

**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-198/11

Prishtinë/Priština, 3 October 2012

In the proceedings of:

E.X.

Appellant

v.s

D.N.

Claimant/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 appeals against the decisions of the Kosovo Property Claims Commission: KPCC/D/A/92/2010 (case file registered at the KPA under numbers:

KPA23955, KPA23956, KPA23957, KPA23959, KPA23960, KPA23961, KPA23963, KPA23965, KPA23968, KPA23970, KPA23971, KPA23974 and KPA23977) dated 28 October 2010, and KPCC/D/A/97/2010 (case file registered at the KPA under numbers: KPA23958 and KPA23975) dated 7 December 2010, after deliberation held on 3 October 2012, issues the following

JUDGMENT

- 1- Appeals filed by E.X. on 9, 14 and 30 November 2011, registered under the numbers: GSK-KPA-A-198/11 to GSK-KPA-A-205/11, GSK-KPA-A-211/11 to GSK-KPA-A-216/11 and GSK-KPA-A-238/11, are joined in a single case under the number GSK-KPA-A-198/11.
- 2- The decisions of the Kosovo Property Claims Commission: KPCC/D/A/92/2010 (case file registered at the KPA under numbers: KPA23955, KPA23956, KPA23957, KPA23959, KPA23960, KPA23961, KPA23963, KPA23965, KPA23968, KPA23970, KPA23971, KPA23974 and KPA23977), dated 28 October 2010 and KPCC/D/A/97/2010 (case file registered at the KPA under Nos. KPA23958 and KPA23975), dated 7 December 2010, are annulled as rendered in the absence of jurisdiction.
- 3- The filed claims of D.N. which are registered at the KPA under the numbers: KPA23955, KPA23956, KPA23957, KPA23958, KPA23959, KPA23960, KPA23961, KPA23963, KPA23965, KPA23968, KPA23970, KPA23971, KPA23974, KPA23975 and KPA23977, are dismissed based on the lack of jurisdiction.

Procedural and factual background:

On 1 February 2007, D.N. filed 15 (fifteen) claims with the Kosovo Property Agency (KPA), claiming confirmation of property right over some parcels and their repossession. He explained that these cadastral parcels were under his name and that they were occupied.

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

- ID Card, issued on 26 April 2004 by the Municipality of Viti/Vitina, Republic of Serbia;
- Possession List No. 4, issued on 13 February 1986 by the General Directorate of Geodesy, Municipality of Viti/Vitina;
- Possession List No. 4, issued on 29 July 2004 by the Department for Cadaster, Geodesy and Property, Municipality of Viti/Vitina, United Nations Interim Administration Mission in Kosovo (UNMIK);
- Possession List No. 134, issued on 26 February 2002 by the Republic Institute of Geodesy, Prishtinë/Priština, Immovable Cadastral Center, Municipality of Viti/Vitina;

The Possession Lists No. 4 and No. 134 show that D.N. is the owner of the following claimed parcels in Municipality of Viti/Vitina, Cadastral Zone of Sodovinë e Çerkezëve/Çerkez Sadovina:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-198/11 (KPA23961)	Parcel No. 244, at the place called “Svinjski Potok”, 4 class orchard, with a surface of 0. 10. 50 ha
GSK-KPA-A-199/11 (KPA23977)	Parcel No. 276, at the place called “Svinjski Potok”, 5 class field, with a surface of 1. 78. 86 ha
GSK-KPA-A-200/11 (KPA23974)	Parcel No. 274, at the place called “Svinjski Potok”, 4 class orchard, with a surface of 0. 13. 40 ha
GSK-KPA-A-201/11 (KPA23971)	Parcel No. 273, at the place called “Svinjski Potok”, 4 class pasture, with a surface of 0. 05. 30 ha
GSK-KPA-A-202/11 (KPA23970)	Parcel No. 272, at the place called “Svinjski Potok”, 4 class orchard, with a surface of 0. 03. 90 ha
GSK-KPA-A-203/11 (KPA23968)	Parcel No. 250/2, at the place called “Svinjski Potok”, 5 class field, with a surface of 0. 24. 73 ha
GSK-KPA-A-204/11 (KPA23963)	Parcel No. 245, at the place called “Svinjski Potok”, 5 class field, with a surface of 0. 47. 19 ha
GSK-KPA-A-205/11 (KPA23960)	Parcel No. 240, at the place called “Svinjski Potok”, 5 class field, with a surface of 0. 38. 29 ha

GSK-KPA-A-211/11 (KPA23975)	Parcel No. 275, at the place called “Svinjski Potok”, 3 class grasses, with surface of 0.03.85 ha
GSK-KPA-A-212/11 (KPA23965)	Parcel No. 248/2, at the place called “Svinjski Potok”, 5 class field, with surface of 0.36.31 ha
GSK-KPA-A-213/11 (KPA23959)	Parcel No. 239, at the place called “Svinjski Potok”, 5 class meadow, with surface of 0.57.69 ha
GSK-KPA-A-214/11 (KPA23957)	Parcel No. 238, at the place called “Svinjski Potok”, 5 class field, with surface of 0.46.19 ha
GSK-KPA-A-215/11 (KPA23956)	Parcel No. 237, at the place called “Svinjski Potok”, 5 class field, with surface of 0.23.74 ha
GSK-KPA-A-216/11 (KPA23955)	Parcel No. 236, at the place called “Svinjski Potok”, 5 class field, with surface of 0.09.30 ha
GSK-KPA-A-238/11 (KPA23958)	Parcel No. 271, at the place called “Svinjski Potok”, 3 class pasture with surface of 0.0.35 ha

Later during the proceedings, he submitted the following documents:

- Statement on the Origin of Ownership, dated 4 December 2007;
- Contract on Gift of Immovable Property, VR.nr. 129/71, dated 5 June 1971;
- Sales Contract on Immovable Property, VR.nr. 208/83, dated 4 March 1983;
- Death Certificate of S.N., issued on 21 January 2008, Vranje, Serbia.

In April, May, June, July, October and November of 2007 KPA officers went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to claims and that the interested parties should file their response within 30 days. According to the notification reports the properties were found unoccupied (except the parcel No. 271 subject to claim no. KPA23958).

3 years later, on 22 July 2010, a new notification was made, this time through publication in the KPA notification Gazette/List no. 5. The publication was displayed in the entrance and the exit of the village Sadovinë Çerkezëve/Ćerkez Sadovina, fuel station “Egzona”, Viti/Vitina Municipality, Viti/Vitina Cadastral Office, Municipal Court of Viti/Vitina and KPA Regional Office Gjilan/Gnjilane. The same Gazette/List was distributed to UNHCR, Regional Office and Ombudsperson Field

Based on the submitted Possession Lists No. 4 and No. 134, KPA officers found Possession Lists No. 4, issued on April, July and September of 2007 and Possession List No. 134, issued on 16 April 2007, of the United Nations Interim Administration Mission in Kosovo, Municipality of Viti/Vitina, Cadastral Zone of Sadovinw e Çerkezwve/Cerkez Sadovina. Based on these documents it appeared that all the claimed parcels are in the ownership of the claimant. Also, the claimant's ID card has been verified positively.

The KPA Executive Secretariat notification and confirmation report, dated 22 July 2012, shows that the notification of the claimed properties registered in the Possession Lists N. 4 and 134, Municipality of Viti/Vitina, Cadastral Zone of Sadovinw e Çerkezwve/Cerkez Sadovina, was done only through publication in the Gazette/List, without containing all geodesic elements of such properties, which serves as necessary conditions for accurate and complete identification. Therefore, the notification through publication is not done by putting the signs in the properties which are subject matter of the filed claims, as it stipulated in the legal provisions of the article 10 par. 1 of the UNMIK Regulation 2006/50 amended with Law No. 03/L-079. This article foresees that the Executive Secretariat notifies and sends the copies of the claim(s) to any person(s) which exercise or pretend the property right over the claimed properties subject matter of the filed claims.

This kind of notification through publication done by KPA through distribution of the Gazette/List No. 5 to a Fuel Station "Egzona" and in other places in Viti/Vitina cannot be considered as a valid and in compliance with the legal provisions. Based on this, it cannot be considered that the interested person(s) received the regular notification for the filed claimant's claims.

On 10 October 2007, the KPA Executive Secretariat informed the Kosovo Property Claims Commission that the loss of the possession over the claimed property happened on 13 August 1999.

The Kosovo Property Claims Commission by its decisions KPCC/D/A/92/2010 and KPCC/D/A/97/2010 confirmed the ownership of D.N. over the claimed properties and ordered that he should be given possession of these immovable properties. Under the same decisions it was stipulated that the respondent(s) or any other party(s) occupying the property should vacate it within a period of 30 days from the day when the decision is delivered otherwise they will be evicted.

The decisions were served to the claimant on 13 April and 13 May 2011.

On 9, 30 November and 14 December of 2011, the appellant filed appeals with the Supreme Court, challenging the KPCC decisions on grounds of erroneous and incomplete determination of factual situation,

enclosing to the appeal the Municipal Court of Viti/Vitina Judgment C.nr. 199/2009, dated 8 January 2010, as well as the Municipal Cadastral Office of Viti/Vitina Decision No. 426/21 dated 9 November 2011.

On 12 and 22 November 2011, the claimant (henceforth “appellee”) in his response to the appeal stated that pursuant to Section 10 paragraph 1 and 2 of UNMIK Regulation 2006/50, the appellant did not participate in the proceedings conducted before the KPA within the prescribed period of time of 30 days, following the day of notification, therefore the same was not a party in these proceedings and that he was not entitled to file the appeals against this decision. In addition, the appellee proposed to the Supreme Court to dismiss such appeals as inadmissible. Moreover, the appellee states that the Municipal Court of Viti/Vitina Judgment C.nr.199/2009, dated 8 January 2010, was issued in contradiction with provisions of Section 3 paragraph 1 of UNMIK Regulation 2006/50, because he filed the claims with KPA in relation to these cadastral parcels; therefore the Court had no jurisdiction to adjudicate on such claims.

This is also due to the fact that the proceedings relating to the Judgment C.nr.199/2009, dated 8 January 2010 was initiated in 2009, while the Regulation 2006/50 started to be applied in 2006. It is not a disputed fact that on 17 February 2001, a sales contract was concluded having as a subject matter the parcels which are subject to the filed claims, but this contract had not been fully implemented, because E.X. as a buyer, paid the amount of 100.000,00 DM and he was also due to pay the amount of 114.472,00 DM, which results also from the signed receipt, by both the seller and buyer.

Finally, the appellee underlines that the abovementioned contract was concluded with E.X., while the disputed judgment in favor of S.X. was issued without summoning him and without his presence in proceedings, although his address was known to the appellant. Therefore, in the light of the reasons above, he proposes to the Supreme Court to dismiss his appeals as inadmissible or reject them as unfounded.

The Supreme Court has joined the claims.

Legal reasoning:

Joining 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 merger 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.

Provisions of Law on Civil 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, then those of Article 408.1 in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, provide 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 in addition to a different number of the cases 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 8 (eight) 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.

Appeals registered under the numbers GSK-KPA-A-198/11 until GSK-KPA-A-205/11, GSK-KPA-A-211/11 until GSK-KPA-A-216/11, and GSK-KPA-A-238/11, are joined in a single case registered under the number GSK-KPA-A-198/11.

Admissibility of the appeal:

Based on the legal provisions of the Article 194 of the LCP, after considering and evaluation of the filed appeals, the Supreme Court of Kosovo finds as follows:

The appeals are admissible if filed within the legal period of time pursuant to the provisions of the Article 21.1 of the UNMIK Regulations No. 2006/50, as amended by Law No. 03/L-079, which foresees that the party can file the appeal against the Commission's decision within thirty (30) days of the notification to the parties of a decision. Because there are no evidences to determine the fact when the appealed decision is served on appellant, he has filed his appeals on 9, 30 November and 14 December 2011, the notification through publication is not done properly as it foreseen with the Article 10.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, and that he filed the appeals on 9, 30 November and 14 December 2011, this court evaluates that the appeal is admissible.

Moreover, the appeals are admissible also because the appellant has not been duly notified. The notification was not made by putting a plate in the claimed parcels following the standard as it foreseen in Article 10.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. Therefore, it cannot be considered that the persons with the legal interest or appellants are notified properly regarding the claimant's claim only by distribution of the Gazette/List in some places within the territory of the Municipality of Viti/Vitina. First instance administrative organ with its actions in contradiction with the law did not enable persons with legal interest as well as the appellant to take part in the decision making proceedings which means the essential violations of the legal provisions of the Article 182 paragraph 2 subparagraph (i) of the LCP.

On 17 February 2001, appellant and appellee concluded a purchase contract regarding the claimed parcels subject to the filed claims as well as signed the certificate of the same date which shows that the buyer – appellant paid the amount of 100.000,00 DM, and left a duty to pay the other amount of 114.472,00 DM of the concluded purchase price.

From the claim form and the claims processing report dated 10 October 2007 it can be concluded that the claimed properties are occupied by unknown persons and the respondent or interested persons have not been identified.

Based on this factual state the appealed decisions comprises essential violations of the legal provisions of the Article 194 and Article 182 paragraph 2 subparagraph (b) of the Law on Contested Procedure, and for this reasons the same should had been annulled ex officio, because these claims fall out of the Commission's jurisdiction. This is because of the legal provisions of the Article 3 paragraph 1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, which stipulates that KPCC has the competence to resolve conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

In his response to the appeals the appellee confirms that on 17 February 2001 he concluded a purchase contract (he presented at purchase contract and certificate on payment partially of the purchase price as attachments to response on appeals) with the appellant regarding the claimed parcels subject to filed claims for a purchase price in amount of 214. 472,00 DM. Moreover, he also confirmed that from the entire concluded purchase price the appellant paid to him the amount of 100.000,00 DM, and still owns him the other amount of 114.472,00 DM.

The seller/appellee requested from the buyer/appellant to pay the difference of the amount, but he refused to do so.

From the submitted purchase contract dated 17 February 2001 and the certificate of the same date which presents that the concluded purchase price partially is paid, results that there is no valid and legal evidences which could base the conclusion that the property right has been lost and cannot be exercised as a result of the armed conflict that occurred between 27 February 1998 and 20 June 1999 in Kosovo.

The concluded contracts are reflecting free will between the seller-buyer unless the opposite is proved based on the valid and legal evidences and competent court decision. So, if the contract is concluded based on the free will of the party the same is legally valid and produces inter-parties legal effects.

Therefore, on the basis of all that was said above KPPC and Supreme Court has no legal jurisdiction to adjudicate this case as they are limited in dealing only with the claims regarding the property rights which have been lost as result of the armed conflict that occurred between 27 February 1998 and 20 June 1999 in Kosovo. However, the appellee as a person with the legal interest can address the issue in front of the regular courts

Subject matter of assessment and evaluation of the Supreme Court was the appellee's allegations expressed in the response to appeal that the appellant could not have filed the appeals because he did not take part in the first administrative proceedings before the KPA Executive Secretariat within the period of 30 days from the date of notification as it is foreseen in Article 10.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. Therefore, he proposed the appeals to be dismissed. These above mentioned allegations, the Supreme Court of Kosovo considers as unacceptable, unfounded and not legally based. This is because the notification has not been done properly.

In accordance with this legal provision the KPA Executive Secretariat is obliged to notify and send the copy of the submitted claim to each person which exercises or pretends that he or she has the property right over the claimed property. The notification through the publication and by distributing the Gazette/List in a fuel station "Egzoni" and in other locations within the territory of the Municipality of Viti/Vitina cannot be considered as valid and in accordance with the legal provisions. That is why it cannot be concluded that the appellant or interested persons are notified properly. But above all claims/appeals were not within the scope of jurisdiction of the Commission/Supreme Court and that is why the same should have been dismissed.

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

Elka Filcheva - Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar