A-42/11 (case file KPA35637)	Parcel No. 454 of 1702 m ² , located at Zoqishtë/Zočişte, Rahovec/Orahovac, Pregan/Barusina, commercial without buildings (land/forest), 3 rd class vineyard/pasture	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.
GSK-KPA-A-43/11 (case file KPA35627)	Parcel No. 214/4 of 162 m ² , located at Zoqishtë/Zočişte, Rahovec/Orahovac, Pregan/Barusina, commercial without buildings (land/forest), 3 rd class field	Possession list No. 68 of Rahovec/Orahovac, Zoqishtë/Zočişte, stating that the parcel belongs for 1/1 to V.S.K.

The death certificate and the possession lists Nos. 68, 346 and 163 could be verified.

On 29 November 2007 (KPA35652, KPA35651, KPA35648, KPA35640, KPA35637, KPA35627), 24 September 2008 (KPA35647) and 16 February 2010 (KPA35638), KPA officers went to the places where the litigious parcels were allegedly located and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within a month. They noted that the claimed property, with the exception of the property claimed in KPA35627 (cultivated land), was not occupied (KPA35652, KPA35651, KPA35648, KPA35640: grassland or pasture; KPA35647: destroyed vineyard; KPA35638, KPA35637: uncultivated land). The occupant of the property claimed in KPA35627 could not be located.

Later on in the proceedings the KPA checked the notification and could, based on “ortophoto and GPS coordinates”, confirm that the notification had been done properly.

Since no respondent filed a reply within the deadline, all claims were considered as uncontested.

As the birth certificate of the claimant indicated his father’s name to be “K.”, whereas the possession lists showed the name of the owner as “V.” and also the name of the deceased in the death certificate

was “V.”, the Information Unit of the KPA contacted the claimant on 10 March 2008 and 24 September 2008, 18 February 2009 and 8 May 2009, asking him to submit statements of witnesses regarding his father’s name. Each time the claimant informed them that he would submit the necessary documents within a deadline of 30 days. The claimant was contacted again on 24 December 2009 and 26 April 2010 and each time he was given a deadline of 30 days to submit a certified document from the civil registration office explaining the discrepancy, otherwise his claim would be dismissed. The claimant explained that he would have his birth certificate and his identification card changed and would submit the changed documents within the deadline. Yet the claimant failed to submit these documents.

On 2 September 2010 the KPCC in a cover decision concerning 67 claims including those of the appellant dismissed the claims for lack of proof of the claimant’s capacity to file a claim on behalf of the property right holder (KPCC/D/A/84/2010).

In its enacting clause the KPCC stated:

“(1) In the 59 (fifty nine) claims identified in parts A and B of the attached schedule, the Commission decides that the claims be dismissed. (2) In the 8 (eight) claims identified in part C of the attached Schedule, the Commission decides that the claims be refused”.

Later on the KPCC argued:

[...] 18. Claims in which an alleged family household relationship between the claimant and the property right holder cannot be established, cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. [...]

21. Claims Nos. 35627, 35637, 35638, 35640, 35647 and 35648 are filed by the Claimant on behalf of his father, the property right holder. The property right holder’s name is registered as V.K. in the possession list and in the death certificate submitted with the claim, while in the identification card and in the birth certificate submitted by the Claimant, his father’s name is listed as K.K.. The Claimant was contacted by the Executive Secretariat on five separate occasions during 2008 and 2009 to clarify the name difference and was asked to provide documents from competent institutions explaining the discrepancy. The Claimant advised that he would provide the necessary documents and would take steps to correct his father’s name in the official record as his father’s first name is V., not K.. However, the Claimant has failed to produce any additional evidence. In the absence of any evidence confirming the family relationship between the Claimant and the property right holder, the Claimant’s claim stands to be dismissed”.

The claims KPA35651 and KPA35652 are not explicitly mentioned in this decision. The individual decisions concerning these claims referred to article 27 of the cover decision, where, however, these claims are not mentioned (but claims with similar case numbers: claims 36551 and 36552).

On 17 December 2010 the KPCC issued the individual certified decisions concerning each of the claims of the claimant (Section 8.8 of Annex III of UNMIK Administrative Direction 2007/5 as amended by Law No. 03/L-079). The claimant received the KPCC decision on 23 February 2011.

On 4 March 2011, M.K. (herein after: the appellant) filed eight appeals with the Supreme Court against the decision KPCC/D/A/84/2010 on the grounds of incompletely established facts and erroneous application of the material law. He states his right of possession of the litigious properties and wants repossession. Insofar as he was denied compensation for the alleged illegal use the appellant does not fight the decision. However, he adheres to his statement that he is the son of the property right holder. He alleges that he had initiated a procedure to correct the birth registry book and that this procedure had, due to no fault of his, lasted a long time. Finally, he states, he has managed to have the data corrected. As the inheritance procedure has not been conducted yet, the KPCC in his opinion should have established that he is the heir of the deceased property right holder and as such is entitled to repossession of the claimed property. Concerning the claims KPA35651 and KPA35652 he furthermore states, that the reasoning of the decision is completely unclear as his requests are not mentioned in article 27 of the decision.

To support his appeal, M.K. provided the Court with a copy of a new identity card, not giving the name of his father, and a second birth certificate. This certificate was issued on 28 October 2010 by the Republic of Serbia, Municipality Rahovec/Orahovac, showing his place of birth as Zoqishtë/Zočişte, the name of his father as “V.” K. and his father’s birth date as 10 May 1915.

Legal Reasoning:

The appeal is rejected as ungrounded. The decision of the KPCC (KPCC/D/A/84/2010) is confirmed.

The appellant has not proven that he is the son of the property right holder and as such either as a member of the family household could file a claim on behalf of his (deceased) father or as heir to his father could file a claim on his own behalf.

1. Section 5.2 of UNMIK Administrative Direction No. 2007/5 (UNMIK/DIR/2007/5) as amended by Law No. 03/L-079 prescribes as follows: *“In proceedings before the Commission, where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person”*.

The appellant here states that he is the son of the deceased property owner. Yet he has not provided the KPCC but only the Court in the appeals instance with a birth certificate that indicates the name of his father to be that of the deceased property right holder: “V.” K..

- a. Section 12.11 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-79 prescribes that *“New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidences could not reasonably have been known by the party concerned”*. It appears rather questionable whether just the allegation of the appellant that he had not been able to obtain the birth certificate at an earlier date is sufficient to fulfill the conditions of the law. But even if the Court allows this new evidence and considers it, it is not sufficient to prove that the appellant is the son (and therewith a member of the family household in the meaning of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079) of the deceased property right holder.
- b. The Court needs not to decide, whether the birth certificate issued on 28 October 2010 was issued by the competent authority. Even if it had been issued by a competent body, it gives no proof that the deceased owner of the property was the father of the claimant.

The death certificate of the property right holder shows his name as V.K. and his birth date as 19 May 1915. Also in his claim the appellant has given the date of birth of his father as the 19 May 1915. The first birth certificate of the appellant, however, indicates the name of his father as K.K. and his birth date as the 10 May 1915. Even after the correction, the birth certificate issued on 28 October 2010 gives the date of the birth of the appellant’s father as 10 May 1915. This birth date is not the same as the birth date of the deceased property owner, which is 19 May 1915. The Court is aware that mistakes do occur and that a birth date may be wrongly copied from the registry. But a mistake seems more than improbable in cases in which the birth date

is written down twice without change. So the Court has to conclude that either the birth certificate is proof that the date of the birth of the appellants father is not the date of the birth of the property right holder and that these are not the same person or the Court could assume that the second birth certificate does not show the entry in the registry but is just a corrected version of the first birth certificate. In both cases there is no proof of the appellant being the son of the property right holder.

2. This argumentation also applies insofar as the appellant wants to claim the property in his own name. The Court has no proof that he is the son of the deceased property right holder.
3. The appellant's allegation that in the cases KPA35651 and KPA35652 the reasoning was completely unclear does not change the legal view discussed above. In the first place, it is obvious from the argumentation of the KPCC's decision that the reasoning in article 21 should apply as well to these two cases which are completely in parallel to the others. This should have been even more obvious to the appellant who was contacted and given deadlines for submitting evidence six times, every time in regard to all eight cases. As for the referral of the individual decisions to article 27, it is obvious from the case numbers mentioned in this article that it does not apply to the cases in question. Furthermore, even if the reasoning should be considered unclear, it does not affect the legal assessment that there is no evidence of the appellant being the son of the deceased property right holder. And there is no possibility of the appellant having had better chances to give this proof if the reasoning in these two cases had explicitly referred to the case numbers of these two cases.

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel.

As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- Court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): 30 €
- Court fee tariff for the issuance of the judgment (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the whole property at hand, 27900 m² of pasture or uncultivated land or destroyed vineyard in the municipality of Rahovec/Orahovac could be reasonably estimated as being between € 2.501 and € 5.000: € 25 €.

These court fees are to be borne by the appellant that loses the case.

According to Article 46 and 45 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar