

**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-72/12

**Prishtinë/Priština
12 April 2013**

In the proceedings of:

G. and S. Ž.

Claimant/ Appellant

vs.

Municipality of Klinë/Klina

Respondent/Appellee

Represented by **Y. M.**, Director of Cadastre, Geodesy and Property

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/132/2011 (case files registered at the KPA under Nos.: KPA48052, KPA48050 and KPA48051), dated 26 October 2011, after deliberation held on 12 April 2013, issues the following

JUDGMENT

- 1- The appeal filed by S. and G. Ž., dated 04 May 2012, registered under no: GSK-KPA-A-72/12 to GSK-KPA-A-74/12, are joint under a single case file by number GSK-KPA-A-72/12.
- 2- The appeals of S. and G. Ž. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011, dated 26 October 2011, are rejected as ungrounded.
- 3- The Decision of the Kosovo Property Claims Commission KPCC/D/A/132/2011, dated 26 October 2011, regarding the case files registered with the KPA under numbers KPA48052, KPA48050 and KPA48051 is confirmed.
- 4- The appellants are obliged to pay the costs of proceedings each to an amount of 165 € (one hundred and sixty five euros) which shall 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 31 October 2007, S. and G. Ž. filed three claims for private commercial property with the Kosovo Property Agency, thus claim KPA48050 is filed by G. Ž. and refers to the object no. 1 with a surface of 37 m², while S. Ž. has filed two claims for restitution of possession over objects through with the Claim KPA48051 for the object no: 5, with a surface of 35m², and with the claim KPA48052 for the object no: 3, with a surface of 14,5m², that were constructed on the cadastral parcel 585, cadastral zone of Klinë/Klina. With these claims they allege that the possession was lost on 15 June 1999 and that the property rights over that immovable property could not be enjoyed due to circumstances directly related to or resulting from the armed conflict that occurred between 27 June 1998 until 20 June 1999

To support his claim the claimant G. Ž. provided the KPA with the following documents:

- Contract on sale and purchase dated 24 January 1995, referring to object no: 1, with a surface of 37 m² that is constructed in cadastral parcel 585, which contract was not certified by the competent court, and
- Copy of his Identity Card

To support his claims S.Ž. provided the KPA with the following documents:

- Contract on sale and purchase of object no: 5, concluded on 24 January 1995, constructed on cadastral parcel 585, cadastral zone of Klinë/Klina, with surface of 35 m², which contract was not certified before the competent municipal court;
- Contract on sale and purchase object no: 3, concluded on 24 January 1995, constructed on cadastral parcel 585, cadastral zone of Klina, with surface of 14,5 m², which contract was not certified before the competent municipal court; and
- Copy of his Identity Card.

The KPA Executive Secretariat during the verification process has negatively verified the aforementioned contracts.

On 27 February 2008, the KPA through the Notification Team went to the site of alleged properties and placed notifications on the commercial shops that are subject of the claims. On 01 June 2011, the KPA Executive Secretariat in regard to these shops has conducted a re-notification by publication in the Official Gazette no. 3 and by distributing the same in the Municipal Assembly and the Municipal Court of Klinë/Klina. Late, in the proceedings a respondent appeared before the Executive Secretary and disputed the filed claims by introducing evidence to support his assertions, as following:

- An immovable property rights certificate No. P-71006022400585, at the place called “Vakëf”, field, agricultural land, with a surface of 00.02.80 ha, whose title holder (of the property right) is the Municipality Assembly of Klinë/Klina. This certificate is issued by the Municipal Cadastral Office of Klinë/Klina on 07 July 2010.

- A notification of Municipality of Klinë/Klina no: 464-2223, dated 01 July 2010, concerning the publication of claims in the KPA, whereat it is concluded that parcel 585 in which the shops subject to the claim are constructed, is public property and belongs to Municipality of Klinë/Klina.
- A Decision of the Municipality of Klinë/Klina no: 463-270/02, dated 15 July 2002, concerning the establishment of a commission for registration of municipal-social owned property, and
- A copy of the identification card of the representative of Municipality of Klinë/Klina for the pertinent position that he performs, issued by Municipal Assembly of Klinë/Klina.

The documents were positively verified by the KPA Executive Secretariat.

The respondent by introducing the evidence to the KPA stated that the Municipal Assembly of Klinë/Klina is the titleholder of the immovable property, in which the shops, subject matter of the claims, are constructed.

With decision KPCC/D/C/132/2011, dated 26 October 2011, the KPCC rejected claim no: 48050, filed by G. Ž., and claims 48051 and 48052 filed by S. Ž.as ungrounded with the reasoning that the contracts on sale and purchase dated 24 January 1995 concerning the purchase of commercial object-shops under no: 1, 3 and 5, constructed on cadastral parcel 585, in cadastral zone of Klina, are not certified before the Municipal Court of Klinë/Klina. Further, even though the claimants were requested to submit additional evidence regarding establishment of ownership right, they failed to use this opportunity in relation to these three claims.

On 05 April 2012, the KPCC decision was served to the claimants. On 4 May 2012, the claimants filed an appeal before the Supreme Court.

On 24 January 2012, the respondent has received the decision of the commission, while the appeals filed by the appellants, he received on 28 June 2012. The appellee, filed an response to the appeal on 06 July 2012.

The appellants through the appeal challenged the KPCC decision on the grounds of erroneous and incomplete determination of the factual situation, erroneous application of the material law and essential violation of procedural provisions, while demanding from the Court to modify the decision of the Commission and return the case for retrial and rendering a decision. Furthermore, in their appeals they have stated that based on contracts on sale and purchase, dated 24 January 1995, they have purchased the commercial shops, subject of the claims, the contracts were performed in entirety, and they entered in possession of the properties. They do not dispute the fact that the contract on sale and purchase, dated 24 January 1995 was not certified before the competent court.

In their response to the appeal, the respondent stated that the contract on the basis of which the appellant is alleging the right of property over the subject of the claims neither were certified by the Municipal Court of Klina, nor registered in the Municipal Cadastral office of Klinë/Klina. Cadastral parcel 585, in which the shops are constructed, is public property of Municipality of Klinë/Klina, and is further considered as agricultural property according to the immovable property rights certificate no. P-71006022400585, at the place named “Vakëf”. As a competent body, the Municipal Assembly neither alienated this property to another subject nor changed its purpose; hence the competent body of Municipal Assembly of Klinë/Klina did not issue permission for construction. Concerning these grounds and reasoning it proposes to the Supreme Court to reject the appeals and confirm the Decision of the Commission regarding these property claims as fair and lawful.

The Supreme Court joined the cases.

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.

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, Article 408.1 in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, provides 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 besides 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 3 (three) cases. The appeals are based 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 filed by S. and G. Ž., dated 04 May 2013, registered under numbers GSK-KPA-A-72/12 to GSK-KPA-A-74/12, hereby are joined in a single case registered under the number GSK-KPA-A-72/12.

Admissibility of the appeal:

According to article 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the dissatisfied party may file an appeal within thirty (30) days of the notification of the decision.

In the present case, the KPCC decision was served to the appellants on 05 April 2012, while they have filed their appeals on 4 May 2012, which is less than 30 days from the date of receipt of notice of decisions of KPCC.

On 24 January 2012, the respondent has received the decision of the commission, while the appeals filed by the appellants, he received on 28 June 2012. The appellee, filed an response to the appeal on 06 July 2012.

The appeals are admissible because they were filed within the prescribed time, however the same are ungrounded.

The merits:

The Supreme Court assesses that based on the documents provided by the claimant, allegations of the appeal, the evidence provided from the respondent against the claim and the appeal, it results that the appealed decision was rendered through fair and complete determination of the factual situation as well as with fair application of the material and procedural law, while it decided through the appealed decision to reject the claims registered before the KPA with numbers KPA48052, KPA48050, and KPA48051, as ungrounded. This is due to the article 4, paragraph 1 and 2 of the Law on Transfer of Immovable Property (Official Gazette of Republic of Serbia no: 43/81 and 19/85), which foresees that the contracts on the transfer of rights to immovable property between ownership right holders shall be concluded in writing; the signatures of the contracting parties shall be certified by the courts, and that contracts which do not comply with this do neither produce any legal binding effect nor any real effect. Therefore, certification of signatures is a constitutive element of the validity and effectiveness of the contract. Considering that the immovable property contracts of the appellants, dated 24 January are not certified by the Municipal Court of Klinë/Klina, the same as such do not produce any legal effect, consequently the same are ineffective. This is also due to the decisive legal facts that the commercial shops are constructed in the cadastral parcel 585 in the cadastral zone of Klinë/Klina, at the place named “VakëP” in field cultivation, agricultural land, which is under ownership of Municipality of Klinë/Klina according to Immovable Property Rights Certificate No. P-71006022400585, dated 07 July 2010, issued by Cadastral Office of Klinë/Klina.

Considering that the KPA has requested from the claimants/appellants to provide further evidence on their alleged property rights upon the business premises they have failed to provide any proof based on which could be eventually decided otherwise, therefore, the Supreme Court hereby concludes that the appealed KPCC decision is fair and lawful and is neither associated with essential violation according to article 182, paragraph 2 of the LCP, nor those of article 194 of LCP which are ex officio safeguarded by the court.

Consequently, based on the aforementioned the Supreme Court concludes that according to article 13, paragraph 3, sub paragraph (c) of the UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, the appeals have to be rejected and the KPCC decision concerning the commercial properties that are subject of the dispute has to be confirmed.

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. Consequently, 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 and 10.1 of AD 2008/2), taking into account that the value of the claimed property may reasonably be estimated € 50,000; € 300 (€50+0.5% of € 50,000)

These court fees are to be borne by the appellants who lose 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 Remedy

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and binding and cannot be challenged through ordinary or extraordinary legal remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva - Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar