

**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-090/12

**Prishtinë/Priština,
17 January 2013**

In the proceedings of:

E. K.

B. M./V. B..

F. K./K. P.

Appellant

vs.

Ž. Š.

B. S., 34

34000 J.

S.

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/100/2011 (case files registered at the KPA under the numbers KPA07200, KPA07199, KPA07194, KPA07201 and KPA07202), dated 20 February 2011, after deliberation held on 17 January 2013, issues the following

JUDGMENT

- 1- The appeal of E. K. against the decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case files registered at the KPA under the numbers KPA07200, KPA07199, KPA07194, KPA07201 and KPA07202), dated 23 February 2011, is rejected as ungrounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case files registered at the KPA under the numbers KPA07200, KPA07199, KPA07194, KPA07201 and KPA07202), dated 23 February 2011, is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 80 (€ eighty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 18 December 2006, Ž. Š filed five claims with the Kosovo Property Agency (KPA), seeking repossession of the property situated in the village Bardhi i Madh/Veliki Belaćevac in the place called "Brda suvi breg", cadastral parcels nos.: 156, 157, 158, 159 and 160. The claimant has stated that his mother P. Š. is owner of the properties which she had under possession but he had to leave because of the armed conflict of 1998/1999.

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

- Possession List No. 39 issued by the Republic of Serbia Geodesy Office on 15 December 2006, under the name of P. Š. in connection to five parcels – 156,157,158,159 and 160.
- Identification document of Ž. Š. dated 6 November 1988;
- Ruling T.nr.380/06 of the Municipal Court of Pristina dated 26 January 2007 where the claimant has been declared inheritor to 1/3 part of the claimed properties under the name of her mother;

- Death certificate issued by the Municipality of Fushë Kosovë/Kosovo Polje, dated 24 January 2007 by which it was established that P. Š. has died in Sllatinë të Madhe/Velika Slatina on 10 November 1988, and
- Certificate of the ownership rights over the immovable property UL-72514009-00039 dated 27 September 2007, by which it was established that the claimed immovable properties are registered under the name of P. Š. referring to the following cadastral parcels:

The KPA Executive Secretariat verified positively the documents.

Number of appeal and KPA case file	Data of the claimed parcels
GSK-KPA-A-90/12 (KPA07200)	Parcel No. 157, at a place called “Brda Suvi Breg”, a 5 th class field with a surface of 0. 25. 88 ha
GSK-KPA-A-91/12 (KPA07199)	Parcel No. 156, at a place called “Brda Suvi Breg”, a 2 nd class forest with a surface of 0. 06. 53 ha
GSK-KPA-A-92/12 (KPA07194)	Parcel No. 158, at a place called ”Brda Suvi Breg”, a 2 nd class vineyard with a surface of 0.07.16 ha
GSK-KPA-A-93/12 (KPA07201)	Parcel No. 159, at a place called “Brda Suvi Breg”, 5 th class field with a surface of 0. 24. 57 ha
GSK-KPA-A-94/12 (KPA07202)	Parcel No. 160, at a place called “Brda Suvi Breg”, pasture with a surface of 0. 08. 39 ha.

The KPA informed the potential interested parties about the existence of the claims by placing notifications in the parcels which are subject of the five claims as follows: on 4 September 2007 for cadastral parcels 157, 159 and 160; on 31 December 2007 for the cadastral parcel 156, and on 5 September 2007 for cadastral parcel 158.

With Decision KPCC/D/A/13/2008 dated 30 April 2008, the KPCC has admitted that the claims are grounded by recognizing the claimant’s ownership to 1/3 of claimed agricultural properties and by deciding

to return these immovable properties to repossession envisaging compulsory execution. The Commission has established that the provided documentation legitimates the claimant as a lawful owner.

With Resolution KPCC/RES/15/2010 dated 19 February 2010, the KPCC has annulled its decision KPCC/D/A/13/2008 dated 30 April 2008 as far as it regards case files registered under the nos.: KPA07200, KPA07199, KPA07194, KPA07201 and KPA07202, because it turned out that the notification from 2007 was wrong, the notification signs had been placed in different parcels. In order to ensure accurate notification of the cadastral parcels and to give to any person that may have legal interest the possibility to respond to the claim(s) regarding the properties in question, as foreseen in Article 10.1 of the UNMIK Regulation 2006/50 amended with Law no. 03/L-079 the KPA had to perform a new notification.

The KPA Executive Secretariat did not re-notify physically the claimed parcels. Instead, on 21 June 2010 the Secretariat made a notification by a publication in the KPA official gazette no. 4. The gazette has been displayed in different places: shop "Lindi" in Slatinë e Madhe/Velika Slatina, Municipality Assembly of Fushë Kosovë/Kosovo Polje, Cadastral Office of Municipality of Fushë Kosovë/Kosovo Polje as well as Pristina Municipality Court.

Within 30 days of the notification by publication no one responded to the claims.

With Decision KPCC/D/A/100/2011, dated 23 February 2011, the KPCC admitted that the claims are grounded by recognizing the claimant's ownership to 1/3 of claimed agricultural properties and by deciding to return these immovable properties to repossession envisaging compulsory execution. The Commission established that the provided documentation legitimates the claimant as a lawful owner.

The decision was served to the claimant on 24 January 2012. On 13 July 2012 E. K. filed an appeal. On 03 September 2012 the claimant submitted a response to it.

The appellant considers that the appealed decision is based on erroneous and incomplete determination of the factual situation and contains essential violations of procedural and substantial laws. He alleges that he has bought the disputed parcels from P.a and her son M. Š. in 1984. Witness to this transfer was B K.. The appellant claims that the contract was destroyed during the war. He asserts that he did not know about the claims regarding the properties until 28 May 2012 when he met several official persons in the properties.

The claimant in his response to the appeal alleges that the appellant did not inform of his legal interest to participate in the proceedings within the deadline of 30 days after being notified on the filed claims, in

accordance with Article 10.2 of UNMIK Regulation 2006/50 the claimant therefore proposes to the Supreme Court in accordance with Article 13.3 of the UNMIK Regulation 2006/50 to dismiss the appeal as impermissible. Additionally, if eventually his brother M. Š. has sold anything, he could have sold only his share of the property which was co-owned but not their share. He considers that the appeal must be rejected also on this ground.

The Supreme Court has joined the cases.

Legal reasoning:

Joining the cases:

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 merger 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.

Provisions of the Law on Civil 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, then those of Article 408.1 in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, provide for the possibility of joining all appeals through a court 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 grounds, as well as the evidentiary issues are completely the same in these five cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are grounded on the same explanatory statement and on the same documents. Furthermore, the legal reasoning given by the Commission on the claims is the same.

The cases registered under the numbers GSK-KPA-A-90/12, GSK-KPA-A-91/12, GSK-KPA-A-93/12, and GSK-KPA-A-94/12 are joined in a single case registered under the number GSK-KPA-A-90/12.

Admissibility of the appeal:

The appeal is admissible. With Resolution KPCC/RES/15/2010 dated 19 February 2010, the KPCC has annulled its decision KPCC/D/A/13/2008 dated 30 April 2008 as far as it regards case files registered under the nos.: KPA07200, KPA07199, KPA07194, KPA07201 and KPA07202. Afterwards the Executive Secretariat had to perform an accurate re-notification(s) of the parcels in accordance with art. 10.1 of the UNMIK Regulation 2006/50 amended with Law no. 03/L-079. The re-notification had to ensure that potential third parties will be properly informed about the claims and will have the possibility to inform the KPA about their legal interest in the matter. The law in section 10.1 provides that the Secretariat shall “make reasonable efforts to notify any other person who may have legal interest in the property”. It does not provide for a specific description of what “reasonable efforts” means with the exception that “in appropriate cases, such reasonable efforts may take form of an announcement in an official publication”. The grammatical interpretation of the text invokes the conclusion that publication is rather an exception than a rule and that the rule itself has to be deducted on the basis of common logic and existing customs. It is up until now accepted that by rule the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the notification is considered correctly done and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise. In this particular case the Executive Secretariat did not perform a proper notification of the properties, therefore it can be concluded that the appellant was not properly informed about the claims and could not take part in the proceedings in front of the KPA.

As a result the appellant’s right to appeal has not been precluded.

On the merits:

The Supreme Court after evaluating the file, the appealed decision and the allegations of the appellant considers that the appeal is unfounded. According to Certificate of the Ownership Rights over the Immovable Property UL-72514009-00039 dated 27 September 2007 of the Cadastral Office of Fushë Kosovë/Kosovo Polje the claimed properties such as: 156, 257, 158, 159 and 160 are registered in the name of P. Š.– claimant’s mother. In addition, after her death, the Municipal Court of Pristina with its ruling T.nr.380/06 dated 26 January declared the claimant as inheritor to 1/3 part of the claimed properties.

The appellant's allegations that he has bought the claimed immovable properties from P. and his son M. Š. in 1984 and that during the transaction B. K. was present do not represent valid and legal evidences to confirm the ownership right over claimed properties as stipulated in article 4 paragraph 2 of the Law on Transfer of Immovable Property (Official Gazette of RS no. 43/81) and article 36 of the Law on Ownership and Other Real Rights. According to this legal provision in order to acquire the ownership right over a given property one needs a written contract, legalized by the competent authority. In the concrete case such contract has never been concluded. So, the appellant's allegation are unfounded, unaccepted and as a result of this in contradiction with legal provisions. These allegations are also in contradiction with valid and verified relevant facts and with the evidenced administered within the KPA administrative proceedings.

Therefore, the Supreme Court concludes that the KPCC decision is right and lawful and that the same contains sufficient reasoning for the factual determination background of the law based decision. The appealed decision does not contain any essential violations of the material and procedural laws foreseen by the Article 12.3 of the UNMIK Regulation 2006/50 amended with Law 03/L-079.

As a consequence of this and based on the Article 13.3 (c) of the UNMIK Regulation 2006/50 amended with Law 03/L-079, the appeal stands to be rejected.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of the Administrative Direction (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 (10.1 and 10.21 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated at € 10.000,00 and is € 50,00.

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 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 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