

**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-22/12

**Prishtinë/Priština,
29 November 2012**

In the proceedings of

I.K

Respondent/ Appellant

vs.

D.N

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka 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 Nos.: KPA15539, KPA15540, KPA15541, KPA15542 and KPA15543), dated 07 September 2011, after deliberation held on 29 November 2012, issues the following

JUDGMENT

- 1- The cases GSK-KPA-A-22/12 to GSK-KPA-A-26/12 are joined in one single case registered under number GSK-KPA-A-22/12.
- 2- The appeal of I.K against the decision of the Kosovo Property Claims Commission KPCC/D/A/120/2011 (case files registered at the KPA under Nos.: KPA15539, KPA15540, KPA15541, KPA15542 and KPA15543), dated 07 September 2011, is dismissed as impermissible.
- 3- Costs of the proceedings determined in the amount of € 37,50 (thirty-seven point fifty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 10 October 2006, D.N filed five claims with Kosovo Property Agency (KPA) seeking confirmation of her property right over some parcels and their repossession. She explained that her property was lost due to circumstances that occurred in Kosovo during 1998/1999 and that the date of loss was 12 June 1999.

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

- Possession List No. 26 issued by the Municipal Directorate for Geodesy of Pejë/Peć, dated 27 August 1984;
- Copy of the plan from the Municipal Directorate for Geodesy of Pejë/Peć, dated 09 January 1985;
- Birth certificate of D.N, issued on 26 November 2004;
- Inheritance Decision issued by the Municipal Court of Pejë/Peć, T.nr....., dated
- Possession List No. 26, issued on 26 August 2008 by the Municipal Directorate for Geodesy, cadaster, and property of Peja.

All these documents could be verified by the KPA verification team.

According to Possession List No. 26, dated 26 August 2008, issued by the Municipal Directorate for Geodesy, Cadastre and Property of Pejë/Peć, the following parcels were registered in the name of the claimant:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-22/12 (KPA15539)	parcel no. 440, at the place called “Kuqanska Mala”, a 5 th class field with a surface of 0.43.50 ha;
GSK-KPA-A-23/12 (KPA15540)	parcel no. 441, at the place called “Kuqanska Mala”, a 3 rd class meadow with a surface of 0.14.57 ha;
GSK-KPA-A-24/12 (KPA 15543)	parcel no. 443/2, at the place called “Kuqanska Mala”, a 3 rd class meadow with a surface of 0.24.35 ha;
GSK-KPA-A-25/12 (KPA 15542)	parcel no. 443/1, at the place called “Kuqanska Mala”, a 3 rd class meadow with a surface of 0.18.96 ha;
GSK-KPA-A-26/12 (KPA15541)	parcel no. 442, at the place called “Kuqanska Mala”, a house with a surface of 0.00.72 ha;

During the proceedings, the claimant’s daughter, V.B, after being contacted by the Executive Secretariat on 15 February, 23 June, and 29 July 2010 confirmed that the claimed properties which are included in Possession List No. 26, with the exception of parcel No. 428/8, were sold to B.K in 1979, and that the latter had fulfilled all obligations of the sales contract. Furthermore, she stated that the claims were filed due to her mother’s lack of accurate knowledge as to which parcels were sold to B.K, who is the father of the appellant in this claim. Furthermore, she affirmed that the properties at stake were not lost due to circumstances directly related to or resulting from the armed conflict that occurred between 1998/1999 in Kosovo. Following the sale of these properties, both her mother and her father moved to Pejë/Peć.

During the notification of the claim, the claimed property was found occupied by I.K, who claimed alleging legal rights to the claimed property. He furthermore stated that the claimed properties were sold to his father B.K in 1979 and that the claimant had received the entire purchase price. He, the respondent, was in possession of these properties since 1979; the claimant together with her husband

had lived in Pejë/Peć since then. He mentioned the fact that he filed a claim before the Municipal Court of Pejë/Peć for confirmation of the property right.

In order to support his allegations as the property right holder over these properties, the respondent submitted the following documents or relevant legally valid evidence:

- minutes of court session, C.nr.139/5, dated 18 March 1988; in the minutes the claimant affirms the fact that in 1979 she sold to B.K the parcel No. 438/8 as well as three hectares of the private immovable property;
- written statement of A.A, serving as official before the Directorate for Finance of Pejë/Peć , no. 3828, dated 12 June 2009, according to which the respondent paid taxes for the claimed properties.

All these documents were positively verified by the KPA verification team through the competent bodies that issued the documents or deposited or archived them.

On 07 September 2011, the KPCC with its decision KPCC/D/A/120/2011 rejected the claim. The KPCC came to such conclusion considering that the daughter of the claimant V.N confirmed the fact that in 1979 the claimed properties were sold to the respondent. Therefore the claimant had failed to submit any legally valid evidence in order confirm her property right over the claimed property.

The decision was served on the respondent on 4 January 2012. On 10 January 2012, the respondent (from here on: the appellant) in each of the cases filed an appeal with the Supreme Court. He found that the decision erroneously did not mention parcels Nos. 440, 441, 442, 443 and 444/2 [this number possibly is an error as it does not occur in the appealed decisions] at all. He declared that the Municipal Court of Pejë/Peć until now had not scheduled a hearing and requested that his ownership of the parcels 440, 441, 442 and 443/1 was confirmed.

Legal reasoning:

Joining the cases:

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 the 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 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 the whole factual and legal grounds, as well as the evidentiary issues are completely the same in these 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.

The cases registered under the numbers GSK-KPA-A-22/12, GSK-KPA-A-23/12, GSK-KPA-A-24/12, GSK-KPA-A-25/12 and GSK-KPA-A-26/12 are joined in a single case registered under the number GSK-KPA-A-22/12.

Admissibility of the appeal:

The appeal is impermissible.

The appellant does not have the right to appeal. The right to appeal is assigned to those – and only those – persons, who are adversely affected by the contested decision. The contested decision of the

KPCC, however, has no negative legal effect on the appellant. On the contrary, with its decision the KPCC dismissed the claim of D.N. The KPCC did not decide on any request of the respondent as this would not have been within the jurisdiction of the KPCC. The KPCC only has to decide on claims with which the claimant states that he/she had lost the property because of the armed conflict of 1998/1999 in Kosovo. The respondent never filed such a formal claim which should have been submitted by the end of the year 2007 (Section 8 of Administrative Direction 2007/5 as amended by Law No. 03/L-079) nor did he ever claim to have lost the property because of circumstances directly related to the armed conflict (Section 3.1 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079). In all five cases the appellant only acted as a respondent. The KPCC according to the legal provisions could not confirm his ownership; the KPCC only had to decide whether to confirm the ownership of the claimant, D.N, and decided not to do so. Therefore, as the decision does not have any negative legal effect on the appellant, the appellant had no right to appeal this decision.

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, 10.1 and 10.15 mutatis mutandis of AD 2008/2), considering that the value of the property at hand can be estimated at € 700: € 7,50 (half portion of the fee according to tariff's number 10.1 which would have been € 15).

These court fees are to be borne by the appellant who loses the case.

According to Article 45.1 of the Law on Court Fees, the deadline for fees payment is 15 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline of 15 days, 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 remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar