

**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-48/11

Prishtinë/Priština, 2 August 2012

In the proceedings of:

**I.O.**

*Respondent/Appellant*

vs.

**N.P.**

*Claimant/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 decision of the Kosovo Property Claims Commission KPCC/D/A/60/2010 (case files registered at the KPA under the numbers KPA31993, KPA32003, KPA32007 and KPA32014), dated 25 February 2010, after deliberation held on 2 August 2012, issues the following:

## JUDGMENT

- 1- The appeal of I.O. against the decision of the Kosovo Property Claims Commission KPCC/D/A/60/2010, dated 25 February 2010, is dismissed as impermissible.
  
- 2- The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

### Procedural and factual background

On 15 March 2007, N.P. filed four claims with the Kosovo Property Agency in Prishtinë/Priština on behalf of his grandfather K.P., seeking to have his grandfather's property rights recognized, to have the litigious parcels returned into his possession and claiming compensation for their use by the illegal occupier. These claims for private property refer to the case files registered with this Court under GSK-KPA-A-48/11, GSK-KPA-A-49/11, GSK-KPA-A-50/11, and GSK-KPA-A-51/11. With these claims he alleges that the possession was lost on 20 April 1999 and that the immovable property could not be used due to circumstances directly related to or resulting from the armed conflict that occurred in the period between 27 February 1998 to 20 June 1999.

To support his claim, he provided the KPA with the following documents/evidence:

- Extract from the death registry book issued by the Municipality of Kragujevac, Republic of Serbia, no. 203-528/2008 on 22 September 2008, confirming that K.P. died in Male Pćelice on 15 September 1982;
- Extract from the death registry book issued by the Municipality of Kragujevac, Republic of Serbia on 26 June 1989, whereby it is confirmed that M.P., son of K.P., died in Male Pćelice on 18 June 1989;

- Ruling of the Municipal Court of Kragujevac T.nr. 125/92 dated 23 December 1992, referring to the inheritance mass located in Male Pćelica, Municipality of Kragujevac, Republic of Serbia, of the decujus M.P/ from the same place; the inheritance decision did not refer to the litigious parcels;
- Possession List No.135 of the Republic of Serbia, dated 7 December 2005, showing that the claimed parcels were in the possession of K.M.P..

The KPA found the Certificate of Immovable Property Rights issued by the Cadastral Office of Skenderaj/Srbica UL 72015062-00135, dated 11 October 2008.

All the documents/evidence submitted could be positively verified by the KPA Executive Secretariat and were indicated in the claim processing report for KPCC dated 12 December 2009.

The Certificate of Immovable Property Rights issued by the Cadastral Office of Skenderaj/Srbica UL 72015062-00135 dated 11 October 2008 establishes that K.P. is the owner of the following cadastral parcels:

Case number of SCK appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-48/11 (KPA31993)	Parcel no. 779(I), at the place called "Donja livada velika livada" with a surface of 0.21.61 ha, 3 class meadow, cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica.
GSK-KPA-A-49/11 (KPA32003)	Parcel no. 804, at the place called "Donja livada kod gloğa", with a surface of 0.10.40 ha, 3 class meadow, cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica.
GSK-KPA-A-50/11 (KPA32007)	Parcel no. 805, at the place called "Donja livada" with a surface of 0.94.93 ha, 4 class field, cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica.
GSK-KPA-A-51/11 (KPA32014)	Parcel no. 1884, at the place called "Donja livada kod reke", 0.07.54 ha, 3 class orchard, cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica.

On 12 November 2009, 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. Later on in the proceedings the notifications were checked based on KCA data and GPS coordinates and were found to have been accurate.

The Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/60/2010, dated 25 February 2010, ruled that the claimant had proven the ownership over the claimed property and he was given the possession right, but it rejected the damage compensation for the right of use of those immovable properties as an incompetent body pursuant to the provisions of Section 3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The decision was served to the claimant on 1 September 2010.

On 15 April 2011, I.O. (from here on: the appellant) filed an appeal with the Supreme Court, challenging the KPCC decision on grounds of incomplete and erroneous determination of the factual situation, misapplication of the material law and essential violations of procedural provisions, proposing to annul the challenged decision and send the case back to KPCC for reconsideration and deciding.

The appellant stated that the KPCC decision was based on erroneous and incomplete determination of the factual situation. He declared that K.P, had sold the parcels in 1979 and received the money. The contract, however, was burnt by Serbian forces. The appellant stated that he had used the property since 1979 without any objections.

To confirm the presented facts he enclosed the witnesses' statements, namely of I.A., H.A. and S.T.. From these statements, which all have the same wording, it results that the appellant bought these agricultural properties in 1979 and paid the sales price, thus entering into possession and using them continuously ever since.

Although the claimant received the appeal on 6 June 2011, he did not respond to the appeal.

With order of 16 December 2011, the Court has requested the appellant to submit legally valid evidence regarding the possession, use and property right over the cadastral parcels which he is currently using, namely parcels 779, 804, 805 and 1884 located in the cadastral zone of Runik/Rudnik, Municipality of Skënderaj/Srbica as well as the causes and reasons for not submitting

the witnesses' statements indicated in the appeal during the proceedings before the Property Claims Commission and for his lack of participation in the proceedings before the KPA.

On 3 February 2012, the appellant filed a submission whereby he fully affirmed the statements of his appeal, adding that he did not challenge the published claim because he did not see it and that he could not have the parcels registered under his own name because of the high taxes. He, however, failed to present any valid evidence in written form.

With order of 14 December 2011, the Court has ordered N.P. (from here on: the appellee) to state within a deadline of eight days when they lost the possession and use of the cadastral parcels 779, 804, 805 and 1884 located in the cadastral zone of Runik/Rudnik, Municipality of Skënderaj/Srbica and whether they used them and had under possession since 1979 onwards. He was also due to state the reasons for the lack of consideration of the inheritance of these immovable properties. The appellant, who received the order on 26 April 2012 has not responded thus far.

The Supreme Court has joined the cases.

**Legal reasoning:**

The appeal is impermissible.

An appeal against a decision of the KPCC may be submitted by a party to the proceedings before the KPCC (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

I.O. cannot be considered a party. A party to the claim and the related proceedings is *“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 [...], 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 in accordance with Section 10.1”* (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, emphasis added).

I.O. was notified according to the law yet did not inform the Executive Secretariat of his intention to take part in the proceedings. According to Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the Executive Secretariat *“shall notify and send a copy of the claim”* to any person

who is exercising rights to the property which is the subject of the claim. I.O. was notified of the claim in accordance with this regulation on 20 November 2009, when KPA officers visited the litigious property and put signs on the property telling of the claim in three languages (English, Albanian and Serbian) and requesting interested parties to contact the KPA. That the signs were put up at the right property was confirmed by a check based on KCA data and GPS coordinates. I.O., however, did not claim a legal right to the property within the 30-day period prescribed in Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. He did not even contact the KPA later on in the proceedings before the KPA. In consequence he did not become a party to the claim and the related proceedings.

The appellant has not justified sufficiently why he did not take part in the administrative proceedings in front of the Kosovo Claims Commission. When asked by the Court for the reason of this omission, the appellant only replied that he did not see the signs. This, however, is not a sufficient excuse. The appellant states that he works the land since 1979. As he lives in the village and the street is near to the parcels which consist of pasture the signs were in plain sight, even in the month of November. So the Court cannot accept the explanation of the appellant.

Therefore, the appeal is dismissed as impermissible based on Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and article 196.3 of the Law on Contested Procedure (Section 12.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

In addition, even though the Supreme Court renders a judgment of procedural nature, the Court gives additional explanations and clarifications, as follows:

- based on factual determinations, the Court finds that the Property Claims Commission has completely and justly established the factual situation and it has applied the material law provision when by the appealed decision it confirmed that the claimant has proven the ownership over the claimed property, and this property is therefore given in his possession;
- the appealed decision does not contain essential violations of procedural provisions, both of absolute nature and those that have an impact on the impartiality and legality of this decision. The merits of this decision in terms of determination of facts and the legal reasoning are found to be rightful and legal.

Object of consideration and evaluation were the appellate claims of the claimant that the immovable properties 779, 804, 805 and 1884 located in the cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica were sold from P. in the capacity of the owner and that the same have been bought by I.O. in 1979 when he took possession and that the ownership of these cadastral parcels has not be transferred under his name due to the taxes and that later this was made impossible by Serbia's authorities and that the contract in its final written form was burnt when his house was burnt during the wartime in Kosovo, but these have been found by the Court as unfounded, inadmissible, inconsistent and consequently unlawful. This is exactly because based on the Certificate of Immovable Property Rights issued by the Cadastral Office of Skenderaj/Srbica UL 72015062-00135, dated 11 October 2008, it is ascertained that the immovable properties Nos. 779, 804, 805 and 1884, located in the cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica, are owned by K.P..

Therefore, pursuant to provision of Article 37 para 1 of Law on Basic Property Relations it is provided that the owner may request the return of an individually specific item through a lawsuit, as it the case how the claimant acted.

Pursuant to provision 20 of Law on Basic Property Relations, it is required that in order to acquire the ownership by legal affair there are three equally valid criteria that have to be fulfilled in a cumulative manner, such as: (a) namely the ownership of the previous owner; (b) the valid legal affair and (c) the valid transfer of ownership.

Due to the fact that the appellant neither presented any facts nor proposed any legally valid relevant evidence, such as contract in written form and certified before a competent court, and neither had he presented any other evidence related to the transfer of this property in a valid way, the appealed decision is correct and legal.

According to provision of Article 72 of the same Law, it is foreseen that for a legal possession, the possessor is required to have acquired the immovable property by legal affair as the ownership is acquired, which cannot be said in the concrete case, because the appellant failed to provide any evidence-contract in written form. This is due to the fact that according to the Certificate of Immovable Property Rights issued by the Cadastral Office of Skenderaj UL 72015062-00135 dated 11 October 2008, it is ascertained that the immovable properties 779, 804, 805 and 1884 located in the cadastral zone of Runik/Rudnik, Municipality of Skenderaj/Srbica, are owned by K.P..

The appellant's allegation that these immovable properties could have not been transferred under his name due to high taxes, although he bought them in 1979, allegations which are sustained by the witnesses I.A., H.A., S.T. from the village of Runik/Rudnik, Municipality of Skenderaj/Srbica, contains no legally valid facts or evidence for acquiring the ownership under provisions of articles 20, 28 and 72 of this law. According to these legal provisions, to acquire the ownership over these immovable properties it is mandatory to have a contract certified before the competent court and the same should be registered the Cadastral Office, which cannot be said for the case at stake.

The decision of this court is without prejudice to a decision by a competent court other than those provided for under provisions of Section 3 para 2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

**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, 10.12, 10.1 and 10.15 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 15.000: € 30 (half portion of the fee according to 10.12 yet no more than € 30).

These court fees are to be borne by the appellant who loses the case. According to Article 45 of the Law on Court Fees, the deadline for fees' payment is 15 (fifteen) days. Article 47.3 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 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**