

**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-175/11

Prishtinë/Priština, 21 June 2012

In the proceedings of:

D.L. personally and

R.L.,

M.L.,

N.L.,

D.L.,

G.L. and

L.H., through their representative D.L.

Claimants/Appellants

vs

M.B.

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 decisions of the Kosovo Property Claims Commission **KPCC/D/A/108/2011** (case files registered at the KPA under Nos. **KPA40940, KPA40941, KPA40942, KPA40943 and KPA40944**) and **KPCC/D/A/110/2011** (case file registered under No. **KPA40945**), dated 13 May 2011, after deliberation held on 21 June 2012, issues the following

JUDGMENT

- 1- The Appeal is accepted.
- 2- The decisions of the Kosovo Property Claims Commission **KPCC/D/A/108/2011** (regarding case files registered at the KPA under Nos. **KPA40940, KPA40941, KPA40942, KPA40943 and KPA40944**) and **KPCC/D/A/110/2011** (regarding case file registered under No. **KPA40945**), both dated 13 May 2011, are modified regarding the claims of **R.L., M.L., N.L., D.L., G.L. and L.H.**, represented by **D.L.**
- 3- The claim filed on 17 July 2007 by **D.L.** on behalf of **R.L., M.L., N.L., D.L., G.L. and L.H.**, registered under Nos. **KPA40940, KPA40941, KPA40942, KPA40943, KPA40944, KPA40945**, is accepted.
- 4- **R.L.'s, M.L.'s, N.L.'s, D.L.'s, G.L.'s and L.H.'s ownership rights are confirmed regarding** for each of them over 1/7 ideal part of:
 - parcel No. 1096 - with a surface of 0 ha 12 a 26 sq. m., located in Gojan-preko reke, Skivjan/Skivjane, Gjakovë/Djakovica;
 - parcel No. 1097 with a surface of 0 ha 6 a 27 sq m, located in Gojan-dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica;
 - parcel no. 1098/1, with a surface of 0 ha 59 a 60 sq m, located in Gojan-Okucnica, Skivjan/Skivjane, Gjakovë/Djakovica;
 - parcel No. 1098/2, with a surface of 0 ha 28 a 90 sq m, located in Gojan-Lokvan, Skivjan/Skivjane, Gjakovë/Djakovica;

- parcel No. 1099/1, with a surface of 1 ha 10 a 42 sq m, located in Gojan-Strnista, Skivjan/Skivjane, Gjakovë/Djakovica;
 - a house and other buildings of 346 sq m, located in parcel No. 1097 located in Gojan-dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica.
- 5- R.L., M.L., N.L., D.L., G.L. and L.H. are given possession of the claimed properties.
 - 6- Any person occupying the properties shall vacate them within 30 (thirty) days of the delivery of the present judgment; in case of failure to comply with this order within the stated time the person shall be evicted from the property through compulsory execution.
 - 7- The Appellant should not bear the costs of the proceedings as the appeal was accepted.

Procedural and factual background:

On 17 July 2007, D.L. filed claims with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of parcel No. 1096 - with a surface of 0 ha 12 a 26 sq. m., located in Gojan-preko reke, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1097 with a surface of 0 ha 6 a 27 sq m, located in Gojan-dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica; parcel no. 1098/1, with a surface of 0 ha 59 a 60 sq m, located in Gojan-Okucnica, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1098/2, with a surface of 0 ha 28 a 90 sq m, located in Gojan-Lokvan, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1099/1, with a surface of 1 ha 10 a 42 sq m, located in Gojan- Strnista, Skivjan/Skivjane, Gjakovë/Djakovica; a house and other buildings of 346 sq m, located in parcel No. 1097 located in Gojan- dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica.

The claimant explained that she is the co-owner of the properties in question which she acquired by inheritance, after the death of her husband A.L.. She declared that the properties were usurped by unknown person. In the claim six persons were listed as interested parties: R.L., M.L., N.L., D.L., G.L. and L.K.. The KPA did not constitute them in the process neither as claimants, nor as respondents. The KPA did not inquire the claimant whether she is representing them in the procedure and did not request from her a power of attorney.

To support her claim, the claimant provided the KPA with the following documents:

- Extract of possession list No. 409, issued by the Municipality of Gjakova/Djakovica, Cadastral Zone Skivjan/Skivjane, on 6 February 2000 (Republic of Serbia), showing that D.L. and R.L., M.L., N.L., D.L. G.L. and L.H. were in possession of the litigious properties and
- ID Card No. 201169, issued by the Municipality of Gjakovw/Djakovica, on 8 July 2004 (Republic of Serbia).

Later on during the proceedings, the claimant submitted the following documents:

- Marriage certificate No. 7, issued by the Municipality of Gjakovw/Djakovica, on 8 July 2004; and
- Claimant's power of attorney given to her legal representative A.L., verified by the Municipal Court of Kraljevo-Serbia, on 21 May 2009;

A KPA notification team notified the properties by putting signs in/on each of them in 2007 and 2008 (for the different properties). Some notifications were repeated in 2010. On a later stage the KPA checked the notifications based on "ortophoto and GPS coordinates". It was confirmed that the notification had been done properly.

Regarding some of the properties the respondent party claimed his own rights, but his allegations were disproved by the presented judgment No. 107/45, dated 1 October 1945, rendered from the District People Court of Gjakovë/Djakovica, as well as judgment No. 25/45, dated 9 November 1945, rendered by the Regional People Court of Prizren. It is established that in the past in 1945, there was a property dispute regarding this parcel between the families of the claimant and the respondent and that it was resolved in favour of the first.

The KPA contacted the respondent in order to ask him to provide additional documents. The correspondence records between KPA and the respondent show that the respondent refused to submit other documents to prove ownership.

On 13 May 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/108/2011 and KPCC/D/A/110/2011 found that the claimant had established that she is the owner of 1/7 ideal part of the claimed properties. The Commission ordered that the claimant be given possession of the claimed properties and that the respondent or any person occupying the properties vacate the same within 30 days of the delivery of the order, otherwise they be evicted.

The decisions were served to the claimant on 13 September 2011.

The decisions were served to the respondent on 27 September 2011.

On 10 October 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision.

The appellant stated that the Commission wrongly considered her claim as individual rather than a joint claim although the supporting documents enclosed into a case file were identical for all co-owners. She asserted that they (she and her children: R.L., M.L., N.L., D.L., G.L. and L.H.) all inherited the claimed property at the same time in the probate proceedings after the death of her husband and they never did physical division of the property. Moreover, she stated that even in the possession list they were indicated as owners, each of them of 1/7 ideal part of the claimed property and also they were mentioned as a party with interest in all claims (KPA40940, KPA40941, KPA40942, KPA40943, KPA40943, KPA40944 and KPA40945) submitted before KPA.

The appellant argues that the KPA should have determined in its decision the ownership right of these persons as well, by considering this claim as joint one, since she was the one person representing the entire family.

Furthermore, she stated that probably technical mistakes had been made by the Commission and that they could be easily corrected without changing the content and facts. Also, she stated that none of the co-owners were informed at all and nobody from the KPA required any statement before KPA and that's why she was convinced that she had represented them.

Finally, she requested from the Supreme Court to reconsider the same decision and decide about all co-owners or interested parties.

The appeal was served to the respondent (henceforth: the appellee) M.B.. The appellee did not respond.

In accordance with its obligations to check ex officio whether a person appearing as representative possesses an authorization to represent (art. 93.4 LCP) the Court has required from D.L. to present a power of attorney, which she did.

She presented a power of attorney, dated 27 June 2007. With it the claimants R.L., M.L., N.L., D.L., G.L. and L.H. have authorized their mother, the claimant D.L. to represent them in any legal proceedings regarding the properties in their village Skivjan/Skivjane and described in possession list 409. Even though not explicitly stated, the reading of the document in relation to the above mentioned possession list prove that the above listed claimants have authorized their mother (non solicitor) to represent them in any legal proceedings related to the disputed property. The power of attorney was issued in accordance with the requirements of article 96, in relation with art. 95 and art. 97, para 1, first hypothesis of the Law on Contested Procedure (SFRY 4/1977). It is in a written form, given to a person who is not a solicitor and the representative has the rights to take all actions in the proceedings, but the acts for which explicit authorization is needed – i.e. withdrawal of the statement of claims, admitting or renouncing the claims, conclusion of a settlement, renouncing or giving up legal remedy, etc. In the current case these are irrelevant as they have not been undertaken by the representative. The latter has filed a claim in front of the KPA and after that an appeal in front of the Supreme Court and these procedural actions were undertaken within the scope of the authorization given to her with the power of attorney. As long as no withdrawal of the power of attorney was communicated to the Court (art. 94.2 LCP) the Court considers that all actions undertaken by the representative D.L. on behalf of the other six claimant/appellants are lawful.

Legal reasoning:

Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 prescribes: “Upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and make reasonable efforts to notify any other person who may have a legal interest in the property”.

Section 11.3 (c) and (d) *ibid* provide that the KPCC may take any other procedural measures it considers appropriate to expedite its decision making.

Section 11.1 *ibid* provides that the provisions of the Law on Administrative Procedure are applicable *mutatis mutandis* to the proceedings of the KPCC, except as otherwise provided in UNMIK Regulation 2006/50 as amended by Law No. 03/L-79 and in UNMIK/DIR/2007/5 implementing the Regulation.

Art. 39.2 of the Law on Administrative Procedure – Law No.02/L-28 - prescribes that notwithstanding the provisions of paragraph 1 of the present article, the public administration body shall, if applicable, correct the request of the interested parties, without prejudice to legal interest of the interested parties. This resolution is a manifestation of the principle of legality, as determined in art.3.1 *ibid*, according to which public administration bodies shall exercise their administrative activity in compliance with the applicable legislation in Kosovo, within the scope of competencies vested in them and for the purposes that such competencies were vested for. Another manifestation of the principle of legality which is relevant to the current case is the

one formulated in art. 3.2 *ibid* which states that public administration bodies shall ensure the implementation of their administrative acts, *mutatis mutandis* decisions, as are the acts of the KPCC named.

Art. 55 *ibid* also provides that the competent body shall ask and shall be acquainted with all the facts necessary to reaching the final decision, employing all the means of verification provided for by the Law. This resolution systematically follows from the principle of objectivity of the administrative process pursuant to art. 7.1 *ibid*: “During an administrative activity, public administrative bodies shall consider and weigh all the factors related to a specific administrative act”. Along the same line, art. 53.1 *ibid* which states that during an administrative proceedings, the official running the proceedings shall consider all relevant factors for the matter at hand, and shall duly evaluate every factor and the principle of objectivity as a basic principle.

It is established that D.L. based on the power of attorney dated 27 June 2007 on her name and on behalf of her children submitted claims for the properties described above in front of the KPA requesting recognition of the ownership right in 1/7 of the ideal part of the cadastral parcels no. parcel No. 1096 - with a surface of 0 ha 12 a 26 sq. m., located in Gojan-preko reke, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1097 with a surface of 0 ha 6 a 27 sq m, located in Gojan- dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica; parcel no. 1098/1, with a surface of 0 ha 59 a 60 sq m, located in Gojan-Okucnica, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1098/2, with a surface of 0 ha 28 a 90 sq m, located in Gojan-Lokvan, Skivjan/Skivjane, Gjakovë/Djakovica; parcel No. 1099/1, with a surface of 1 ha 10 a 42 sq m, located in Gojan- Strnista, Skivjan/Skivjane, Gjakovë/Djakovica; a house and other buildings of 346 sq m, located in parcel No. 1097 located in Gojan- dvoriste, Skivjan/Skivjane, Gjakovë/Djakovica. and based on the PL no. 409, issued by the Municipality of Gjakova/Djakovica, Cadastral Zone of Skivjan/Skivjane they are possessors in 1/7 of the ideal part of these parcels. Regardless of this the KPCC has not constituted R.L., M.L., N.L., D.L., G.L. and L.H. as claimants.

The KPCC should have constituted the above mentioned claimants as such. If the Commission considered that the claim is not clear regarding the fact who the parties are, it should have used its prerogatives, as vested in art 39 in the Law of Administrative Procedure (LAP) and correct the claim after interrogating the first claimant regarding the other claimants and whether she represents them. By not doing this the Commission has rendered a decision in violation of principal of objectivity (*argumentum per art. 3.1 LAP*). Therefore the Appeals Panel within the scope of its authority and according to art. 201 LCP, which the Court applies *mutatis mutandis* according to section 12.2 of UNMIK/REG/2006/50 as amended by Law No. 03/L-079 modifies the decision by accepting the claims of the above mentioned six claimants as grounded.

Cost of the proceedings:

Pursuant to Article 8.4 of Annex III of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission. Such exemption is not foreseen for the proceedings before the Supreme Court. However in the current case the appeal was accepted as grounded, therefore the appellant should not bear the costs of the proceedings.

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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar