

**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-112/11

Prishtinë/Priština, 8 March 2012

In the proceedings of:

A.A.

Claimant/Appellant

vs.

S.A.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011 (case files registered at the KPA under Nos. KPA42422, KPA42423, KPA42424, KPA42425, KPA42426, KPA42427, KPA42428, KPA42429, KPA42430, KPA42432, KPA42433, KPA42434, KPA42435, KPA42436, KPA42437, KPA42438, KPA42439, KPA43337, KPA43338, KPA43339, KPA43340, KPA43341, KPA43342, KPA43347, KPA43348, KPA43349, KPA43350, KPA43351, KPA43352, KPA43353 and KPA43355), dated 23 February 2011, after deliberation held on 8 March 2012, issues the following

JUDGMENT

- 1- The appeal of A.A. is rejected as unfounded.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011, dated 23 February 2011, as far as it regards the cases registered under Nos. KPA42422, KPA42423, KPA42424, KPA42425, KPA42426, KPA42427, KPA42428, KPA42429, KPA42430, KPA42432, KPA42433, KPA42434, KPA42435, KPA42436, KPA42437, KPA42438, KPA42439, KPA43337, KPA43338, KPA43339, KPA43340, KPA43341, KPA43342, KPA43347, KPA43348, KPA43349, KPA43350, KPA43351, KPA43352, KPA43353 and KPA43355, is confirmed.

- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 530 (€ five hundred thirty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 and 27 November 2007, A.A. filed several claims with the Kosovo Property Agency (KPA), seeking to be recognized as the co-owner of different parcels of land acquired by inheritance and claiming repossession. He stated that his late father was co-owner of the property to a share of ¼. He explained that these parcels had belonged to his deceased grandfather A.A. and that his uncle D.A. unlawfully had himself registered as the owner of the entire property in 1984.

In the claim forms signed by the claimant, the claimant states that his late father (M.A.) was the co-owner of the mentioned cadastral parcel, which is usurped by his uncle D.A. and the claimant requests repossession of the parcel and compensation for its usage. The claim forms signed by the claimant, concerning GSK-KPA-113/11 (KPA42423) reads as follows: "By signing this form, the claimant establishes that his/her property right is related to the immovable private property that was lost as a result of the circumstances in 98/99 in

Kosovo and states that the date of loss is 15/06/1999". In the other claims at stake the claimant signs the forms with the date of loss 10 May 1999.

To support his claim, the claimant provided the KPA amongst others with the following documents:

- Judgment P.No.1181/89, issued by the Municipal Court of Prizren on 3 November 1989, which annulled the gift contract Cer. No. 1766/64 regarding immovable property between the father of the claimant, M.A., and the claimant's uncle, D.A., the father of the respondent;
- Judgment with reference number Gz.No.103/90, issued by the District Court of Prizren on 26 February 1990, rejecting the claimant's appeal as ungrounded and verifying the Municipal Court of Prizren Judgment P.No.1181/89 dated 3 November 1989;
- Supreme Court of Belgrade decision with reference number Rev. 3253/93 dated 6 October 1993, rejecting the revision submitted against the District Court of Prizren Judgment P.No.1181/89, by which the revision in the case of G.A. and D.A. is challenged;
- Birth Certificate of A.A., born on 6 January 1956 as son of father M.A. and mother G.A. born D., issued by the Republic of Serbia, Municipality of Niška Banja, Office of the Registrar Jelasnica, on 18 July 2005;
- Possession List No. 24, issued by the Republic of Serbia-SGP Kosovo and Metohija, Municipality of Prizren, Cadastral Municipality of Jablanica/Jablanički, on 22 December 1998.

Possession List No. 24 showed that the father of the respondent, D.A., is the property right holder. The property is the following:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-112/11 (KPA42422)	Parcel no. 1134, in municipality of Prizren in Pousko-Jabllanice, cadastral zone Jabllanice/Jablanica, 6. class orchard with a surface of 13 ar, 52 m ²
GSK-KPA-A-113/11 (KPA42423)	Parcel no. 1152, in municipality of Prizren, Pousko, place Markov rit, 1-storey house with a basement (1 floor, 4 rooms), 2 ar, 21m ² , yard with a surface of 5ar,
GSK-KPA-A-114/11 (KPA42424)	Parcel no. 1152, in municipality of Prizren, Pousko, place Markov rit, 5. class pasture with a surface of 5ar, 86m ²
GSK-KPA-A-115/11	Parcel no. 1825, in municipality of Prizren, Pousko, place Porodin-

(KPA43349)	Nurtova kosara, 7. class pasture with a surface of 2ar, 72m ²
GSK-KPA-A-116/11 (KPA424226)	Parcel no. 1154, in municipality of Prizren, Jablanica, place Markov rit, 7. class meadow with a surface of 2ar, 19m ²
GSK-KPA-A-117/11 (KPA42427)	Parcel no. 1154, in municipality of Prizren, Jablanica, place Markov rit, 5. class pasture with a surface of 80m ²
GSK-KPA-A-118/11 (KPA42428)	Parcel no. 1155, in municipality of Prizren, Pousko, place Markov rit, 1-storey house with a basement
GSK-KPA-A-119/11 (KPA42429)	Parcel no. 1156, in municipality of Prizren, Jablanica, place Markov rit, 5. class (illegible) with a surface of 4ar, 79m ²
GSK-KPA-A-120/11 (KPA42430)	Parcel no. 1157, in municipality of Prizren, Pousko, Markov rit, 6. class field with a surface of 25ar, 14 m ²
GSK-KPA-A-121/11 (KPA42432)	Parcel no. 1158, in municipality of Prizren, Pousko, Markov rit, 6. class meadow with a surface of 23ar, 34 m ²
GSK-KPA-A-122/11 (KPA42433)	Parcel no. 1159, in municipality of Prizren, Pousko, Markov rit, 6. class orchard with a surface of 8ar, 83m ²
GSK-KPA-A-123/11 (KPA42434)	Parcel no. 1160, in municipality of Prizren, Pousko, Markov rit, 5. class forest with a surface of 19ar, 55m ²
GSK-KPA-A-124/11 (KPA42435)	Parcel no. 1177, in municipality of Prizren, Pousko, Markov rit, 7. class pasture with a surface of 21ar, 64m ²
GSK-KPA-A-125/11 (KPA42436)	Parcel no. 1178, in municipality of Prizren, Pousko, Markov rit, 8. class meadow with a surface of 6ar, 71m ²
GSK-KPA-A-126/11 (KPA42437)	Parcel no. 1207, in municipality of Prizren, Pousko, Pokrojenik M. rit, 5. class forest with a surface of 43ar, 56m ²
GSK-KPA-A-127/11 (KPA42438)	Parcel no. 1208, in municipality of Prizren, Pousko, Pokrojenik M. rit, 7. class meadow with a surface of 63ar, 23m ²

GSK-KPA-A-128/11 (KPA42439)	Parcel no. 1287, in municipality of Prizren, Pousko, Pokrojenik M. rit, 4. class forest with a surface of 16ar, 30m ²
GSK-KPA-A-129/11 (KPA43337)	Parcel no. 1176, in municipality of Prizren, Pousko, Markov rit, 7. class forest with a surface of 9ar, 5m ²
GSK-KPA-A-130/11 (KPA43338)	Parcel no. 1175, in municipality of Prizren, Pousko, Markov rit, 7. class forest with a surface of 14ar, 32m ²
GSK-KPA-A-131/11 (KPA43339)	Parcel no. 1174, in municipality of Prizren, Pousko, Markov rit, 7. class pasture with a surface of 32ar, 43m ²
GSK-KPA-A-132/11 (KPA43340)	Parcel no. 1173, in municipality of Prizren, Pousko, Markov rit, 8. class field with a surface of 8ar, 36m ²
GSK-KPA-A-133/11 (KPA43341)	Parcel no. 1162, in municipality of Prizren, Pousko, Markov rit, 5. class vineyard with a surface of 8ar, 18m ²
GSK-KPA-A-134/11 (KPA43342)	Parcel no. 1161, in municipality of Prizren, Pousko, Markov rit, 6. class field with a surface of 40ar, 88m ²
GSK-KPA-A-135/11 (KPA43347)	Parcel no. 2732, in municipality of Prizren, Pousko, 5. class forest with a surface of 12ar, 25m ²
GSK-KPA-A-136/11 (KPA43348)	Parcel no. 1827, in municipality of Prizren, Pousko, Jablanica, 1. class meadow with a surface of 2ar, 26m ²
GSK-KPA-A-137/11 (KPA42425)	Parcel no. 1153, in municipality of Prizren, Pousko, Markov rit, 6. class orchard with a surface of 3ar, 89m ²
GSK-KPA-A-138/11 (KPA43350)	Parcel no. 1484, in municipality of Prizren, Pousko, Isakovo-(illegible), 5. class pasture with a surface of 7ar, 6m ²
GSK-KPA-A-139/11 (KPA43351)	Parcel no. 1483, in municipality of Prizren, Pousko, Isakovo-(illegible), 8. class field with a surface of 56ar, 10m ²
GSK-KPA-A-140/11 (KPA43352)	Parcel no. 1375, in municipality of Prizren, Pousko, Kora-potok, Belavoda, 8. class field with a surface of 39ar, 78m ²

GSK-KPA-A-141/11 (KPA43353)	Parcel no. 1482, in municipality of Prizren, Pousko, Isakovo-(illegible), 6. class forest with a surface of 5ar, 91m ²
GSK-KPA-A-142/11 (KPA43355)	Parcel no. 1288, in municipality of Prizren, Pousko, Pokrojenik, 6. class meadow with a surface of 7ar, 95m ²

The submitted Possession List No. 24 was verified. In 2007 the entire Prizren Cadastre Department was burned down with all the records, therefore it is not possibility to provide further information on the background of the property.

The Judgment P.No.1181/89 issued by the Municipal Court of Prizren on 3 November 1989 and the court decision Gz.No.103/90 issued by the District Court of Prizren on 26 February 1990 were verified. The court decision with reference number Rev. 3253/93 issued by the Supreme Court in Belgrade on 6 October 1993 was also verified,.

The Claimant's mother G.A. initiated inheritance proceedings in the Municipal Court of Prizren in relation to her husband's claims. The court rejected the application as being out of time. Various challenges were made by the claimant's family to the inheritance decision of the Municipal Court of Prizren including appeals to the District court of Prizren and the Supreme Court of Belgrade which issued the decision Rev. 3253/93 upholding an appeal against a decision of the District Court in Prizren. The claimants requested co-ownership for the disputed property. Further court actions challenging the decision relating to the inheritance proceedings were initiated in 1994 and 1998.

In 2008, the KPA notification team went to the places where the claimed parcels allegedly were located and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. All of the property was found occupied by S.A. who claimed a legal right to the property. The notification was checked by GPS and orthophoto later on in the proceedings in 2010 and was found to have been correct. Only in case GSK-KPA-A-142/11 (KPA43355) no orthophoto is with the documents.

On 23 February 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/102/2011 dismissed the claims as they did not fall within the jurisdiction of the KPCC. Under no. 51 the decision reads as follows: "The commission finds that the property dispute in these claims is a result of a longstanding family dispute and is wholly unrelated to the conflict in Kosovo in 1998-1999. Indeed

the Claimant does not contend that the dispute is related to the conflict. It is apparent that the dispute commenced well prior to the conflict and has continued between the disputants since the conflict. The Claimant states that neither he nor his father ever had possession of the claimed properties and agrees that the properties have been continually used by the Respondent's family. The Respondent confirms that his family has had uninterrupted possession of the properties. In the circumstances, the claim stands to be dismissed as falling outside the Commission's jurisdiction." The Commission's decision based on Article 11.4 subparagraph (b) of UNMIK Regulation 2006/50 amended by the Law No.03/L-079, when declared incompetent is lawful.

The decision was served the claimant on 29 June 2011. On 22 July 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of incompletely established facts and the erroneous application of the material law.

In his appeal the appellant declared the KPCC decision as partially correct, as a long standing family dispute is at stake but as incorrect insofar as the dispute was not connected to the conflict in Kosovo in 1998/99. The appellant admits that the dispute about the property was ongoing even before 1999, which is shown by the inheritance claim of 1993. Preceding this dispute was the dispute about the gift contract which was annulled in 1989. The claimant also states that already in 1984, his uncle unlawfully had himself registered as the owner of the property. The claimant, however, argues that the loss of the property is connected with the conflict of 1998/1999 insofar as the proceedings could not be finished because of the 1998/1999 conflict and because even now there are not the conditions to finish it within a foreseeable time period at a fair and impartial trial. The appellant states that the KPCC's decision contains several inaccuracies that would be reason to annul the decision. He states "when one compares the size of the land parcels under the same number, it is different in the KPCC decision and in the possession list". The appellant, however, does not specify these alleged inaccuracies.

The appellant requests to quash the decision of the KPCC and accept his claims.

The respondent (henceforth: the appellee) requests the appeal to be rejected and the first instance decision of the KPCC to be confirmed.

In his opinion, the KPCC's decision is accurate. The appellee explains furthermore that the predecessor of the appellant waived on his right to $\frac{1}{4}$ of the immovable property in 1964 of which he would have been entitled in exchange for children's allowance and with the conclusion of a contract on gift.

The Supreme Court has joined the claims.

Legal reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the Court finds neither incomplete establishment of facts nor erroneous application of the material law. The cases are not within the jurisdiction of the KPCC.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by 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 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.

In this case, however, the claimant has not proven that he was restrained from exercising the claimed ownership right because of the armed conflict of 1998/1999. The parcels were registered under the name of the claimant's uncle already in the year 1984. The dispute about who is the owner of the parcels, the claimant or the respondent, goes back at least to the year 1989, when the inheritance decision of the Municipal Court of Prizren relating to the litigious parcels was issued. The following decisions show that the dispute within the family went on. This dispute, and here the Court completely agrees with the KPCC, has nothing to do whatsoever with the armed conflict in Kosovo in the years 1998/1999. The loss of the property, which is a consequence of this family dispute, therefore is not related to the armed conflict either. The KPCC and the KPA Appeals Panel have jurisdiction only for cases linked to the conflict as foreseen with the provisions of Article 3.1 subparagraph "a" and "b" of UNMIK Regulation 2006/50 as amended by Law No. 03/L-79.

That the mother of the claimant allegedly left Kosovo in 1999 because of pressure and harassment as she was married to a Muslim and she was Serbian by ethnicity does not prove that the property was lost because of the conflict, as the property was registered under the name of the claimant's uncle well before – and the dispute had arisen before – and there is no indication that the mother of the claimant lived on the litigious

property before leaving Kosovo. The same reasoning applies to the claimant, who left Kosovo even before the conflict and was working in Gornji Milanovac until he was retired.

The claimant's allegation that at this moment and in the foreseeable future there would not be an efficient, impartial judiciary able to solve his request in Kosovo, neither changes the facts which have to be considered by the Court nor does it influence the character of his claim, which stays without the jurisdiction of the KPCC and therefore without the jurisdiction of the KPA Appeals Panel.

As far as the claimant reasons that there are mistakes in the decision of the KPCC concerning the surface of the parcels, the Court does not find these alleged mistakes. But even if these mistakes would have occurred, they would not be a reason to quash the decision. As the claim does not fall within the jurisdiction of the KPCC, these alleged mistakes had no influence on the judgment, especially do not influence its execution.

Because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed properties or not. Therefore, the decision of the Court is without prejudice to the decision of a competent court.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- court fee tariff for the issuance of the judgment (10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at more than € 100.000: € 500 (€ 50 + 0,5% of € 100.000 to a maximum of 500 €).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment by a person with residence or domicile abroad may not be less

than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice

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

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filchva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar