

**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-173/11

Prishtinë/Priština, 26 July 2012

In the proceedings of

Đ.M.P.

Claimant/Appellant

v.s

R.H.

Respondent/Appellee

and

X.Z.

Second respondent/Second 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/108/2011 (case files registered at the KPA under Nos. KPA20160 and KPA20161), dated 13 May 2011, after deliberation held on 26 July 2012, issues the following

JUDGMENT

- 1- The appeals filed by Đ.P. on 3 November 2011, registered under Nos. GSK-KPA-A-173/11 and GSK-KPA-A-174/11, are joined in a single case under the number GSK-KPA-A-173/11.
- 2- The appeals filed by Đ.P. on 3 November 2011 are rejected as unfounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/108/2011, dated 13 May 2011, as far as it regards the cases registered under Nos. KPA20160 and KPA20161, is confirmed.
- 4- The appellant has to pay the costs of the proceedings which are determined in the amount of € 55 (fifty five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 4 December 2006, Đ.M.P., acting as a family household member on behalf of his late father, filed several claims with the Kosovo Property Agency (KPA), claiming amongst other confirmation of property right and repossession of the following parcels: No. 726/2, at the place called “Ljigata”, a 3 class field, with a surface of 16 ar and 79 m² and No. 728/1, at the place called “Ljigata”, a 3 class field, with a surface of 18 ar and 49 m². He explained that these cadastral parcels belonged to his father M.S.P., and that they were occupied.

To support his claim, he provided the KPA with the following documents:

- His Birth Certificate, issued on 2 November 1998 by the Municipality of Vushtrri/Vucitrn, Republic of Serbia;
- Transcript of Possession List No. 221, issued on 6 September 1999 by the Municipality of Vushtrri/Vucitrn, Cadastral Zone of Gracë/Grace, Republic of Serbia, and
- ID Card, issued on 19 March 1997 by the Municipality of Vushtrri/Vucitrn, Republic of Serbia.

Possession List No. 221 shows that M.S.P. was the owner of the claimed parcels in the Municipality of Vushtrri/Vucitrn, Cadastral Zone of Gracë/Grace.

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

- Death Certificate of the property right holder, issued on 26 October 2007 in Kraljevo, Municipality of Vushtrri/Vucitrn, Republic of Serbia;
- Copy of Plan No. 953-1/2010-80, issued on 10 March 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;
- Copy of Plan No. 953-1/2010-182, issued on 28 May 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;
- Transcript No. 952-1/2010-2123 of Possession List No. 221, issued on 28 May 2010 by the Cadastral Office of Vushtrri/Vucitrn Republic of Serbia;
- Copy of Plan. 953-1/2010-284, issued on 24 August 2010;
- Copy of Plan No. 953-1/2010-312, issued on 15 September 2010 by the Cadastral Office of Vushtrri/Vucitrn, Republic of Serbia;

The first notifications done by the KPA on 19 March 2007 (KPA20161) and 29 August 2007 (KPA20160 and KPA20161) were incorrect. Therefore, on 16 September and 6 October 2010, the KPA notification team went to the place where the claimed parcels were allegedly situated and put up signs indicating that the properties were subject to a claim and that interested parties should have filed their response within 30 days. Both parcels were found occupied.

Confirmations (for KPA20160 on 27 September 2010 and for KPA20161 on 22 October 2010) of the abovementioned notifications were done based on cadastral map, orthophoto and GPS coordinates, the notifications were found to be correct.

Based on the submitted Possession List No. 221, the KPA officers found the Possession List No. 221 of the United Nations issued on 25 September 2007 by the Municipality of Vushtrri/Vucitrn for the cadastral zone of Gracë/Grace, and the Certificate of the Immovable Property Rights No. UL-70202022-00221 issued on 27 August 2010 by Municipality of Vushtrri/Vucitrn, showing that the claimed parcels were in possession of M.S.P. – father of the claimant – as the owner of these immovable properties. Both the claimant's birth certificate and the property right holder's death certificate could be verified.

The KPA requested the claimant to submit his father's birth certificate (property right holder) and asked him whether the inheritance procedure was initiated. The claimant responded that his father had passed away on 22 March 1993 and that the inheritance procedure had not been initiated.

On 20 October 2008, after the first incorrect notifications were made by the KPA, R.H. (henceforth: *the first respondent*) submitted a response to the claim filed with the KPA, indicating that in 2001 he had bought the parcels which are the subject of the dispute in these cases from the claimant Đ.P., and that he had concluded an internal contract with him. According to him, this contract was not certified before the court because courts were not operational at that time.

In the light of this ascertainment, the first respondent presented an undated, unsigned and uncertified copy of a power of attorney given by S.P. (the property right holder's spouse and the mother of the claimant), whereby she authorizes her son – the claimant – to enter and sign on her behalf and in her interest a sales contract on 1/3 ideal part of the immovable properties evidenced in the Possession Lists No. 221 and No. 222 respectively, and to accept the selling price contracted for these immovable properties.

Furthermore, the first respondent provided a statement to the KPA, which, according to him, was given by the claimant and was certified on 18 May 2001 before the Municipal Court in Vršac, Serbia, which reads that he accepted as his own the signature put on the sales contract. The KPA verification report, dated 8 December 2010, confirms the fact that this statement was given by the claimant before the Municipal Court of Vršac on 18 May 2001 under the number VR.Nr. 1085/2010.

On 2 February 2010, the KPA contacted the claimant and asked him about the allegations of the first respondent, where he claimed that among the other cadastral parcels registered in Possession List No. 221 he also bought from him (Đ.P.) the cadastral parcels No. 726/2 and No. 728/1. The claimant responded that the alleged sale of immovable properties by him to the first respondent based on an internal contract had not taken place. Furthermore, he stated that he and his family as well as his mother S.P. were in possession and use of the claimed properties until 2004.

In the meantime, on 23 September 2010 (following notifications repeated and done correctly by the KPA), X.Z. (henceforth: *the second respondent*), in the notification received and signed regarding participation in proceedings, expressed his interest to participate in the legal proceedings before the KPCC.

Also, in another contact (28 October) between KPA and the claimant, the claimant reconfirmed that he and his family as well as his mother S.P. had been in possession of the claimed property (parcels No. 726/2 and

No. 728/1) until 2004. Further in this communication, the claimant states that the claimed properties were illegally occupied by the respondent following the death of his mother and that no inheritance procedure was initiated.

To support and confirm his abovementioned statements, on 10 November 2010, the claimant provided the KPA with a handwritten statement through which he indicated that the immovable properties recorded under the name of his father M.P. were not sold due to the fact that according to him nobody was entitled to do that, denying that the power of attorney and the statement given were confirmed by himself as the inheritor of the immovable properties. Additionally, in the same statement he underlined that S.P., the property right holder's spouse and his own mother was in possession of the claimed parcels until 30 December 2004, which corresponds with the day of her death.

Finally, on 17 December 2010 and 3 February 2011, KPA contacted the claimant again and asked him once again whether the respondent's claims and his response were the same as in the previous statement – that he and his family as well as his mother S.P. were in possession and use of the claimed properties (including the claimed immovable properties under No. 726/2 and No. 728/1) until 2004. Further in this communication, the claimant states that the claimed properties were illegally occupied by the respondent following the death of his mother.

On 28 February 2011, KPA contacted the second respondent and asked him about his property claims over the parcels No. 726/2 and No. 728/1. He responded that he bought the claimed properties on 25 February 1977 from M.P.. He stated that he paid the selling price in its entirety and the transaction tax was due to be paid by M.P., but at the time when the cadastral changes were due, he rejected to pay this tax and the immovable property therefore was not transferred under his name (the second respondent's).

Further, according to him, in 1984 when the land consolidation took place, the claimant's father went at his place and handed over to him the land consolidation documentation in his name (in the name of X.Z.). Finally, in his statement, the second respondent underlines that he has been in possession of these two immovable properties ever since and that the claimant's father has never been against this, and that his son is perhaps not aware of this. To support his ascertainment, he provided KPA with a record on determination of factual situation No. (illegible) issued in the village of Gracë/Grace and in the village of Stanoc i Poshtem/Donje Stanovce, Municipality of Vushtrri/Vucitrn.

On 28 February 2011 (on the same date), KPA contacted the claimant and asked him in relation to the second respondent's allegations, that he bought the claimed immovable properties. The claimant's response

was that to his knowledge his late father did not sell the immovable properties to X.Z. and that they were in possession of his mother S.P. until the end of 2004 when she passed away.

Also, on 15 March 2011, KPA contacted the claimant and asked him about the second respondent's claim that he was in possession of the claimed properties (cadastral parcel No. 726/2 and 723/1) since 1977. The claimant responded that it was not true that these parcels were bought or used by the second respondent and that his mother S.P. used all parcels recorded in Possession List No. 221, including these claimed parcels until 2004 when she passed away.

On 14 April 2011, the first respondent (R.H.) gave a statement whereby he stated that he had bought some parcels from D.P., but he did not exactly know which these parcels were. He further stated that the parcels that are subject of the dispute in the cases at stake belonged to the second respondent (X.Z.) and that he became aware of this at the time when the KPA notification team visited the parcels. Since, according to him, these parcels have been in possession of the second respondent for 20-30 years, he requested his removal from the proceedings.

The Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/108/2011, dated 13 May 2011, rejected all claims, since they were not under the KPCC jurisdiction. Point 42 of the decision, among the others, stipulates the following "*The Claimant states that his mother S. retained possession of the claimed properties until December 2004*". Then, point 47 of the same decision reads as follows: "*...the Claimant contends that his mother remained in possession of the properties until December 2004, well after the end of armed conflict in Kosovo*". Further under the same number of the decision it is stipulated "*The Claimant confirmed that there had been no loss of possession as a result of the 1998-99, but that after his mother's death in 2004 the properties had been occupied by unknown persons*". Under such circumstances, the Commission comes to the following conclusion: "*the claims stand to be dismissed as falling outside the jurisdiction of the Commission*".

The decision was served to the claimant on 23 September 2011. The first respondent received the decision on 12 September 2011, while the second respondent received it on 12 September 2011.

On 3 October 2011, the claimant (henceforth: "the appellant") filed appeals with the Supreme Court, challenging the KPCC decision because of (a) erroneous determination of the factual situation and (b) misapplication of the substantive law.

The erroneous determination of the factual situation in the Commission's decision according to the claimant lies in the incorrect quotation of his statement as in the following: "*His deceased mother was in possession of the*

claimed properties until December 2004, when she passed away”, Furthermore, he underlines the following: “It is clearly incorrect that this was alleged in his statement”.

He further stated in his appeal that he never said that his mother was in possession of the immovable properties until her death. He further states that his family lost possession of the immovable properties after they left Kosovo in 1999 and that they were not in their possession at the time when the claim was filed, as they are not today.

Furthermore, in his appeals, he also refers to another decision of the Commission KPCC/D/R/23/2008, dated 28 August 2010, which refers to the claim KPA20162 (KPA Appeals Panel number is GSK-KPA-A-92/11) and which has to do with the parcel No. 782/2 - a house, with a surface of 83 m² that is registered just like the other immovable properties under the Possession List No. 221 –, claiming that the KPA decided on his claim confirming that the late father of the claimant was the owner. In addition, according to him, in these claims: KPA2063, KPA20164, KPA20165, KPA20165, KPA20166, KPA20167, KPA20168, KPA20169, KPA20161 and KPA20160 (the KPA Appeals Panel joined the claims in a single claim under the number GSK-KPA-A-92/11), KPA did not establish the fact that his mother was in possession of the property until December 2004, the claimant states that it was not logical for someone to be in possession of the land but not in possession of the house. A rather different situation when someone possesses the house but not the land would be more logical. Thus, according to him, the KPA commission has ascertained and decided differently in similar cases.

According to the appellant the factual situation was erroneously established and the substantive law, respectively Section 3 of UNMIK Regulation 2006/50, was misapplied.

The appellant requests the decisions on his appeals to be in his favour, in order for him to repossess the claimed properties and register them under the name of his father.

The appeal was served to the first respondent (henceforth: “the first appellee”) on 11 October 2011, while to the second respondent (henceforth: “the second appellee”) on 7 October 2011. The appellees did not respond.

The Supreme Court has joined the appeals.

Legal reasoning:

Joining of the appeals:

Section 13.4 UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property provides that the Supreme Court can decide to join or merge the appeals when such joining or merging was duly decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section enables the Commission to join or merge the claims in order to deal with and render decisions when there are common legal issues and evidence in place.

Article 408.1 in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, applicable in the appeal proceedings before the Supreme Court of Kosovo pursuant to Section 12.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, provides for the possibility of joining all appeals through a ruling court if such joining contributes to the efficiency of proceedings.

In the text of the appeals filed by the appellant, the Supreme Court finds that besides a different number of the case which the relevant appeal is exactly filed for, the whole factual and legal ground, as well as the issue of evidence is completely the same in the 2 (two) cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are grounded on the same explanatory statement and on the same documents. Furthermore, the legal reasoning given by the Commission on the claims is the same. So obviously it would be more efficient to join the appeals.

The appeals registered under the numbers GSK-KPA-A-173/11 and GSK-KPA-A- 174/11 are joined in a single case registered under the number GSK-KPA-A-173/11.

Admissibility of the appeals:

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision.

In the present cases, the KPCC decision was served to the appellant, who was a party in the first instance proceedings, on 23 September 2011, while his appeals were filed on 3 October 2011, that is to say less than 30 days after the receipt of the notification of the KPCC's decision.

Therefore, the appeals are admissible.

The merits:

The Supreme Court observes that, based on the documents provided by the claimant and on the verification reports of the Executive Secretariat, the Commission has correctly assessed that the loss of possession over the claimed properties was not a result of circumstances related to the armed conflict of 1998-1999 and it therefore rightfully decided when it rejected the claims.

The Supreme Court wants to point out that the KPCC has not quoted incorrectly the appellant, as underlined in the appeals filed thereof. In his statement submitted to the KPA on 10 November 2010, the appellant underlined that the property right holder's spouse, S.P., who was his mother, was in possession and use of the claimed properties until 30 December 2004, which time corresponds with the day of her death. The same assertions have also been reconfirmed by the claimant's contacts with the KPA in 2010 and in 2011. Therefore, based on such situation, the Court finds that there was no erroneous determination of factual situation as a real ground assumed for filling an appeal by the appellant.

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 prevented from exercising the claimed ownership right because of the armed conflict of 1998/1999. The appellant does not confirm that he or his mother had to leave the property because of the armed conflict. On the contrary, the appellant stated several times, orally and in handwritten form that his mother – the property right holder's spouse – had been in possession of the claimed parcels until 30 December 2004.

Therefore, there is no sign or even any evidence that the claimant had lost the property as a result of the armed conflict in Kosovo in 1998/1999. On the contrary, the facts presented by the appellant would give reason to believe that the property was lost after the death of his mother in 2004.

Therefore, since the claim does not fall within the KPCC jurisdiction, the KPCC did not decide on the appellant's ownership and thus there was no need to go into further consideration of this issue. In the light of the above, the Supreme Court finds that the KPCC decision does not contain any violations of substantive law, as another real ground assumed and determined for filing an appeal by the appellant.

The Supreme Court rejects the abovementioned appeals and consequently based on the legal reasoning above, it confirms the KPCC decision. The Court wants to add that, according to the similar factual and legal situation, all parallel cases are decided in the same way.

This decision is without prejudice to the appellant's right to seek confirmation of the property right over the immovable properties that are subject of the dispute before a competent local 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 (Sections 10.21, 10.12 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 4000: € 25.

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 legal remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva - Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Phil Drake, EULEX Chief-Registrar