

**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-113/2015
GSK-KPA-A-117/2015
GSK-KPA-A-119/2015
GSK-KPA-A-124/2015
GSK-KPA-A-128/2015
GSK-KPA-A-130/2015**

**Prishtinë/Priština
7 June 2017**

In the proceedings of:

Ž. C.

Representative:
D. C. L.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed by Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeals against the Decision of the Kosovo Property Claims Commission (hereinafter “the KPCC”) No KPCC/D/R/231/2014 of 13 March 2014 (the case files registered at the Kosovo Property Agency under the numbers KPA29975, KPA44245, KPA44247, KPA44253, KPA44257, KPA44260) after the deliberation held on 7 June 2017 issues:

JUDGMENT

1. The Appeals filed by Ž. C, registered under the numbers GSK-KPA-A-113/2015, GSK-KPA-A-117/2015, GSK-KPA-A-119/2015, GSK-KPA-A-124/2015 and GSK-KPA-A-128/2015 and GSK-KPA-A-130/2015 concerning the cases registered at the Kosovo Property Agency under the numbers KPA29975, KPA44245, KPA44247, KPA44253, KPA44257 and KPA44260 are joined in a single case under the number GSK-KPA-A-113/2015.
2. The Appeals filed by Ž. C. against the Decision of the Kosovo Property Claims Commission No KPCC/D/R/231/2014 dated 13 March 2014 regarding the cases registered at the Kosovo Property Agency under the numbers KPA29975, KPA44245, KPA44247, KPA44253, KPA44257 and KPA44260 are dismissed as inadmissible due to the fact that they were filed by an unauthorised person.

Procedural and factual background

1. On 18 June 2007 and 19 June 2007, the Limited Liability Company “Kosmet Coning”, with its seat in Novi Sad, Republic of Serbia (hereinafter “the Claimant”), represented by Ž. P. C. (hereinafter “the Appellant”), as authorised representative in his position as the Director of the Claimant, filed several Claims with the Kosovo Property Agency (hereinafter “the KPA”) seeking the confirmation of its property rights over residential premises located in several floors in two buildings: A and B, which are claimed to have been constructed on the parcels No 7476/1 and 7480, in Prishtinë/Priština cadastral zone, “Dvarska 6” Street Dardania, near the bus station in Prishtinë/Priština (hereinafter “the claimed properties”).
2. In support of its Claims, the Claimant submitted to the KPA *inter alia* the following:
 - The copy of the Extract on Registration of Business Entity, of 31 December 1999, issued by the Agency for Business Registries of the Republic of Serbia regarding the registration of the Claimant with full name: Limited Liability Company Kosmet Coning for Planning, Construction Works and Engineering, No 08201366, with seat in Novi Sad, Republic of Serbia. The Appellant was registered as a founder and representative of the Claimant;
 - The copy of the Decision No 351-363/93-01 of the Prishtinë/Priština Municipal Assembly on Allocation of the City Construction Land for Use (the land parcels 7471/1 and 7480) dated 16 July 1993;
 - The copy of the Decision of the Secretariat for Urbanism, Construction and Protection of the Municipal Assembly of Prishtinë/Priština, granting permission to the Claimant to construct residential premises on the cadastral parcels 7476/1 and 7480, in Dardania in Prishtinë/Priština;
 - The copy of the Power of Attorney signed on 20 May 2008 by Ž. C, acting as “the Director and the owner” of L.L.C. “Kosmet Coning” from Novi Sad on the basis of which lawyer L. C. D. was authorised to represent the Appellant. The signature of the Appellant below the Power of Attorney was legalised by the Municipal Court in Kamenici on 20 May 2008 (Ov. 474/08);
 - The copy of the Certificate on Immovable Property Rights, dated 24 June 2011, indicating that land parcels Nos 7476/1 and 7480 are registered under the name of Prishtinë/Priština Municipality.

3. The KPA notified the Claims on 14 February 2008. The property claim at the Claim KPA29975 was found to be occupied by Ragip Mulaku who alleged that he bought the claimed property from Muharrem Broci. Muharrem Broci purchased the property from Desanka Miljkovic, with the latter having previously bought it from KEK. The property claimed at the Claim KPA 44247 was found occupied by Idriz Gashi who claimed legal right over the claimed property, stating that he has occupied the property from 1999 because of his housing needs. Further he claims that the KEK is the rightful owner of the property. The rest of the claims were contested by Kosovo Energetic Corporation–KEK, represented by Hamdi Damca, contend being owner of 17 apartments, based on the Contract on Construction that the KEK as investor had with the alleged owner as executor of construction. Considering that details of the properties included in the Contract of Construction that Appellee provided do not correspond with the actual description of the claimed properties as claimed by Appellant, the Secretariat included KEK as Appellee in all claims.
4. The Executive Secretariat of the KPA positively verified the documents listed in paragraph 2, additionally, ex officio, found the document as follows:
 - Copy of the Decision of the Commercial Court in Novi Sad (Republic of Serbia) No 139/2011, dated 1 August 2011, in which the reasons for the claimant's bankruptcy were considered. According to the enacting clause, the bankruptcy procedure was initiated because of permanent inability to repay the debts. Further, it is stated that creditors and debtor have no legal interest in implementing the bankruptcy procedure. The bankruptcy proceedings were concluded and the debtor's property, if there was any, according to the law was transferred under the ownership of the Republic of Serbia.
5. The Executive Secretariat of KPA established that Constitutional Court of R. of Serbia, through its Decision issued on 17 July 2012 found as non-constitutional the provisions based on which the Claimant bankrupted. The Decision of the Constitutional Court was published in Serbian Official Gazette on 25 July 2012, thus, almost a year following the bankruptcy of the Claimant, raising the question of retroactive character of the Decisions of the Serbian Constitutional Court. From the available evidences is confirmed that the Appellant did not file a proposal for revision of the Decision on bankruptcy within the prescribed period.
6. On 5 March the KPA notified the Claim to the Municipality of Prishtinë/Priština; however no Reply was filed by the latter Municipality.
7. The Executive Secretariat of the KPA obtained the information that the Decision of the Commercial Court in Novi Sad was final and binding as of 11 November 2011 and that the Claimant was expunged from the Registry of Business in the Republic of Serbia and it no longer existed.
8. Moreover, according to the statement of the Appellant himself and following the research in the registers of legal persons, the Appellant was not registered as a business entity in Kosovo.
9. On 13 March 2014, the Kosovo Property Claims Commission through its Decision KPCC/D/R/231/2014 (hereafter "the KPCC's Decision") dismissed the Claims. In the reasoning of the Decision, the KPCC noted that the Claims were filed by the legal entity "Kosmet Coning" Limited Liability Company with its registered seat in Republic of Serbia, in its capacity as the alleged property right holder. The Claimant was represented by its duly authorised legal representative, being at the same time the sole shareholder of the Corporation. As the Executive Secretariat of the KPA established that the Claimant went declared bankrupt in 2011 and subsequently was deleted from the register of commercial companies. As a consequence, the Claimant ceased to exist as a party in the procedure before the KPCC. The Commission further concluded, that "since the Claimant as a Limited Liability Company, possessed a legal personality separate from its owners (shareholders), the shareholder who filed these claims with the Commission on behalf of the

Claimant cannot be recognised as a legal successor of the Claimant in relation to the alleged property rights”.

10. The KPCC's Decision was served upon the Appellant on 16 July 2014. On 14 August 2014 he 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	<i>Number and date of the decision</i>
GSK-KPA-A-113/2015 (KPA29975)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 85 m ²	KPCC/D/R/231/2014 of 13 March 2014
GSK-KPA-A-117/2015 (KPA44245)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 85 m ²	KPCC/D/R/231/2014 of 13 March 2014
GSK-KPA-A-119/2015 (KPA44247)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 70 m ²	KPCC/D/R/231/2014 of 13 March 2014
GSK-KPA-A-124/2015 (KPA44253)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 80 m ²	KPCC/D/R/231/2014 of 13 March 2014
GSK-KPA-A-128/2015 (KPA44257)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 40 m ²	KPCC/D/R/231/2014 of 13 March 2014
GSK-KPA-A-130/2015 (KPA44260)	land parcel 7476/1, land parcel 7480 Prishtinë/Priština, Drvarska 6, with the surface of 70 m ²	KPCC/D/R/231/2014 of 13 March 2014

Allegations of the Appellant

11. The Appellant states that the decision of KPCC contains fundamental error or misapplication of the applicable substantial and procedural law, as well as it rest upon an erroneous or incomplete determination of facts, because the Appellant is the owner of the Claimant and at the same time the owner of claimed properties. In the opinion of the Appellant, the fact that Corporation does not exist as a legal entity any longer remains meaningless for the outcome of the case, as the claimed properties are private properties of the Appellant. Together with the Appeal, Ž. C. submitted the Power of Attorney granted to lawyer D. L. to represent him before the KPA.

Joining of the Appeals:

12. According to Section 13.4 of UNMIK Regulation 2006/50 as amended by 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.
13. The provisions of Law on Civil Procedure that are applicable in the proceeding before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No 03/L-079, as well as provision of Article 408.1 as read in conjunction with Article 193 of the Law No 03/L006 on Contested Procedure (hereinafter “the LCP”), provide for the possibility of joining of all claims through a ruling, if that would ensure court effectiveness and efficiency of the case.
14. 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.
15. The Appeals registered under the numbers GSK-KPA-A-113/2015, GSK-KPA-A-117/2015, GSK-KPA-A-119/2015, GSK-KPA-A-124/2015, GSK-KPA-A-128/2015 and GSK-KPA-A-130/2015 are joined in a single case under the number GSK-KPA-A-113/2015.

Legal reasoning

16. Following the review of the documents gathered in the case file, the Appellant’s allegations and after the assessment of the challenged Decision, pursuant to provisions of Article 194 as read in conjunction with Article 95 of the LCP, the Supreme Court found that the abovementioned Appeals of Ž.C. are to be dismissed as inadmissible on the basis of Article 186.3 as read in conjunction with the Article 95 of the LCP, due to the fact that the Appellant is not authorised to file them.
17. The Claimant: “Kosmet Coning” Limited Liability Company from Novi Sad (hereinafter “the Corporation”, “the L.L.C”, “the legal entity”), represented by the Director Ž. C. requested the KPA to confirm its property rights over the claimed properties and their re-possession. During the proceedings however, before the KPCC issued the Decision, the legal entity was expunged from the Register by the competent court in the Republic of Serbia, thus the L.L.C ceased to exist. Consequently, the Commission dismissed the Claims filed by the Corporation explaining that the shareholder who filed the Claims on behalf of the legal entity cannot be recognised as a legal successor of the Claimant. The Decision was then served on Ž. C., who filed the Appeals, in which claimed that he was the owner of the claimed properties on the basis of the contract concluded in 1999, as well as declared that being the shareholder of all the shares of the Corporation, he owned all its assets.
18. According to Section 12.1 of the Law No 03/L-079 “within thirty (30) days of the notification 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”. In the case at hand there was only one party to the proceedings: “Kosmet Coning” Limited Liability Company from Novi Sad. The fact that the Corporation after being declared bankrupt was expunged from the Register means that the party which submitted a Claim ceased to exist and

therefore cannot support it anymore. The Commission was correct then when it assessed that in such a case the Claim stands to be dismissed.

19. The Appellant: Ž. C. did not act during the proceedings as a natural person, on his own behalf, but represented the legal entity. Once the party to the proceedings went bankrupt it may not be represented by neither the director, nor any other representative anymore (Article 95.2 of the Law on Contested Procedure). None of the provisions of the law in force in the Republic of Kosovo allows for the previous representative of the legal entity to step in to the proceedings on his own behalf after the declaration of bankruptcy, neither it provides that such a representative becomes the successor of the Corporation. Furthermore, the Appellant, who filed the Claims on behalf of the LLC has not amended their content during the proceedings before the KPCC on the basis of the Articles: 257 – 261 of the Law on Contested Procedure neither. For those reasons Ž. C. cannot be considered as a party to the proceedings in the case at hand, hence he could not support the Claims on his behalf, neither was he entitled to file an Appeal against the Decision. The Appeals stand to be dismissed though.
20. Therefore the Appeals had to be dismissed as inadmissible on procedural grounds (Section 13.3(b) of Law No 03/L-079). As a consequence the Supreme Court could not examine the grounds indicated in the Appeals.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 amended by Law No 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, acting EULEX Registrar