

**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-104/2015

**Prishtinë/Priština,
18 October 2017**

In the proceedings of:

V. M.

Appellant

vs.

Ali Zeqiri

Nedakovc – Vushtrri/Vučitrn

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (the case files registered at the Kosovo Property Agency under the numbers KPA10742 and KPA10743) of 18 June 2014, after the deliberation held on 18 October 2017, issues the following

JUDGMENT

1. The Appeals of V. M. registered under the numbers GSK-KPA-A-104/2015 and GSK-KPA-A-105/2015 are joined in a single case under the number GSK-KPA-A-104/2015.
2. The Appeals of V.M. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 regarding the case files registered at the KPA under the numbers KPA10742 and KPA10743, are rejected as unfounded.
3. The Decision of the KPCC/D/A/244/2014 regarding the case files registered at the KPA under the numbers KPA10742 and KPA10743 is confirmed.

Procedural and factual background

1. On 23 November 2006, V. M. (hereinafter “the Appellant”) filed two Claims to the Kosovo Property Agency (hereinafter “the KPA”) seeking the compensation for land parcels which had been confiscated by the state: a cadastral parcel No 80/1, cultivated land with the surface of 00.85.61 ha; a cadastral parcel No 82, cultivated land with the surface 00.48.99 ha and a cadastral parcel No 136, cultivated land with the surface 00.60.47 ha; all located in the Municipality of Vushtrri/Vučitrn (hereinafter “the claimed properties”). The Appellant indicated the date: 1 June 1999 as the date of loss of possession over them.
2. To support his Claims, the Appellant provided the KPA with the following documents:
 - The copy of the Possession List No 1, issued by the Geodetic Authority for Real Estate and Cadaster, of the Cadastral Zone of Vërnice/Vrnica on 21 February 1997 listing the cadastral Parcels No 80/1 and 82 as registered under the name of S. M., the diseased mother of the Appellant.
 - The copy of the Birth Certificate of the Appellant No 200-6315/2001-III, issued by the Civil Registration Office of Kraljevo on 30 August 2001.
 - The copy of the Death Certificate No 203-1-63/2001-40, issued by the Civil Registration Office of Kraljevo on 27 September 2001, showing that S. M. passed away on 23 September 2001.
 - The copy of the Decision No 461-35 issued by the Commission for conducting a procedure and deciding upon the requests for land restitution on 1 February 1994, whereby the request of S. M. as the successor of M. M. was accepted as grounded and the claimed properties were returned into the ownership and possession of S. M. However, the Decision mentioned that due to the fact that the return of the expropriated parcels (the claimed properties) was not possible, as they were subject of the ownership of the natural persons, the Commission ordered to return the land of the adequate surface area and class.
3. The notification of the Claim in the case No KPA10742 took place on 22 July 2010 through the publication in the KPA Notification Gazette No 5 and the UNHCR’s Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left at the entrance and exit of the village Vërnice/Vrnica, Municipality of Vushtrri/Vučitrn, at the Cadastral Office of Vushtrri/Vučitrn, the Municipal Court of Vushtrri/Vučitrn, as well as in Mitrovicë/Mitrovica Regional Office of the KPA. In addition, the List and Gazette were distributed to the Head Office of the UNHCR, the Ombudsperson, the Kosovo Cadastral Agency (KCA), the Danish Refugee Council (DCR), the Privatization Agency of Kosovo, UNMIK and OSCE.

4. The Notification of the Claim in the case No KPA10743 took place on 15 April 2010 and the cadastral parcel No 136 was found to be occupied by Ali Zeqiri who has claimed a legal right to the property (hereinafter “ the Appellee”).
5. On 2 April 2010 the Appellee filed a response to the Claim in which he alleged to have bought, *inter alia*, the land parcel No 136 with the regular contract of 22 August 2000 from N. and B.E. Together with the Response he provided the Executive Secretariat of the KPA with the following documents:
 - The copy of the Contract on Sale concluded on 3 August 2000 between N. and B. E., both in the capacity of the Sellers, represented by the lawyer R. M. and the Appellee in the capacity of the Buyer of the cadastral parcel No 136, among other properties. The signatures were legalized on 22 August 2000 before the Municipal Court of Mitrovicë/Mitrovica and contains the reference number Leg. Nr. 123/2000.
 - The copy of the Possession List No 61, issued by the Directorate for Cadaster and Geodesy of the Municipality of Vushtrri/Vucitrn on 22 August 2000, showing the cadastral parcel No 136 registered under the name of the Appellee.
6. The Executive Secretariat of the KPA verified negatively the Decision No 461-35. The Certificate for the Immovable Property Rights P-7020215 issued by the Municipal Cadastral Office of Vushtrri/Vučitrn on 16 October 2008 which was located *ex officio* by the Executive Secretariat of KPA shows only the cadastral parcel No 80 (not divided into cadastral parcel No 80/1 as it was claimed by the Appellant). Moreover, the cadastral parcel No 80 was found to be socially-owned property, registered under the name of the Enterprise “Koperativa Bujqësore”. The cadastral parcel No 82 was as well found to be socially-owned property registered under the name of the Enterprise “Koperativa Bujqësore”. The Executive Secretariat of the KPA verified positively the Contract on Sale submitted by the Appellee, while the cadastral parcel No 136 was found to be registered under the name of B. E.
7. With the Decision KPCC/D/A/244/2014 of 18 June 2014, the Kosovo Property Claims Commission dismissed the Claims. In paragraphs 39 and 82 of the Cover Decision, which according to the Certified Decision apply specifically to the cases at hand, the Commission noted that the Claimant sought only the compensation for the agricultural property lost during 1998-1999 conflict. The Commission, however, has no jurisdiction under the UNMIK Regulation 2006/50, as amended by the Law No 03/L-079 over such claims.
8. The Decision was served on the Appellant on 07 October 2014. He filed an Appeal on 23 October 2014. The Appellee was served with the Decision on 8 October 2014. The copy of the Appeal was delivered to the Appellee on 23 April 2015; however, he did not submit a Reply to it.

Allegations of the Appellant

9. The Appellant alleges that the KPCC’s Decision is based on an erroneous determination of the factual situation and erroneous application of the substantive law. In his opinion the Commission, while processing his request, did not take into consideration the Possession List No 1 submitted by him, which proves the ownership right over the claimed properties that he inherited after his late mother, S. M. For that reason the Commission wrongly considered that the claimed properties were illegally occupied.
10. Concluding, the Appellant requests the Supreme Court to amend the KPCC’s Decision and to confirm his ownership rights.

Legal reasoning

Joining of the Appeals

11. 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

12. 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.
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 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.
14. Thus the Appeals registered under the numbers GSK-KPA-A-104/2015 and GSK-KPA-A-105/2015 are joined in a single case under the number GSK-KPA-A-104/2015.

Merits of the Appeal

15. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth "the LCP"), as well as the allegations of the Appellant, and it found that the Appeal is ungrounded.
16. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property or use rights of the private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999. The Appellant in the case at hand requested however only "the compensation" for the expropriated land parcels. For that reason the KPCC dismissed the Claims explaining it had no jurisdiction over such Claims pursuant to the Law No 03/L-079.
17. In the Appeal, the Appellant referred to the Claims as the Claim for confirmation of the property right, which does not correspond to the content of his Claims he submitted to the KPA, in which he explicitly stated he requested compensation. Therefore, the positions expressed in the Appeals are to be treated as defensive arguments only. The Court, neither in the first, nor in the second instance can deliberate *plus petitum*, the Court adjudicates only within the scope of the claim submitted – argument after Article 2.1 of LCP, applicable *mutatis mutandis* under Article 12.2 of the Law No 03/L-079.
18. Moreover, neither the Commission nor the KPA Appeals Panel of the Supreme Court is competent to decide with regard to Claims for compensation, as the Law No 03/L-079 itself does not provide for compensatory mechanism. For that reason the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts took place.
19. Additionally, the Court wishes to underline that the question of validity of the mentioned by the Appellee Contract on Sale of 2000 falls outside the jurisdiction of the KPCC and of the Supreme Court.
20. Consequently the Appeals, on the basis of Section 13.3 (c) of the Law No 03/L-079 are to be rejected as ungrounded and the Decision of the KPCC is to be confirmed.
21. This Judgment is without prejudice of the right of the Appellant to file a claim before the 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

Anna Bednarek, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar