

**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-004/13

Prishtinë/Priština, 15 March 2012

In the proceedings of:

N. D.

Crna Gora

Claimant/Appellant

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 decisions of the Kosovo Property Claims Commission KPCC/D/R/152/2012 (case files registered at the KPA under Nos. KPA51116 and KPA51118), dated 19 April 2012, KPCC/D/C/153/2012 (case file registered at the KPA under No. KPA51117), dated 19 April 2012, KPCC/D/A/140/2012 (case file registered at the KPA under No. KPA51110), dated 29 February 2012, KPCC/D/A/149/2012 (case files registered at the KPA under Nos. KPA51121, KPA51123, KPA51124 and KPA51125), dated 19 April 2012, after deliberation held on 15 March 2012, issues the following

JUDGMENT

- 1- The appeal of N. D. against the decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012 of 19 April 2012, as far as it regards the cases registered at the KPA under Nos. KPA51116 and KPA51118 is dismissed as belated.
- 2- The appeal of N. D. against the decision of the Kosovo Property Claims Commission KPCC/D/C/153/2012 of 19 April 2012, as far as it regards the case registered at the KPA under No. KPA51117 is dismissed as belated.
- 3- The appeal of N. D. against the decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 of 29 February 2012, as far as it regards the case registered at the KPA under No. KPA51110 is dismissed as belated.
- 4- The appeal of N. D. against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012 as far as it regards the cases registered at the KPA under Nos. KPA51121, KPA51123, KPA51124 and KPA51125 s rejected as unfounded.
- 5- The decision of the Kosovo Property Claims Commission of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012, as far as it regards the cases registered at the KPA under Nos. KPA51121, KPA51123, KPA51124 and KPA51125, is confirmed.
- 6- The appellant has to pay the costs of the proceedings which are determined in the amount of € 80 (eighty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 25 October 2007, N. D. filed several claims with the Kosovo Property Agency (KPA), among them the eight claims which are the subject of this judgment and with which he seeks confirmation of ownership and repossession. He explained that he had inherited the properties, that they had been lost on 13 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo.

The data of the claimed parcels are the following:

Number of appeal and KPA case file; Number of KPCC- Decision	Data of the parcels
GSK-KPA-A-004/13 (KPA51118) KPCC/D/R/152/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, a house with two rooms and a surface of 60 m ² ;
GSK-KPA-A-005/13 (KPA51116) KPCC/D/R/152/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, a house with three rooms and a surface of 80 m ² ;
GSK-KPA-A-006/13 (KPA51117) KPCC/D/C/153/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, a warehouse with a surface of 20 m ² ;
GSK-KPA-A-007/13 (KPA51110) KPCC/D/A/140/2012	As the claimant explicitly stated in the claims form: Parcel No 216/6, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, according to the possession list a parcel located at a place called “Strane”, a 4 th class field with a surface of 18 ar and 88 m ² ; (the KPA, however, after having been informed of the claimant that he did not know the parcel numbers decided upon parcel no 216/2, as this is the parcel which is mentioned in possession list No. 211 to which the claimant referred)
GSK-KPA-A-008/13 (KPA51124) KPCC/D/A/149/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, pasture with a surface of 2 ha and 75 ar;
GSK-KPA-A-009/13 (KPA51123)	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik; according to the claims form pasture, a surface is not

KPCC/D/A/149/2012	mentioned;
GSK-KPA-A-010/13 (KPA51125) KPCC/D/A/149/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, pasture with a surface of 1 ha and 60 ar;
GSK-KPA-A-011/13 (KPA51121) KPCC/D/A/149/2012	Parcel with unknown parcel number, located in Pejë/Pec, cadastral zone Brestovik/Brestovik, apparently a park/commercial building with a surface of 30 m ² ;

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

- Copy of a lawsuit dated 31 May 2005 filed by N. D., the claimant, M. D. , I.D. and D.D. against the Municipality of Pejë/Pec for compensation of 217.150 € for the damage of immovable property on parcels registered in possession list No. 211 (parcels No. 22/1, 216/6 [correct: 216/2], 216/7, 216/8, 219/1, 225/5, 260/1, in total a surface of 1 ha 64 ar and 85 m². In the lawsuit the claimants declared that they had inherited the parcels as well as the buildings which had been built on them and the furniture. The claimants furthermore declared that they would submit the inheritance decision to the Municipal Court of Pejë/Pec as soon as it was issued and stated that they had found their property completely damaged while visiting. They had left the property after the arrival of international forces in Kosovo after 26 June 1999.

The KPA *ex officio* found Possession List No. 211 issued by UNMIK on 8 December 2009, showing that the claimant was co-owner to ¼ ideal part of the following parcels:

Parcel	Culture	Surface
216/2	field	18 88
216/7	field	19 42
216/8	forest	6 31
219/1	forest	4 37
225/2	house	36
		5 00
		3 24

260/1	forest	64 50
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Parcel No. 216/6, a field with a surface of 16 ar and 92 m², was registered in possession List No. 212 under the name of a third person, parcel No. 22/1, a field with a surface of 42 ar and 77 m², was registered Possession List No. 427 also under the name of a third person.

As the KPA was not able to notify the claimed parcels for which the claimant had given no parcel number and stated that he was not able to present these parcel numbers (KPA51116, KPA51117, KPA51118, KPA51119 and KPA51120) they tried to get more information. They checked three cases of the claimant before the Housing and Property Directorate, but there the claimant also had not given parcel numbers. Furthermore, none of the surfaces requested by the claimant in these cases was similar to the surfaces the claimant claims before the KPA. Checking in the KPA itself, the KPA found out that the numbers of the parcels mentioned in the lawsuit (and the possession list) are subject of other claims with the KPA.

The KPA also contacted the claimant several times and asked him whether he knew the parcel numbers in case the parcels claimed were other parcels than those already claimed with other claims and on most of which decisions already had been issued. The claimant replied that he did not know the parcel numbers.

1. Cases GSK-KPA-A-004/13 (KPA51118) and GSK-KPA-A-005/13 (KPA51116)

With its decision KPCC/D/R/152/2012 of 19 April 2012, the Kosovo Property Claims Commission refused claims KPA51116 and KPA51118. The Commission decided that the claimant had failed to establish any property right over the claimed property. The surface of the claimed parcel/building did not correspond to any parcel listed in the lawsuit the claimant had submitted to prove his ownership. The claimant had not identified the claimed parcels in the claim intake form and even after several requests of the Executive Secretariat had failed to do so.

The decision, which contained a warning that an appeal had to be filed within 30 days was served on the claimant on 5 October 2012.

On 18 December 2012, the claimant filed an appeal, asking “the Commission” to issue a decision on the basis of Possession List No. 211.

2. Case GSK-KPA-A-006/13 (KPA51117)

With its decision KPCC/D/C/153/2012 of 19 April 2012, the Kosovo Property Claims Commission refused claim KPA51117 (as well as other claims of the claimant which, however, apparently have not been appealed). The Commission decided that the claims had to be refused as the claimant had failed to specify the claimed property. Although he had been contacted several times by the Executive Secretariat and requested to specify the claimed properties and provide additional documents, the claimant had failed to do so.

The decision, which contained a warning that an appeal had to be filed within 30 days was served on the claimant on 5 October 2012.

On 18 December 2012, the claimant filed an appeal, asking “the Commission” to issue a decision on the basis of Possession List No. 211.

3. Case GSK-KPA-A-007/13 (KPA51110)

With its decision KPCC/D/A/140/2012 of 29 February 2012, the Kosovo Property Claims Commission regarding claim KPA51110 decided that the claimant was the owner of $\frac{1}{4}$ of parcel No. 216/2 with a surface of 18 ar and 88 m².

The claimant explicitly had claimed parcel 216/6 and stated that the surface of all parcels together was 1 ha 64 ar and 85 m². He had, however, not provided the KPA with a Possession List. The UNMIK Possession List 211, which the KPA had found *ex officio*, had not contained a parcel 216/6, but this parcel No. 216/2. The claimant was contacted by the Executive Secretariat. According to a note in the file he replied that he did not know the numbers of the parcels. The case then was processed for parcel No. 216/2.

The decision, which contained a warning that an appeal had to be filed within 30 days was served on the claimant on 12 June 2012.

On 18 December 2012, the claimant filed an appeal, asking “the Commission” to issue a decision on the basis of Possession List No. 211. He submitted Possession List of 2111, issued by the Cadastre of the Municipality of Peć (a parallel institution) on 11 September 2001, which contained a parcel 216/6 with a surface of 18 ar 88 m².

4. Cases GSK-KPA-A-008/13 (KPA51124); GSK-KPA-A-009/13 (KPA51123); GSK-KPA-A-10/13 (KPA51125); GSK-KPA-A-011/13 (KPA51121)

With its decision KPCC/D/A/149/2012 of 19 April 2012, the KPCC refused claims KPA51121, KPA51123, KPA51124 and KPA51125. The claimant, who had described the litigious parcels only by culture and surface, not, however, by a parcel number, had not proven his ownership. None of the requested parcels corresponded in surface with the parcels listed in Possession List No. 211 (see description above).

In spite of several requests the claimant had not provided the KPA with more information.

The decision was served on the claimant on 6 December 2012. On 12 December 2012 the claimant filed an appeal against this decision, asking the Commission to issue a decision on the basis of Possession List No. 211. He submitted Possession List of 2111, issued by the Cadaster of the Municipality of Peć (a parallel institution) on 11 September 2001.

The Supreme Court has joined the cases.

Legal reasoning:

The legal remedies taken by the appellant had to be interpreted as appeals, although the claimant in all of his requests asks “the Commission” to issue a decision on the basis of Possession List No. 211.

Yet the appellant used a form prepared especially for appeals against the KPCC’s decision, explicitly addressed to the Supreme Court of Kosovo, the legal remedy is explicitly described as “appeal” against the decision of the KPCC, the party is described as “appellant”. Because all of these facts the legal remedy cannot be considered just as a request to the Commission to reconsider their decision, but as an appeal which has to be dealt with by the Supreme Court.

1. Cases GSK-KPA-A-004/13 (KPA5118) and GSK-KPA-A-005/13 (KPA5116)

The appeal in cases KPA5116 and KPA5118 had to be dismissed as belated. Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 provides:

“Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”.

The KPCC decided on these cases with its decision KPCC/D/R/152/2012 of 19 April 2012. This decision was served on the appellant on 5 October 2012. The appellant, however, filed an appeal only on 18 December 2012. This is outside the deadline proscribed by the law. Consequently, the appeal had to be dismissed as belated.

The Court could not find any reasons why the appellant should be excused for this delay. He was sufficiently warned of the deadline (the decision contained a warning in the Serbian language) and the claimant himself gave no reason for the delay.

The Court, however, wants to add that it is satisfied that all parcels mentioned in Possession List No. 211 (the claimant asks for a decision on basis of this Possession List) are subjects of other claims, which here have not to be decided upon. These claims apparently have already been decided upon in favour of the claimant or are not yet decided.

The Court concludes: Either claims KPA51116 and KPA51118 are “technical duplicates” (subject are houses built on the parcels listed in Possession List No. 211), then a separate decision on the houses is not necessary (legally not even possible), or the buildings are on other parcels. In this latter case the claimant has not given any evidence that he is co-owner of these parcels. That houses with a surface of 60 m² and 80 m² are mentioned in the lawsuit before the Municipal Court in Pejë/Peć (insofar the Court disagrees with the reasoning in the KPCC’s decision) is no proof of ownership.

2. Case GSK-KPA-A-006/13 (KPA51117)

For the reasons mentioned under No. 1, the appeal in case GSK-KPA-A-006/13 also had to be dismissed as belated. The claimant was served with the decision KPCC/D/C/153/2012 on 5 October 2012, he filed his appeal on 18 December 2012 outside the deadline proscribed by Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079.

3. Case GSK-KPA-A-007/13 (KPA51110)

For the reasons mentioned under No. 1, the appeal in case GSK-KPA-A-007/13 also had to be

dismissed as belated. The claimant was served with the decision KPCC/D/A/140/2012 on 12 June 2012, he filed his appeal on 18 December 2012 outside the deadline proscribed by Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079.

4. Cases GSK-KPA-A-008/13 (KPA51124); GSK-KPA-A-009/13 (KPA51123); GSK-KPA-A-10/13 (KPA51125); GSK-KPA-A-011/13 (KPA51121)

The appeal is admissible, yet it is ungrounded.

The decision of the KPCC is correct; the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law. The Court agrees with the KPCC that the appellant has not proven ownership of the claimed parcels. The KPA ex officio found UNMIK Possession List 211 of 8 December 2012 showing parcels registered in the name of the appellant (and D., I. and M. D.) and UNMIK Possession List No. 212, showing parcel 216 with a surface of 16 ar 92 m² registered under the name of M. D. and UNMIK Possession List No. 472 showing parcel 22/1 with a surface of 42 ar and 77 m² registered under the name of S. Z.

After assessing the content of the files, the Supreme Court finds that none of the registered parcels correspond in surface with the claimed parcels (KPA51124: 2 ha and 75 ar; KPA51123: pasture with no surface at all; KPA51125: pasture with a surface of 1 ha 60 ar; KPA51121: a park/commercial building with one room and a surface of 30 m²).

The appellant himself, although contacted several times by the Executive Secretariat, has not given any more information on the parcels, but informed the KPA that he did not know the number of the parcels. He has neither specified the parcels nor given any more evidence concerning his ownership of the parcels.

The Possession List 211 issued by a parallel institution on 11 December 2001 does not constitute any more proof.

- a. The Court does not accept this Possession List as Evidence. Section 21.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides: “*New facts and material evidence presented by any party of the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned*”). The Possession List was issued already in 2001, the appellant easily could have

submitted the Possession List to the KPCC.

- b. Furthermore, the Possession List was issued by a parallel institution and also for this reason is not accepted by the Court as evidence.
- c. But even if the Court would accept the List as evidence, this would not change the Court's decision. This Possession List is very similar to the UNMIK Possession List, only the name of parcel 216/2 in the Possession List of 2001 is 216/6 and the Possession List of 2001 contains one more parcel, No. 22/1 with a surface of 42 ar and 77 m². The Possession List of 2001 also does not contain any parcels which have the same surface as the parcels requested with claims KPA51124.

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 (10.21 and 10.1 of AD 2008/2), considering that the value of the property on which the Court decided on the merits (No. 4) could be reasonably estimated as being comprised at € 10.000: € 50 .

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment for a person living outside Kosovo may not be less than 30 days and no longer than 90 days. The Court decides that a deadline of 90 days is given. Article 47 Paragraph 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 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