

**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-056/12

Prishtinë/Priština, 23 May 2013

In the proceedings of

I. K.

Pejë/Peć

Appellant

vs.

V. D. D.

Belgrade
Serbia

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 decisions of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered at the KPA under number KPA20131), dated 23 February 2011, KPCC/D/A/60/2010 (case files registered at the KPA under numbers KPA20132 and KPA20133), dated 25 February 2010, and KPCC/D/A/140/2012 (case file registered at the KPA under number KPA20134), dated 29 February 2012, after deliberation held on 23 May 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011, dated 23 February 2011, as far as it regards the case registered at the KPA as KPA20131, the decision KPCC/D/A/60/2010, dated 25 February 2010, as far as it regards the cases registered at the KPA as KPA20132 and KPA20133 and the decision KPCC/D/A/140/2012, dated 29 February 2012 as far as it regards the case registered at the KPA as KPA20134 are annulled and the claims are dismissed as the cases are not within the scope of jurisdiction of the Kosovo Property Claims Commission.
- 2- The appellee has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 29 November 2006, V.D. D. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of the following property located in Rosuljë/Rosulje, Pejë/Peć:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-056/12 (KPA20131)	Parcel No. 1/25, a 3 rd class forest with a surface of 1 ha 68 ar 39 m ² ;
GSK-KPA-A-057/12 (KPA20132)	Parcel No. 9, a 4 th class field with a surface of 0 ha 59 ar 46 m ² ;
GSK-KPA-A-058/12 (KPA420133)	Parcel No. 117, a 4 th class field with a surface of 0 ha 28 ar 37 m ² ; Parcel No. 118, a 4 th class field with a surface of 0 ha 36 ar 96 m ² ; Parcel No. 119, a 4 th class field with a surface of 0 ha 20 ar 89 m ² ; Parcel No. 120, a 3 rd class pasture with a surface of 0 ha 50 ar 02 m ² ;
GSK-KPA-A-59/12 (KPA20134)	Parcel No. 139/1, a 4 th class field with a surface of 0 ha 68 ar 06;

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The claimant explained that ½ of the parcels had belonged to his deceased father D. D. (the other half to R. M D.) and that he had inherited them. He stated that the property had been lost on 14 June 1999.

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

- Copy of the Possession List No. 25, issued on 13 April 2006, of the Immovable Property Cadastral Office of Pejë/Peć, stating that parcels No. 1/24, 1/25, 9, 117, 118, 119, 120 and 139/6 were to ½ in the possession of D. M. D. , to the other half in possession of R. M.D.;
- Death Certificate, issued by the Municipality of Stari Grad on 30 December 2005, confirming the death of D.D. on 2 December 2005 in Belgrade, Stari Grad;
- Inheritance Decision of the II Municipal Court in Belgrade, O.No. 233/06 (final since 19 April 2006), with which the claimant was pronounced heir of 1/3 of ½ of the litigious property [the Court wants to note that in this decision parcel No 137/1 or 139/1 (s. below) is declared parcel No. 139/6].

The KPA Officers found UNMIK-Possession List No. 25, issued by the Kosovo Cadastral Agency on 27 May 2008 which showed that the litigious parcels were registered to ½ under the name of D. M. D., to the other half under the name of R.M. D. The Court wants to add that in this list the field with the surface of 68 ar and 06 m² is registered as parcel No. 137/1 [not 139/1 as in the Possession List of 2006, submitted by the claimant and 139/6 in the Possession List of 1978 submitted by the appellant later on in the proceedings]. The Death Certificate and the Inheritance Decision could be verified as well.

In the cases GSK-KPA-A-057/12 (KPA20132) and GSK-KPA-A-058/12 (KPA20133) the KPA officers in November 2009 went to the places where parcels No. 9, 117, 118, 119 and 120 allegedly were situated and put up on each parcel a sign notifying of the claim and informing that anybody claiming a legal right to the parcel might come forward and take part in the proceedings before the KPA. The notifications later on were checked based on the Cadastral plan, ortophoto and GPS coordinates and were found to be correct.

As nobody responded to the claim, the KPCC on 25 February 2010 with its decision KPCC/D/A/60/2010 decided that the claimant in these cases had established that he was the owner of 1/6 of the claimed property and entitled to its possession.

On 24 September 2010 the KPA notified the public of claim KPA20131 (GSK-KPA-A-56/2012) and claim KPA20134 (GSK-KPA-A-059/12) by publishing it in the KPA Notification Gazette No. 9 and the UNHCR property office bulletin. Gazette and List were left with the village leader and placed at the exit and the entrance of Rosuljë/Rosulje and were distributed to multiple other officials.

As in these cases as well nobody responded to the claim, the Kosovo Property Claims Commission on 23 February 2011 with its decision KPCC/D/A/100/2011 decided that the claimant had established that he was the owner of $\frac{3}{4}$ of the abovementioned parcel No. 1/25 (KPA20131; GSK-KPA-A-56/12) and entitled to its possession. Regarding claim KPA20134 (GSK-KPA-A-59/12), the KPCC on 29 February 2012 with its decision KPCC/D/A/140/2012 decided that the claimant had established that he was the owner of 1/6 of the claimed property and entitled to its possession.

On 2 April 2012, I.K.(the appellant) filed an appeal with the Supreme Court. He explained that he had bought the litigious property with contract of 25 October 1978, certified in the Municipal Court of Pejë/Peć, Vr.Nr. 2362/78. He declared that he had expected the Court to have the property registered in his name and did not pay attention to this anymore. To sustain his allegations he provided the Supreme Court among others with a copy of a sales contract with which R.D., represented by V. P., and D. D. represented by Z. D. sold the litigious parcels (or an ideal part of half of each parcel, the contract insofar remains unclear) to I.K. of Qellopek/Celopek.

The claimant (from here on: the appellee) was served with the appeal on 7 August 2012, yet he did not respond.

Later on in the proceedings, the appellant explained that he had not been aware of the claim as he did not live in Rosuljë/Rosulje, where the parcels were situated, but in Qellopek/Celopek.

On 8 March 2013 the appellee was served with an order of the Supreme Court, requesting him to explain within two weeks since he received this order in which way the loss of the property was related to the armed conflict in Kosovo in 1998/1999 and warned that without reply he could lose the case. Yet the appellee did not respond.

The Supreme Court has joined the cases.

Legal reasoning:

The appeal is admissible even though the appellant had not been a party to the procedure before the KPA/KPCC.

Regarding cases GSK-KPA-A-56/2012 (KPA20131) and GSK-KPA-A-059/12 (KPA20134) the notification of the claims was done by publication of the claims in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes “reasonable efforts” as required by Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 only in exceptional cases. Such an exception cannot be found here. As the Court cannot exclude that the appellant was not aware of the claims, he has to be accepted as a party to the proceedings, his appeal is admissible.

Regarding cases GSK-KPA-A-057/12 (KPA20132) and GSK-KPA-A-058/12 (KPA20133), the appellant explained that he had not seen any notification as he did not live at the village where the parcels are situated. The Court accepts this explanation, the appeal of Iber Krasniqi also in these cases is admissible.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 b) of the Law on Contested Procedure).

Therefore the decisions of the KPCC insofar as they have been appealed had to be annulled and the claims dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order of the Commission for repossession of the property if the claimant not only proves a right to the property but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In these cases, however, the appellee has not provided the Court with any facts that could lead to the conclusion that the loss of the property is directly related to the armed conflict. In cases in which the Court has indications that the claimant or his family had escaped from Kosovo or fled from their

property because of the armed conflict, the Court usually assumes that the loss of the property is related to the armed conflict. Here, however, there are no such indications. According to the claims form, the appellee has been born in 1982 in Beograd. The Court assumes that the whole family at this time was living in Beograd and therefore did not flee from their property in Kosovo because of the armed conflict. Although the Court issued an order, explicitly requesting information in which way the loss of the property was related to the conflict and warning the claimant that if he did not comply with this order he could lose the case, the appellee did not reply. Without any more information, the Court, however, cannot consider the loss of the property being directly related to the armed conflict in Kosovo in 1998/1999.

Therefore, the cases are not within the jurisdiction of the KPCC or the KPA Appeals Panel.

As a consequence the decision of the KPCC regarding the claim had to be annulled and the claim dismissed as being without the jurisdiction of the KPCC and the Court.

The Court notes that this decision does not prejudice the right of the appellee to pursue his claims before the competent civil courts (Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

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, as the value of the litigious parcel can be estimated at more than € 10.000 (10.21, 10.15 and 10.1 of AD 2008/2): € 30.

These court fees are to be borne by the appellee who filed an inadmissible claim. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Court decides that the deadline here is 90 (ninety) 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 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