

**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-108/14

Prishtinë/Priština,

19 May 2015

In the proceedings of

M. I.

Serbia

Appellant

vs.

M. A.

Gj.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi, and Willem Brouwer, 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 KPA06859 and KPA06861 dated 21 August 2013 after deliberation held on 19 May 2015, issues the following

JUDGMENT

1. The appeals filed by M. I., registered under the numbers GSK-KPA-A-108/2014 and GSK-KPA-A-109/2014, are joined in a single case under the number GSK-KPA-A-108/2014.
2. The appeal of M. I. 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. 06859 and 06861 is 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 registered with KPA under Nos. 06859 and 06861 is confirmed.

Procedural and factual background

1. On 12 March 2007 M. I. (henceforth: the Claimant) filed two separate claims with the Kosovo Property Agency (KPA), acting as a family household member on behalf of his son, K. I. (registered under case no. KPA 06859) and his brother, I.I. (registered under case no KPA 06861) seeking confirmation of the ownership right over the parcel no 4502/2 with the surface 00.05.00 ha and parcel no 4502/3 with the surface 00.05.00, respectively, both parcels located in the place Orize 2, Gjakovë/Đakovica (henceforth: the claimed properties)
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 14 June 1999 as the date of loss. Claimant added that his son and brother have gained the claimed properties based on the contracts on lease but Claimant failed to submit them because both are missing person and the contracts on lease remained with them when they were kidnapped.
3. With the claim he submitted following documents:
 - Two Decisions on allocation of the land for construction (both decisions does not have the reference numbers) dated **6 May 1999** issued by M. A. of Gj./Đ.. According to the

Decisions, the M. A. of Gj./Đ. allocated the parcel no 4502/2 and 4502/3 each with the surface 00.05.00 ha situated in street "Orize 2" bb to K. and I.I.

- Power of Attorney No.1226 dated on 6 April 2009, certified before the Municipal Court of Niš/Nish based on which the Claimant authorized H. S. to represent him before the KPA and other relevant institutions regarding the claimed property.
- The Certificate No. 230-816/06 issued by Ministry of Internal Affairs of the Republic of Serbia on 7 April 2006 where it is stated that 6 family members of the Claimant (including his son K.I.) were kidnapped in June 1999.

The Claimant represented numerous other documents which were not relevant for this legal matter to resolve.

4. On 17 June 2010 and 25 April 2013, the KPA notified the claimed properties by publishing it in the Notification Gazette No.11. The Gazette and the List were 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 Gjakova/Đakovica. The same publications were also left at the Municipality-Public Lawyer, Cadastral Office, Municipal Court, KPA regional office of Peja, as well as to OSCE, UNHCR, Kosovo Privatization Agency and Ombudsperson.
5. On 21 January 2009, A. R. acting on behalf of M. A. of Gj./Đ. (henceforth: the Respondent), participated in proceedings before the KPA, by contesting the Claimant's allegations.
6. In support of his allegation the Respondent submitted:
 - The Possession List no.856 issued by Kosovo Cadastral Agency, Department for Cadastre Geodesy and Property of Gjakova/Đakovica on 29 December 2008 showing that the parcel no 4502/2, pasture of the 2th class and with the surfaces 00.01.94 ha situated in place called "Nakarade" is registered in the name of Municipal Assembly of Gjakova/Đakovica.
 - The Certificate for the Immovable Property Rights UL- 70705028-02280 issued by Kosovo Cadastral Agency, Department for Cadastre Geodesy and Property of Gjakova/Đakovica on 29 December 2008 showing that parcel no 4502/3, pasture of the 2th class and with the surface 00.05.70 ha situated in place called "Nakarade" is registered in the name of the third party
 - Copy of Plan dated 29 December 2008 listed the property in the name of Municipal Assembly of Gjakova/Đakovica
 - Copy of Plan dated 29 December 2008 listed the property in the name of third party
 - The Statement of 6 January 2009 from the Respondent's representative in which he states that the Claimant is claiming to have the property rights over the parcels based on probably a forged the allocation decisions issued in Serbia.

- The Power of Attorney dated 16 January 2009 based on which the M.A. of Gj./Đ. authorized A. R. to represent its interest in KPA regarding the object of the claim.
7. According to the KPA verification report, of 15 July 2007, 11 November 2008 and 1 August 2012, the Decisions on Allocation of the properties dated 6 May 1999 were negatively verified as they were not found on the competent institutions whilst the possession list for parcel no 4502/2 and Certificate for Immovable Property Rights for parcel no 4502/3 were positively verified showing that the properties were registered in the name of the M. A. of Gj./Đ. and third party
 8. On 21 August 2013, the KPCC with its Decision KPCC/D/A/212/2013 refused the claims.
 9. The KPCC decision was served on M. I. (henceforth: the Appellant) on 7 February 2014. On 07 March 2014, he appealed the decision to the KPA Appeals Panel of the Supreme Court. The Appeal was served on the Appellee on 20 June 2014, however, he did not respond.

Allegations of the appellant

10. M. I. alleges that the decision of the KPCC involves a fundamental error or serious violation of substantive law and that the decision rests on an erroneous or incomplete determination of the facts.
11. According to the Appellant, the challenged decision of the KPCC is unlawful and legally unsustainable because, the paragraph 1 of the enacting clause, under A, concludes that the claim had been dismissed, whereas further in the text, in paragraph 57 of the decision, it is concluded that the claim had been rejected, this make the decision unclear and incomprehensible, due to which cannot be evaluated whether the reason given is for a dismissal or for the rejection of the claim.
12. The Appellant alleges that the Commission erroneously established the facts based on which the correct application of the substantive law depends on. He maintains that his son and his brother have acquired ownership right over the claimed properties in accordance with the Law on Basic Property Relations according to which to them were allocated the claimed properties based on a legal transaction, namely based on the Decisions of the M. A. of Gj./Đ. dated 6 May 1999, hence, the Commission was obliged, ex officio, to obtain requested data, if the same questioned the credibility of the documents submitted by him, and then in a separate procedure to present the evidence and with correctly established facts, the panel should have reached a lawful decision and recognize the ownership right of the Claimant over the property in question

Allegations of the appellee

13. The representative of the M. of G./Đ., Appellee, argued that the decisions on allocation submitted by the appellant were issued by an incompetent authority when in Kosovo was state of war and as such should not produce any legal effect.
14. In addition, the Appellee stated that the claimed properties do not correspond with the real situation in field. He further states that the Appellant alleges a property right over the properties based on probably a forged the allocation decision issued in Serbia.

Legal reasoning

Admissibility of the appeal

15. The appeal has been filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and it is admissible.

Joining of the appeals:

16. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 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.
17. The provisions of Law on Civil Procedure that are applicable in the proceeding 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 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.
18. 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.
19. The appeals registered under GSK-KPA-A-108/14 to GSK-KPA-A-109/14 are joined in a single case under GSK-KPA-A-108/14.

Merits of the appeal

20. Regarding the allegation of the appellant that the KPCC decision is unclear, the KPCC has given a certified decision dated on 21 August 2013, the decision made a reference to “relevant paragraphs”. A special reference is made to the paragraphs 11, 56 and 57. The Supreme Court will therefore give a short summary of the reasons why the KPCC **refused** the case.
21. According to Article 3.1 of the Law No. 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 an ownership title 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.
22. Although from the evidences submitted before the KPCC it can be seen that to the Appellant son and brother allegedly were allocated a claimed properties **on 6 May 1999** (during period of the conflict) whereas he indicates 14 June 1999 as the date of loss, thus, he puts in doubt the question of the possession over the properties, the KPCC and the KPA Appeals Panel of the Supreme Court consider the claim as falling under its jurisdiction since there is no evidence proving the opposite.
23. The KPCC based its decision on the fact that the KPA and the KPCC Executive Secretariat had made a negative verification in the documents, on which Mr. Ibraj bases his claims of ownership, including the Decisions on Allocation dated 6 May 1999. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported Mr. Ibraj's claims. It is not because it did not try to collect evidence *ex officio* but because those documents the Claimant relied on could not be found in the public records. The verification is negative. This means that whether those documents are authentic or not is in question. Based on this, the KPCC found that Mr. Ibraj had failed to establish any property right over the disputed property.
24. The appeals repeat the same allegations that he made before the KPCC. No new evidence of significance has been submitted with the appeal.
25. Pursuant to Section 8.6 of the Annex III of the UNMIK/ADM/DIR/2007/5 as adopted by Law No.03/L-079 the Commission may refuse or dismiss a claim on any grounds. Claims may be refused by the Commission if the Claimant or the Property Right Holder, as the case may be, has been unable to prove their ownership or use right over the claimed property. In this regard, the Supreme Court observes that the KPCC, as to the enacting clause and the reasoning, used different terminology related to the outcome of the proceedings as it regards to the claim. Thus the appellant's

allegation on this point stands; however, this does not affect the eventual result achieved. The fact that the documents submitted by the Claimant cannot be found in the records of those institutions where they are supposed to be would lead to the rejection (refusal) of the claim on the merits. The outcome and the reasoning of the decision challenged are clear and comprehensible.

26. Furthermore, the properties are registered in the name of M.A. of Gj./Đ., the Appellee and third party. The appellant could not prove alleged ownership right or the possession of the properties before the conflict. Therefore, the claim had to be refused by the KPCC, as it did so.
27. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that neither violation of substantive law nor an erroneous or incomplete determination of the facts has been made. The Supreme Court finds the appeal as unfounded.
28. 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

29. 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

Esma Erterzi, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar