

**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-043/13

Prishtinë/Priština,

03 June 2015

In the proceedings of

M. H.
Skenderaj

Appellant

vs.

S. V.
Beograd/Srbia
Claimant 1

and

D. B. M.
Lazareviac/Srbia
Claimant 2

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Willem Brouwer, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/76/2010 (case file registered at the KPA under the number KPA08225) dated 16 June 2010, KPCC/D/A/119/2011 (case file registered at

the KPA under the number KPA44097) dated 7 September 2011 and KPCC/D/A/126/2011 (case files registered at the KPA under the numbers KPA08233, KPA08229, KPA08227, KPA08226) dated 26 October 2011 after deliberation held on 03 June 2015, issues the following

JUDGMENT

1. **The appeals of M. H., registered under the numbers GSK-KPA-A-043/2013, GSK-KPA-A-044/2013, GSK-KPA-A-045/13 and GSK-KPA-A-046/13, GSK-KPA-A-047/13 and GSK-KPA-A-A048/12 are joined in a single case under the number GSK-KPA-A-043/2013.**
2. **The appeals of M. H. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/76/2010 (case file registered at the KPA under the number KPA08225) dated on 16 June 2010, KPCC/D/A/119/2011 (case file registered at the KPA under the number KPA44097) dated 7 September 2011 and KPCC/D/A/126/2011 (case files registered at the KPA under the numbers KPA08226, KPA08227, KPA08229 and KPA08233) are dismissed as inadmissible because the appeals are belated.**

Procedural and factual background:

1. On 7 June 2007, S. V. (henceforth: the Claimant 1), son of R. M., filed a claim (registered under case no. KPA 44097) with the Kosovo Property Agency (KPA), seeking re-possession right, while on 26 December 2006, D. B. M. (henceforth: the Claimant 2), son of B. O. M., filed five (5) claims (registered under case no. KPA08225, KPA08226, KPA08227, KPA08229, KPA08233), with the Kosovo Property Agency (KPA), seeking re-possession 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 12 June 1999 as the date of loss.
3. To support their claims the Claimant1 and Claimant2 provided the KPA with the following documents:

- Marriage Certificate No. ... issued by Civil Registration Office, Municipality of Zemun on 25 March 1991 showing that the father of S. M. is R. M.
 - Death Certificate issued by Civil Registration Office, Municipality of Zemun, showing that R. M. passed away on 14 August 1998 in Zemun.
 - Possession List No 51 issued by the Geodesic Institution of Serbia, Center for Cadastre of Immovable Property in Skenderaj/Srbica on 26 May 2003, where the claimed properties (case no. KPA 44097), were registered on the name of R. R. M.
 - Final Additional Inheritance Decision Posl.Br.II-O.926/04 dated on 19 July 2004 issued by Fourth Municipal Court of Beograd. Based on this Decision the Court finds additional legacy of the late, R. M., that consist of the immovable property listed in Possession List no 51, Municipality of Skenderaj /Srbica, Cadastral Zone Kotore. The sole inheritor of the additionally found legacy was pronounced S. V. (daughter of R. M.).
 - Possession List No 50 issued by the Geodesic Institution of Serbia, Center for Cadastre of Immovable Property in Skenderaj/Srbica on 17 August 2005, where the claimed properties (case no. KPA08225, KPA08226, KPA08227, KPA08229, KPA08233) were registered under the name of B. O. M. The final Inheritance Decision O.Br.374/05 dated on 28 October 2005 issued by Municipal Court of Lazarevac. According to the Inheritance Decision D. and Z. M. inherited each per ½ ideal part of the property listed on the Possession List no 51.
 - Death Certificate of 21 February 2008 issued by Civil Registration Office of the Municipality of Lazarevac showing that B. M. passed away on 5 July 2005 in Lazarevac.
4. According to the Possession List No. 50 dated 26 May 2003 and Possession List No.51 dated 17 August 2005 of the Center for Cadastre, Geodesy and Property of the Municipality of Skenderaj/Srbica, the cadastral parcels claimed by the Claimant1 and Claimant2 (henceforth all together: the claimed properties), located in the cadastral zone of Kotor, are registered as following

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-043/13	Possession List no 51, parcel no.133, at the place called "Rog –

(KPA44097)	Isenov lug”, a 4 th class meadow with a surface of 00.19.42 ha Possession List no 51, parcel no.134, at the place called “Rog – Isenov lug”, a 4 th class forest with a surface of 00.31.10 ha Possession List no 51, parcel no.135, at the place called “Rodevic-ara e malit ”, a 6 th class meadow with a surface of 00.43.95 ha Possession List no 51, parcel no.136, at the place called “Rodevic-ara e malit”, a 6 th class meadow with a surface of 00.12.50 ha
GSK-KPA-A- 044/13 (KPA08233)	Possession List no 50, parcel no. 503, at the place called “Kodra vojs”, a 5 th class meadow with a surface of 00.02.60 ha
GSK-KPA-A-045/13 (KPA08229)	Possession List no 50, parcel no. 207 at the place called “Rodevci-Lugi i Duceve” , a 7 th class cultivated land with the surface 00.91.74 ha and parcel no 208, “Rodevci-Lugi i Duceve”, a 6 th class meadow with a surface of 00.12.45 ha
GSK-KPA-A-046/13 (KPA08227)	Possession List no 50, parcel no. 137 at the place called “Rog-Lugu Gat” , a 6 th class meadow with a surface of 00.16.05 ha
GSK-KPA-A-047/13 (KPA08226)	Possession List no 50, parcel no. 128 at the place called “Rog-Lugu Gat” , a 6 th class meadow with a surface of 00.14.50 ha and parcel no. 129 at the place called “Rog-Lugu Gat” , a 4 th class orchard with a surface of 00.03.40 ha
GSK-KPA-A-048/13 (KPA08225)	Possession List no 50, parcel no. 126 at the place called “Rog-Lugu Gat” , a 6 th class meadow with a surface of 01.23.60 ha and parcel no. 127 at the place called “Rog-Lugu Gat” , a 4 th class forest with a surface of 02.16.75 ha

5. The physical notification of the claim (KPA44097) was carried out on 19 June 2008 and reflects the claimed property as “not occupied forest” and “meadow”, while the physical notifications of the claims (KPA08233, KPA08229, KPA08227, KPA08226, and KPA08225), were carried out on 29 October 2007, 5 September, 30 November 2008 and 3 February 2010. The claimed properties were found as not occupied.
6. According to the verification reports, dated 16 April 2008; (case KPA44097), Possession List no 51 and Marriage Certificate No. 202-2-44 were positively verified, whereas the verification reports of 2008 (KPA08225, KPA08226, KPA08227, KPA08229, KPA08233) show positively

verified Possession List no 50, Death Certificate of 21 February 2008 and Inheritance Decision O.Br.374/05.

7. On 28 August 2008 the Kosovo Property Claims Commission granted the claim KPA44097 in certified decisions KPCC/D/A/22/2008. In paragraph 13 of the decision, KPCC/D/A/22/2008 which applies specifically to the claim, it is stated that the property right is confirmed in favour of the property right holder. On 19 December 2008 the Kosovo Property Claims Commission granted the claims KPA08233, KPA08229, KPA08227, and KPA08226 in certified decisions KPCC/D/A/29/2008 and claim KPA08225 in certified decision KPCC/D/A/76/2010 dated 16 June 2010. In paragraph 15 of the Decision, KPCC/D/A/22/2008 which applies specifically to the claims KPA08233, KPA08229, KPA08227 and KPA08226 as well as in paragraph 14 of the decision KPCC/D/A/76/2010 which applies specially to the claim KPA08225 is stated that the claimant or current property right holder must be considered as having succeeded to obtain all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings. Therefore, the claims stand to be granted.
8. By the Decision nr. KPCC/RES/16/2010, dated 24 February 2010, the KPCC was informed by the KPA Executive Secretariat that the claims (KPA44097, KPA08233, KPA08229, KPA08227, and KPA08226) were not properly processed by the Secretariat or more specifically that the claimed properties were not properly notified and that the Commission was not informed about this fact. The claims were returned back to the KPA Executive Secretariat for further processing by making the correct notification of the property.
9. On 24 September 2010; the KPA once again notified the claimed property (KPA44097) by publishing it in the Notification Gazette No.9. The Gazette was left with the village leader who accepted to make them available to the interested parties as well as at the entrance and in the exit of village Kotorr/Kotore. The same publications were also left at the Municipality and Cadastre of Skenderaj/Srbica, Municipal Court of Skenderaj/Srbica, KPA regional office of Mitrovica, as well as to the offices of the OSCE, UNHCR, Kosovo Privatization Agency and the Ombudsperson. On 1 July 2010 the KPA notified for a second time the claimed properties (KPA08233, KPA08229, KPA08227, KPA08226, KPA08225) by publishing it in the Notification Gazette No.3. The Gazette was left with the village leader who accepted to make them available to the interested parties as well as at the entrance and in the exit of village Kotorr/Kotore. The same publications were also left at the Municipality and Cadastre of Skenderaj/Srbica, Municipal Court of Skenderaj/Srbica, KPA regional office of Mitrovica, as well as to the offices of the OSCE, UNHCR, Kosovo Privatization Agency and the Ombudsperson.

10. Within the legal deadline of 30 days, pursuant to Article 10.2 of the Law nr. 03/L-079, no party has expressed an interest to take part in a proceedings with regards to the property which is subject of the claim; therefore the claim was again considered as uncontested.
11. By its decision dated 7 September 2011 (KPCC/D/A/119/2011), the Kosovo Property Claim Commission established that the Claimant 1 had proven that his deceased father R. M. was the owner of the claimed property and therefore the Claimant had a possession right over the claimed property (KPA44097). On 26 October 2011, the Kosovo Property Claims Commission granted the claims KPA08233, KPA08229, KPA08227, KPA08226, and KPA08225 by its Decision KPCC/D/A/126/2011. In paragraph 15 of the decision, KPCC/D/A/126/2011 which applies specifically to the claims KPA08233, KPA08229, KPA08227 and KPA08226 is stated that the claimant 2 must be considered as having succeeded to obtain all the rights belonging to an owner, including the right to claim for confirmation of ownership and for repossession in the present proceedings, therefore, the claims stands to be granted.
12. From the evidences in the case files (KPA08233 page no 027-037 and KPA44097 page no 025) is established that M. H. approached KPA (by e-mail) in November 2011 asking detailed information regarding the status of claimed properties registered on Possession List 49, Possession List no 50 and Possession List no 51 as interested party. Additionally, M. H. submitted before KPA a written statement of his brother D. H. who alleged that the claimed properties were bought by their father B. H. during 1970.
13. The KPA, through the Response Ref.01331/11/fk dated 9 December 2011, informed M. H. (by email sent to him on 13 December 2011 as requested) about all needed information such as the cadastral parcel and the status of each claim that is filed before KPA. The KPA informed M. H. that he can file the appeal before the KPA Appeals Panel of the Supreme Court regarding the claims in relation to the parcels over which he pretends legal right are already decided. He was also explicitly informed that the appeal has to be filed as soon as possible.
14. On 7 February 2012, the decision KPCC/D/A/119/2011 was served on S. M. On 14 February 2011, the decision KPCC/D/A/76/2010 on D. M. while the decision KPCC/D/A/126/2011 was served on D. M. on 16 March 2012.
15. M. H. filed the appeal before the KPA Appeals Panel of the Supreme Court on 8 March 2013.
16. The appeal was served on the Claimant 1 (from now on also: Appellee 1) on 12 April 2013. She responded to the Appeal on 24 March 2013.
17. The appeal was served on the Claimant 2 on 17 July 2013 but he did not file a response to the appeal.

Allegations of the parties

18. The appellant states that the decisions made by KPCC were based on violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation.
19. The appellant alleges that his father bought the claimed properties on 1977 and since then, family H. has had uninterrupted possessed the properties, thus, appellant seeks from the Supreme Court to reconsider the KPA decisions and to dismiss the claims.
20. Moreover, the appellant alleges that family H. was informed about the claims before KPA on 9 February 2011 through the claim KPA44101. According to appellant they received KPCC decision on 26 February 2013.
21. The Appellant additionally presented:
 - A written Statement of 11 March 2013. According to the statement, the appellant's brother, D. H. declared that he was present when the Purchase Contract was concluded between B. H. as the buyer and S. M. as the seller of the claimed property. The contract was concluded before Municipal Court of Skenderaj/Srbica by the end of year 1974. The purchase price was 13.000.000 dinars (Serbian currency) and the property which was bought was listed on the possession list no 49 with the total surface 05.15.74 ha. The payment was made with the installments during the year 1975. In 1976 the seller handed over the property to the buyer while he was transferred at the village Kirligate. The Purchase Contract can be found in the Municipal Court of Skenderaj/Srbica.
 - The Purchase Contract concluded between B. M. (as seller) and B. H. (as buyer). The Contract was concluded in 1977 and the amount of money paid was 13.000.000 Dinars. The cadastral parcels which were bought are as following: parcel number 126, 127, 128, 129, 137, 138, 207, 208, and 503 with the total surface 05.11.00 ha.
 - The purchase contract concluded between R. M. (as seller) and B. H. (as buyer). The property was bought during 1977 from R. M. The purchase price was contracted to be 4 500.000 Dinars. The total surface of the property which was bought was 02.06.71 ha. The cadastral parcels which were bought were listed on the Possession List No 51 and they were as following: parcel number 123, 130, 133, 134, 135, 136, 139, 140, 500, 501. The amount from 2.000.000 Dinars was paid while another 2.500.000 was not paid due to contest regarding cadastral parcel 134 between R. M. and Rr. H. However D. H. showed the will to pay the remained amount of the purchase price.

22. In her response Appellee 1 declared that she is aware of the purchase negotiations but her late father did not want to sell the property because the purchase price was lower than the market price. She expressed the will that the contest between M. H. as legal successor of his father and her as a legal successor of her father to be settled through an agreement. According to the appellee, H. did not deny that his father has paid 2,000,000.00 Dinars (Serbian currency) of the 4,500,000.00 amount of the purchase price. She requests from him to pay the remained amount. Otherwise she requests the appellant's appeal to be rejected as the appellant was not a party before the first instance proceedings.

Legal reasoning:

Admissibility of the appeal

23. The appeal is not admissible.
24. According to Section 12.1 in connection with section 10.1 of UNMIK Regulation 2006/50 on Resolution of Claims Related to Immovable Property, Including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter: Law No. 03/L-079), (only) a party may file an appeal within thirty (30) days of the notification to the parties by Kosovo Property Agency of the decision of Kosovo Property Claims Commission.
25. There is an exception to that rule: when an interested person is not (well) notified by the KPA of the claim and could not reasonable be aware of the claim, he/she still can appeal after the decision is taken by KPCC, but then he/she has to appeal within 30 days after he/she became aware of the decision of the KPCC on the claim. An appeal filed at a later stage can only be regarded as admissible when that interested person has a legitimate excuse for further delay.
26. The appellant was not a party in the proceedings before the KPCC.
27. KPA informed the appellant of the cover decisions of the KPCC on 13 December 2011 by e-mail as he asked, mentioned here for in paragraph 13, and in that e-mail KPA informed him to appeal against the decisions of the KPCC as soon as possible.
28. Appellant denies in his letter of appeal to have received the email from 13 December 2011, but the Supreme Court does not follow this denial, because Appellant himself used email correspondence from the same address as KPA used for the message to him on 13 December 2011. It is not likely that this message did not reach Appellant. The Supreme Court therefore takes into account that the email was sent on 13 December 2011 also to the email address of a

lawyer. Appellant mentioned that address in his email communications with KPA in 2011 and also adds information about that same lawyer to his letter of appeal in March 2013.

29. The appellant filed the appeal on 8 March 2013, more than 13 months after the 30 days appeal term that started for him on 13 December 2011. He presented no legitimate excuse for this delay.

30. Therefore, the appeal is to be dismissed as decided in the enacting clause of this Judgment pursuant to Section 13.3(b) of UNMIK Regulation 2006/50 amended by the Law no 03/L-079 and Articles 196 and 195/1 (a) of the Law on Contested Procedure.

Legal Advice

31. Pursuant to Section 13.6 of 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

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar