

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

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

GSK-KPA-A-120/12

Prishtinë/Priština

17 April 2013

In the proceedings of:

R. P.

Claimant/Appellant

vs.

A. T.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/142/2012 (case files registered at the KPA under the numbers KPA53113), dated 29 February 2012, and KPCC/D/R/145/2012 (case file registered under Number KPA53112), dated 29 February 2012, after deliberation held on 17 April 2013, issues the following

JUDGMENT

- 1. The case GSK-KPA-A-120/12 and GSK-KPA-A-121/12 are joined in one single case registered under number GSK-KPA-A-120/12.**

2. The appeals of R. P. are dismissed as belated.
3. Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 16 November 2007, R. P. in her capacity as alleged property right holder filed two claims with the Kosovo Property Agency (KPA), seeking repossession of a house (KPA53112) and yard (KPA53113) located in parcel 221. She asserted that she is the co-owner of the claimed properties by means of inheritance and that her family lost possession of the claimed properties on 12 June 1999 due to circumstances directly related to the conflict in Kosovo in 1998/99. She explained that the property was occupied by an unknown person.

The data relating to the claimed parcel, registered under Possession List No. 1273 of Podujevë/Podujevo, Cadastral Municipality of Podujevë/Podujevo, issued on 10 July 2008, reads as follows:

Number of appeal and KPA case file	Data of the parcel
GSK-KPA-A-120/12 (KPA53112)	Parcel No. 221 in Podujevë/Podujevo, consisting of a house with a surface of 65 m ² ;
GSK-KPA-A-121/12 (KPA53113)	Parcel No. 221 in Podujevë/Podujevo, consisting of a yard with a surface of 2 ar 15 m ² ;

In support of her claims, the claimant provided the KPA, amongst others, with the following documents:

- Inheritance decision No. II O.br. 4/94, issued by the Municipal Court of Kuršumlja, Podujevë/Podujevo branch, according to which the claimant inherited 1/3 of the claimed properties situated on parcel 221, at the so-called place “Varoš” in Podujevë/Podujevo;

- Signed statement written by the Claimant, dated 05 November 2007;
- Marriage Certificate No. 1/1972, issued by the Municipality of Mojkovac, Republic of Montenegro on 3 October 2008;
- Death Certificate No. 20/2007 issued by the Municipality of Mojkovac, on 3 October 2008, showing that S. K. A., born on in Podujevë/Podujevo, with permanent residence in Podujevë/Podujevo -Narodni Front NN, died in Mojkovac on 11 April 2007;
- Copy of the ID-card of the claimant, R. P., born on 17 May 1947 in Podujevë/Podujevo.

The ID-card was positively verified (the verification of the ID-card was done prima facie).

The notification of the parcel No. 221 was first physically executed on 22 July 2008. It was found occupied by A. T. who did not allow the notification team to take pictures of the claimed property (house and yard). The notification was then checked on 03 March 2010 based on ortophoto and GPS-coordinates and found to be accurate.

A. T. (from here on: the respondent) signed the notice of participation on the day of the physical notification, 22 July 2008. On that day, he stated that he is claiming a legal right to the claimed property, explaining that he bought it and that he would provide the KPA with the supporting documentation.

The respondent approached the KPA later on in the proceedings in June 2010, and submitted the following documents:

- Purchase Contract (of the house and right on use of the land) Ov. br. 257/75 dated 19 June 1975 and concluded between P. (P.) T. as the seller and B. (J.) K. as the buyer of parcel No. 221 in Podujevë/Podujevo;
- Decision No. 05-353-1731 dated 24 July 1975, issued by the Municipality of Podujevë/Podujevo by which B. (J.) K. was given the permission to build a business housing building P+1;
- Copy of Plan, issued on 06 March 1981 by the Municipality of Podujevë/Podujevo, showing B. (J.) K. as the owner of parcel 221 (containing a house and a yard), listed in Possession List 237;
- Purchase Contract, concluded on 16 October 2000 between the claimant (R. B.P.), M. K. and S. K. as sellers and A. Sh. T.as buyer, according to which parcel 221 was sold for the price of 75 000 DM;

- Extract from Possession List No. 1273, Cadastral zone of Podujevë/Podujevo (the parcel number is, on this document, illegible. The KPA however verified the information ex officio and found that the parcel number is No. 221);

All the above-mentioned documents were positively verified.

On 29 February 2012, the KPCC with its decisions KPCC/D/A/142/2012 (KPA53113), and KPCC/D/R/145/2012 (KPA53112), dismissed both claims for lack of jurisdiction. The KPCC, basing itself on the certified purchase contract, the updated possession list and the claimant's phone-recorded statement according to which she sold the property to the respondent in 2000, stated that the property was sold and that therefore the claimant had been able to exercise her property rights after the conflict.

The decisions KPCC/D/A/142/2012 (KPA53113), and KPCC/D/R/145/2012 (KPA53112) were handed over to the claimant on 30 July 2012. The decisions were served to the respondent on 3 October 2012.

On 31 August 2012, R. P. (from here on: the appellant) filed an appeal with the Supreme Court against both KPCC-decisions. She challenges the decisions as containing erroneous and incomplete established state of facts; misapplication of substantive law; unlawful appealed decision. According to the appellant, the Kosovo Property Agency stated in their decision that she sold the house and that she does not have ownership rights to it. She argues that although she admitted having sold 'one house' jointly with her mother and her brother, she never sold the claimed house. She states: 'we sold just one house, [...] but not the other one. We sold the house that is located in street Narodnog Fronta [...] registered in possession list 340, and not in possession list 231' [this is most probably a typing mistake]. The number should read 237 according to a 1981 Possession List found in the case file]. 'The surface of the house [which was sold] is about 200m², ground floor with one upper floor, and is located near the post office and Police station in Podujevo. The house was bought by A.T.'. According to her, the property claimed before the KPA is located near the shopping mall, at a place called 'Varoš' towards the 'Lap River'. She explains: 'My father had a bakery there earlier until he built a new house that we sold, in which he was running a bakery also, until he moved to Niš. This house [the claimed property, 'Varoš'] was not the subject of the purchase contract between sellers and buyer A.T. She therefore requests the court to enquire whether the buyer, A. T., bought 'two or just one house'. Furthermore, she states that the contract on sale she, her mother and her brother signed was 'a blank contract'. She adds that they are not in possession of the properties listed in the

possession list No. 230 [this, again, is most probably a typing mistake. The number should read 237 according to a 1981 Possession List found in the case file]. She requests the Supreme Court to annul the decision of the Kosovo Property Agency and to recognize her ownership rights over the house she inherited from her father.

The respondent in the KPA proceedings, A. T. did not reply to the appeal lodged by the appellant.

The Supreme Court has joined the cases.

Legal reasoning:

1. The appeal is inadmissible. It has been filed out of the time limit.

According to Section 12.1 of the UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, a party may submit an appeal “*[]within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim*”.

The appellant was served with the decisions KPCC/D/A/142/2012 and KPCC/D/R/145/2012 on 30 July 2012. She then sent her appeal request against the above-mentioned decisions by post from Montenegro on 31 August 2012. In accordance with the LCP, Article 127.2, the sending date is to be considered the date of the service to the court to which it was sent. As this date not lies within the 30 day deadline, the appeal is inadmissible.

2. However, the court wants to note the following:
 - a) The documents submitted by both the appellant and the respondent in the KPA procedure however all lead to the conclusion that the claimed property (house and yard) was sold by the appellant, her brother and her mother, to the respondent in 2000. The Supreme Court finds that the positively verified and certified purchase contract is genuine, albeit the allegations made by the appellant against its legitimacy, stating that it does not mention the ‘right’ property and that she only signed a ‘blank copy’, trusting that the buyer and his lawyer would then fill it in with information relating to the “other property”. The court finds no evidence pointing towards the fact that the appellant, her brother and her mother signed the contract under pressure or duress, or against their own free will.

- b) The appellant submitted an inheritance decision No. II O.br. 4/94, issued by the Municipal Court of Kuršumljia, Podujevë/Podujevo branch, according to which she, her brother and her mother each inherited 1/3 ideal part of the claimed property situated on parcel 221, at the so-called place “Varoš” in Podujevë/Podujevo. The decision does not refer to any other property, leading to the conclusion that the only parcel inherited by the appellant, her brother and her mother is parcel No. 221. Although other transactions may or may not have taken place between the appellant and A. T. (the respondent before the KPA) the Supreme Court is limited on reviewing the evidence submitted by the parties or found by the KPA, as per Section 6, Annex 3 of UNMIK Administrative Direction 2007/5 as amended by Law No. 03/L-079. As no evidence corroborating with the allegations presented by the appellant regarding the sale of another property that she and her family allegedly inherited were provided to the court, the Supreme Court finds that the appellant did not succeed in shaking the evidence submitted by the respondent before the first instance.
- c) The Supreme Court notes that the KPCC decision states that the appellant acknowledged the sale of the claimed property. The court finds that although a misunderstanding of the appellant’s phone confirmation of the sale may have occurred, the appellant actually referring to ‘another’ property, the substantive evidence of the sale in the form of the purchase contract and of the updated possession list establishes the lawfulness of the transaction.
- d) Finally, the court notes that according to Article 8 of the Administrative Direction 2007/5 implementing UNMIK Regulation 2006/50, the subject of the claim is to be contained in the claim itself. As the claim was submitted to the KPA for repossession of parcel No. 221, the court is only able to take a decision concerning the parcel being the subject of the first instance decision. Moreover, Article 8 *ibid* establishes the KPA claim intake period as having expired on 1 December 2007. No new claim could therefore have been filed with the KPA after this date. This is without prejudice for the appellant to refer other subject matter claims to the competent court, as per Article 3.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

According to all this the Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law which influenced the outcome of the KPCC decision.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt 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 (10.21, 10.15 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being € 40.000: € 30 (€ 50 + 0.5% of 40.000, yet not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees the deadline for fees' payment is 90 (ninety) days. Article 46 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice:

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

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar