

**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-93/11

Prishtinë/Priština, 26 July 2012

In the proceedings of

D.M.P.

Claimant/ Appellant

v.s

R.H.

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 decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011 (case files registered at the KPA under Nos. KPA 20163, KPA 20164, KPA 20165, KPA 20166, KPA 20167, KPA 20168 and KPA 20169), dated 23 February 2011, after deliberation held on 26 July 2012, issues the following

JUDGMENT

- 1- The appeals filed by Đ.P. on 8 July 2011 and registered under the Nos. GSK-KPA-A-93/11 to GSK-KPA-A-99/11, are joined in a single case under the number GSK-KPA-A-93/11.
- 2- The appeals filed by Đ.P. on 8 July 2011 are rejected as unfounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011, dated 23 February 2011, as far as it regards the cases registered under Nos.KPA20163, KPA20164, KPA20165, KP20166, KPA20167, KPA20168 and KPA20169, is confirmed.
- 4- The appellant has to pay the costs of the proceedings which are determined in the amount of € 350 (three hundred fifty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 4 December 2006, Đ.M.P., acting as a family household member on behalf of his late father, filed 7 (seven) claims with the Kosovo Property Agency (KPA), claiming confirmation of property right over several parcels and their repossession. He explained that these cadastral parcels belonged to his father M.S.P., and they were illegally occupied.

To support his claim, the claimant provided the KPA amongst others with the following documents:

- His Birth Certificate, issued on 2 November 1998 by the Municipality of Vushtrri/Vucitrn, Republic of Serbia;
- Transcript of Possession List No. 221, issued on 6 September 1999 by the Municipality of Vushtrri/Vucitrn, Cadastral Zone of Grace, Republic of Serbia, and
- ID Card, issued on 19 March 1997 by the Municipality of Vushtrri/Vucitrn, Republic of Serbia.

Possession List No. 221 shows that M.S.P. was the owner of the following claimed parcels in Municipality of Vushtrri/Vucitrn, Cadastral Zone of Grace:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-93/11 (KPA20163)	Parcel No. 794/3, at the place called "Ljigata/Kod Laba", 2 class orchard, with a surface of 13 ar, 6 m ² ; Parcel No. 794/6, at the place called "Ljigata/Kod Laba", 2 class orchard, with a surface of 6 ar, 75 m ² ;
GSK-KPA-A-94/11 (KPA20164)	Parcel No.. 801/5, at the place called "Ljigata", 1 class pasture, with a surface of 2 ar, 97 m ² ;
GSK-KPA-A-95/11 (KPA20165)	Parcel No. 808, at the place called "Ljigata/Kod Kuće", uncultivated, with a surface of 3 ar, 12 m ² ;
GSK-KPA-A-96/11 (KPA20166)	Parcel No. 824, at the place called "Ljigata", 2 class field, with a surface of 27 ar, 6 m ² ;
GSK-KPA-A-97/11 (KPA20167)	Parcel No. 827/4, at the place called "Ljigata", 1 class field, with a surface of 40 ar, 3 m ²
GSK-KPA-A-98/11 (KPA20168)	Parcel No. 832/1, at the place called "Ljigata", 2 class forest, with a surface of 6 ar, 16 m ² ;
GSK-KPA-A-99/11 (KPA20169)	Parcel No. 836/3, at the place called "Ljigata", 1 class field, with a surface of 3 ar, 45 m ² ; Cadastral No. 837/3, at the place called "Ljigata", 1 class pasture, with a surface of 24 ar, 9 m ² ;

Later during the proceedings, the claimant submitted the following documents:

- Death Certificate of the property right holder, issued on 26 October 2007 in Kralevo, Municipality of Vushtrri/Vucitrn, Republic of Serbia;

- Copy of Plan No. 953-1/2010-80, issued on 10 March 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;
- Copy of Plan No. 953-1/2010-182, issued on 28 May 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;
- Transcript No. 952-1/2010-2123 of Possession List No. 221, issued on 28 May 2010 by the Cadastral Office of Vushtrri/Vucitrn Republic of Serbia;
- Copy of Plan. 953-1/2010-284, issued on 24 August 2010;
- Copy of Plan No. 953-1/2010-312, issued on 15 September 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;
- Transcript No. 952-1/2010 -2783 of Possession List No. 53, issued on 27 September 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;

In March (KPA20167, KPA20168 and KPA20169) and August (KPA20163, KPA20164, KPA20165, KPA20166, KPA20167 and KPA20168) 2007, then in May (KPA20166 and KPA20165) and September (KPA20169, KPA20167, KPA20163) 2010, the KPA notification team went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. Almost all parcels were found occupied, except parcels 836/3 and 837/3 (KPA20169). The above-mentioned notifications were checked in May (KPA20166 and KPA20165) and September (KPA20169, KPA20168, KPA20167, KPA20164 and 20163) 2010 based on cadastral map, orthophoto and GPS coordinates and were found to be correct.

KPA requested the claimant to submit his father's birth certificate and asked him whether the inheritance procedure was initiated. The claimant responded that his father had passed away on 22 March 1993 and that no such inheritance procedures were ongoing.

Based on the submitted Possession List No. 221, the KPA officers found the Possession List No. 221 of the United Nations issued on 25 September 2007 by the Municipality of Vushtrri/Vucitrn for Cadastral Zone of Gracë/Grace, and the Certificate of the Immovable Property Rights No. UL-70202022-00221 issued on 27 August 2010 by Municipality of Vushtrri/Vucitrn, showing that that all claimed parcels were in possession of M.S.P. – father to the claimant – as the owner of these immovable properties. Both the claimant's birth certificate and the property right holder's death certificate could be verified.

On 20 October 2008, R.H. submitted a response to KPA, indicating that he bought the claimed parcels which are the subject of dispute in these cases and that he was the property right holder. He explained that he bought the immovable properties at stake from the claimant D.P., and that he entered an internal contract

with him on 18 May 2001, which, according to him, was not certified before the court due to the fact that courts were not operational at that time.

In the light of this ascertainment, the respondent presented an undated, unsigned and uncertified copy of a power of attorney given by S.P. (the property right holder's spouse and the mother to the claimant), whereby she authorizes her son – the claimant – to enter and sign on her behalf and in her interest a sales contract on 1/3 of ideal part of the immovable properties evidenced under the Possession Lists No. 221 and No. 222 respectively, and to accept the selling price contracted for these immovable properties.

Furthermore, the respondent provided a statement, which, according to him, was given by the claimant and was certified on 18 May 2001 before the Municipal Court in Vršac, Serbia, which reads that he accepted as his own the signature put on the sale contract. The KPA verification report, dated 8 December 2010, confirms the fact that this statement was given by the claimant before the Municipal Court of Vršac on 18 May 2001 under the number VR. Nr. 1085/2010.

On 10 November 2010, the claimant provided the KPA with his statement, emphasising that the immovable properties evidenced under the name of his father M.P. were not sold, due to the fact that according to him nobody had a legal right to do so, denying that the power of attorney and his given statement were certified by himself as a heir of the immovable properties. Finally, in the same statement, the claimant underlined that S.P. - the property right holder's spouse (and the claimant's mother) was in possession of the claimed parcels until 30 December 2004, which corresponds with the day of her death.

The contacts between KPA and the claimant, dated 2 February 2010, 28 October 2010, 1 November 2010, 17 December 2010 and 3 February 2011 reconfirm the same statement given by the claimant that his mother and his family were in possession of the claimed properties until 2004. Further in this communication, the claimant states that the claimed properties were illegally occupied by the respondent following the death of his mother and that no inheritance procedure was initiated.

The Kosovo Property Claims Commission (KPCC) with its Decision KPCC/D/A/102/2011, dated 23 February 2011, rejected all claims since they were not under the KPCC jurisdiction. Article 32 of the decision, among other, stipulates the following “[t]he Claimant contends that his mother remained in possession of the properties until December 2004, well after the end of the armed conflict in”. Then, it reads as follows: “The Claimant confirmed that there had been no loss of possession as a result of the 1998-99 conflict, but that after his mother's death in 2004 the properties had been occupied by unknown persons. Under such circumstances, the Commission comes to the following conclusion: “the claims stand to be dismissed as falling outside the jurisdiction of the Commission”.

The decision was served to the claimant on 23 June 2011.

On 8 July 2011, the claimant (henceforth: “the appellant”) filed appeals with the Supreme Court, challenging the KPCC decision because of (a) erroneous determination of factual situation and (b) misapplication of the substantive law.

The erroneous determination of factual situation in the Commission’s decision according to the claimant lies in the incorrect quotation of his statement as in the following: “His deceased mother was in possession of the immovable properties until December 2004, when she passed away”, Furthermore, he underlines the following: “It is clearly incorrect the fact that this was supported in his statement”.

He further stated in his appeal that “He never said that his mother was in possession of the immovable properties until her death”. He further states that “His family lost possession of the immovable properties after they left Kosovo in 1999 and that they were not under their possession at the time when the claim was filed, as they are not today”.

Furthermore, in his appeal, he also refers to another decision of the Commission KPCC/D/R/23/2008, dated 28 August 2010 which refers to the claim KPA20162 (GSK-KPA-A-92/11) and which has to do with a house that is registered just like the other immovable properties under the Possession List No. 221, claiming that “*In this claim, the KPA did not establish the fact that his mother was in possession of the property until December 2004*”, underlining that “*It is not logical for someone to be in possession of the land but not in possession of the house. A rather different situation when someone possesses the house but not the land would be more logical*”. Thus, according to him, the KPA commission has ascertained and decided differently in similar cases.

The appellant requests the decisions on his appeals to be in his favour, in order for him to repossess the claimed properties and registered under the name of his father.

The appeal was served to the respondent (henceforth: “the appellee”) on 17 August 2011. The appellee did not respond.

The Supreme Court has joined the appeals.

Legal reasoning:

Joining the appeals:

Section 13.4 UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property provides that the Supreme Court can decide to join or merge the appeals when such joining or merging was duly decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section enables the Commission to join or merge the claims in order to deal with and render decisions when there are common legal issues and evidence in place.

Article 408.1, in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, applicable in the appeal proceedings before the Supreme Court of Kosovo pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, provides for the possibility of joining all appeals through a ruling if such joining contributes to the efficiency of proceedings.

In the text of the appeals filed by the appellant, the Supreme Court finds that the whole factual and legal ground, as well as the issue of evidence is completely the same in the 7 (seven) cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are based on the same explanatory statement and on the same documents. Furthermore, the legal reasoning given by the Commission on the claims is the same. So obviously it would be more efficient to join the appeals.

The appeals registered under the numbers GSK-KPA-A-93/11 to 99/11 are joined in a single case registered under the number GSK-KPA-A-93/11.

Admissibility of the appeals:

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision.

In the present cases, the KPCC decisions were served to the appellant on 23 June 2011, who was a party in the first instance proceedings, while his appeals were filed on 8 July 2011 that is in less than 30 days after the receipt of the notification of the KPCC's decision.

Therefore, the appeals are admissible.

The merits:

The Supreme Court observes that, based on the documents provided by the claimant and on the verification reports of the Executive Secretariat, the Commission has correctly assessed that the loss of possession over the claimed properties was not a result of circumstances connected with the armed conflict of 1998-1999 and it therefore rightfully decided when it dismissed the claims.

The Supreme Court wants to point out that the KPCC has not quoted the appellant incorrectly, as underlined in the appeals filed by him. In his handwritten statement of 10 November 2010, the appellant underlined that the property right holder's spouse, who was his mother, was in possession and use of the claimed properties until 30 December 2004, which time corresponds with the day of her death. Therefore, based on such situation, the Court finds that there was no erroneous determination of factual situation as a real ground for filing an appeal by the appellant.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In this case, however, the claimant has not proven that he was restrained from exercising the claimed ownership right because of the armed conflict of 1998/1999. The appellant does not confirm that he or his mother had to leave the property because of the armed conflict. On the contrary, the appellant states that his mother – the property right holder's spouse was in possession of the claimed parcels until 30 December 2004. Therefore, the facts given in his appeal seem to be more than contradictory to those being presented by him in the proceedings before the Commission and more than disputable.

Therefore, there is no sign or even any evidence that the claimant had lost the property as a result of the armed conflict in Kosovo in 1998/1999. On the contrary, the facts presented by the appellant give reason to believe that the property was lost after the death of his mother in 2004.

Therefore, since the claim does not fall within the KPCC jurisdiction, the KPCC did not decide on the appellant's ownership and thus there was no need to go into further consideration of this issue. In the light of the above, the Supreme Court finds that the KPCC decision does not contain any violations of substantive law, as another real ground assumed and determined for filing an appeal by the appellant.

The Supreme Court rejects the above-mentioned appeals and consequently based on the legal reasoning above, it confirms the KPCC decision.

Finally, this decision is without prejudice to the appellant's right to seek confirmation of the property right over the immovable properties that are subject of the dispute before a competent local court.

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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 50,000: € 300 (€ 50 + 0,5% of € 50,000).

These court fees are to be borne by the appellant who loses the case. According to Article 46 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. 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

Philip Drake, EULEX Chief-Registrar