

**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-221/11

**Prishtinë/Priština,
30 October 2012**

In the proceedings of

L.Ž.

Claimant/Appellant

vs.

I.T.

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, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/108/2011 (case files registered at the KPA under the numbers: KPA47326, KPA47327, and KPA47328), dated 30 October 2012, after deliberation held on 30 October 2012, issues the following:

JUDGMENT

1. The appeals filed by L.Ž. on 18 November 2011 and registered under GSK-KPA-A-221, GSK-KPA-A-222/11, and GSK-KPA-A-223/11 are joined in a single case under the number GSK-KPA-A-221/11.
2. The appeals filed by L.Ž. on 18 November 2011 are rejected as unfounded.
3. The decision of the Kosovo Property Claims Commission KPCC/D/A/108/2011 as far as it regards the cases registered at the KPA under the numbers KPA47326, KPA47327, and KPA47328, is confirmed.
4. Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant, L.Ž., and to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 30 November 2007, L.Ž. on behalf of her father's uncle, filed 3 (three) claims with the Kosovo Property Agency (KPA), seeking the confirmation of ownership right over several parcels and repossession. She explained that these parcels were registered under the name of P.V.P., her father's uncle, and that she does not know who is using those immovable properties or if they are occupied.

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

- Identification Card, issued on 12 March 1995 by the Dečan/Dečan Municipality;
- Possession List No. 193, issued on 22 November 2007 by the Cadastre Service for Immovable Property of the Republican Geodesic Body of Republic of Serbia for the Municipality of Pejë/Pec, cadastral zone Vitomiricë/Vitomirica;
- Death Certificate issued on 16 February 2011 by the Ministry of Internal Affairs and Public Administration of the Republic of Montenegro, showing that B.L.P. died on 15 January 1979 in Berane;

- Death Certificate of P.V.P., issued on 22 February 2011 in Kragujevac, showing that he died on 1 October 1975 in Vitomiricë/Vitimirica.

The Possession List No. 193 which was submitted by the claimant ascertains that P.P. was the owner of the claimed parcels in the Peja/Peć Municipality, Cadastral Zone of Vitomiricë/Vitimirica, as follows:

KPA Appeals Panel number and KPA file number	Data concerning the claimed parcel
GSK-KPA-A-221/11 KPA47326	Cadastral parcel no. 690, at the placed called “Vitimirica”, a 4 th class field, with surface of 0.66.55 ha;
GSK-KPA-A-222/11 KPA47327	Cadastral parcel no. 692, at the placed called “Vitimirica”, a 4 th class field, with surface of 0. 07. 44 ha;
GSK-KPA-A-223/11 KPA47328	Cadastral parcel no. 697/2, at the placed called “Vitimirica”, a 3 rd class field, with surface of 1. 27. 28 ha

This possession list, however, according to the KPA verification report dated 27 July 2010 could not be verified. Instead the KPA Officers found the UNMIK Possession List No. 193 of 21 October 2008, showing that the litigious parcels were registered under the name of X.T. [Đ.T.].

The KPA notification team went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should file their response within 30 days. The publication of all claims for the claimed parcels was made on 26 June 2009, and the notification on 19 November 2009, except for the claim KPA47327, which refers to the parcel 692, for which the notification was done on 17 November 2009.

I.T. responded to the claim, stating that her husband was the owner of these immovable properties and that he had bought the property already in 1970.

To support her claim she presented the following documents:

- Her Identification Card, issued by the Ministry of Internal Affairs of the Republic of Kosovo, dated 14 November 2009;
- Sales Contract, dated 20 December 1997, concluded between H.Č. as seller, and Đ.T. as buyer, certified by the Municipal Court in Peja/Peć Vr.6005/01, dated 15 October 2001;
- Power of Attorney of H.Č., certified by the Municipal Court in Sarajevo Vr.nr.4467/1997, dated 12 November 1997; and
- Property Rights Certificate for the Immovable Property of Peja/Peć Cadastral Office UL-71611015-00193, dated 20 July 2010.

According to the KPA verification report dated 27 January 2011 all these documents could be verified.

The Kosovo Property Claims Commission (KPCC), with regard to the claimed parcels, with its decision KPCC/D/A/108/2011, dated 13 May 2011, dismissed the claims of L.Ž., as she had not presented a legally valid power of attorney to represent her father's uncle in the capacity of the property rights holder and that she also was not family household member who would have been entitled to file a claim, as foreseen by the provisions of Section 5.1 of UNMIK Administrative Directive No. 2007/5 as amended by the Law No.03/L-79.

The decision was served to the claimant on 20 October 2011, whereas to the respondent the appeal was served on 16 November 2011.

On 18 November 2011, L.Ž. (from here on: the appellant) filed an appeal with the Supreme Court, challenging the KPCC decision on the grounds of erroneous and incomplete determination of the factual situation and essential violations of the procedural and substantive law. She requested the appealed decision to be annulled and her appeal be granted as founded, thereby confirming her ownership over the claimed cadastral parcels.

In her appeals, she declares that the ownership over the claimed parcels sought in her claims belonged to her great uncle P.P., then that ownership passed on to her grandfather L.P., then the ownership passed on to her father B.P., her uncle and her aunt. Those used the property for years. In addition she declared that after the death of her father B.P., on 15 January 1979, she should now have the ownership of that property which no one can take it from her. While they were alive, her predecessors used that property. The claimant furthermore states that the allegations of the respondent were contradictory, that the alleged seller H.Č. had

never been the owner of the property and that this was a typical case of a fraudulent transaction and forged contract.

The respondent (from here on: the appellee) did not respond.

Legal reasoning:

Joining of appeals:

The Supreme Court has joined the claims.

Section 13.4 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 On The Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, stipulates that the Supreme Court may decide on joining or merging the appeals, when the Commission has decided to join or merge the claims, pursuant to Section 11.3 (a) of this Regulation. This section enables the Commission to take into consideration the joining or merging of all claims in order to render decisions when common legal and evidentiary matters exist.

The provisions of the Law on Contested Procedure which are applicable in the proceedings before the Appeals Panel of the Supreme Court according to Section 12.2 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079, and the provisions of Article 408.1 in conjunction with Article 193 of the Law No. 03/L006 on the Contested Procedure, foresee the possibility of joining by a ruling of all the claims if this joining contributes to the court-effectiveness and efficiency of the proceedings.

In the text of the appeals filed by the appellant, the Supreme Court observes that except for the different case number for which the appeal is filed, all the facts, the legal grounds and the evidentiary issues are exactly the same in all 3 (three) cases. Only the parcels, object of the property right which are claimed in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's cover decision which is appealed is the same one.

The appeals registered under numbers GSK-KPA-A-221/11, GSK-KPA-A- 222/11, and GSK-KPA-A-223/11, are joined into a single case registered under GSK-KPA-A-221/11.

On the appeal:

The Supreme Court of Kosovo examined the appealed judgment pursuant to the provisions of Article 194 of LCP and after assessing the statements in the appeal found that:

The appeal is admissible as it has been filed within the deadline prescribed by Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, which provides for the party to file an appeal against the Decision of the Commission within (30) thirty days from the day of the notification of parties about the decision. This is because the decision was served to the appellant on 20 October 2011 and the appellant filed the appeal on 18 November 2011.

The appeal, however, for several reasons is not founded.

The claim is not within the jurisdiction of the KPCC/the KPA Appeals Panel. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, as amended by the Law No. 03/L-079, a claimant is entitled to an order by the Commission for the repossession of the property if the claimant proves not only the right over a property but also that he or she is currently unable to exercise such 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. According to this legal provision, the KPCC jurisdiction is limited to property claims related directly to or resulting from this conflict. The KPA Appeals Panel has to assess its jurisdiction *ex officio*.

According to the presented facts and evidence, the appellant has not shown that she lost the properties as a consequence of the conflict and cannot exercise her rights due to the same circumstances. The claimant has been born in 1965 in Berane in Montenegro. The documents submitted by the appellant show that her father died in 1979 in Montenegro. Her father's uncle died in 1975 in Kragujevac. There is no indication that the family of the claimant fled from Kosovo because of the armed conflict and/or that the parcels were occupied only during or shortly after the armed conflict in Kosovo. So the Court cannot find any relation, direct or even only indirect one, of this case to the armed conflict. Accordingly, the case is not within the jurisdiction of the KPCC/KPA Appeals Panel, the KPCC therefore is correct insofar as the claim was dismissed.

The Court wants to add that it also agrees with the legal assessment of the KPCC related to the necessity of a power of attorney. The appellant, who is not a family household member in the sense of Section 5.1 of UNMIK Administrative Directive No. 2007/5 as amended by the Law No.03/L-79, could not prove that she herself was the owner of the claimed parcels. The submitted Possession List No. 193 – which could not be verified by the KPA – shows that the parcels were registered under the name of P.P.. The appellant has given no evidence at all that she is an heir to P.P.. The Court and the KPCC cannot rely only on the appellant's

statements. Therefore the appellant would have needed the power of attorney of any family household member of the deceased property rights holder or a (proven) heir to him. Insofar as the appellant complains that she was never notified that the discrepancy between her name and the property rights holder's name would constitute a problem, the Court wants to note the following: the difference of names only indicated that the appellant was not a family household member of the property right holder. And as such she either had to provide the KPA with a power of attorney given by a family household member of the registered property right holder or his heirs (which she could not) or prove that she had inherited the property (which she could not as she had not initiated an inheritance procedure).

Cost 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 court fee tariff for the issuance of the judgment (Sections 10.21, 10.12, 10.1 and 10.15 mutatis mutandis of AD 2008/2), considering that the value of the property at hand can be estimated at € 20.000: € 30 (€ 50 + 0,5% of € 30.000 yet no more than € 30).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. 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 the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

As the case is not within the jurisdiction of the KPCC/KPA Appeals Panel, this decision is without prejudice to the right of the appellant to seek confirmation of her property right over the claimed property before the competent local authorities.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar