

**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-053/13

Prishtinë/Priština, 18 February 2015

In the proceedings of:

N I
K

Appellant

vs.

**S R M
S P 22
S**

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered at the KPA under the number KPA29761), dated 23 February 2011 and KPCC/D/A/112/2011 (case file registered at the KPA under the number KPA29762), dated 22 June 2011, after deliberation held on 18 February 2015, issues the following:

JUDGMENT

1. The appeals filed by N I dated 28 January 2012, registered under the numbers GSK-KPA-A-053/2013 and GSK-KPA-A-054/2013, are joined in a single case under the number GSK-KPA-A-053/2013.
2. The appeals of N I against the Decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 of 23 February 2011 as far as it regards the claim registered at the KPA under No. KPA29761 and decision KPCC/D/A/112/2011 of 22 June 2011 as far as it regards the claim registered at the KPA under No. KPA29762 are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 of 23 February 2011 as far as it regards the claim registered at the KPA under No. KPA29761 and decision KPCC/D/A/112/2011 of 22 June 2011 as far as it regards the claim registered at the KPA under No. KPA29762 are confirmed.

Procedural and factual background:

1. On 18 April 2007 the claimant S R M filed two claims at the Kosovo Property Agency (KPA), seeking ownership right and repossession of the cadastral parcels no. 760, with a surface 2ha 15ar 78m² and cadastral parcel no. 761, with a surface 0ha 21ar 2m², located on Klinavac, Municipality of Klinë/Klina according to the possession list no. 226 issued by the Department of the Cadaster in Municipality of Kline/Klina. He states that his deceased father is the co-owner right holder over the land parcels 760 and 761. The co-ownership share is 3/4.
2. During claim processing period he stated that the properties were lost due to circumstances that occurred during the 1998/99 armed conflict in Kosovo.

3. To support the claim, S R M (hereinafter: the appellee) submitted copies of the possession list no. 226 issued on 6 May 2004 by the Directorate for Cadaster and Geodesy of the Municipality of Klinë/Klina, listing the claimed cadastral parcels no's 760 and 761 in the name of B M and R M. The appellee submitted also a copy of a Death Certificate of his deceased father, R M issued by Civil Registration Office of the Municipality of B, M to prove the death of the property right holder.
4. The claimed properties were notified twice. The first time was physical notification on 23 November 2007. The parcels were not occupied. It turned out that the first notification was incorrect, the notification sign was not placed on the disputed property but elsewhere. Therefore a second notification was made, but this time through publication in gazette no.8, which was distributed to the municipality offices.
5. On 4 April 2011, KPA verified positively possession list no. 226, presented by the appellee. The Executive Secretariat established *ex officio* that both parcels 760 and 761 were registered in the name of two co-owners, B M $\frac{1}{4}$ part of the properties and R M $\frac{3}{4}$ part of the properties.
6. During the proceedings in the first instance no one approached KPA expressing interest in the property.
7. With Cover Decisions: KPCC/D/A/100/2011, dated 23 February 2011, and KPCC/D/A/112/2011, dated 22 June 2011, the Kosovo Property Claims Commission (KPCC) decided to grant the claims and recognize the appellee, S R as the owner of the $\frac{3}{4}$ part of the claimed property.
8. The decisions were served on the appellee respectively on 13 October 2011 decision (KPCC/D/A/100/2011) and on 21 February 2012 decision (KPCC/D/A/172/2012).
9. On 3 October 2011 the appellee sent a request to put the claimed property registered under the number KPA29761 under the administration of KPA. On 21 February 2012 he sent another request to KPA for administration of the property, this time for the claimed property registered under the number KPA29762. KPA with an internal

memorandum respectively on date 6 March 2012 about claim under number KPA29761 and on date 23 May 2012 about claim number KPA29762, decided to put the claimed properties under its administration.

10. On 28 January 2013 an interested party, N I filed an appeal against both abovementioned decisions

Allegations of the appellant:

11. The appellant in his appeal challenges the KPCC's decisions alleging that his father and his grandfather about 30 years ago purchased from brothers R and B M a land with total surface 2ha 15ar 78m², without specifying the number of the parcel. He states also that they paid the tax on property to M family and that he is in possession of the booklet for tax on property, which proves that they paid the taxes from 1981 till 1998. In his statement the appellant explain that the transfer of the property is not done because after the war the M family filed a claim to KPA for the mentioned properties. To support his allegations the appellant submitted:

- A statement certified by Basic Court in Peja, Department in Klinë/Klina with no.Vr.nr.95/2013 on 22 January 2011, by which the witnesses confirm that the properties are purchased from the appellant's father in 1972 and that the appellant and his father have paid the taxes on the property until the end of the war in Kosovo.
- A lawsuit filed before Municipal Court in Klinë/Klina on 12 November 2012, seeking confirmation of the ownership over the parcels 760 and 761;
- Copies of the booklet for paying the taxes on the property, the data's described in the pages of booklet are illegible.

Legal reasoning:

Joining of the appeals:

12. 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.

13. 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.
14. The cases registered under the numbers GSK-KPA-A-053/2013 and GSK-KPA-A-054/2013 are joined in a single case registered under the number GSK-KPA-A-053/2013.

Legal reasoning:

Admissibility of the appeal

15. The appellant was not properly notified regarding the proceedings in front of the KPA, therefore his right of appeal has not been precluded.

Jurisdiction

The Supreme Court has jurisdiction over the appeals against the KPCC's decisions.

- The appellant claims he has ownership right over the claimed property, basing his allegations on a purchase from his father and grandfather, specifying the surface of the land but not the number of the parcel. To prove his allegations he submitted some evidences which are found insufficient by the Supreme Court to take a lawful and grounded decision. For this reason on 13 December 2013 the Court with an order no.1 requested from the appellant to clarify which parcel have he, his father and his grandfather purchased 30 years ago – parcel 760 or parcel 761 or both; to present evidence that he or his father or his grandfather have purchased, the land in question in the beginning of the eighties of the 20th century; to present legible copies of the documents submitted with the appeal; to explain why he did not object the claim in front of the Kosovo Property Claims Commission, why he did not he take part in the proceedings there; to explain how he or a member of his family used the land prior to the armed conflict in 1998/1999.

16. On 14 March 2014 the Court received a response from the appellant, with which he gave some additional explanations, without presenting evidence for the alleged purchase (now he claimed that the family had acquired the property through uninterrupted possession since 1972), without presenting legible copies of the documents submitted with the appeal and without answering the question why he did not take part in the proceedings in front of the Kosovo Property Claims Commission (why he did not object to the claim in front of the KPCC).
17. On 24 March 2014 the Court with a second order requested from the appellant to clarify whether he claims the property on the basis of a purchase contract or on the basis of uninterrupted possession. And if yes, since when? Since sometimes in the eighties, as he claimed in the appeal, or since 1972, as claimed in the response to the Court's order.
18. On 30 May 2014 the Court received a response from the appellant dated 29 April 2014 in which he reiterated that his family purchased the land but this time he stated that the purchase happened in 1972. He also explained that the transfer has not been formalized; however since 1972 the family of the appellant had used the parcels 760 and 761, built a house on it and used the rest of the land for agricultural purposes. He alleged that if his family had not purchased the land from the M brothers they would not have been able to use the land uninterruptedly since 1972.
19. In a response to the orders of the Court the appellant submitted the same documents he submitted with his appeal.
20. The Supreme Court notes that the evidences and the declarations of the appellant do not prove his property right over the claimed property. The appellant's allegations that his father and grandfather bought the property from the M family and the statements of the two witnesses do not represent valid and legal evidences to confirm the ownership right over the claimed properties. According to the "Law on trade of immovable property" (official gazette of Socialist Republic of Serbia, 43/81, 1. August 1981, p.3050), article 4, paragraph 2, which was the applicable law at the time "*Contracts on the transfer of rights to immovable property between ownership right holder (...) shall be concluded in writing; the contracting*

parties shall be certified by the courts". In the concrete case such a contract in the form prescribed has never been concluded.

21. In addition, the appellant's allegations are inherently contradicting. First he stated that the property was purchased in 1981, later he claimed that the property had been purchased in 1972. Regardless he presented evidence neither for a purchase in 1972 nor for one in 1981.
22. Therefore, the Supreme Court concludes that the KPCC decision is right and lawful and that the same contains sufficient reasoning for the factual determination background of the law based decision. The appealed decision does not contain any essential violations of the material and procedural laws foreseen by the Article 12.3 of the UNMIK Regulation 2006/50 amended with Law 03/L-079.
23. As a consequence of this and based on the Article 13.3 (c) of the UNMIK Regulation 2006/50 amended with Law 03/L-079, the appeals stands to be rejected as unfounded.

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

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar