

**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-235/13

Prishtinë/Priština,
14 January 2015

In the proceedings of:

P. Đ. B.

Appellant

vs.

N. Q.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva - Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/R/175/2012 (case file registered at the KPA under the number KPA30017), dated 22 October 2012 and KPCC/D/A/172/2012 (case file registered at the KPA under the number KPA90744), dated 24 October 2012, after deliberation held on 14 January 2014, issues the following

JUDGMENT

1. The appeals filed by P. Đ. B. dated 12 August 2013, registered under the numbers GSK-KPA-A-235/2013 and GSK-KPA-A-236/2013, are joined in a single case under the number GSK-KPA-A-235/2013.
2. The appeal of P. Đ. B. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 of 22 October 2012 as far as it regards the claim registered at the KPA under No. KPA30017 is dismissed as belated.
3. The appeal of P. Đ. B. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/172/2012 of 24 October 2012 as far as it regards the claim registered at the KPA under No. KPA90744 is rejected as unfounded.
4. The Decision of the Kosovo Property Claims Commission KPCC/D/A/172/2012 of 24 October 2012 as far as it regards the claim registered at the KPA under No. KPA90744, is confirmed.

Procedural and factual background:

1. On 20 February 2007 the claimant Đ. P. B. filed two claims at the Kosovo Property Agency (KPA), seeking ownership right and repossession of the cadastral parcels no. 732, with a surface 0ha 9ar 54m², and cadastral parcel no. 942, with a surface 0ha 59ar 24m², possession list no. 518, cadastral zone Xërxe/Zrce, Municipality of Rahovec/Orahovac. He alleged that he is the owner of 1/3 of ideal part of the claimed properties in Xërxe/Zrce, which he inherited from his father P. S. B. after the completion of the inheritance procedure.
2. During claim intake period he stated that the properties were lost due to circumstances that occurred during the 1998/99 armed conflict in Kosovo. However, the claimant in his statement with the KPA Executive Secretariat on 14 June 2012 admits that his family left Kosovo to Montenegro and Serbia in 1967 and since then has not been in possession over the claimed properties. In addition he stated that 1997 he acquired the properties based on the court decision.
3. To support the claim, Đ. P.B. (hereinafter the claimant) submitted copies of the possession list no. 518, cadastral municipality Xërxe/Zrce, issued on 29 August 2002 by the Directorate for Cadaster and Geodesy of the Municipality of Rahovec/Orahovac, listing the claimed cadastral parcels no's 732 and 942. The claimant submitted also a copy of a Municipal Court

of Rahovec/Orahovac Judgment P.br.165/97, rendered on 29 September 1997 by which it is decided that the sale contract OV.br.129/67 concluded on 14 June 1967 in Rahovec/Orahovac, between his father P. S. B. (hereinafter the PRH) and Municipality of Rahovec/Orahovac in respect of the claimed properties, is annulled. This is the judgment based on which the claimant and his two brothers were restituted the possession right over 1/3 of ideal part each of the claimed properties. Further a copy of the District Court of Prizren Judgment O.br.75/98, rendered on 17 March 1996 was provided, showing that the said MC Judgment is confirmed.

4. On 8 February 2010 and 18 July 2012, KPA confirmed the accuracy of the notification of the claimed properties - parcels no. 732 and no. 942 with cadastral map, orthophoto and GPS coordinates.
5. On 7 September 2007, KPA verified positively the possession list no. 518, presented by the claimant. MC of Rahovec/Orahovac Judgment P.br.165/97 and DC Prizren Judgment O.br.75/98 are also verified. The Executive Secretariat established *ex officio* that both parcels were registered in the name of several co-owners, heirs of P. S.B..
6. The respondent N. Q. filed a notice of participation to the proceedings on 19 December 2008. He claimed property rights over the claimed properties. Apart from his ID card there is no any other document in the case files presented by him. The respondent's brother M. Q. in his correspondence with the KPA declared that: “[...in 1967 the Geneva Foundation for Migrants had purchased land from the claimant's father with amount of 12 Million...]”. Moreover he added that: “[...Since 1967, until today, we have the possession and ownership over this land...these parcels: 732....942...]”.
7. It is not disputed that the claimant's family used these properties until 1967.
8. It is not arguable that after 1967 and before the armed conflict of 1998/1999 the property was used by other people.
9. It is irrelevant for the current case on what basis these other individuals used the said properties after 1967 and until the armed conflict.
10. With Cover Decisions: KPCC/D/R/175/2012, dated 22 October 2012, and KPCC/D/A/172/2012, dated 24 October 2012, the Kosovo Property Claims Commission (KPCC) dismissed the claims on the basis “of the various documents submitted by the claimant, which have been verified by the KPA Executive Secretariat *ex officio* and based on the claimant's own statement giving to the KPA ascertaining that since 1967 they have not lived in Kosovo”. In view of this, the Commission concluded that the claimant did not lose possession as a result of the conflict in 1998-1999, but due to other circumstances before

this period. Therefore, the claims are not within the jurisdiction of the Commission, consequently they have been dismissed.

11. The decisions were served on the claimant on 18 April 2013 (KPCC/D/R/175/2012) respectively on 15 July 2013 (KPCC/D/A/172/2012). He filed appeals on 12 August 2013.
12. The decisions were served on the respondent on 25 April 2013 (KPCC/D/R/175/2012) respectively on 16 July 2013 (KPCC/D/A/172/2012). On 12 December 2013, he replied the appeal declaring that he stays behind all statements given before the KPA.

Allegations of the appellant:

13. The claimant's son P. Đ. B. (hereinafter the appellant) appealed the entire KPCC decisions alleging that his deceased father was the owner of the claimed properties. Additionally, in his attached written statement as another integral part of the appeals referring to the immovable properties recorded within possession list no. 518 and certificate for the immovable property right UL-71510033-00518, issued on 3 July 2012 by Municipality of Rahovec/Orahovac, where among other properties the claimed parcels no. 732 and parcel no. 942 are listed as well, alleges that since 1932 the owner of the claimed properties was his grandfather P. S. B. (hereinafter the Property Right Holder (PRH)). He added that PRH was under the pressure and threat to sale the claimed properties; therefore, the sale contract OV.br.129/67 between PRH and Municipality of Rahovec/Orahovac was imposingly concluded on 14 June 1967. The appellant also stated that the claimant and his brothers as heirs of PRH filed a lawsuit before the Municipal Court of Rahovec/Orahovac, seeking from the court annulment of this sale contract and declaring them owners of 1/3 of the ideal part each. The appellant alleges that the use of the claimed properties by Q. family was done without having any legal base, presenting a violation of human rights.

Legal reasoning:

Joining of the appeals:

14. The Court refers to art. 408.1 of the Law on Contested Procedure (hereinafter the LCP), applicable *mutatis mutandis* (as appropriate) in the procedure in front of the Supreme Court (section 12.2 of Law 03/L-079). It provides for the possibility the Court to join proceedings if such joining contributes to the efficiency of those proceedings.

15. In the text of the appeals filed by the appellant, the Supreme Court finds that the whole factual and legal grounds, as well as the evidentiary issues are completely the same in these two cases. Only the parcels claimed in each claim, are different.
16. The cases registered under the numbers GSK-KPA-A-235/2013 and GSK-KPA-A-236/2013 are joined in a single case registered under the number GSK-KPA-A-235/2013.

Admissibility of the appeals:

17. The Supreme Court has jurisdiction over the appeals against the decisions of the KPCC.

Case GSK-KPA-A-235/2013 (KPA30017):

18. The appeal in case KPA30017 is inadmissible because it was filed outside the time limits pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 (hereinafter Law No. 03/L-079) on the resolution of claims relating to private immovable property, including agricultural and commercial property which provides that: *“Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”*.
19. The KPCC decided on this case with its decision KPCC/D/R/175/2012 of 22 October 2012. This decision was served on the appellant on 18 April 2013. The appellant, however, filed an appeal only on 12 August 2013. Consequently, in accordance with Section 13.3 (b) of Law No. 03/L-079 and Article 195.1 (a) of LCP the appeal had to be dismissed as belated.
20. The Court could not find any reason why the appellant should be excused for this delay. He was sufficiently warned of the deadline (the decision contained a warning in the Serbian language) and the appellant himself gave no reason for delay.

Case GSK-KPA-A-236/2013 (KPA90744):

21. The appeal in case KPA90744 is admissible. It has been filed within the 30 day period as prescribed in section 12.1 of Law No. 03/L-079.
22. The appeal is unfounded.
23. According to Section 3.1 of the Law No. 03/L-079, the Commission has the competence to resolve claims related to the armed conflict of 1998/1999; claims related to rights that cannot be exercised because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

24. In the current case the possession over the properties was lost in 1967 (the claimant himself asserts this fact). *I.e.* the claim is not related to the armed conflict of 1998/1999. Therefore the Commission rightfully dismissed the claim as falling outside its jurisdiction.
25. On the basis of the above and in accordance with Section 13.3 (b) and (c) of Law 03/L-079 and Article 195.1 (a) and (d) and the Court decided as in the enacting clause.

Legal Advice:

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

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar