

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-29/12

Prishtinë/Priština,
01 November 2012

In the proceedings of

M.J.1

Claimant/Appellant

represented by

S.J

vs.

RR.S

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/120/2011 (case files registered at the KPA under the numbers: KPA06212, KPA06213, KPA06214, KPA06217 and KPA06221), dated 07 September 2011, after deliberation held on 01 November 2012, issued the following:

JUDGMENT

- 1- The appeals filed by S.J on 23 January 2012, and registered under the numbers GSK-KPA-A-29/12, GSK-KPA-A-30/12, GSK-KPA-A-31/12, GSK-KPA-A-32/12 and GSK-KPA-A-33/12, are joined in a single case under the number GSK-KPA-A-29/12.
- 2- The appeals filed by S.J on 23 January 2012, are dismissed as belated.
- 3- Costs of the proceedings determined in the amount of € 60 (sixty euro) are to be borne by the appellant and have to be paid within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 29 December 2006, S.J filed 5 (five) claims with the Kosovo Property Agency (KPA), on behalf of the property right holder M.J.1, seeking confirmation of property right over some parcels and their repossession. She explained that these cadastral parcels were under the name of the respective property right holder and that they were occupied and she pointed out 07 June 1999 as the date of loss, claiming that the property rights were lost due to the armed conflict that occurred in Kosovo in 1998/1999.

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

- ID card, issued on 01 June 2006 by the Municipality of Podujevë/Podujevo, Republic of Serbia;
- Possession List no. 44, issued on 08 September 2007 by the Directorate of Geodesy and Property of the Municipality of Podujevë/Podujevo (UNMIK);
- Possession List no. 44, issued on 08 September 2004 by the Republican Entity of Geodesy-Municipal Cadaster Directorate of the Municipality of Podujevë/Podujevo;
- Power of attorney of S.J certified before the Municipal Court in Krushevac Vr.nr.8624/08, dated 17 September 2008;

Possession List no. 44 indicates that M.J is the owner of the following claimed parcels in the Municipality of Podujevë/Podujevo, Cadastral Zone of Batllavë/Batlava:

Number of appeal and KPA case file number	Data regarding the claimed parcel
GSK-KPA-A-29/12 (KPA06212)	Parcel no. 873, at the place called "Statovci-Gruda", a 4 th class orchard, with a surface of 00. 22. 70 ha
GSK-KPA-A-30/12 (KPA06213)	Parcel No. 870, at the place called "Statovci-Gruda", a 4 th class meadow, with a surface of 00. 22. 04 ha
GSK-KPA-A-31/11 (KPA6214)	Parcel no. 867, at the place called "Statovci-Gruda", a 4 th class field, with a surface of 02. 31. 02 ha
GSK-KPA-A-32/12 (KPA06217)	Parcel no. 868, at the place called "Statovci-Gruda", a 4 th class orchard, with a surface of 0. 79. 36 ha
GSK-KPA-A-33/12 (KPA06221)	Parcel No. 869, at the place called "Statovci-Gruda", a 3 rd class field with a surface of 0. 90. 18 ha

Regarding the claims registered in the Kosovo Property Agency under the numbers KPA06212, KPA06213, KPA06214, KPA06217 and KPA06221, dated 29 December 2006, the KPA notification team went on 20 and 27 June 2011 to the place where the claimed parcels were allegedly located and put up signs indicating that the properties were subject of claims and that the interested parties should submit their responses within 30 days.

The respondent responded on 04 November 2011, alleging that he bought the claimed cadastral parcels from the property right holder back in 1972, while the other part of these parcels was bought by his son H.S, and he provided the following documents:

- A preliminary contract certified before the Municipal Court of Podujevë/Podujevo Vr.nr.68/72, dated 03 March 1972. This contract establishes that the seller M.J.1 sold to RR.S, in the capacity of respondent from Batllavë/Batlava, the land with a surface of two hectares in the Cadastral Zone of

Podujevë/Podujevo. This contract also establishes that the seller handed over the property to the buyer as well as the possession of the respective surface;

- The Pristina District Court's Judgment C.nr.51/72, dated 11 December 1972, whereby established that it was rejected the summary claim of R.J from Batllavë/Batlava, whereby, among the others, she requested the respondent RR.S to recognize her property right by returning under her possession a part of the cadastral parcel no. 868, 869,870, 871, and 873, an orchard and field at the place called "Statovci-Gruda", with a surface of 2,14,00 ha, on grounds that it is not disputable that in 1970 R.J and her sons M.J.1 and M.J.2 had divided among themselves the immovable property with a surface of 9.08.07 ha, which is recorded under the Possession List no. 41 of the Cadastral Zone of Batlavë/Batlava. R.J was entitled to a field of 0.70.00 ha, and a forest of 0.50.00, whereas M.J.1 and M.J.2 were entitled to 2.14.00 ha each. M.J.2 sold his part with a surface of 2.14.00 ha in 1971 to RR.S and this sale was legally valid, because it was affected by a legally valid contract, thus the buyer acquired the ownership, although these changes have not been evidenced in the cadastral records. Under the second paragraph of this judgment it is decided that the claim of R.J is granted and the respondent, now the claimant M.J.1, was obliged to recognize her property right by returning under her possession parts of cadastral parcels no. 868, 869, 870, 871, and 873, a meadow, orchard and field at the place called "Statovci-Gruda", with a surface of 2.14.00 ha, no. 868, 869, 870, 871, and 873, a meadow, orchard and field at the place called "Statovci-Gruda", with a surface of 2,14,00 ha, as well as some other parcels which are not subject of the claim. This is due to the fact that the respondent M.J.1 has recognized the claim of his mother R.J, whereby she is a property right holder of a part of these immovable properties. These changes have also not been evidenced in the cadastral records.
- From the minutes of the main trial C.nr 6/1975, dated 03 February 1975, it is ascertained that the claimant R.J from Batllavë/Batlava waived the claim filed against M.J.1 on grounds this legal property matter was resolved by this court's judgment C.nr.51/72, and
- ID card of the respondent RR.S, issued by UNMIK on 23 September 2008.

Both the preliminary contract certified before the Municipal Court of Podujevë/Podujevo Vr.nr.68/72, dated 03 March 1972, and the Pristina District Court's Judgment C.nr.51/72, dated 11 December 1972, were positively verified by the KPA verification team.

On 07 September 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/120/2011, rejected the claims regarding the claimed properties on grounds that the claimant confirmed the respondent's allegations that she sold the properties to him on voluntary basis in 1972 and she did not give any explanations as to the allegation that she lost the property as a consequence of the conflict

and she also refused to take part in proceedings or present relevant evidence. Thus, as a consequence, the claimant failed to prove her current property right over the claimed properties.

The decision was served to the claimant on 21 December 2011, whereas she filed an appeal before the Supreme Court on 23 January 2012. The appellant challenges the appealed decision on grounds of erroneous and incomplete determination of factual situation, erroneous application of the material and procedural law, proposing to have the decision reversed and confirm her property right by granting repossession of that property or annul that decision and return the case for adjudication. By this appeal, the appellant alleges that the KPCC's legal conclusion is wrong when it rejected her claim on grounds that she was not summoned by the KPCC to plead in relation to the claims filed thereof, by proposing also relevant evidence and that no phone conversation was conducted with the KPA Executive Secretariat on 02 August 2012 and that the sale contract of the immovable property Vr.nr.68/72, dated 03 March 1972 is invalid, because it was not sold by its owner and which according the possession list no. 44 of cadastral zone of Batllavë/Batlava this is M.J.1 from Batllavë/Batlava, whom she is representing with a power of attorney.

The KPCC decision was served to the respondent-appellee on 02 December, whereas the appeal was served to him on 29 February 2012. He did not file any complaints or any responses to appeal.

The Supreme Court joined the claims.

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 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, 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 court ruling 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 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 all 5 (five) 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-29/12 until GSK-KPA-A-33/12 are joined in a single case registered under the number GSK-KPA-A-29/12.

Admissibility of the appeals:

The Supreme Court of Kosovo considered the appealed judgment pursuant to provisions of Article 194 of LCP, and following the assessment of the case files and the appellate allegations found the following:

The appeals are inadmissible because they were filed outside the legal time frame pursuant to Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, which provides that a party may submit an appeal within thirty (30) days of the notification of the decision. This is because the decision was served to the appellant on 21 December 2011 and she filed an appeal on 23 January 2012. The date 20 January 2012 (Friday) was the deadline for filing the appeal and in this case the same was filed on 23 January 2012, which means that the appeal is belated. Therefore, in accordance with article 196 of the LCP, since the appeal was filed outside of the legal time frame, is dismissed as belated.

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 for the issuance of the judgement (Sections 10.15 and 10.21 of AD 2008/2) which cannot be more than 30 €.

These court fees are to be borne by the appellant/claimant 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. 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 within 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

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar