

**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-167-168/2015**

**Prishtinë/Priština,**

7 March 2018

In the proceedings of:

**M. P.**

**Appellant**

Vs.

**R. A.**

**Appellee**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: KPCC), KPCC/D/A/228/2014 dated 13 March 2014 (case files registered at the KPA under numbers KPA37393 and KPA37394), after deliberation held on 7 March 2018, issues the following:

## JUDGMENT

1. The Appeal filed by M. P, registered under the numbers GSK-KPA-A-167/2015 and GSK-KPA-A-168/2015 concerning the cases registered at the Kosovo Property Agency under the numbers KPA37393 and KPA37394 are joined in a single case under the number GSK-KPA-A-167/2015.
2. The Appeal filed by M. P, against the Decision of KPCC/D/A/228/2014 (case files registered at the KPA under no KPA37393 and KPA37394), dated 13 March 2014 are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 14 March 2014, with regard to the claims registered with the KPA under no KPA37393 and KPA37394 is confirmed.

### Procedural and factual background:

1. On 28 September 2007, M. S. filed two (2) claims at the Kosovo Property Agency (KPA) in a capacity of the alleged owner of cadastral parcel no 204/1, meadow of the 3<sup>rd</sup> class with the surface of 00.09.20 ha and cadastral parcel no 205/2, meadow of 3<sup>rd</sup> class with the surface of 00.09.79 ha, both located at the place called “Deonica”, village Drenovac, Municipality of Klinë/Klina (hereinafter: the claimed properties). M. S. seeks confirmation of the ownership right and repossession over the properties by alleging that the lose the possession over the properties happened on 18 June 1999 due to circumstances occurred in Kosovo during 1998-1999 conflict. The claims were registered at the KPA under the numbers KPA37393 and KPA37394.
2. To support his claim, M. S. provided the Executive Secretariat of KPA with the following documents:

- Possession List No 36 issued by Municipality of Klinë/Klina, Directory for Cadastre and Geodesy on 17 September 1981, listing the claimed properties on the name of M. S,
- The Lawsuit filed before Municipal Court of Klinë/Klina by M. S. on 30 September 2004 against Provisional Institutions of Kosovo, Municipality of Klinë/Klina , UNMIK and KFOR for compensation of the material damage caused during the armed conflict on Kosovo,
- Power of Attorney legalized before Municipal Court of Mitrovicë/Mitorivca on 26 July 2005 under No 2729/05, through which M. S. authorizes V. A. to sell his properties located at Drenocav, Municipality of Klina, listed on Possession List no 36 , namely cadastral parcel no 204/1, cadastral parcel no 205/1 and cadastral parcel no 205/2. V. A. was authorized to conduct the Contract on Sale and to transfer the property right on the name of the buyer as M. S. confirms that he received 9000 euro from V. A. on the name of the sale of the above mentioned properties,
- Contract on Sale conducted on 26 July 2005 between M. S. (represented by V. A.) in capacity of the seller and Hristi Agushi in capacity of the buyer of the claimed properties. The Contract was legalised on 27 July 2005 before Municipal Court of Klinë/Klina under the reference no 1172/05.
- Possession List No 36 issued by Displaced Cadastre of Serbia on 03 March 2009 listing the claimed properties on the name of the M. S.
- Contract on Long Life Care concluded between M.S. as receiver of the care and M. P. and S. K., both in capacity of the care holder. According to the Contract after M. S. and his spouse passed away, M. P. will became the owner of the claimed properties. The Contract was legalized before Municipal Court of Paraćin on 4 September 2009 under the reference no 494/09,
- Written Statement of the M. S. certified before Administration of the Municipality of Čuprija on 29 September 2009, through which he declared that he did not sell the claimed properties to Hristi Agushi,
- Power of Attorney legalized before Municipal Court of Paraćin on 16 June 2010 under No 1669/10, whereby, M. P. authorizes Anđelka Ušević or Jovana Popović that on her behalf obtain from the competent institutions below mentioned documents :

- Confirmation form Municipal Court of Mitrovicë/Mitorivca if her late uncle M. S. legalized the Power of Attorney No 2729/05 dated on 26 July 2005
  - Copy of the Contract on Sale legalized under No 1172/05 on 27 July 2005 before Municipal Court of Klinë/Klina based on which allegedly were sold the cadastral parcel no 204/1, cadastral parcel no 205/1 and cadastral parcel no 205/2
3. The Notification of the Claims has been carried out on 17 June 2010 through Publication in the KPA's Notification Gazette no.2 and in the UNHCR Property Office. The Notification team has left the gazette and List to entrance and exit of the village Drenoc. The same Publications were left in Klinë/Klina Municipality, Municipal Court, KPA Regional Office of Peja/Peć, to DRC, OSCE, UNHCR and Kosovo Privatization Agency.
4. On 30 August 2013, Rahim Agushi (hereinafter: the Appellee) approached the KPA by alleging that his father Hatë Agushi has bought the claimed properties from the rightful owner.
5. In support of his allegation, the Appellee provided the EXECUTIVE Secretariat with:
- Power of Attorney legalized before Municipal Court of Mitrovicë/Mitorivca on 26 July 2005 under No 2729/05, through which M. S. authorizes V. A. to sell cadastral parcel no 204/1, cadastral parcel no 205/1 and cadastral parcel no 205/2, located at Drenocav, Municipality of Klina, listed on Possession List no 36. V. A. has been authorized to conduct the Contract on Sale and to transfer the property right on the name of the buyer as M. S. confirms that he received 9000 euro from V. A. on the date of the sale of the above mentioned properties,
  - Contract on Sale conducted on 26 July 2005 between M. S. (represented by V. A.) in capacity of the seller and H. A. in capacity of the buyer of the claimed property. The Contract was legalised on 27 July 2005 before Municipal Court of Klinë/Klina under the reference no 1172/05,
  - Ruling No 71/2005 issued by Kosovo Cadastral Agency on 22 August 2005, whereby, the request of H. A. for transferring the property right over the claimed property on his name was approved.
6. The Executive Secretariat of KPA verified positively:
- Contract on Sale conducted No 1172/05 concluded on 26 July 2005,
  - Power of Attorney legalized before Municipal Court of Mitrovicë/Mitorivca on 26 July 2005 under No 2729/05,
  - Certificate for Immovable Property Rights UL-71011030-00084 issued by Municipall Cadastral Office of Klinë/Klina on 22 September 2008 showing the claimed properties

updated on the name of H ~~41~~ A, pursuant to the Contract on Sale No No 1172/05 concluded on 26 July 2005

7. The attempts of the Executive Secretariat of KPA to contact M. S. failed due to M.S. death. The niece of M. S., M. P. declared that the claimed properties were not sold, her uncle did not give a Power of Attorney to anyone and that the signature at the Power of Attorney is forged. She declared that she is the owner of the claimed properties after his uncle passed away based on the Contract on Long Life Care conducted between her and his uncle. Moreover, she notes that the signature of his uncle at the Contract on Long Life Care and Power of Attorney is different and according to her this fact shows that the Power of Attorney was not signed by his uncle, M. S.
8. With the Decision KPCC/D/228/2014, dated 13 March 2014, the KPCC decided to dismiss the claims with the reasoning that the claimant had sold the claimed properties to the third party after the conflict based on the valid Contract on Sale. The voluntary sale of the claimed properties was denied by M. S. but the evidences obtained *ex officio* by the Executive Secretariat of KPA shows the opposite.
9. The Decision was served on M. S. on 24 October 2014. The Decision was received by M. P. (nephew of M. S.). The Appel was filed on 14 November 2014 by M. P. (hereinafter: the Appellant).

### **The allegations of Appellant**

10. The Appellant alleges that the KPCC's Decision contains essential violation of the substantive and procedural law and erroneous and incomplete determination of the factual situation.
11. She alleges that after the death of his uncle on 21 October 2009, the claimed properties belong to her based on the Contract on Long Life Care dated 28 August 2009 and that her uncle did not sell the claimed properties nor has given a Power of Attorney to anybody. The documents that Commission bases its Decision are forged. This can be seen from the signatures at the Lawsuit, Written Statement and at the Power of Attorney allegedly has been signed by her uncle and they differ from each other
12. The Appellant further gives a detailed presentation of the documents that has been submitted before first instance and seeks Supreme Court to accept her appeal as grounded and recognize the ownership right over the claimed properties on her behalf.

## Legal reasoning

### Joining of the Appeals

13. According to Section 13.4 of Law No. 03/L-079, the Supreme Court can decide upon joined or consolidated appeals, when such joinder or consolidation of claims has been decided by the Commission in accordance with Section 11.3 (a) of the law. That Section allows the Commission to take into consideration the joining or consolidating of claims in order to review and render decisions when there are common legal and evidentiary issues.
14. 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 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.
15. 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 both the cases. Only the cadastral parcels, subject of the property right which are mentioned in each Claim, are different. The Appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the Decisions is the same one.
16. Thus the Appeals registered under the numbers GSK-KPA-A-167/2015 and GSK-KPA-A-168/2015 are joined in a single case under the number GSK-KPA-A-167/2015.

### Admissibility of the appeal

17. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079

### Merits

18. According to Section 3.1 of the Law 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a Claimant is not only to provide his ownership right over a private immovable property but also to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.
19. The KPCC decided that the matter is not in its jurisdiction since the loss of possession does not derive from the circumstances of the armed conflict but derives from the sale contract in 2005 which is long time after the conflict.
20. The Supreme Court also concludes that the ownership right and possession over the claimed property is not lost because of the armed conflict of 98-99 in Kosovo. The Contract on Sale of the claimed properties between Appellant's uncle and Appellee concluded on 2005 was positively verified by the Executive Secretariat and found legally valid. This fact clearly shows that the property right and possession of the property was lost due to a sale transaction occurred in 2005 which is long time after the conflict and not due to circumstances related to the armed conflict of 98-99.
21. The Appellant claims that the Contract on Sale No 1172/05 is not valid since the Power of Attorney No 2729/05 is falsified. However, the Supreme Court notes that the KPCC does not have jurisdiction to examine the validity of the Power of Attorney nor of the Contract since both were verified positively. Furthermore, the cadastral parcels are registered under the name of the Appellee based on the abovementioned documents. Whether such registration lacks a legal basis is not within the jurisdiction of the KPCC either since it has no direct relation to the conditions of the armed conflict.
22. Therefore, the Supreme Court concludes that KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct decision. Consequently, the appeal is to be rejected as unfounded.
23. On the basis of the reasoning above and according to the provision of section 13 paragraph 3.c) of the Law No. 03/L-079, it has been decided as in the enacting clause of this judgment.
24. This Judgment does not prejudice the right of the any party to pursue the proceedings before the ordinary competent court.

**Legal Advice**

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

**Beshir Islami, Presiding Judge**

**Krassimir Mazgalov, EULEX Judge**

**Ragip Namani, Judge**

**Timo Eljas Torkko, EULEX Registrar**