

**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-033/13

Prishtinë/Priština, 21 January 2014

In the proceedings of:

B. S.
Prishtinë/Priština

Respondent/Appellant

vs.

G. (M.) L.
Kuršumlija
Serbia

Claimant/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/A/155/2012 (case files registered at the KPA under NN. KPA37059 and KPA37060), dated 6 June 2012, after deliberation held on 21 January 2014, issues the following

JUDGMENT

- 1- Cases GSK-KPA-A-033/13 and GSK-KPA-A-034/13 are joined into case GSK-KPA-A-033/13.
- 2- The appeals of B.S. are rejected as unfounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/155/2012 (regarding case files registered at the KPA under NN. KPA37059 and KPA37060), dated 6 June 2012 is confirmed.

Joining the cases:

1. Section 408.1 of the Law No. 03/L-006 on Contested Procedure (LCP) provides that the court may join all the cases where two or more proceedings are ongoing in the same court and involving the same persons, if that would ensure court-effectiveness and efficiency of the case.
2. In the cases registered under the numbers GSK-KPA-A-033/13 and GSK-KPA-A-034/13 the appellant filed identic appeals, implicitly giving his consent to the joining of the cases, as provided by section 408.3 of the LCP. In addition, the Supreme Court observes that the facts, the legal grounds and the evidentiary issues are exactly the same in those cases. Only the parcels, object of the property right which is alleged in each claim, are different. The appellee is also the same person. The appeals are based on the same explanatory statement and on the same documentation. Moreover the KPCC's cover decision which is appealed is the same one.
3. Insofar as all the elements of the cases are the same but the parcels, it is obviously more efficient to join the appeals and to examine them in one single judgment.
4. The aforementioned cases shall become one single case registered under the number GSK-KPA-A-033/13.

Procedural and factual background:

5. On 7 May 2007, G. (M.) L. filed claims with the Kosovo Property Agency (KPA), seeking repossession over parcels numbers 1207, 1208 (the two with surface of 73 ar 1 sq.m), 1209, 1210 and 1211 (the three with surface of 79 ar 37 sq.m) The parcels are situated in “Stara pleća” Rimaniste, Pristina. He asserted that he is the owner of the parcels and that the land is usurped by unknown person. The possession he lost on 18 June 1999. The claimant presented to the KPA possession list N 103, issued in 2002 by the Kosovo Cadastral Agency. According to the cadastral records the claimed properties have been registered under the name of G. (M.) L. The claimant presented inheritance decision – T. nr. 129/2002 from 13 May 2002 (certifying his inheritance rights over the properties), cadastral schemes of the parcels and a certificate from 1937 which relates to the purchase of allegedly the same properties. It is claimed that the great grandfather of the claimant purchased these properties from the ancestors of the respondent B. S. The KPA verified positively the documents. The claimant asserted that none of the properties were sold afterwards and that his family used them until 1999 when they had to flee from Kosovo.
6. After the notification, B. S. responded to the claims. He stated that the claimant is not the property right holder but he is. He alleged that his grandfather I. I. bought the claimed properties. He presented a document, named “Obligation”, in which it is noted that P. S. has borrowed from I. I. a sum of money and in case he would not have returned the money I. can take over one of his meadows. There is no data for follow up transfer of property.
7. Neither the document from 1937, presented by the claimant, nor the document from 1929, provided by the respondent make obvious identification (in the context of the present cadaster) of the parcels of land they relate to. Both documents contain descriptive illustration of the pieces of land by explaining with what they bordered at the time of the making of those documents – 1929 and 1937. However there is no data in the file that the properties described in these old documents correspond with the claimed properties. There is no data as well whether any cadastral verification has been performed in that regard.
8. Regardless of the above it is not disputed that at least from the beginning of 1940ies and until 1999 the claimed properties, i.e. parcels 1207, 1208, 1209, 1210 and 1211 were used by the family of the claimant G. (M.) L. and the respondent B. S. and his family only entered into possession of the land after the claimant left Kosovo, because of the armed conflict, i.e. after 1999 onwards.
9. There is argument as well that after 1999 the claimant never sold the properties to the respondent or anyone else.

10. On 6 June 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/155/2012 granted the claims. The Commission considered that the claimant has submitted a possession list listing him, as the property right holder. The document is positively verified, the properties have never been sold. Regarding the respondent the Commission did not accept the allegations that the properties were purchased from a third person 1941.
11. The decision was served on the respondent on 4 January 2013. On 8 January 2013, the respondent (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision. He does not invoke misapplication of the applicable material and procedural law. He states that the decision is unjust. He claims his grandfather I. S. had never signed a contract in his life to be later used as a proof of purchase by L. G.. The latter has done the paper work entirely by himself in the absence of his family. It is not clear which paper work the appellant describes, but from previous statements of the parties it may be concluded that the appellant is referring to the alleged by the claimant transfer of properties in the past – in 1937. The appellant has presented written statements signed by three different individuals, born in the following years - 1943, 1932 and in 1963. The appellant presents as well a claim he has filed on 23 March 2007 against L.G.in front of the Municipal Court of Pristina, requesting the Municipal Court to acknowledge his property right over several properties, among which the disputed ones. There is no data whether the regular court has dismissed the proceedings or they are still pending.
12. The claimant in response to the appeal seconds his initial statement that his family has used the properties uninterruptedly from 1937 till 1999. He points out that the witnesses, whose statements have been presented by the appellant were either not born or at very early age to be able to witness for the facts that occurred in 1937.

Legal reasoning:

13. 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 No. 03/L-079.
14. The case falls in the scope of jurisdiction of KPCC and KPA Appeals Panel. It is directly related to the armed conflict. There is no doubt that the claimant and his family possessed the properties until 1999 when they had to flee Kosovo. That the appellant has filed a claim with the Municipal Court of Pristina does not influence the question of jurisdiction, because the claim at the civil court was filed on 23 March 2007, i.e. after the entering into force of UNMIK/REG/2006/50, as amended by Law No. 03/L-079, (*the Law*). Section 18 of *the Law* stipulates that the provisions of *the Law* are applicable for claims under section 3.1 *ibid* in cases when judicial proceedings in respect

of such claims have not commenced prior to the entering into force of the Law. The judicial proceedings in front of the Municipal Court initiated by B. S. against L. G. regarding the property right over the same parcels, have been initiated after the entering into force of *the Law*.

15. The appeal 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. As there is no argument that the disputed properties have been in uninterrupted possession of the family of the appellee at least since the beginning of 1940s and until 1999 and there is no transfer of property registered before or after 1999 in favor of the appellant (or his family members), there is no reason the Court to annul or modify the decision of the KPCC which has accepted the claim as grounded.
16. Therefore and in line with section 13.3 of *the Law* the Court has rejected the appeal and confirmed the decision.

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, EULEX Presiding Judge

Sylejman Nuredini, Judge

Dag Brathole, EULEX Judge

Urs Nuffer, EULEX Registrar