

SUPREME COURT OF KOSOVO  
GJYKATA SUPREME E KOSOVËS  
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL  
KOLEGJI I APELIT TË AKP-së  
ŽALBENO VEÇE KAI

GSK-KPA-A-115/13

Prishtinë/Priština,  
27 May 2014

In the proceedings of:

J.R

A.R

B.Z

J.R

B.Q

K.D

O.I

I.SH

E.H

O.O

A.SH

I.R

R.R

Hereafter all together referred to as the:

**Appellants**

vs.

B.V

Represented by R.D

**Appellee/Claimant**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Dag Brathole and Emine Kaqiku, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/176/2012 dated 14 December 2012 (hereafter referred to as: the KPCC decision) (case file registered at the KPA under Nos. KPA 35177, KPA 35178, KPA 92423, KPA 92872, KPA 92873, KPA 92876, KPA 92877, KPA 92878, KPA 92879, KPA 92882, KPA 92883, KPA 92884, KPA 92886 and KPA 92887), after deliberation held on 27 May 2014, issues the following

**JUDGMENT:**

1. **The appeal is rejected as unfounded;**
2. **The decision of the KPCC no. KPCC/D/A/176/2012 dated 14 December 2012 is confirmed as far as it regards the case files registered Nos. KPA 35177, KPA 35178, KPA 92423, KPA 92872, KPA 92873, KPA 92876, KPA 92877, KPA 92878, KPA 92879, KPA 92882, KPA 92883, KPA 92884, KPA 92886 and KPA 92887.**

**Procedural and factual background:**

The Supreme Court takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

1. On 5 April 2007 the claimant B.V filed three claims at the Kosovo Property Agency (KPA), seeking confirmation of his property right over three parcels of land at Klinë/Klina Drenja registered with the numbers KPA 35177, regarding cadastral parcel: 468/2, KPA 35178, regarding cadastral parcel 468/3 and KPA 92423, regarding cadastral parcel 471/1. The total surface of these parcels all together was approximately 00.92.54 ha.
2. These parcels were newly divided in some 20 smaller parcels and a road (hereafter all together referred to as: the properties) each of which in use by different interested parties.

3. The KPA notified potential interested parties by placing notification signs in the properties on the dates mentioned here after.
4. Since each of these cases were responded to by several respondents, the KPA decided to split up the appeals in separate files. The following scheme gives the newly formed files as well as the decision on the claim and whether an appeal was filed or not.

KPA no.	Parcel	decision on claim	Appeal no.	Notification
<b>35177</b>	468/2	granted	282	22 June 2012
92873	468/16 468/19	granted	283	22 June 2012
92874	468/17	granted	no appeal	22 June 2012
92875	468/18	granted	no appeal	22 June 2012
92876	468/21	granted	124	22 June 2012
92877	468/22	granted	281	22 June 2012
92878	468/23	granted	117	22 June 2012
92879	468/24	granted	120	22 June 2012
92880	468/25	granted	no appeal	22 June 2012
92881	468/31	granted	no appeal	22 June 2012
92882	468/33	granted	123	22 June 2012
92883	468/34	granted	118	22 June 2012
92884	468/35	granted	121	22 June 2012
92885	468/38	granted	no appeal	22 June 2012
92886	468/40	granted	122	22 June 2012

KPA no.	Parcel	decision on claim	Appeal no.	Notification
<b>35178</b>	468/3	granted	116	25 June 2012
92887	468/26	granted	279	25 June 2012
92871	468/20	granted	no appeal	25 June 2012
92872	468/36	granted	119	25 June 2012

KPA no.	Parcel	decision on claim	Appeal no.	Notification
<b>92423</b>	471/1	granted	115	7 May 2012

5. The KPCC decided the claims to be granted and the Appellee entitled to the (re-)possession of the properties, and further that the persons occupying the properties were to vacate the property within 30 days of the delivery of the order, this under penalty of eviction.
6. The decision was served upon the various Appellants according to the following scheme:

Case Number	KPA number	Name appellant	date KPCC decision	served upon appellant	date appeal
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115	92423	J.R	14 December 2012	04 April 2013	12 April 2013
116	35178	A.R	14 December 2012	04 April 2013	12 April 2013
117	92878	B.Z	14 December 2012	04 April 2013	12 April 2013
118	92883	J.R	14 December 2012	05 June 2013	06 June 2013
119	92872	B.Q	14 December 2012	02 April 2013	11 April 2013
120	92879	K.D	14 December 2012	15 April 2013	16 April 2013
121	92884	O.I	14 December 2012	02 April 2013	11 April 2013
122	92886	I.SH	14 December 2012	04 April 2013	11 April 2013
123	92882	E.H	14 December 2012	10 April 2013	12 April 2013
124	92876	O.O	14 December 2012	04 April 2013	12 April 2013
279	92887	A.SH	14 December 2012	24 July 2013	15 August 2013
281	92877	I.R	14 December 2012	24 July 2013	15 August 2013
282	35177	I.R	14 December 2012	24 July 2013	15 August 2013
283	92873	R.R	14 December 2012	13 August 2013	15 August 2013

7. The Appellants all filed an appeal against the KPCC decision within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property (hereafter referred to as: the UNMIK regulation 2006/50).
8. The appeals were served upon the Appellee who filed responses on 4 September 2013.

### **Allegations of the parties**

#### *The appellants*

9. The Appellants challenge the KPCC decision due to: substantial errors and serious violations of the applicable material and procedural law and erroneous and incomplete establishment of the facts. To support their appeals the appellants has stated the following:
  1. The appellants were not given de opportunity to challenge the claimant's allegations;
  2. The appellants have filed a power of attorney (PoA) to Q.B that has been certified before the basic court of Tivar. This evidence was confirmed on 3 April 2013 by the same court;
  3. The fact the PoA of the seller of the property was not found in the archives of the court in Podgorica does not mean that this PoA is a falsification. The CPCC should have verified this PoA at the court of Tivar, where this PoA was also certified. The decision that the PoA is a falsification is based on assumptions;
  4. The appellants bought the property from the legitimate owner;

5. The possession sheets, filed by the claimant/appellee are invalid and cannot be considered as evidence to prove that the claimant is the owner of the property. The property is registered on the appellant's name at the cadastre;
  6. The Appellee needs to clarify where the property documents he filed, were issued;
  7. The evidences in this case are deficient.
10. As evidence the appellants have filed copies of:
- A general power of attorney that authorizes, Q.B, born on 16 October 1975 and having the personal number 2013395317, to sign, in the name of V.B, contracts of sale for the cadastral parcel no. 468/2;
  - A statement that the Appellee sold the property and received the money;
  - Several contracts of sale concerning the parcels in question;
  - A certificate regarding the contract of sale by the municipal court of Klina;
  - A decision of the Director of the Directorate of Budget and Finance.
11. The appellants request the decision of the KPCC to be quashed and their property right to be confirmed, the Appellee requests the confirmation of the KPCC decision.

*The Appellee:*

12. The Appellee states that the decision of the KPCC is correct, and taken with a just establishing of the facts. In support of this statement he alleges that:
1. He never granted (issued) a general power of attorney to Q.B.B.;
  2. He does not know Q.B.B or ever saw this person;
  3. The PoA's are falsifications. At the undersigning of the statements and the PoA a false ID card was used. A personal number always begins with the date of birth of the person it concerns. The Appellant's number starts with 1803929 since he was born on 18 March 1929. The personal number used when undersigning the false GPO and the statement of payment started with 1004971.
  4. He never signed a statement saying that he received a sales prize for the parcels: 468/2 (36.58 ha and the field of 54.62 ha at Drenja);
  5. He never went to Bar in Montenegro in order to have a PoA certified. If he ever had to do such a thing, he would have gone to the Municipal Court in Mitrovicë/Mitrovica.
13. As evidence the Appellee filed copies of:

- The possession list no. 92 issued on 3 April 2002, showing that the appellee is the sole owner of the parcels 172/3, 281/3, 282, 468/2, 468/3 and 471/1;
- A purchase contract by which the parcel 282 is sold by the Appellee to H.TH on 13 October 2013;
- A purchase contract by which the parcel 281/3 is sold by the Appellee to H.TH in 2012;
- An identity card by the name of the Appellee, mentioning, among other things: his date of birth (18 March 1929) and his personal number 1803929934961.

### **Joining of the cases**

14. In the aforementioned cases, the facts, the legal grounds and the evidentiary issues are the same. The different parcels, objects of the property right which is alleged in each claim, though each with its own cadastral numbering, are all part of the larger and later combined parcels 468/1, 468/2 and 471/1. The appeals are based on the same explanatory statement and on the same documentation. Insofar as all the relevant elements of the cases are the same but the parcels, it is obviously more efficient to join the appeals and to decide on them in one single judgment.
15. The Supreme Court, by authority given in the Section 13.4 in combination with Section 11.3 (a) of the UNMIK regulation 2006/50, therefore decided to join the 15 cases GSK-KPA-A-115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 279, 281, 282 and 283 now all together registered as: GSK-KPA-A-115.

### **Legal reasoning:**

#### *Admissibility of the appeal*

16. The appeal is admissible.

#### *Jurisdiction*

17. The Supreme Court has jurisdiction.

#### *Merits*

*The Supreme court hereafter refers to the numbering of the allegations as given in paragraph 9.*

#### *Allegation 1:*

18. The Supreme Court does not support the appellant's allegation that they were not given de opportunity to challenge the claimant's allegations. The claims were duly notified and the KPA files on all cases show that the all Appellants responded to the claim of the Appellee.

*Allegation 2, 3 and 4:*

19. The KPCC in its decision of 14 December 2012, more precise in the paragraphs 36 and 37, established that the power of attorney allegedly issued by the Appellee to Q.B could not be found in the archives of the court of Podgorica where it allegedly had been certified (as mentioned here fore in paragraph 11, this PoA was to give Q.B the authority to sell the parcel with cadastral number 468/2).
20. The KPCC further established that this Q.B apparently had sold the property to XH.K in 2003 who, on his turn sold the property to the Appellants. The property was in the meantime merged with 468/3 and 472/1 and the merged parcel divided in the smaller parcels as mentioned in paragraph 3.
21. In its conclusion the KPCC established that the PoA cannot be considered as reliable evidence and concluded that Q.B had not been authorized to sell the properties.
22. Since the Appellee B.V proved his ownership by filing copies of the relevant possession lists, and since his ownership prior to the armed conflict as such was neither challenged nor doubted, the KPCC concluded that the Appellee B.V never lost this ownership.
23. The question to answer by the Supreme Court therefore is whether the PoA that was allegedly issued by the Appellee to Q.B, meets the requirements needed to have validity before the law.
24. The validity of a PoA regarding the selling of immovable property is submitted to the rules of Law of Contracts and Torts (the law of 1 October 1978, official Gazette of the FPRY nr. 29/1978 amendments published in 39/1985, 45/1989, and finally in the Official Gazette of the FR nr. 31/1993) as applicable in 1999 (hereafter referred to as: the LCT), more specific Article 90, regarding:

*Particular Form of Authorization:*

*The form prescribed by law for a contract or some other legal transaction shall apply also to the authorization for concluding such contract, namely engaging in such transaction*

Such in connection with Article 455 of the LCT:

*Form of Sale of Real Property:*

*A contract of sale of real property must be in written form, otherwise it shall be null and void.*

And in connection with article 4 of the SRS Law on trade of immovable property (official gazette of the socialist republic of Serbia , 43/81, 1. august 1981, p. 3050):

*Self-management agreements and contracts concluded between social legal persons on the transfer of immovable property or the exchange of socially-owned immovable property shall be concluded in writing.*

*Contracts on the transfer of rights to immovable property between ownership right holders as well as contracts on the alienation of socially-owned immovable property, on the exchange of socially-owned immovable property which can be subject to the right of ownership and contracts on the procurement of socially-owned immovable property shall be concluded in writing; the signatures of the contracting parties shall be certified by the courts.*

*Self-management agreements or contracts which do not comply with paragraphs 1 or 2 of this Article are null and void.*

25. The burden to prove whether the POA is validity lies with the Appellants. As evidence the Appellants have filed a copy of the alleged PoA. This copy shows, apart from the text, two stamps.
26. One stamp allegedly issued by the municipal court of Bar and dated 3 April 2013. In their arguments under number 3 the Appellants suggest that this stamp is to be considered as the certification by the courts of the signature of the contracting party as meant in with Article 455 of the LCT.
27. The Supreme Court does not agree to this. This stamp is merely a recognition that the copy of the POA is identical to the one that has been shown to the court.
28. The other stamp as far as it is legible mentions “Klinë”, however it cannot be established by which institution the stamp was issued. Since the Appellant clearly alleged that the PoA had



been certified at the Municipal Court of Bar, this stamp cannot prove otherwise and will not be taken in consideration.

29. As for the material deficiencies in the alleged PoA the Supreme Court considers as follows: According to the copy of his identity card B.V's personal number is 1803929934961. The alleged PoA bears the name of the Appellee B.V together with a personal number: 1004971923014. Since this number does not meet the requirements of a local personal number in Kosovo, nor in the Federal republic of Serbia, the alleged PoA simply could not have been certified at any court. As for the certification of the signature to be done in person with proper identification a comparison would have been made between the personal numbers mentioned on both the PoA and the identity card.
30. The same goes for the signatures on both the identity card and the alleged PoA between which significant differences are to be noticed.

*Allegations 5, 6 and 7:*

31. The Supreme Court notes that the ownership if the Appellee before the transactions of the alleged holder of the PoA has never been challenged or doubted. Nevertheless, the Supreme Court agrees with the KPCC that the Appellee has sufficiently proven his property right over the parcels by filing the Possession list as he did.
32. The Appellants have not given any sufficient reason nor has occurred any reason to the Supreme Court to decide otherwise.

*Conclusion*

33. The above reasoning leads to the conclusion that the PoA has never been certified in front a court and is to be considered null and void according to Article 455 of the LCT. The Appellee B.V therefore never lost his property right as a result of a transaction between Q.B.B and third parties.
34. The appeals of the appellants therefore have to be rejected as unfounded and the decision of the KPCC has to be confirmed as far as it concerns the KPA numbers: 92423, 35178, 92878, 92883, 92872, 92879, 92884, 92886, 92882, 92876, 92887, 92877, 35177 and 92873.

**Legal Advice**

35. 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.

**Willem Brouwer, EULEX Presiding Judge**

**Dag Brathole, EULEX Judge**

**Emine Kaqiku, Judge**

**Urs Nufer, EULEX Registrar**