

**SUPREME COURT OF KOSOVO  
GJYKATA SUPREME E KOSOVËS  
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL  
KOLEGJI I APELIT TË AKP-ës  
ŽALBENO VEĆE KAI**

**GSK-KPA-A-36/13**

**Prishtinë/Priština,  
12 November 2013**

In the proceedings of

**S.S**

***Appellant***

vs

**Z.V**

***Appellee***

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/158/2012 (case file registered at the KPA under the numbers KPA00706 and KPA91507) dated 6 June 2012, after deliberation held on 12 November 2013, issues the following

## JUDGMENT

- 1- The appeal of S.S against the decision of the Kosovo Property Claims Commission KPCC/D/R/158/2012 of 6 June 2012, as far as it regards the claim registered at the KPA under No. KPA00706 and KPA91507, is rejected.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/155/2012 regarding case file registered at the KPA under the numbers KPA00706 and KPA91507) dated 6 June 2012 is confirmed.

### Procedural background

On 25 October 2007, Z.V filed a claim with the Kosovo Property Agency (KPA), seeking ownership of 2/4 of parcels nr. 332 and 333 in Drvare, Vushtrri/Vucitrn. As the basis for her claim, she submitted a contract of gift dated 11 November 1997 from D.S. The signatures of the parties were confirmed by the Municipal Court in Vushtrri-Vucitrn on 13 February 1998. The contract and the court's confirmation of the signatures have been verified by the KPA.

Before this The Housing and Property Claims Commission (HPCC) on 27 August 2004 ordered repossession of the property Drvare br 13, Opstina Vushtrri/Vucitrn Cadastral Parcel nr. 332 to D.S. In the decision it is stated that the property had been destroyed after D.S lost possession of the property, and that the parcel was vacant.

D.S died 7 January 2004.

By decision of 27 September 2010 KPA separated the claims, so that the original case KPA00706 now only concerns parcel 333 and the claim concerning parcel 332 was given the number KPA91507.

S.S responded to the claim, stating that he had a legal right to both properties. He stated that the land traditionally belonged to his ancestors, and that it had been occupied from 1912. He did not submit any documentation of ownership.

In its Cover Decision KPCC/D/A/155/2012 dated 6 June 2012 KPCC decided that Z.V was the owner of 2/4 of both the properties, and that she was entitled to the possession of these. The KPCC found that Z.V had supplied proof that she had submitted proof of ownership to both properties, and that it had no

jurisdiction to decide on expropriation matters that occurred prior to and was not related to the conflict in 1998/1999.

The decisions were served on S.S on 11 December 2012. He filed appeal against both decisions on 8 January 2013. In the appeal, which refers to both cases, Salihu has given a broad description of the historical background in Kosovo. His main argument is that his family lost his properties after 1912 due to Serbian colonialism, and that the land rightfully belongs to him. After the conflict in 1998/1999 he, as his fellow countrymen, had the right to reclaim the land. S.S states that the European Parliament and the Kosovo Government have a role in adjusting rightfully the ownership issue in Kosovo. S.S requests that the Supreme Court should annul the decision of KPCC in order to correct ownership injustice in Kosovo.

The appeal was served on Z.V on 16 July 2013. She has responded to the appeal in both cases on 22 July 2013. She rejects the arguments raised by S.S as being of a historical nature and irrelevant to the case.

### **Joining of cases**

S.S has filed appeal against KPCC's decision in the cases registered at the KPA under the numbers KPA00706 and KPA91507. The cases have been filed at the Supreme Court as case numbers GJK-KPA-A-036/13 and GJK-KPA-A-037/13. 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.

Accordingly the Supreme Court hereby issues an order to join the cases under the number GJK-KPA-A-036/13 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**

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079.

The claim made by Z.V to KPA concerns a loss of property on 12. June 1999 by reason of circumstances directly relating to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, and that she is not able to exercise her rights due to this circumstances. Accordingly it is within the mandate

of KPCC as defined in UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079. The claim is admissible.

Z.V has submitted evidence to KPA that she according to a contract of gift dated 13. February 2012, is the owner of 2/4 of the cadastre nr. 332 and 333 in Vushtrri/Vucitrn. The gift was given by D.S, who KPA has verified is the same person as D.S.

S.S has confirmed in the appeal that he has taken possession of the property after the armed conflict, stating that the land belonged to his family before 1912. He has not suggested or documented any right to the property other than his historic claim.

The claim and appeal is within the jurisdiction of the Supreme Court. However the Court can only decide on cases within the framework set by Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, issues relating to the armed conflict in Kosovo in 1998/1999. The arguments that S.S has forcefully put forward concerning the historic background of the ownership of the property, are outside the jurisdiction of the Supreme Court.

The Supreme Court therefore agrees with KPCC that Z.V has proven her claim.

On 27 August 2004 HPCC gave D.S possession of cadastral parcel nr. 332 as the property right owner. The order was made after an uncontested proceeding. This decision does not make the present case Res Judicata because it is explicitly states that::

“The order only resolves the issue of entitlement to the declaratory relief granted. It does not finally decide any other legal right, issue or dispute relating to the claimed property. In cases where there is more than one owner, the order does not affect the rights of co-owners”

In the same way, this judgment is only binding between Z.V and S.S, and does not affect the rights of co-owners.

### **Cost of proceedings**

In previous decisions the Supreme Court has taken the position that while the parties are exempt from costs of proceedings before KPCC, such an exemption is not foreseen for the proceedings before the Appeals Panel. Accordingly the losing parties have been obliged to bear the court fee in accordance with 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

Art. 12.2 of the UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079 (UNMIK 06) states that, unless otherwise provided, the Law on Contested procedure shall be applied *mutatis mutandis* to the appellate proceedings before the Supreme Court. The Law on Contested Procedure has provisions concerning court fees.

In Art. 13.5 of UNMIK 06 it is stated that:

“In interpreting the present Regulation or any Administrative Direction implementing the present Regulation, the Supreme Court of Kosovo may take into account, with such modifications or qualifications as it considers necessary or appropriate in the given circumstances, the provisions of the applicable laws on the powers of the Supreme Court relating to civil procedures.”

It follows from this provision that the Appeal Panels of the Supreme Court has been given a margin of appreciation when applying general laws relating to civil procedure in appeals against decisions made by KPCC. The Supreme Court understands this as an acknowledgment of the special issues raised in these cases. In interpreting these laws the Supreme Court takes into account the objectives of the laws and the state of evolution at the time of the application of the laws.

The Supreme Court acknowledges that as a main rule the parties before the KPCC and KPA Appeals Panel are highly vulnerable.

For claimants and respondents alike, a court fee imposed by the Supreme Court, may be a serious burden which may affect their access to justice. Experience has shown that it is not uncommon that appellants have been unaware of the proceedings before KPCC through no fault of their own, and an appeal to the Supreme Court is the only possible challenge of an uncontested claim at the KPCC. Additionally, the parties who are appellees before the Supreme Court may have court fees imposed without themselves having appealed the KPCC judgment

The KPA, KPCC and the KPA Appeals panel were established in order to create a simple and fair access to justice regarding claims from parties not being able to exercise their property rights. With the experience

gained over the last years, the Supreme Court finds that court fees in appeal cases may represent a hindrance to access to justice for claimants and respondents alike. This was not the will of the lawmaker.

Accordingly, the Supreme Court revises its practice effective from today, and decides to interpret the above mentioned laws and provision so that they do not apply to appeals to the Supreme Court relating to decisions made by KPCC.

**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.

**Elka Filcheva-Ermenkova, EULEX Presiding Judge**

**Sylejman Nuredini, Judge**

**Dag Brathole, EULEX Judge**

**Urs Nufer, EULEX Registrar**