

**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-015/13

**Prishtinë/Priština
25 June 2013**

In the proceedings of:

D. R.

Vrnjačka Banja
Serbia

Appellant,

as legal successor of **M. R.**

Claimant

vs.

A. M.

Vushtrri/Vučitrn

Appellee/Respondent

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/149/2012 (case files registered at the KPA under Nos. KPA41351, KPA41352, KPA41353 and KPA41354), dated 19 April 2012, after deliberation held on 25 June 2013, issues the following

JUDGMENT

- 1- The appeals filed by D.R. on 8 February 2013, and registered under numbers GSK-KPA-A-015/13, GSK-KPA-A-016/13, GSK-KPA-A-017/13 and GSK-KPA-A-018/13, are joined in a single case under number GSK-KPA-A-015/13.

- 2- The appeals filed by D. R. against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012, as far as it regards cases registered at the KPA under Nos. KPA41351, KPA41352, KPA41353 and KPA41354 are dismissed as belated.

- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 30 (thirty euro) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 6 November 2007, M. R. (hereinafter “the claimant”) acting as a family member of D. R. filed several claims with the Kosovo Property Agency (KPA), which are the subject of this judgment and with which he seeks confirmation of ownership, repossession and compensation. He explained that the claimed properties had been lost on 16 July 1999 and that the loss was as a result of the circumstances 1998/1999 in Kosovo.

The data of the claimed parcels are the following:

Number of appeal and KPA case file	Data of the parcels
GSK-KPA-A-015/13 (KPA41351)	Parcel number 537/2, located in Vushtrri/Vučitrn, cadastral zone Reznik/Resnik, pasture 4 th class with a surface of 2 ha 3 ar 7 m ² ;
GSK-KPA-A-016/13	Parcel number 538, located in Vushtrri/Vučitrn, cadastral zone

(KPA41352)	Reznik/Resnik, pasture 4 th class with a surface of 0 ha 20 ar 5 m ² ;
GSK-KPA-A-017/13 (KPA41353)	Parcel number 540/3, located in Vushtrri/Vučitrn, cadastral zone Reznik/Resnik, pasture 4 th class with a surface of 0 ha 8 ar 20 m ² ;
GSK-KPA-A-018/13 (KPA41354)	Parcel number 547, located in Vushtrri/Vučitrn, cadastral zone Reznik/Resnik, pasture 3 rd class with a surface of 0 ha 4 ar 60 m ² ;

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

- Possession List no. 58, issued on 18 October 2007 by the Directorate for Cadaster and Immovable Property of the Municipality of Vushtrri/Vučitrn (listing the claimed properties in the name of the property right holder D. R. - claimant's mother);
- Claimant's Birth Certificate no. 296, issued on 31 August 1955;
- Death Certificate no. 203-2/201 of Property Right Holder (D. R.), issued on 19 July 2006;
- Claimant's Statement dated 29 April 2009 (stating that the respondent's allegations are not true).
- Records on savings from Bank "Jogobank" in the name of the claimant; and
- Claimant's ID card no. 8569, issued on 17 February 1983.

The KPA *ex officio* found Certificate for the Immovable Property Rights UL-70202054-00058, issued on 7 November 2008 by Municipal Cadastral Office of Vushtrri/Vučitrn, showing that the Property Right Holder - claimant's mother, was the owner of the claimed parcels. ID cards and submitted certificates have been found and verified positively as well.

Latter on the claimant in 2009 and 2011 stated that the allegations of the respondent over the claimed parcels are not true and that he never sold the properties to him. He added that he regularly used the claimed properties until the NATO air campaign ended. The claimant also stated that the respondent started to use the claimed properties only after said campaign and not before as he asserts from 1986.

In all cases the KPA officers in June 2008 went to the places where parcels No. 537/2, 538, 540/3 and 547 allegedly were situated and put up on each parcel a sign notifying of the claim and informing that anyone claiming legal right to the parcel might come forward and take part in the proceedings before the KPA. Later on the notifications were checked based on the cadastral plane, ortophoto and GPS coordinates and were found to be correct.

On 2 July 2008, after receiving the notification of the claim, the respondent signed the application for taking part in the proceeding. He claimed a legal right to the claimed properties.

On 29 October 2008, in his reply to the claims, the respondent stated that he bought the disputed properties from the claimant. He proposed the KPA to request from the claimant a booklet of "Jugobanka" of 1986, by adding that through this Bank in Mitrovicë/Mitrovica he paid to the claimant the amount of 12 million dinar as part of the purchase price in regards to one of the claimed property, while the rest of 30 million dinars he paid -this sentence is not clear. In addition he requested from the KPA to review the case as soon as possible.

To support his allegations the respondent provided the KPA amongst others with the following documents:

- Possession List no. 58, issued on 18 March 1988 by the Directorate for Property Issues of Municipality of Vushtrri /Vuçitër (listing the claimed properties in the name of the property right holder);
- Decision no. 133, issued on 2 July 1946 by the Commission on Revision of Agrarian Reform (showing that the claimant's father – P. R., was recognized the right over the land consisted of two parcels);
- Decision no. 466-22, issued on 18 March 1988 by the Directorate for Property Issues of Municipality of Vushtrri/Vuçitër (referring to the illegal occupation of one part of the cadastral parcel no. 530 by the respondent);
- Decision no. 466-28, issued on 18 March 1988 by Directorate for Property Issues of the Municipality of Vushtrri/Vuçitër (referring to the illegal occupation of one part of the cadastral parcel no. 645 by the respondent);
- Power of Attorney (PoA) dated 16 June 2008, certified only with a lawyer's stamp (through which the respondent authorizes his lawyer N. B., to represent his interests before the KPA);
- ID card no. 797/2003 in the name of the respondent's representative, N. B., issued by Chamber of Advocate of Kosova/Kosovo; and
- ID card no. 2005198057, issued on 29 May 2001 in the name of the respondent.

Except the ID cards which was positively verified, the KPA considered the verification of other above mentioned documents unnecessary.

On 29 October 2008 the respondent declared that the following: " [.....] *during the period between June and July 1986, I do not remember the exact date, together with my brother Rr. have bought the immovable properties [claimed parcels – subject matter of the claims with the numbers KPA41351, KPA41352, KPA41353 and KPA41354] of D.R. formerly from Reznik. [.....] she informed us that she was selling the stated immovable property, [.....]. My brother and I*

went to her house and we were also accompanied by our neighbor Sh.C. from Reznik/Resnik. [.....] D. was together with her son M. R. and in the course of the conversation she offered us the price for the immovable property which they said to be around 4.00.00 ba. We agreed to buy this immovable property for the amount of 150,000.00 Dinars. On that day I paid the amount of 30,000.00 Dinars on cash and the rest we agreed I pay on autumn 1986. I paid the amount of 120,000.00 to D. son, Mr. M. R. in autumn 1986 through Jugobanka in Mitrovica which he then transferred to his Jugobanka Card. [.....] M.R. told me that he will make the transfer of the immovable property right to our name as soon as that became possible because the state at that time prohibited the sale of immovable property belonging to Serbians and that was the reason why the stated immovable property was not transferred to my name [.....]”.

On 15 November 2010 the respondent once again repeated his allegations that he bought the claimed parcels number 537/1 (subject matter of the claim KPA41350), 537/2 (subject matter of the claim KPA41351), 538 (subject matter of the claim KPA41352), 547 (subject matter of the claim KPA41354) and 540/3 – part of the parcel 540 (subject matter of the claim KPA41353). He finally added that he possessed and used these parcels ever since he purchased them.

On 22 November 2011 the KPA asked the respondent’s representative (N.B.) to present the documents which proves that the respondent, A. M. purchased the claimed properties from the claimant’s mother D. R.. He replied that the respondent does not have documents as there is no purchase contract concluded at that time, stating that the respondent only gave the purchase price through “Jugobanka” to the claimant. He added that they found a decision from 1945 which shows that the claimed properties during implementation of agrarian reform were taken from the respondent’s family and given unlawfully to the claimant’s family. Moreover, he asserted that in 1986 the respondent purchased the claimed properties from the claimant’s mother since these properties before belonged to his (respondent’s) family. Finally he stated that the respondent does not have other evidence to submit, except a witness who can testify that transaction.

On 29 February 2012, during its 27th session, the Commission ordered an oral hearing regarding the mentioned claims by one of its members pursuant to section 5.4 Annex III on UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. Both parties and the respondent’s witnesses were invited to attend the oral hearing on 29 March 2012 in the KPA. Within this hearing the respondent again (as in the previous statements) repeated that he and his brother H. M. purchased the claimed properties from the claimant’s mother in 1985 for a purchase price of 150 million dinars. He added also that he and his brother paid the purchase price in two installments. At the hearing the respondent’s representative N.B. and two witnesses proposed by the first (Sh. C. and I. M.) were present.

As the claimant was not able to attend this hearing in Prishtinë/Priština, on 3 April 2013 another hearing was organized in Mitrovicë/Mitrovica and the claimant took part in it. The claimant stated that he is not interested in pursuing the claims KPA41351, KPA41352, KPA41353 and KPA41354, but he is interested in another parcel which is subject matter of the claim KPA41350 (which was decided by another Commission's Decision KPCC/D/A/148/2012 – not by the appealed decision).

With its decision KPCC/D/A/149/2012 of 19 April 2012, the KPCC refused claims KPA41351, KPA41352, KPA41353 and KPA41354. The claimant, who had described the litigious parcels by culture, surface and by a parcel number, had not proven his ownership or any other property right over the claimed properties immediately prior to or during the 1998-99 conflict.

According to the presented death certificate the claimant died on 26 November 2012. The decision was served to his legal successor, his son D.R. on 21 December 2012. On 8 February 2013 D. R. filed an appeal against the decision, asking the Supreme Court to accept his appeal and revise the challenged decision of the Commission by accepting the claims and decide that he is the owner of the immovable properties, or to dismiss the challenged decisions and return the case to the first instance body for a retrial.

The decision was served to the respondent on 4 December 2012. On 9 January 2013 the respondent submitted another submission named “additional arguments” named in the KPA cover letter “written appeal”). In the first part of the documents he repeated the same allegations as in the previous statements. In the second part he referred to the parcel no. 537/1 which is the subject matter of the claim number KPA41350 (and is not subject to the review of this judgment)

The Supreme Court has joined the cases.

Legal reasoning:

Joining of the appeals:

Section 13.4 of 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 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, 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 in addition to a different number of the case which the relevant appeal is exactly filed for, the whole factual and legal ground, as well as the issue of evidence is completely the same in all 4 (four) 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.

Appeals registered under the numbers GSK-KPA-A-015/13 until GSK-KPA-A-018/13 are joined in a single case registered under the number GSK-KPA-A-015/13.

Admissibility of the appeals:

The Supreme Court of Kosovo considered the appealed judgment pursuant to provisions of Article 194 of LCP, and following the assessment of the case files and the appellate allegations found the following:

The appeals are inadmissible because they were filed outside the legal time frame pursuant to Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, which provides that a party may submit an appeal within thirty (30) days of the notification of the decision. The decision was served to the appellant D.R. on 21 December 2012. He filed the appeals on 8 February 2013. The deadline for submitting appeals was 21 January 2013 (Monday) . In this case the appeals were filed after that date – on 5 February 2013, which means that they are belated. Therefore, in accordance with article 196 of the LCP, since the appeals were filed outside of the legal time frame, they had to be dismissed

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;

These court fee is to be borne by the appellant/claimant who filed belated appeal . 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. 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 within 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 legal remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

rs Nufer, EULEX Registrar