

**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-193/2015
GSK-KPA-A-194/2015**

**Prishtinë/Priština
7 February 2018**

In the proceedings of:

N. D.

Appellant

Vs

L. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed Beshir Islami, Presiding Judge, Anna Bednarek and Isa Kelmendi, Judges, deciding on the Appeals against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC”) No KPCC/D/A/211/2013 of 21 August 2013 (the case files registered at the Kosovo Property Agency under the numbers KPA23643 and KPA23642) after the deliberation held on 7 February 2018 issues the following:

JUDGMENT

1. The Appeals filed by N. D, registered under the numbers GSK-KPA-A-193/2015 and GSK-KPA-A-194/2015 concerning the cases registered at the Kosovo Property Agency under the numbers KPA23643 and KPA23642 are joined in a single case under the number GSK-KPA-A-193/2015.
2. The Appeals filed by N. D. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/211/2013 dated 21 August 2013 regarding the cases registered at the Kosovo Property Agency under the numbers KPA23643 and KPA23642 are dismissed as belated.

Procedural and factual background

1. On 22 January 2007, L. M. (hereinafter “the Appellee”), filed two Claims with the Kosovo Property Agency (hereinafter “the KPA”) seeking the repossession of the properties, located in place called “Staro Selo” and “Vise Selo”, village Miloshevë/Miloševo, Municipality of Obiliq/Obilić (hereinafter “the claimed properties”, “the land parcels”). The Appellee alleged that the loss of possession over the properties occurred on 28 June 1999 due to the 1998-1999 circumstances and currently the properties are being occupied by N. D. In addition to the repossession, the Appellee seeks the compensation for his properties being used without his consent.
2. To support his Claims, the Appellee submitted to the KPA the following documents:
 - A copy of the Plan No 176 issued by the Department of Cadastre of the Municipal Assembly of Prishtinë/Priština on 22 June 1995 showing the claimed properties being registered under the name of the Appellee;
 - A copy of the Possession List No 176 issued by the Displaced Department for Cadastre of the Municipality of Prishtinë/Priština on 21 December 2006 showing the claimed properties being registered under the name of the Appellee.
3. The Executive Secretariat of the KPA notified the Claims: KPA23643 and KPA23642 on 13 November 2009, while the Claims: KPA23645 and KPA23641 on 18 November and 22 December 2009. The land parcels were found to be occupied by N. D. (hereinafter “the Appellant”) who had claimed legal interest to the claimed properties and signed a Notice of Participation.
4. The Appellant argued that he had bought the claimed properties from the Appellee himself. To support his allegations, the Appellant submitted to the KPA the following documents:
 - A copy of the Contract on Sale concluded on 6 February 2006 between L. M. (represented by the Lawyer B. Ç.) in a capacity of the seller of the claimed properties and N. D. in a capacity of the buyer. The Contract was legalized in September 2006 with the reference number 773/2006,
 - A copy of an Extract of the Possession List No 176, issued by the Department for Cadastre Geodesy and Property of the Municipality of Obiliq/Obilić on 7 September 2006, showing the claimed properties being registered under the name of the Appellee,
 - A copy of the Certificate for Immovable Property Rights No 00341 issued by the Municipal Cadastral Office of Obiliq/Obilić on 12 September 2006, showing the updated data regarding the claimed properties being registered under the name of the Appellant.

5. On 20 May 2010 the Appellee filled a written submission to the KPA and strongly denied the allegation that he had sold the claimed properties to the Appellant and insisted he had never signed the Contract on Sale and that the Power of Attorney through which he allegedly had authorized the lawyer to act on his behalf regarding the sale transaction was forged.
6. The Executive Secretariat of the KPA reacted on the Appellee's written declaration by addressing the issue of the forged Power of Attorney to the Ministry of Internal Affairs, Kosovo Forensic Agency. At its request, the KPA attached:
 - A Power of Attorney legalized before the Municipal Court of Lipjan/Lipljan on 7 February 2006 under the reference number 472/2006, through which L. M. authorized the lawyer B. Ç. to sell his properties, to undertake all necessary actions regarding the transfer of the property rights under the name of the buyer, to receive the purchase price and to collect all the necessary documents from the competent institutions.
7. Upon the request of the Executive Secretariat of the KPA, the Kosovo Forensic Agency rendered a Forensic Report No AKF/2012-3169/2012-2783 dated 11 March 2013. According to it the signature of L. M. under the document named "Power of Attorney" and the samples used for the expertise might not have been signed by same person.
8. The Verification Department of the Executive Secretariat of the KPA verified positively the Power of Attorney (verification under the No 472/2006) and the Contract on Sale No 773/2006 (verification under the No 773/2006), whereas the Certificate for Immovable Property Rights No 00341 issued by the Municipal Cadastral Office of Obiliq/Obilić was found updated under the name of the Appellant. The changes in the Cadastre were performed pursuant to the Contract on Sale.
9. On 21 August 2013, the Kosovo Property Claims Commission through its Decision KPCC/D/A/211/2013 (hereafter "the KPCC's Decision") established the Appellee's ownership and repossession right over the claimed properties and decided to return the claimed properties into the possession of the Appellee. In the reasoning of the Decision, the KPCC stated that the Power of Attorney could not be considered as sufficient evidence that the lawyer B. Ç. was duly authorized by the Appellee to sell the properties on his behalf and as such the alleged sale transaction must be considered as null and void. It followed from this that the updated Certificate for Immovable Property Rights identifying the Appellant as the owner of the claimed properties was erroneous and could not be considered as evidence of the Appellant's property rights.
10. The KPCC's Decision was served upon the Appellee on 24 December 2013, while the Appellant received it in person but he refused to sign the receipt on 10 December 2013. On 18 December 2014 the Appellant filed the Appeals against the KPCC's Decision with regard to the Claims listed below:

Appeal number and KPA case number	Data concerning the claimed parcel	Number and date of the decision
GSK-KPA-A-193/2015 (KPA23643)	Cadastral parcel 648, cultivated land with the surface of 00.15.96 ha, Staro Selo, Miloshevë/Miloševo	KPCC/D/A/211/2013 of 21 August 2013
GSK-KPA-A-194/2015 (KPA23642)	Cadastral parcel 305/1, pasture with the surface of	KPCC/D/A/211/2013 of 21 August 2013

	00.92.98 ha, Staro Selo, Miloshevë/Miloševo	
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Allegations of the Appellant

11. The Appellant states that the Decision of the KPCC contains fundamental error and misapplication of the applicable substantial and procedural law, as well as it rests upon an erroneous or incomplete determination of facts.
12. The Appellant alleges that he was invited by the KPCC on 15 December 2014 and in presence of his lawyer he has been informed that allegedly he refused to receive the KPCC's Decision. The Appellant added that according to the evidence in the case file the KPCC's Decisions were served on him on 10 December 2013. The Appellant declared that he never received the KPCC's Decisions; therefore, it was not possible and there was no reason to refuse them. According to the Appellant he has filed the Appeals after he had received the KPCC's Decision through his lawyer.
13. The Appellant strongly opposes the KPCC's Decision by alleging that he has bought the claimed properties and that fact could be proven by the Contract on Sale which was legalized before the Municipal Court of Prishtinë/Priština.
14. According to the Appellant, there was a criminal procedure ongoing against the lawyer B.Ç. and other persons based on the Indictment PP.nr. 319-8/11 of the Municipal Prosecutor's Office dated 3 March 2012, therefore the KPCC was not entitled to take a Decision until the criminal proceedings are final.

Legal reasoning

Joining of the Appeals:

15. According to Section 13.4 of UNMIK Regulation 2006/50 as amended by the 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.
16. The provisions of the Law on Contested Procedure that are applicable in the proceeding before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of the UNMIK Regulation 2006/50, as amended by the Law No 03/L-079, as well as pursuant to the provision of Article 408.1 as read in conjunction 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.
17. 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 six 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.

18. The Appeals registered under the numbers GSK-KPA-A-193/2015 and GSK-KPA-A-194/2015 are thus joined in a single case under the number GSK-KPA-A-193/2015.

Admissibility of the appeal

19. The Appeal is belated.
20. The Supreme Court reviewed the content all the case files and found two (2) receipts showing that the KPCC's Decisions were served on the Appellant twice: for the first time on 10 December 2013. The Appellant received the Decision, but refused to sign the receipt. For the second time, the Decision was served on 28 October 2014. The Decision was received by the Appellant's son, L. D.
21. Section 12.1 of Law No 03/L-079 provides as follows: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a Decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision".
22. The KPCC's Decision was served on the Appellant on 10 December 2013 for the first time and on 28 October 2014 for the second time. So the time limit to file an Appeal elapsed on 13 January 2014. Yet the Appellant filed his Appeal on 18 December 2014 meaning almost 1 (one) year after he had received the Decision for a first time. Moreover, even considering that only the second delivery was effective, the time limit to file an Appeal elapsed on 29 November 2014. In this case the Appeals were filed 2 months after the Appellant's son received the Decisions. Consequently, the Appeals were filed outside the time limit.
23. Even though, the Appellant was continuously active during the first instance proceedings, he alleged that he had never received the KPCC's Decisions, and had no legal interest in refusing to sign the receipt and copy of the Decision.
24. Section 6.3 in conjunction with the Section 6.5 (b) of the Administrative Direction 2007/5 on implementing UNMIK Reregulation 2006/50 as amended by Law No 03/L-079 provides that: the Executive Secretariat of the Kosovo Property Agency shall ensure that the service of the documents is effected at the address for service of that party either by the dispatch of a copy of the document by registered mail with a form for acknowledgement of receipt or by personal service of the copy against the receipt. In case of personal service of the document, if the addressee has refused to accept the document or to sign the receipt on the day of the attempted service, the person serving the document shall make a note of the refusal on the document and return it to the Executive Secretariat.
25. At the case at hand the officer of the Executive Secretariat of the KPA noted that the Appellant received the KPCC's Decision, but he refused to sign a receipt on 10 December 2013. On the basis thus of the provision quoted above the service was effected on that day.
26. Regarding other allegation of the Appellant that he received the KPCC's Decision through his lawyer, the Supreme Court is of the opinion that such allegation does not stand.
27. Pursuant to Section 5.3 of the Administrative Direction 2007/5 on implementing UNMIK Reregulation 2006/50 as amended by Law No 03/L-079, a lawyer acting for a party must submit to the Executive Secretariat of the KPA or the Registry of the Supreme Court a copy of the Power of Attorney granting the authority to represent such party in the proceedings before the Commission or the Supreme Court.

28. From the documents gathered in the case file it appears that the Appellant never engaged a lawyer to act on his behalf neither during the first instance nor during the appellate stage of the proceedings. There is absolutely no Power of Attorney attached neither to the case file nor to the Appeal.
29. Therefore the Appeal is to be dismissed on procedural grounds as belated pursuant to Section 13.3 (b) of the Law No 03/L-079 and Article 195.1 (a) and 196 of the Law No 03/L-006 on Contested Procedure.
30. Consequently the Supreme Court will not consider other allegations of the Appellant due to their irrelevance.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, acting EULEX Registrar