

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-155/14

**Prishtinë/Priština,
9 March 2016**

In the proceedings of

V.D. M.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 (case files registered at the KPA under the numbers KPA56653 and KPA56655), dated 21 August 2013, after the deliberation held on 9 March 2016, issues the following

JUDGMENT

1. The Appeals filed by V. D. M., registered under the numbers GSK-KPA-A-155/2014 and GSK-KPA-A-156/2014, are joined in a single case under the number GSK-KPA-A-155/2014.
2. The Appeals filed by V. D. M. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013, dated 21 August 2013, with regard to the Claims registered with KPA under Nos. KPA56653 and KPA56655 are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013, dated 21 August 2013, with regard to the Claims No KPA56653 and KPA56655, is confirmed.

Procedural and factual background

1. On 26 November 2007, V. D. M. (henceforth: the Appellant) in his capacity of family household member of the alleged property right holder- his grandfather J.P. M., filed two separate Claims with the Kosovo Property Agency (hereinafter: the KPA), registered under the case No. KPA56653 and case No. KPA56655, seeking the repossession of a parcel with surface of 00.42.00 ha and a parcel with surface of 00.14.00 ha, both located in the village of Zegra/Zegra, Municipality of Gjilan/Gnjilane (hereinafter: the claimed property). Initially the Appellant has not mentioned the numbers of the claimed cadastral parcels.
2. On 13 June 2008 the Appellant clarified that he is seeking repossession of cadastral parcels Nos. 850, 851 (Claim registered under No.KPA56653) and Nos.1346, 1347 and 1348 (Claim registered under No.KPA56655).
3. With the Claims the Appellant submitted *inter alia* to the KPA:
 - Birth certificate No.69/1945 issued by Municipality of Gjilan/Gnjilane certifying that the Appellant was born on 25 April 1945 by Z.M.- mother and D. M.- father;
 - Death certificate No.22/1998 issued by Municipality of Gjilan/Gnjilane certifying that D. M. passed away on 04 November 1998 and his parents are J. M. and J. M..

- Death certificate issued on 23 January 2008 by Municipality of Vranje, Serbia certifying that D.J. M. passed away on 04 November 1998 and his children are D. P., R.J., M. M. and the Appellant V. M..
 - Ruling No.12-951-62624 issued on 11 January 2012 by Kosovo Kadastral Agency recognizing the Appellant as an owner of 6 cadastral parcels, none of them identical with the claimed property.
 - Ruling No.12/44932 issued on 11 October 2012 by Municipality of Gjilan/Gnjilane, Department of Geodesy, Cadastre and Property, which approves Appellant's request for division of 4 cadastral parcels, none of them identical with the claimed property.
 - Contract on gift concluded on 15 June 1994 between the Appellant's father D. M. as a donor and the Appellant as a donee. The subjects of the contract are 8 cadastral parcels, none of them identical with the claimed property.
4. The KPA obtained *ex officio* Certificate for Immovable Property Rights No.893/2008 listing Stojan Stojanović as an owner of cadastral parcels Nos.1346, 1347.
 5. The KPA obtained *ex officio* Certificate for Immovable Property Rights No.510/2008 listing B. M., P. P., V. P. and D. P. as owners of cadastral parcel No.1348.
 6. The claims were notified on 31 July 2008 and on 03 November 2008. The claimed property was found occupied by B. V.(cadastral parcels Nos. 850, 851) and by unknown person (cadastral parcels Nos.1346, 1347 and 1348). B. V. refused to take and sign Notice of participation. On 21 July 2010 the claims were notified through publication in the KPA Notification Gazette. Nobody participated as a respondent in the procedure.
 7. On 21 August 2013, the KPCC with its Decision KPCC/D/A/212/2013 refused the Claims with reasoning that the Appellant has failed to establish ownership or any other property right over the claimed property.
 8. The KPCC Decision was served on the Appellant on 5 March 2014. On 4 April 2014 Appeals were filed by the Appellant.

Allegations of the Appellant

9. In his Appeals, the Appellant alleges that the Decision of the KPCC involves misapplication of the applicable material law and incompletely determination of the factual situation. The

Appellant states that his grandfather Jovan Pavić was the owner of the claimed property and there is a misunderstanding because his grandfather's last name is different than his and his father's last name. The Appellant requests the Supreme Court to recognize his right to repossession over the claimed property.

Legal reasoning

Admissibility of the Appeals

10. The Appeals were filed within the time limit of 30 days set in Article 12.1 of the Law No. 03/L-079 and it is admissible.

Joining the Appeals

11. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 states that the Supreme Court can decide upon 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 Supreme Court to take into consideration the joining or merger of appeals in order to review and render judgments when there are common legal and evidentiary issues.
12. The provisions of Law on Contested Procedure that are applicable in the proceedings before the 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, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
13. 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 two cases. Only the parcels, subject of the property right which is alleged 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 Claims is the same one.

14. Therefore the Appeals registered under GSK-KPA-A-155/14 and GSK-KPA-A-156/14 are joined in a single case under the number GSK-KPA-A-155/14.

Merits of the Appeal

15. The Appellant has not presented any evidence for his allegations that his grandfather J. (P.) M. has had any property rights over the claimed property. With the presented birth and death certificates he is only establishing the relation between him and his grandfather. The provided rulings No.12-951-62624 issued on 11 January 2012 by Kosovo Cadastral Agency and No.12/44932 issued on 11 October 2012 by Municipality of Gjilan/Gnjilane, Department of Geodesy, Cadastre and Property, and the contract on gift concluded on 15 June 1994 between the Appellant's father D. M. as a donor and the Appellant as a donee concerns cadastral parcels which are not identical with the claimed property. The KPA has obtained ex officio Certificate for Immovable Property Rights No.893/2008 and Certificate for Immovable Property Rights No.510/2008 listing other persons as owners of the claimed property.
16. Accordingly, the KPCC was correct to refuse the claims. Neither violation of substantive law nor an incomplete determination of the facts has been made. Therefore the Supreme Court finds the Appeals unfounded.
17. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar