

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-080/12

Prishtinë/Priština,
19 February 2013

In the proceedings of:

M. D.

Appellant

vs.

V. D. M.

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 appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered at the KPA under numbers KPA56636, KPA56644, and KPA56647), dated 22 June 2011, after deliberation held on 19 February 2013, issued the following

JUDGMENT

- 1- The cases GSK-KPA-A-80/12 to GSK-KPA-A-82/12 are joined in one single case registered under number GSK-KPA-A-80/12.

- 2- The appeal of M. D. filed against the decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered at the KPA under KPA56636, KPA56644, and KPA56647), dated 22 June 2011, is rejected as unfounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered at the KPA under KPA56636, KPA56644, and KPA56647), dated 22 June 2011, is confirmed.
- 4- The appellant has to pay the cost of proceedings in the amount of 80 € (eighty euros), which 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 28 January 2008, V. M. filed three claims with the Kosovo Property Agency (KPA), claiming repossession of the property located in the Zhegra/Žegra cadastral zone in the Gjilan/Gnjilane Municipality, at the place called “Suka”, cadastral parcels no. 121, 999 at the place called “Jaruga golema njiva” and parcel no. 2054 at the place called “Vrbnica”. He asserted that his father D. owned these properties but that he had to leave due to the armed conflict of 1998/1999. In order to support his claim, he presented among others the following documents to the KPA:

- Possession list no. 115 dated 23 April 2002, issued by the Republic Office for Geodesy in Serbia on behalf of M. D., concerning three parcels –121, 999 and 2054,
- Identification Card of V. M. dated 20 September 2005;
- Birth certificate issued by the Vranje municipality in the Republic of Serbia, dated 23 January 2008 which confirms that the claimant is the son of D. M., the property rights holder of claimed properties;
- Death certificate issued by the Vranje municipality in the Republic of Serbia, dated 23 January 20, which confirms that D. M. died in Zhegër/Žegra village, Gjilan/Gnjilane Municipality on 04 November 1988, and
- Certificate of immovable property rights UL-70403026-00115, dated 7 September 2008, issued by the Cadastral Office in Gjilan/Gnjilane, which confirms that the claimed immovable properties are registered on behalf of M. D. and it refers to the following cadastral plots:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-80/12 (KPA56636)	Parcel No. 121, at the place called “Suka”, class III field, with surface area 0. 30. 84 ha
GSK-KPA-A-81/12 (KPA56644)	Parcel No.999, at the place called “Jaruga golema njiva”, class II field, with surface area 0. 41. 19 ha
GSK-KPA-A-82/12 (KP056647)	Parcel No.2054, at the place called “”,Vrbnica” class III field, with surface area 0.15.69 ha

The KPA Executive Secretariat positively verified these documents.

KPA notified the potentially interested parties of the existence of the claims by placing signs at the parcels that are subject of the three claims: cadastral parcels 999 and 2054 on 22 May 2008 and cadastral parcel 121 on 19 May 2008.

Through the decision KPCC/D/A/29/2008, dated 19 December 2008, KPCC found that the claims are founded by recognising the claimant’s ownership over the claimed agricultural properties, and deciding to return these immovable properties to the claimant’s repossession under threat of compulsory execution. The Commission decided that the presented documents legitimise the claimant as the rightful owner.

Through the order KPCC/RES/12/2010, dated 24 January 2010, it annulled the decision KPCC/D/A/29 dated 19 December 2008 concerning the cases registered at KPA under the numbers KPA56636, KPA56644 and KPA56647, reasoning that this was necessary to ensure the accurate notification of the parcels and to enable any person with legal interest to file a response for the claimed properties according to the provision of Section 10.1 of UNMIK Regulation 2006/50, as amended by Law no.03/L-079.

The KPA Executive Secretariat did not re-notify the immovable properties that are subject of the claims by putting up respective physical signs as usually, but notified them through publication in the Gazette no.6 on 30 July 2010, and by distributing and placing it in the Zhegër/Žegra village, Cadastral Office, Municipal Assembly, Municipal Court in Gjilan/Gnjilane, as well as at the KPA Office in Gjilan/Gnjilane. In addition,

these immovable properties that are subject of the claims were notified through publication in the KPA notification gazette, which was distributed to respective government bodies.

Furthermore, the KPA found out that the claimed properties were not occupied, used and cultivated and that no party contested the validity of the claims within 30 day or more during the proceeding as foreseen by Section 10 of UNMIK Regulation UNMIK Regulation 2006/50 as amended by Law no. 03/L-079

Through decision KPCC/D/A/112/2011, dated 22 June 2011, KPCC acknowledged that the claims are founded by recognising the claimant's ownership over the claimed agricultural properties, and decided to return these immovable properties to the claimant's repossession under threat of compulsory execution. The Commission assessed that the presented documents legitimise the claimant as rightful owner.

The decision was served to the claimant on 11 November 2011 and he filed a response to the appeal on 12 September 2012; whereas M. D. filed an appeal on 14 June 2012. There is no evidence that the KPCC decision was served to the appellant. The appellant challenges the appealed decision on the grounds of erroneous and incomplete determination of the factual situation, and essential violation of the procedural and substantial law. He presented as evidence the deed of 1874 brought from Turkey. In the response to the appeal, the claimant alleges that the appellant did not participate in the time frame of 30 days following the notification by KPA for the filed claims, according to Section 10.2 of UNMIK Regulation 2006/50; thus, he proposes that pursuant Section 13.3 of UNMIK Regulation 2006/50 the Supreme Court dismiss the appeals as impermissible. The deed of 1874 submitted as sole evidence proves nothing in view of relevant facts concerning the claimed ownership; therefore, based on this legal basis, he proposes that the appeal be rejected.

The Supreme Court joined the cases.

Legal reasoning:

Joining of cases:

The Supreme Court joined the claims

Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.

The provisions of the Law on Contested Procedure that are applicable in the proceedings of the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as Article 408.1 as read with Article 193 of the Law No. 03/L-006 on Contested Procedure, provide the possibility of joining all claims through a ruling if that would ensure court-effectiveness and efficiency of the case.

Furthermore, the Supreme Court finds that the facts, legal grounds and the submitted evidence are completely the same in all of the 3 (three) cases. Only the parcels subject to 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. As all elements of the cases are the same except for the parcels, it would be more efficient if the appeals were joined and examined in a single judgment.

The appeals registered under GSK-KPA-A-80/12, GSK-KPA-A- 81/12 and GSK-KPA-A- 82/12 are joined in one single case under GSK-KPA-A-80/12.

Concerning the admissibility of the appeal

Based on the determination of facts, the appeal is admissible. Through the order KPCC/RES/12/2010 dated 24 January 2010, the decision of KPCC/D/A/29, dated 19 December 2008, concerning the case files registered at the KPA under KPA56636, KPA56644, and KPA56647 was annulled, and the Executive Secretariat was obligated to carry out a physical and accurate re-notification of the properties in order to enable any person with legal interest to file a response for the claimed properties, according to the provisions of Article 10.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.

Due to the fact that the Executive Secretariat had not carried out an accurate physical re-notification of the parcels that are subject of the claims, as required in the proceeding before the KPA according to Section 10.01 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, it can be concluded that the appellant was not informed of the physical and accurate re-notification of these immovable properties. According to this legal provision, the KPCC is obligated to perform a full and accurate notification, including the physical re-notification of claimed properties by putting up signs on the properties thus giving any person with legal interest the possibility of responding to the claim.

Because the Executive Secretariat failed to make reasonable efforts into the full and accurate physical re-notification of immovable properties that are subject of the claim, the appellant was prevented from participating in the proceedings before the KPA in violation of paragraph 2 of this Article, and consequently his right to appeal was not excluded.

Merits of the Judgment

The Supreme Court of Kosovo, after considering the case file submissions, the appealed decision and the allegations of the appeal found that the appellant's appeals are unfounded. This is because the Certificate on immovable property rights UL-70403026-00115, dated 7 September 2008, issued by the Cadastral Office in Gjilan/Gnjilane, constitutes that the claimed immovable properties are registered under the name of M. D., referring to the cadastral parcels 121, 999 and 2054. Therefore, based on such factual ascertainment, it indubitably follows that pursuant to Article 20 of the Law on Basic Property Relations, respectively Article 36 of the Law on Property and Other Real Rights, the property rights holder over these claimed immovable properties is M.D.. Therefore, the KPCC's appealed decision was right and legal when it recognised the ownership of M. D. and returned the properties into the claimant's re-possession.

The appellant's allegations that the appealed decision was taken by wrongful determination of the factual situation and presenting as evidence the deed of 1874 brought from Turkey do not present legally valid evidence to confirm the ownership right over the contested parcels according to Article 4, paragraph 2 of the Law on Movement of Immovable Properties (Official Gazette of R.S.no.43/81), Article 20 of the Law on Basic Property Relations, as well as Article 36 of the Law on Property and Other Real Rights. According to these legal provisions, in order to acquire ownership it is necessary to have a sales contract in writing that is legalised by a competent body such as courts or notaries, which is lacking in the concrete case. Therefore, the appellant's allegations are unfounded, inadmissible and consequently contrary to the said legal provisions. Moreover, the appellate allegations are contrary to the confirmed relevant valid facts and evidence administered in the KPA administrative proceedings. In addition, subject of particular consideration and evaluation was the extract of the deed referring to 1874, issued by the State Agency of Kosovo Archive dated

06 June 2012 but it found that the deed was not a legally valid document to confirm the legally valid facts concerning the appellant's allegation in relation to the claimed property. Through this Extract the existence of a causal link between the data in the deed and the claimed property cannot be confirmed according to the Certificate on immovable property rights UL-70403026-00115, dated 7 September 2008, issued by the Cadastral Office in Gjilan, which confirms that the claimed immovable properties are registered under the name of M. D.. The data indicated in the deed extract cannot serve to materialize the dimensions and delimitations by accurate geometric elements as to which immovable properties does that extract refer to. Furthermore, the appellant has not presented any fact nor proposed any legally valid evidence to confirm the circumstance of losing these immovable properties, by raising doubts about the appealed decision.

Consequently, based on the above, the Supreme Court ascertains that the decision of the KPCC is right and legal, and it provided sufficient explanations and clarification for decisive facts for a decision based on the law. The appealed decision did not contain essential violation of the procedural and substantial law according to the Section 12.3 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079.

Therefore, the appellant's appeal is rejected as unfounded according to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079

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 (10.21 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being 10.000,00 and it is € 50,00.

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 the payment of fees is 15 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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nuffer, EULEX Registrar