

**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 VEÇE KAI**

GSK-KPA-A-054/2014

Prishtinë/Priština, 14 April 2016

In the proceedings of:

M.S.

Ljubić Kej, Soliter 5, Apartment 49

Čačak,

Serbia

Appellant

vs.

1. Sh.B.

Arbanë (Dušanova) 518/2

Prizren/Prizren

and

2. I.K.

Prizren

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/A/204/2013 (case

files registered at the KPA under KPA19199, KPA19200, KPA19201 and KPA19202), dated 11 June 2013, after deliberation held on 14 April 2016, not unanimously issues the following

JUDGMENT

1. The Supreme Court joins the appeals filed by M.S. , registered under GSK-KPA-A-054/2014, GSK-KPA-A-055/2014, GSK-KPA-A-056/2014 and GSK-KPA-A-057/2014, into a single case with case number GSK-KPA-A-054/2014.
2. The appeal of M.S. filed against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/204/2013, dated 11 June 2013, is accepted as grounded.
3. The Decision of the Kosovo Property Claims Commission no. KPCC/D/R/204/2013, dated 13 June 2013, as far as it concerns the claims registered at the KPA under KPA19199, KPA19200, KPA19201 and KPA19202 is modified as follows:
 - a. M.S. has established that J.S. is the owner of the Cadastral parcels nos. 518/1, 518/2, 518/4, 519/1 and 519/2 in Possession list no. 78/Certificate for the immovable property rights UL-71813023-12175, Municipality Prizren/Prizren, Cadastral Zone Dushanovë/Dušanovo; and orders that:
 - b. J.S. is entitled to repossession of those parcels;
 - c. Any other person occupying those parcels has to vacate those parcels within 30 (thirty) days of delivery of this Order;
 - d. Should any other person occupying the parcels fails to comply with this Order to vacate those parcels within the time period stated, he or she shall be evicted from the parcels.

Procedural and factual background:

1. On 24 November 2006, M.S. , (hereinafter: the Appellant) filed four claims at the Kosovo Property Agency (KPA), registered under KPA19199, KPA19200, KPA19201 and KPA19202 as a member of the family household and on behalf of his mother J.S. (henceforth also: the mother

of the Appellant), seeking repossession of the parcels mentioned in paragraph 3 hereafter (henceforth all together: the claimed properties). He alleges his mother is the owner.

2. In these claims it is initially stated that the claimed properties were lost because of circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 13 of June 1999 as the date of loss. The Appellant further stated that the claimed properties are occupied by I.K. who had transferred the property right onto his name in 2005, based on an illegal sale and purchase contract without the knowledge and approval of his mother as owner.

According to the Possession list no. 78 issued by the Department for Cadastre and Geodesy of the Republic of Serbia on 13 March 2006, the claimed properties are registered as follows:

Appeal number and KPA case file	Data concerning the claimed parcels
GSK-KPA-A-054/14 (KPA19199)	Possession List no. 78, parcel no. 518/1, at the place/street called "Selo Okučnica", class 3 meadow and infertile land, with a surface of 00.06.58 ha, Municipality Prizren/Prizren, Cadastral Zone Dushanovë/Dušanovo.
GSK-KPA-A- 055/14 (KPA19200)	Possession List no.78, parcel no. 518/2 at the place/street called "Selo Kod Kuče", class 3 cultivating land, with a surface of 00.01.20 ha, Municipality Prizren/Prizren, Cadastral Zone Dushanovë/Dušanovo.
GSK-KPA-A-056/14 (KPA19201)	Possession List no.78, parcel no. 518/4 ¹ , at the place/street called "Selo Okučnica", class 3 meadow and house and buildings, with a surface of 00.05.80 ha, Municipality Prizren/Prizren, Cadastral Zone Dushanovë/Dušanovo.
GSK-KPA-A-057/14 (KPA19202)	Possession List no.78, parcels nos. 519/1 and 519/2, at the place/street called "Selo Kod Kuče", orchard third class, with a surface of 00.05.20 plus 00.04.80 ha, together 00.10.00 ha, Municipality Prizren/Prizren, Cadastral Zone Dushanovë/Dušanovo.

3. To support his claim, the Appellant submitted *inter alia* the following documents:

¹ KPCC refers only to 00.05.20 ha and doesn't mention the house, but from the submitted possession list it is clear that the surface of this parcel is 00.05.80 and besides meadow the parcel is registered with a house.

- The Corrected inheritance decision from the Municipal Court of Prizren/Prizren, dated 21 April 1994, no. C. 32/94; in this decision the mother of the Appellant is announced as inheritor to the claimed properties.
- The Possession list no. 78 meant in paragraph 2.
- Extract from the Matrix Book of Births no. 06 200 1 issued by the Civil Registry Office, Gjakovë/Đakovica Municipality, on 13 January 1999 which proves the kinship between the Appellant and J.S.
- A Power of attorney, certified under no. II-757/2003 at the Municipal Court in Kragujevac, Serbia, on 25 December 2003 (henceforth: the Power of attorney); according to this document J.S. authorised A.S. to sell on her name and on her account the claimed properties. In this regard A.S. was authorised to conclude a contract on sale, to certify the contract before the competent court and to perform all legal actions so that the buyer becomes owner of the claimed properties. The Power of attorney is signed both with a fingerprint and a signature.
- A Statement on voluntary sale certified in the Municipal Court in Kragujevac under no. II-758/2003 on 25 December 2003; according to this document J.S. declares that her immovable properties registered in the Possession List no. 78 are free and can be sold based on the power of attorney given to A.S., and that this statement is given without coercion or threats and that she willingly gave the power of attorney. The Statement is signed both with a fingerprint and a signature.
- A Revocation of the Power of attorney certified at the Municipal Court of Kragujevac under No. 20/04; by this Revocation J.S. withdrew her Power of attorney given to A.S.. The document is dated: 2003, the day and month are illegible. The Revocation is signed both with a fingerprint and a signature.
- A Revocation of the Statement on voluntary sale of the property certified at the Municipal Court in Kragujevac under no. II-21/2004 on 25 December 2003: J.S. withdraws her statement concerning the voluntary sale of the parcels registered in the Possession List no.78. The document is dated: 2003, the day and month are illegible. The Revocation is signed both with a fingerprint and a signature.
- A Contract on Sale of real estate, dated 27 January 2004, certified by the Municipal Court of Prizren/Prizren, on 29 January 2004, with no. 421/2004; according to this document J.S. ,

represented by Ana Seniç, sold the claimed properties to O.C, M.C., H.C. M.C. for 140.000 Euro's.

- The Possession List no.78 issued on 25 January 2005 by the Directorate for Cadastre, Geodesy and Ownership of Prizren Municipality; in this Possession list the claimed properties are registered in the name of I.K. (henceforth: Appellee 2).
 - A report 'Expert Findings', by L.L., Court Expert in the field of Graphology and Traceology in Belgrade, dated 28 April 2005; he states as his expert opinion that the signatures on the Power of attorney and the Statement on voluntary sale and both Revocations are not signed by J.S. and the signature on the Contract on Sale of real estate is not written by A.S..
 - Decision no. P-117/05 (K-117/05) issued by the District Court in Kragujevac on 30 October 2006 through which a preliminary injunction on alienation, mortgaging or construction of new buildings on the parcels 518/1, 518/2, 518/4, 519/1 and 519/2 was imposed. According to the decision, the aforesaid measure is imposed onto Appellee 2 ("possessor-owner of the property") and shall last until a final decision in the criminal proceedings against the defendant M.M. and others for the grounded suspicion of committing the criminal offence of abusing their official position.
 - Judgment no.1 P-6/10 (No. 1 K-6/10) dated 19 April 2012, issued by the High Court in Kragujevac through which M.M. and M.D. were found guilty for the criminal offence of abusing their official position, forgery of the Power of attorney and alienation of the claimed properties. M.M. was sentenced to 10 months of imprisonment while M.D. was sentenced to 6 months of imprisonment, and at the same time they were ordered to compensate M.S. in the amount of 9.627.618 dinars (Serbian currency) whereas in case of additional claims S. was instructed to a regular civil dispute.
 - Judgment no. 4576/12 issued by the Court of Appeals in Kragujevac on 18 December 2012: the Court annulled the Judgment no. 1 P-6/10 (Nr. 1 K-6/10) dated 19 April 2012 and the case was returned to the first instance court for retrial.
4. All the above mentioned documents were found upon verification by the KPA. Furthermore, the KPA *ex officio* obtained the Certificate on immovable property rights UI-71813023-12175, where the claimed properties are listed in the name of a third person D.Xh.. According to the verification report dated 21 April 2011, J.S. had initially sold the properties to O.C., M.C., H.C., M.C., based on the sale and purchase contract Vr.Nr.412/04, certified in the Prizren Municipal Court on 27 January 2004. The latter, based on the sale and purchase contract Vr.Nr.4377/04

certified in the Prizren Municipal Court on 23 September 2004, had sold the properties to Appellee 2. Afterwards, Appellee 2 sold the same properties to D.Xh, according to the sale and purchase contract Vr.Nr.7922/2010 dated 14 September 2010, certified by the Municipal Court in Prizren.

5. On 18 May 2010, KPA performed the identification of the claimed properties for the claims KPA19199 and KPA19200 which were found occupied by Sh.B.(hereinafter: the Appellee 1) who claimed to have a legal interest over the claimed properties. The property which was subject of examination in the claim no. KPA19202 was identified on 2 January 2007 whereas the accuracy of identification report was confirmed on 2 January 2007. On 28 December 2010, the KPA performed the identification of the property for the claim no. KPA19201 by publishing it in the Notification Gazette no. 10. In addition, the list was published in two different parts of Dushanovë/ Dušanovo, in the Municipal Court, Cadastral Office, Prizren/Prizren Municipality and in the region. Appellee 2 claimed a legal interest stating that he had purchased the property from the Ç. brothers and then had sold it to the Appellee 2.
6. To support their claims, the Appellees presented the following documents:
 - Authorisation no. II-757/2003 certified in the Municipal Court in Kragujevac on 25 December 2003 through which J.S. had authorised A.S. to undertake all necessary actions concerning the sale and transfer of property rights in the name of the third person for the parcels 518/1, 518/2, 518/4, 519/1 and 519/2, registered in the possession list no.78.
 - Statement for the voluntary sale of the property Vr.nr. II-758/2003 certified in the Municipal Court in Kragujevac on 25 December 2003 through which J.S. declares that the parcels registered in the Possession List no. 78 can be sold according to the authorisation given to Ana Sencić.
 - Contract on the sale and purchase of the property Vr.Nr.421/2004 certified in the Prizren/Prizren Municipal Court dated 29 January 2004. The contract was concluded between J.S. in the capacity of seller and O.C., M.C., H.C., M.C., in the capacity of buyers of parcels 518/1, 518/2, 518/4, 519/1, 519/2 registered in the Possession List no.78.
 - Possession List no. 78 issued by the Directorate for Cadastre, Geodesy and Ownership of Prizren Municipality on 22 September 2004 in the name of .C., M.C., H.C., M.C who are listed as owners.
 - Contract on sale and purchase certified in Prizren/Prizren Municipal Court Vr.Nr.4377/2004 dated 23 September 2004. The contract was concluded between .C., M.C.,

H.C., M.C as sellers of parcels 518/1, 518/2, 518/4, 519/1 and 519/2 and Appellee 2 as buyer.

- Contract on sale and purchase certified in Prizren/Prizren Municipal Court Leg.Nr.984/2009 dated 19 February 2009. The contract was concluded between Appellee 2 as seller of parcels 518/1, 518/2, 518/4, and Sh.B.as buyer.
 - Decision 027.nr.389/B issued by the Kosovo Cadastral Agency dated 20 February 2009 through which the request of Sh.B.was approved, by which he requested to transfer his property right onto his name.
 - Contract on sale and purchase certified in Prizren/Prizren Municipal Court Leg. Nr. 7972/2010 dated 14 February 2010. The contract was concluded between A.B. as seller of parcels 518/1, 518/2, 518/4, 519/1 and 519/2 and D.Xh. as buyer.
7. On 11 June 2013, the KPCC, with its decision KPCC/D/A/204/2013, dismissed the claims based on Section 18 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50). In its reasoning, KPCC stated that the Appellant submitted *inter alia* documents concerning an ongoing criminal proceeding, which was initiated by the public prosecutor on 1 June 2005. These proceedings pertain to an alleged falsification of the Power of attorney issued by J.S. The Power of attorney was the basis for transferring the claimed properties in the names of third parties in 2004 and afterwards for the resale of the claimed properties. The KPCC further noted that the court proceedings involve also adjudication of the property right for the claimed properties and started prior to 16 October 2006, on which date the UNMIK Regulation 2006/50 entered into force. Therefore, the KPCC dismissed the claims.
 8. The decision was served to the Appellant on 4 November 2013. On 2 December 2013, the Appellant filed an appeal.
 9. The Appellees received the decision on 14 and 19 November 2013 whereas the appeal on 11 April 2014. The Appellees did not file responses to the appeal.

Allegations of the parties

The Appellant

10. The Appellant alleges that the KPCC decision contains fundamental errors or serious violations of the substantive law, and that the decision rests on an erroneous and incomplete determination of facts.
11. The Appellant declares that his mother is the legal owner and possessor of the claimed properties and that these rights were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
12. According to the Appellant, the KPA/KPCC has exclusive competence to decide regarding his claim because it is in full compliance with the UNMIK Regulation 2006/50. He did not refer the same claim to the competent court prior or after entering into force of the UNMIK Regulation 2006/50.
13. The appellant states that the ongoing proceedings in the Court in Kragujevac cannot be seen as proceedings which in view of Section 18 of the UNMIK Regulation 2006/50 would exclude the jurisdiction of KPA/KPCC, because it is a criminal proceeding initiated against M.M. and Milka Đoković, and not a civil proceeding for annulment of the contract which was concluded based on the falsified Power of attorney.
14. In the end, the appellant states that KPA/KPCC, analogously to Section 4 of the Administrative Direction no. 2007/5 on implementation of the UNMIK Regulation 2006/50, is authorised to declare void any contract on transfer of immovable property that is established by means of fraud as well as any proceeds from such sales.

The Appellees

15. Before KPCC the Appellees alleged that Appellee 2 bought the claimed properties on 23 September 2004 from .C., M.C., H.C., M.C and that he subsequently, on 19 February 2009, sold the claimed properties to Appellee 1. Appellee 1 gave the claimed properties on 27 October 2009 to his son Arbër and in 2010 the son sold the claimed properties to D.Xh.

Legal reasoning:

Admissibility of the appeals

16. The appeals are admissible. They were filed within the time limit of 30 days as foreseen by Section 12.1 of the UNMIK Regulation 2006/50.

Joining of the appeals

17. Section 13.4 of UNMIK Regulation 2006/50 provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the KPCC pursuant to Article 11.3 (a) of the law. This article allows the KPCC to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues. Although the KPCC did not join the claims formally, KPA and KPCC processed the four claims and all the submitted evidences to the four claims together and provided a common reasoning on the four claims.
18. The Provisions of the Law on Contested Procedure (no. 03/L-006) (LCP) are applicable in the appeal proceedings before the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50. Article 408.1 in conjunction with Article 193 of the LCP, provides for the possibility of joining of cases through a ruling if that would ensure court-effectiveness and efficiency of the case.
19. In the text of the appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in all 4 (four) cases. Only the parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
20. Therefore the Supreme Court decides to join the appeals as stated in paragraph one of the enacting clause.

Merits

21. Since the KPCC based its decision to dismiss the claim on Section 18 of UNMIK Regulation 2006/50 and the Appellant is challenging that reasoning, the first question to be answered by the Supreme Court is whether KPCC rightfully came to that conclusion.
22. Article 18 of the UNMIK Regulation 2006/50 reads:

The provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation.

23. According to the established case law of the Supreme Court (vide e.g. Judgment 21 November 2014, no. GSK-KLPA-A-230/2013) *a contrario* to this provision the KPCC does not have jurisdiction to decide on the claim when the same claim was already pending before the competent court before the entry into force of the UNMIK Regulation 2006/50.

24. Section 3.1 of UNMIK Regulation 2006/50 reads – as far as relevant -:

The KPA shall (...) through the KPCC have the competence to resolve (...) the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:

a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and

b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,

Where the claimant is not now able to exercise such property rights.

25. As follows from the documents submitted by the Appellant and also is not disputed, the mother of the Appellant was during the war as owner the property right holder of the claimed properties and in 1999 she lost the possession over the claimed properties due to circumstances resulting from the armed conflict.

26. The question to be answered is than whether the subject of the criminal proceedings in Kragujevac, Serbia, is a claim under Section 3.1 of UNMIK Regulation 2006/50 that is filed to a competent court prior to 16 October 2006, the date of entry into force of that Regulation.

27. As the Appellant states, according to the judgments from the courts in Kragujevac the indictment in the criminal proceedings refers to the criminal act of misuse of official position. The defendants are accused of causing damage to and violating the rights of the mother of the Appellant by using a false Power of attorney and register this false document as genuine in the Certification Book of the Municipal Court of Kragujevac and compiled a Contract on sale of the claimed properties based on this false Power of attorney. During the proceedings the Municipal Court of Kragujevac issued on 30 October 2006 the preliminary injunction to ‘prevent alienation of the claimed properties by the third party that allegedly bought the claimed properties’. In the (quashed) first instance judgement the mother of the Appellant as injured party was granted a ‘property legal claim in the amount of 9.627.618 dinars, whereas when it comes to other claims the injured party is referred to a litigation’.

28. Other than what the KPCC concluded this claim as injured party is not a claim as provided for in Section 3.1 of the UNMIK Regulation 2006/50. Firstly, the (forged) sale in 2004 is not directly related to or resulting from the armed conflict in 1998/1999, as the forgery arose in 2003/2004. Secondly, KPCC has according to Section 3.1 of UNMIK Regulation 2006/50 the competence to resolve property claims and provide reinstatement in the form of repossession of the property or other relief, remedies or consequential orders as are deemed necessary to enable the property right holder to duly exercise his/her property rights. The KPCC cannot accept claims for (financial) compensation. (Vide: Section 2.1 of Administrative Direction no. 2007/5 on Implementing UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 to Annex I to UNMIK Regulation 2006/50, and Section 8.6 of Annex III to that Administrative Directive.) The Criminal Court in Kragujevac can provide financial compensation to the mother of the Appellant as injured party of the misuse of official position, but as a criminal court outside Kosovo that Court cannot give an order for repossession or provide other relief, remedies or consequential orders as are necessary to enable the property right holder to duly exercise his/her property rights with civil legal effect to the property in Kosovo. Therefore the criminal proceedings in Serbia cannot seize the competence of the KPCC to decide on the claims as filed by the Appellant before KPA/KPCC even when it must be concluded that the criminal proceedings were initiated before 16 October 2006, the date of entry into force of UNMIK Regulation 2006/50.
29. This means that the KPCC decision cannot stand and the appeal has to be accepted as grounded.
30. The Supreme Court can decide on the claim as well. It is evident that the mother of the Appellant was the owner of the claimed properties. The Appellees referred to the Contract on sale certified on 29 January 2004 to support their stance that the mother of the Appellant is no longer the owner of the claimed properties. This argument is not efficacious. This contract does not achieve a valid transfer of the property rights of the mother of Appellant, because the Power of attorney is fraudulent and therefore not effective. This follows from the report 'Expert Findings', by L.L., Court Expert in the field of Graphology and Traceology in Belgrade, dated 28 April 2005 and also from the fact that the Power of attorney was already revoked in 2003, before the Contract on sale was concluded in January 2004. The Contract on sale certified on 29 January 2004 has to be ignored and also the subsequent contracts to transfer the claimed properties because they are not based on a valid property right by the subsequent sellers.

31. In the light of the above, pursuant to Section 13.3 item (a) of UNMIK Regulation 2006/50, it has been decided as in the enacting clause of this judgment.

Legal advice:

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, EULEX Judge

Sandra Gudaityte, EULEX Registrar