

**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-214/13

**Prishtinë/Priština,
17 September 2014**

In the proceedings of:

N. A.

Viti/Vitina

Appellant

vs.

L. S. M.

Niš

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Esma Erterzi Presiding Judge, Elka Filcheva - Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/126/2011 dated 26 October 2011 (case files registered at the KPA under No. KPA34614, KPA34615, KPA34616, KPA34617, KPA34618, KPA34619, KPA34621, KPA34622 and KPA34623 after deliberation held on 17 September 2014, issues the following

JUDGMENT:

1. The cases GSK-KPA-A-214/13, GSK-KPA-A-215/13, GSK-KPA-A-216, GSK-KPA-A-217/13, GSK-KPA-A-218/13, GSK-KPA-A-219/13, GSK-KPA-A-220/13, GSK-KPA-A-221/13 and GSK-KPA-A-222/13 are joined in one single case registered under number GSK-KPA-A-214/13.
2. The appeal of N. A. against the decision of the Kosovo Property Claims Commission KPCC/D/A/126/2011 dated 26 October 2011, regarding case file registered at the KPA under the numbers KPA34614, KPA34615, KPA34616, KPA34617, KPA34618, KPA34619, KPA34621, KPA34622 and KPA34623, is rejected as unfounded.
3. The decision of the KPCC/D/A/126/2011 dated 26 October 2011, regarding case files registered at the KPA under the numbers KPA34614, KPA34615, KPA34616, KPA34617, KPA34618, KPA34619, KPA34621, KPA34622 and KPA34623, is confirmed.

Procedural and factual background:

1. On 30 November 2007 L. S. M. filed nine claims at the Kosovo Property Agency (KPA), seeking confirmation of her property right and repossession of several properties in Viti/Vitina. The claims were registered as nine claims by the KPA. Details about case numbers at the KPA and at the Supreme Court, and information related to the properties, are as follows:

Case no. GSK-KPA-A	Claim no.	Parcel no.	Cadaster no.	Surface	Village Place	According to
214/13	KPA34614	171	70101033	1 721 m2	Pozharan/Požaranje Strnjaca	Certificate dated 26.02.2013
215/13	KPA34615	204	70101033	3 542 m2	Pozharan/Požaranje Strnjaca	Certificate dated 26.02.2013
216/13	KPA34616	206	70101033	3 633 m2	Pozharan/Požaranje	Certificate dated

						26.02.2013
217/13	KPA34617	836	70101033	1 016 m2	Pozharan/Požaranje Fshat Oborr	Certificate dated 26.02.2013
218/13	KPA34618	969	70101033	13 065 m2	Pozharan/Požaranje Potok	Certificate dated 26.02.2013
219/13	KPA34619	971	70101033	12 297 m2	Pozharan/Požaranje Potok	Certificate dated 26.02.2013
220/13	KPA34621	4		6 910 m2	Çiflak/Ciflak	
221/13	KPA34622	7		2 263 m2	Çiflak/Ciflak	
222/13	KPA34623	8		19 637 m2	Çiflak/Ciflak	

2. The certificate dated 26 February 2013 has been issued by the Municipal Cadastral Office of Viti/Vitina. In cases no. 220 – 222 no certificate or Possession List issued by Kosovar Authority has been submitted. It follows from the certificate dated 26 February 2013 that B. S. was registered as owner of an ideal 1/3 of the properties mentioned in the certificate.
3. With the claims L. S. M. submitted *inter alia*:
 - Birth Certificate dated 23 August 2004 showing that she is the daughter of B.S.;
 - Death Certificate showing that B.S. died on 26 February 2002;
 - Inheritance decision O.br.401/02 made by the Municipal Court in Jagodina dated 23 September 2002 showing that L. S. M. inherited an ideal ½ of the whole legacy. The claimed properties are all mentioned in the decision. The other half of the legacy was inherited by her sister, S. D.
4. The three documents mentioned above have been positively verified by the KPA.
5. On 23 October 2008 in cover decision KPCC/D/A/25/2008 the Kosovo Property Claims Commission (KPCC) awarded the claims made in all nine cases described above.
6. However the decision was rescinded by resolution no. KPCC/RES/15/2010 dated 19 February 2010. According to the resolution the claims had not been physically identified or properly notified. The physical notifications had been made on wrong locations.

7. On 26 October 2011 in cover decision KPCC/D/A/126/2011 the KPCC again awarded the claims made in all nine cases.
8. The renewed decision was made without a physical notification on the nine properties. However it follows from “Notification and Confirmation report” dated 25 August 2010 that a notification of the claims were made in the KPA Notification Gazette and UNHCR property office BULLETIN. In addition a copy of the notifications of claims KPA34614-34616, KPA34619 and KPA34219-221 was left with the owner of the shop “Sameti”, a notification of claim KPA34617 was left with the owner of the shop “Shansa”, and a copy of the claims in cases KPA34621-34623 was left with a school employee at the primary school “Halil Alidema”.
9. The cover decision KPCC/D/A/126/2011 dated 26 October 2011 was served on L. S. M. on 8 June 2012.
10. On 12 July 2013 N.A. submitted an appeal against the cover decision, concerning all nine cases. The appeal was served on L. S. M. on 12 October 2013. M. responded to the appeal on 12 November 2013. The Supreme Court received the case file on 6 March 2013.

Allegations of the parties

11. N. A. has stated generally that cover decision of the KPCC involves a fundamental error or serious misapplication of the applicable material or procedural law. A. relates this to lack of documents at the KPCC. He has submitted the following documents with the appeal
 - Sales contract dated 11 July (year unknown)
 - Power of attorney from S. Dj. to N. A. (undated) with confirmation of signature from the Municipal Court of Cuprija dated 8 October 2004. The power of attorney authorizes A. to sell parcels no. 4 registered in Possession List 98, and parcels 969/1, 971/2 and 204 all registered in Possession List 289.
 - Power of attorney from B. S. to S. M. T. dated 1 February 2001 with confirmation of signature from the Municipal Court of Cacak dated the same day. The power of attorney states that T. “may, pursuant to the decision of the court on the ownership over the immovable property registered in possession list no. 98 CM Ciflak, place called “Adzin

grob”, in surface of 2 hectare and 19 are, as well as my 2/3 of the immovable property registered in possession list no. 289CM Požaranje,”

- Records
- Receipts
- Banknote numbers
- ID

12. In case 214/13 and in cases 216/13 to 222/13 A. declared that he did not file the appeal on time because he was not notified of the claim, and stated that L. S. M. has problems with her family, not with A
13. In case 215/13 A has stated that he has purchased parcel no. 171 from S. S.
14. L S M alleges that the appeals from A must be dismissed because A did not take part in the proceedings before the KPCC, and because the appeals are belated with approximately one year.
15. As to the merits, M alleges that her father, B S, has never issued the power of attorney that has been submitted. The power of attorney is a counterfeit. B. S. has never been to Cacak, and the ID number on the ID submitted to the Municipal Court of Cacak is 12381, whereas the ID number of B. S. issued on 3 March 1997 by FPD Viti/Vitina is 67227.

Joining of cases

16. N. A has filed appeals against KPCC’s decision in the cases registered at the KPA under the numbers KPA34614, KPA34615, KPA34616, KPA34617, KPA34618, KPA34619, KPA34621, KPA34622 and KPA34623. The cases have been filed at the Supreme Court as case numbers GSK-KPA-A-214/13, GSK-KPA-A-215/13, GSK-KPA-A-216/13, GSK-KPA-A-217/13, GSK-KPA-A-218/13, GSK-KPA-A-219/13, GSK-KPA-A-220/13, GSK-KPA-A-221/13 and GSK-KPA-A-222/13. The cases are between the same parties and deal with the same issues. Only the cadastre numbers are different. A joinder of the cases will contribute to the efficiency of the proceedings.
17. Accordingly the Supreme Court hereby issues an order to join the cases under the number GJK-KPA-A-214/13 in accordance with the Law on Contested Procedure Art. 408.1 and

Art. 193, which are applicable *mutatis mutandi* according to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079.

Legal Reasoning

Admissibility of the Appeal

18. The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. However, according to the jurisprudence of the Supreme Court, *inter alia* in GSK-KPA-A-130/12, this constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter *Law No. 03/L-079*) only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the N. A. was not aware of the claim, he has to be accepted as a party to the proceedings, and his appeal is admissible.

Merits of the appeal

19. N. A. has submitted one contract on sale of immovable property dated 11 July, unknown year. According to the contract, B. S. has sold parcels no. 171, 836, 971/2, registered in possession list 289.
20. However the said contract does not give N. A. any support for his appeal.
21. Firstly, it is stated initially in the contract that B. S. is represented by S. S. according to authorization (power of attorney) no 132/2001. S. S. has again given power of attorney to N. A. However in this alleged power of attorney, S. S. is not the empowered person. The empowered person is N. A. It seems probable that N. A. and N. A is the same person, but the lack of coherence between the power of attorney and the contract does not add to the trustworthiness of the documents.

22. Secondly, according to the submitted contract, N. A. is not the buyer, but acts as the “Seller’s authorized person”. The alleged buyer is V.A. Accordingly the contract does not give N. A. any right to any property.
23. Thirdly, when the signature on the alleged power of attorney OV.br.132/2011 was confirmed by the Municipal Court of Cacak, the confirmation was based on identity card no. 12381, whereas the identity card issued by the authorities in Viti/Vitina, where B.S. lived, has no. 67227. The aforementioned power of attorney was not verified by the KPA Verification Team.
24. Lastly the Supreme Court notes that A. only has submitted documents that might concern three cases: Case 214/13 (parcel no. 171), 217/13 (Parcel no 836) and 219/13 (parcel no. 971). In the other cases, no evidence of relevance has been provided.
25. In conclusion N.A. has failed to provide evidence that he is the owner of any of the parcels that are dealt with in the nine appeals. In the light of foregoing, pursuant to Section 13.3 under (c) of Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Esma Erterzi, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva - Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar