

**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-006/14

Priština/Prishtinë

21 October 2015

In the proceedings of:

D. S.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Rolandus Bruin, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 dated 14 December 2012 (case files registered at the KPA under nos. 37501, 37502, 37503), after deliberation held on 21 October 2015 not unanimously issues the follows

JUDGMENT

1. The appeals filed by D. S., registered under the numbers GSK-KPA-A-006/2014, GSK-KPA-A-007/2014 and GSK-KPA-A-008/2014, are joined in a single case under the number GSK-KPA-A-006/2014.
2. The appeals of D. S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 dated 14 December 2012, with regard to the claims registered with KPA under Nos. KPA37501, KPA37502 and KPA37503, are rejected as unfounded.
3. The decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 dated 14 December 2012, with regard to the claims registered with KPA under Nos. KPA37501, KPA37502 and KPA37503, is confirmed.

Procedural and factual background

1. On 3 August 2007, D. S. (henceforth: the claimant) acting on behalf of her late brother M. D., filed three separate claims with the Kosovo Property Agency (KPA), registered under case no. KPA37501, KPA37502 and KPA37503, seeking confirmation of ownership right.
2. In the claims, it is stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 17 June 1999 as the date of loss.
3. To support her claim, she provided the KPA with the following documents:
 - Death Certificate no. 201-1129/2007-01 issued by Civil Registration Office of the Municipality of Backa Topola on 20 February 2007, showing M. D. passed away on 19 October 2006.

- Possession List no 540 issued on 25 July 2007 by Geodesic Institution of Serbia, Centre for Cadastre of Immovable Property in Lipjan/ Lipljan, where the cadastral parcel 834 was registered on the name of M. D. as the sole owner.
 - Possession List no 190 issued on 25 July 2007 by Geodesic Institution of Serbia, Centre for Cadastre of Immovable Property in Lipjan/ Lipljan, where the cadastral parcel 370 was registered on the name of M. D. as the sole owner.
4. According to both Possession Lists of the Center for Cadaster, Geodesy and Property of the Municipality of Lipjan/Lipljan, the cadastral parcels claimed by the claimant, located in the Municipality of Lipjan/Lipljan, are registered in his name, notably:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-006/14 (KPA37501)	Possession List no 540, Parcel no.834, at the place called "Livada", a 2 nd class cultivated land with a surface of 00.67.30 ha
GSK-KPA-A- 007/14 (KPA37502)	Possession List no 190, Parcel no. 370 at the place called "Kod Groblja Njivće", a 4 th class cultivated land with a surface of 00.57.92 ha
GSK-KPA-A-008/14 (KPA37503)	Possession List no 190, Parcel no. 370, at the place called "Kod Groblja Dugačk", a 4 th class cultivated land with a surface of 00.97.87 ha

5. On 22 July 2010, KPA notified the claim no. KPA35701 by publishing it in the Notification Gazette no. 5 and in the UNHCR Property Bulletin Office. The Gazette and the List were left to Head of the village in Suhadoll/Suvi Do who agreed to make them available to the interested parties. The same publications were also left at the Municipal Court, Cadastral Office and Municipality of Lipjan/Lipljan and Prishtinë/Priština Regional Office, as well as in the Head Offices of UNHCR, Ombudsperson, KCA, DRC and UNMIK Office in Graçanicë/Graçanica.

The physical notification of the claims KPA37502 and KPA37503 was carried out on 19 April 2010 and the claimed properties were found occupied by unknown person.

6. Within the legal deadline of 30 days, pursuant to article 10.2 of the Law no. 03/L-079, no party has expressed an interest to take part in proceedings with regards to the property which is subject of the claim; therefore the claims were considered as uncontested.
7. According to the verification report, dated 12 December 2007, the claimed properties were found on the name of L.D. (wife of M. D.). The changes on cadastre were done based on

the inheritance decision no VI-0-864/06/8 dated 4 December 2006 which was obtained *ex officio* by Executive Secretariat of KPA.

8. The claimant has been contacted by Executive Secretariat and has been asked to submit the Power of Attorney issued by her brother's wife. The claimant said that she cannot get a Power of Attorney from her brother's wife since she does not have any contact with her.
9. On 14 December 2012, the Commission with its decision KPCC/D/A/180/2012 refused the claims with the reasoning that claimant has failed to show the ownership or any other property right over the claimed properties immediately prior to or during the 1998-1999 conflict.
10. On 27 August 2013, the KPCC decision was served on the claimant.
11. On 26 September 2013 May 2013, the claimant (hereinafter: the appellant) filed an appeal.

Allegations of the appellant

12. The appellant challenges the KPCC decision but her appeal except the numbers of the appealed claims she does not specify any reason for the appeal. Actually the appeal relates to other claim which was submitted by her before KPA.

Legal reasoning

Admissibility of the appeal

13. The appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible. The KPA Appeals Panel has the jurisdiction to examine the appeal.

Joining of the appeals

14. According to section 13.4 of Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. 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.

15. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the 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.
16. In the text of appeals filed by the appellant, the Supreme Court observes 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 four cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
17. The appeals registered under the numbers GSK-KPA-A-006/14, GSK-KPA-A-007/14, GSK-KPA-A-008/14 are joined in a single case under the number GSK-KPA-A-006/14.

Merits of the appeal

18. The Supreme Court of Kosovo reviewed the appealed decision pursuant to provisions of article 194 of LCP, and after the assessment of allegations in the appeals it found that:
19. Based on case file submission it results that claims were filed by D. S., in the capacity of the family household member of the alleged property right holder, respectively her deceased brother, M. D.
20. The appellant, however, could not prove that her brother was the property right holder.
21. According to the Certificates for Immovable Property Rights of the Municipal Cadastral Office of Lipjan/Lipljan, dated 12 December 2007, L. D. (wife of M. D.) is registered as owner over the claimed properties.
22. The Executive Secretariat of the KPA has requested from the appellant to submit a valid power of attorney to represent L.D. before KPA, but she declared that it is not possible to get the Power of Attorney from L. D. due to lack of family relations.

23. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported the claim. Based on this, the KPCC found that D. S. had failed to establish any property right over the disputed property.
24. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds the appeal unfounded.
25. In the light of foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal advice

26. Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar