

**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-287/13

**Prishtinë/Priština,
16 July 2014**

In the proceedings of:

S. J.

Montenegro

Appellant

vs.

Respondent/Appellee

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Dag Brathole, Judges, on the appeals against the decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 (case files registered at the KPA under the numbers KPA 28749, KPA 28750 and KPA 28751), dated 13 February 2013, after deliberation held on 16 July 2014, issued the following:

JUDGMENT

1. The appeals of S. J. filed against the decision KPCC/D/A/188/2013 (case files registered at the KPA under KPA 28749, KPA 28750 and KPA 28751), dated 13 February 2013, are dismissed as inadmissible.
2. The decision of Kosovo Property Claims Commission KPCC/D/A/188/2013 (case files registered at the KPA under KPA 28749, KPA 28750 and KPA 28751), dated 13 February 2013, is confirmed.

Procedural and factual background:

1. On 18 May 2007, Ž. J, in the capacity of family household member of the alleged property right holder, filed three claims with the Kosovo Property Agency (KPA) registered at the KPA under KPA32470, KPA32472 and KPA 32473, seeking the re-possession right. She claims that her deceased father-in-law N. J. is registered as the owner of the claimed immovable properties.
2. To support her claim, she provided the KPA with the following documents:
 - Identification Card issued on 21 July 2003 by the Commissariat for Displaced Persons of the Republic of Montenegro.
 - Copy of plan issued by the competent authority of the Municipality of Podujevo, dated 11.2.1964.
 - Extract from the death registry issued by the competent authority of the Municipality of Podgorica, Republic of Montenegro, no. 09-UPI-204/10/9594, for Ž. J, which shows that Ž. J. passed away on 14 March 2009, in Podgorice, Republic of Montenegro.
 - Identification Card of Ž.J. issued by the competent authority of Kurshumlia, no. 97424, dated 24 August 1996.
3. The Executive Secretariat of the Kosovo Property Agency has ex officio obtained the possession list no. 1 issued by the Department of Cadastre, Geodesy and Property of Municipality of Podujevo, on 28.2.2008, which establishes that cadastral parcel no. 2 at the place called “Lugina-livadhi i epërm” with the surface of 0.83.65 ha, is registered under the name of Milacić Paun from the village of Ballovc. Likewise, the same Secretariat has retrieved the certificate of the immovable property right, from the Cadastral Office in Podujevo, UL-71712004-00001 dated 14 July 2011, which shows that M. P. is registered as the owner of mentioned immovable property.

4. The Executive Secretariat of the Kosovo Property Agency has ex officio obtained the possession list from the Department of Cadastre, Geodesy and Property, dated 29 January 2002, which establishes that cadastral parcel no. 3, located at the place called “Lugina-livadhi” with the surface of 01.64.75 ha is registered under the name of Rr. R.. As to the cadastral parcel no. 3 as well as for cadastral parcel no. 2, the property right holders have been registered since 1987.
5. According to copy of plan of Cadastral Zone “Ballove” dated 12.9.1964, the cadastral parcels are as follows:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-287/13 (KPA28749)	Parcel no. 3/1, at the place called “Livadhet e Milaqiqit” a 4 th class field with a surface of 01.50.00 ha
GSK-KPA-A-288/13 (KPA28750)	Parcel no. 3/1, at the place called “Milaqiqeve livade” a 3 rd class meadow with a surface of 0.50.00 ha
GSK-KPA-A-289/13 (KPA28751)	Parcel no. 2/1, at the place called “Milaqiqeve livade” a 4 th class field with a surface of 04.56.00 ha

6. According to the verification and confirmation report, the Verification Team of Kosovo Property Agency carried out the notification of cadastral parcels which are subject of the claim as follows:
- For the claim KPA 28749 referring to cadastral parcel no. 3/1, notification was carried out on 24 September 2010.
 - For the claim KPA 28750 referring to cadastral parcel no. 3/1, notification was carried out on 1 February 2008 and re-notification with publication on 24 September 2010, whereby it was ascertained that the claimed property was not occupied.
 - For the claim KPA 28751 referring to cadastral parcel no. 2/1, notification was carried out on 2 January 2008 and re-notification with publication on 24 September 2010, whereby it was ascertained that the claimed property was not occupied.
7. According to the verification report dated 28.2.2008, the Verification Team of Kosovo Property Agency found that according to stated possession list, the claimed properties are registered under the name of M. P. and Rr. R.
8. Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/A/288/2013 dated 13 February 2013, decided to dismiss the claims of Ž. J, with the reasoning that the claimant has failed to provide any evidence that her father-in-law in the capacity of the property right holder is actually a legitimate property right holder over the claimed property. The KPCC based its decision on the following reasons: The Executive Secretariat has ex officio obtained evidence that those

properties are registered under the name of other persons. Furthermore, the claimant has never been a member of the family household pursuant to Section 1 and 5 of UNMIK Administrative Direction no. 2007/5 as amended by Law no. 03/L-079, in order to have a right to file a claim on behalf of the alleged property right holder. In addition, the claimant has failed to provide a valid power of attorney to undertake legally valid actions on behalf of her father-in-law, in the capacity of the alleged property right holder.

Allegations of the appellant:

9. The appellant S. J. in her appeals filed alleges that the appealed decision does not contain reasoning on the legal rights. This is because the properties are registered under the name of her mother-in-law Ž. J., and she and her children have therefore the right on parts of those immovable properties. Together with the appeal, she presented also an extract from the death registry for Ž. J. as well as a copy of her identification card.
10. The appealed decision was served on S. J., in the capacity of the appellant, on 16 August 2013, whereas she filed an appeal on 11 September 2013.

Legal reasoning:

Joining of the appeals:

11. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereafter referred to as Law No. 03/L-079) the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section allows the Commission 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.
12. The provisions of Law on Contested Procedure that are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No. 03/L-079, as well as provisions of Article 408.1 as read with Article 193 of Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
13. In the text of appeals filed by the appellant, the Supreme Court finds 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 3 (three) cases. Only the parcels, subject 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 legal reasoning on the claims provided by the Commission is the same one.

14. The appeals registered under the numbers GSK-KPA-A-287/2013 to GSK-KPA-A-289/2013, are joined in a single case under the number GSK-KPA-287/2013.

Admissibility of the appeals:

15. The Supreme Court of Kosovo reviewed the appealed Judgment pursuant to provisions of Article 194 of LCP, and after the assessment of allegations in the appeals it found that:

The appeals are impermissible.

16. Based on case file submission it results that claims were filed by Ž. J., in the capacity of the family household member of the alleged property right holder, respectively her deceased father-in-law.
17. The claimant and the Executive Secretariat of the KPA have not obtained ex officio the evidence that she or her father-in-law N. J. is the alleged property right holder over the properties subject of claims. According to the possession list no. 1 of the Department of Cadastre, Geodesy and Property, dated 28 February 2008, also possession list no. 2 of the Department of Cadastre, Geodesy and Property, dated 29 January 2002, M. P. respectively Rr. .R. are registered as owners over the claimed properties.
18. On 15 March 2010 and 1 April 2010, the Executive Secretariat of the KPA has requested from the appellant S. J. to submit a valid power of attorney to file an appeal at the Supreme Court against the decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 dated 13.2.2013, but she submitted only the extract from the death registry dated 20.08.2013 and identification card dated 26.12.2012.
19. From such a determined factual situation, it results that the appellant is not a family household member of the alleged property right holder over the claimed property pursuant to Section 1 and 5 of UNMIK Administrative Direction no. 2007/5 as amended by Law no. 03/L-79, and he has not submitted a valid power of attorney on the right to file the said appeals either.
20. Therefore, in the light of foregoing, the Supreme Court of Kosovo dismissed the appeals as impermissible pursuant to Article 186 para 3 in conjunction with Article 196 of LCP. This is because the appellant was not authorized to file them; respectively she neither presented nor possessed valid power of attorney to file the appeals. Pursuant to emphasized legal provision, it is envisaged that the appeal is impermissible if filed by an unauthorized person, as in the respective case.

21. Given that the alleged property right holder and the claimant have died, and that the appellant is not a member of their family household, pursuant to Section 1 and 5 of UNMIK Administrative Direction no. 2007/5 as amended by Law no. 03/L-79, and also because she did not submit a valid power of attorney on the right to file the said appeals, pursuant to Article 196 of the LCP, these appeals are dismissed as impermissible.
22. In the light of foregoing, pursuant to Section 13 para 3 subpara b) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, with the dismissal of filed appeals, it is decided as in the enacting clause of this judgment.

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.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar