

**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-197/13

**Prishtinë/Priština,
26 March 2014**

In the proceedings of:

M. V.
R. D. 6, Str.
K.,
G.
S.

Claimant/Appellant

vs.

N/A

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeals against the decision of the Kosovo Property Claims Commission KKPK/D/A/164/2012 (case files registered at the KPA under numbers KPA 13978, KPA 50354, KPA 13979, KPA 13980, KPA 50355, KPA 13975, KPA 13976, KPA 50352, KPA 13977, KPA 50353,) dated 5 September 2012, after deliberation held on 26 March 2014, issues the following:

JUDGMENT

- 1- Appeals filed by M. V. against the Decision KPCC /D/A /164/2012 (case files registered at the KPA under numbers: KPA 13978, KPA 50354, KPA 13979, KPA 13980, KPA 50355, KPA 13975, KPA 13976, KPA 50352, KPA 13977, KPA 50353,) dated 5 September 2012, are granted as founded.
- 2- The Decision of the Kosovo Property Claims Commission KPCC/D/A/164 /2012 dated 5 September 2012 (case files registered at the KPA under numbers KPA 13978, KPA 50354, KPA 13979, KPA 13980, KPA 50355, KPA 13975, KPA 13976, KPA 50352, KPA 13977, KPA 50353), dated 5 September 2012, is annulled.
- 3- The claims of M. V. from the Municipality of Palilula, Republic of Serbia, registered at the KPA under numbers KPA 13978, KPA 50354, KPA 13979, KPA 13980, KPA 50355, KPA 13975, KPA 13976, KPA 50352, KPA 13977, KPA 50353, are dismissed for the lack of jurisdiction.

Procedural and factual background:

- 1- On 7 November 2007, M. V. filed 10 (ten) claims with the Kosovo Property Agency (KPA) seeking confirmation of his right over ½ of the ideal part of co-ownership in a number of parcels and their repossession. He explained that these cadastral parcels were registered in his name and that they were occupied.
- 2- To support his claim, he provided KPA with the following documents:
 - Identification card issued on 25 September 2007 by the competent body of the Municipality of Klina,
 - Possession List, no. 198 issued on 4 February 2008 by the Department for Cadaster, Geodesy and Property of the Municipality of Klina,
 - Judgment C.nr.319/96 issued on 17 March 1998 by the Municipal Court in Klina. This Judgment does not contain a clause indicating when it will become final.
- 3- According to the possession list no.198 issued on 4 February 2008 by the Department for Cadaster, Geodesy and Property of the Municipality of Klina, cadastral parcels claimed by the claimant which

are located in the cadastral zone Shtupel, Municipality of Klina are registered in the name of the agricultural production company “Malishgan” from Klina as follows:

KPA appeal and case file number	Data relating to the claimed parcel
GSK-KPA-A-197/13 (KPA13978)	Parcel no.328/18, at the place called “Parallova”, field class 6 with a surface of 01.31.13ha.
GSK-KPA-A-198/13 (KPA32818)	Parcel no.328/18, at the place called “Parallova”, field class 6 with a surface of 01.31.13ha.
GSK-KPA-A-199/13 (KPA32819)	Parcel no.328/19, at the place called “Parallova”, forest class 4 with a surface of 3.36.17ha.
GSK-KPA-A-200/13 (KPA13980)	Parcel no. 328/22 at the place called “Parallova” with a surface of 0.74.01ha, forest class 4.
GSK-KPA-A-201/13 (KPA13979,13980 and 50355)	Parcels no. 328/19 and 328/22 are registered as specified above.
GSK-KPA-A-202/13 (KPA13975)	Parcel no. 328/20 at the place called “Parallova” with a surface of 0.31.37ha.
GSK-KPA-A-203/13 (KPA13976)	Parcel no. 328/21, at the place called “Parallova” with a surface of 0.64.35 ha, forest class 4.
GSK-KPA-A-204/13 (KPA500352)	In his claim he claimed cadastral parcels 328/20 and 328/21 which are registered with geometric dimensions as specified above.
GSK-KPA-A-205/13 (KPA13977)	Parcel no. 526/1, at the place called “Parallova”, forest class 4, with a surface of 0.69.98ha
GSK-KPA-A-206/13 (KPA500353)	Parcel no. 526/1, at the place called “Parallova”, forest class 4 with a surface of 0.69.98ha

- 4- Later in the procedure, the Executive Secretariat of the Kosovo Property Agency has ex officio obtained also the Certificate of Immovable Property Rights no. UL-71006059-00306 issued on 15 January 2009 by the Cadastral Office of the Municipality of Klina. With this certificate it is established that all cadastral parcels which are subject of the claim have been registered in the name of NEWCO Malishgan Agricultural Land Parallove LLC” under a 99-year leasehold. From this it results that all these cadastral parcels have been privatized during the privatization process by the Privatization Agency of Kosovo and this agricultural property has been converted into a 99-year leasehold for the new owner. This certificate contains all claimed cadastral parcels.

- 5- The verification team of the Kosovo Property Agency, according to the notification and confirmation report, has carried out the notification of the claimed cadastral parcels as specified below:
- Claim KPA 13978 with reference to the cadastral parcel 328/18, on 6 November 2008 the notification and on 21 July 2010 the re-notification were carried out and it was established that this parcel was not occupied;
 - Claim KPA 13979 with reference to cadastral parcel 328/19, on 4 November 2008 the notification and on 21 July 2010 the re-notification were carried out and this immovable property was not found occupied;
 - Claim KPA 13980 with reference to cadastral parcel 328/22, on 6 November 2008 the notification and on 21 July 2010 the re-notification were carried out and this cadastral parcel was not found occupied;
 - Claim KPA 13975 with reference to cadastral parcel 328/20, 3 September 2007 the notification and on 21 July 2010 the re-notification were carried out and the cadastral parcel was not found occupied;
 - Claim KPA 13976 with reference to cadastral parcel 328/21, on 4 November 2010 the notification and on 21 July 2010 the re-notification were carried out and the cadastral parcel was not found occupied;
 - Claim KPA 13977 with reference to cadastral parcel 526/1, on 10 March 2008 the notification and on 28 May 2010 the re-notification were carried out and the cadastral parcel was not found occupied.
- 6- According to the verification report of the Kosovo Property Agency dated 10 October 2008 it was established that the extract from the possession list no. 198 dated 29 April 2008 and the Certificate of Immovable Property Rights UL-71006059-00306 issued on 10 August 2008 by the Cadastral Office of the Municipality of Klina is positively verified. According to the same Verification Report, the Judgment C.nr.319/96 issued on 17 March 1998 by the Municipal Court in Klina has not been positively verified with the justification that this Judgment was not found in the Archive of this Court.
- 7- The Kosovo Property Claim Commission (KPCC) with its decision KKPK/D/A/164/12 dated 5 September 2012 rejected the claims filed by the claimant on grounds that he failed to present legally valid evidence to prove his right over the claimed properties. The KPCC, noted that the Judgment C.nr.319/96 dated 17 March 1998 issued by the Municipal Court in Klina by which the contract

entered between the claimant's mother and the Socially-owned Enterprise "Malishgan" from Klina was annulled, was not verified as authentic because it was not found in the Archive of the Municipal Court in Klina. Additionally, according to the Certificate of the Immovable Property Rights issued by the Cadastral Office of the Municipality of Klina on 20 September 2010, the claimed parcels were registered in the name of the new company "NEWCO Malishgan" from Klina, after the socially-owned enterprise with the same name had been privatized.

- 8- The KPCC Decision was served on the claimant on 28 June 2013 whereas the claimant filed his appeals on 18 July 2013.
- 9- In his appeal filed against the KPCC decision, the claimant alleges that this decision relies on essential violations of provisions of the procedural and material laws and on erroneous and incomplete determination of the factual situation. Therefore, he proposes that the stated decision is amended in order to recognize his property rights over the claimed parcels. In his appeal he alleges that the Judgment C.nr.319/96 dated 17 mars 1998 issued by the Municipal Court in Klina is final and that it should have been found in the Archive of this Court. Furthermore, he alleges that even though this Judgment became final in 1998, because of the armed conflict in Kosovo, it could not be registered in the respective immovable property register.

Legal reasoning:

Joining of the appeals:

- 10- Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.
- 11- The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No.

03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.

- 12- In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in those 10 (ten) cases. Only the parcels, subject of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
- 13- The appeals registered under GSK-KPA-A-197/13 to 206/13 are joined in a single case under GSK-KPA-A-197/13.

Admissibility of the appeals:

- 14- The Supreme Court of Kosovo reviewed the appealed Judgment pursuant to provisions of Article 194 of LCP, and after evaluating the allegations of the appeal it found that:
- 15- The appeals are admissible because they have been filed within the period prescribed under Section 12.1 of UNMIK Regulation no. 2006/50 as amended by Law no. 03/L-079, which stipulates that a party may file an appeal against a decision of the Commission within thirty (30) days of the notification to the parties of the decision. This is because the decision was served on the appellant on 28 June 2013 and he filed an appeal on 18 July 2013.
- 16- From the factual situation it undoubtedly results that the appealed decision has been rendered under serious violations of Articles 194 and 182.2 b of the Law on Contested Procedure and for this reason this decision should have been *ex officio* annulled and the claims dismissed because such claims are outside the jurisdiction of the Property Claims Commission and of this Court.
- 17- This because pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the claimant has a right to a Commission's order for re-possession of the property if the claimant proves not only the property right but also that he or she is not able to exercise such

property rights because of the circumstances that directly relate to or result from the armed conflict which occurred in Kosovo between 27 February 1998 and 20 June 1999.

- 18- According to this legal provision, the KPCC and the Supreme Court jurisdiction is limited only to the property claims which relate to the conflict or which are a direct consequence or result from this conflict. The claimant does not dispute the fact that the claimed parcels have been registered in the name of the Agricultural Production Company “Malishgan” from Klina. However, he claims that his mother has sold these parcels to the said Company as per the Contract Vr. nr. 17/69 entered on 16.09.1969, and that meanwhile the said contract was cancelled pursuant to Judgment C.nr. 319/96 dated 17 March 1998 issued by the Municipal Court in Klina.
- 19- According to the Possession List no. 198 issued on 04.02.2008 by the Department for Cadaster, Geodesy and Property of the Municipality of Klina, the claimed cadastral parcels which are located in the cadastral zone of Shtupel, Municipality of Klina, have been registered in the name of the Agricultural Production Company “Malishgan” from Klina. Moreover, according to the Certificate of the Immovable Property Rights issued by the Cadastral Office of the Municipality of Klina on 20 September 2010, given that these parcels were registered in the name of the Agricultural Production Company “Malishgan” from Klina, during the privatization process the Privatization Agency of Kosovo has transferred them under NEWCO “Malishgan” agricultural land in Malishgan L.L.C (99-year leasehold). Judgment C.no. 319/96 issued on 17 March 1998 by the Municipal Court in Klina has not been verified as authentic because it was not found in the Archive of this Court.
- 20- Therefore, it undoubtedly results that the claimant has not only failed to prove his property right over the claimed parcels but he did not even prove circumstances that eventually the loss of the possession over these parcels was due to the armed conflict that occurred in Kosovo in the period 1998/1999.
- 21- Given that based on the Certificate of Immovable Property Rights issued on 20 September 2010 it results that the claimed parcels have been registered in the name of the Company NEWCO “Malishgan” agricultural land in Parallova after the socially-owned enterprise has been privatized by the Privatization Agency of Kosovo, the Claimant may exercise his subjective rights before the Special Chamber of the Supreme Court of Kosovo on the Kosovo Trust Agency Related Matters as a Court which has the subject matter and territorial jurisdiction pursuant to Article 4 of the Law no.

04/1-033 on Special Chamber of the Supreme Court, because these cadastral parcels were registered in the name of the Agricultural Production Company “Malishgan” from Klina as socially owned-property.

22- This is even more so because the KPCC and hence the Supreme Court is limited to deal exclusively the claims for confirmation of the private immovable property right and return of possession because of the circumstances which are directly related to or result from the armed conflict in Kosovo during 1998 and 1999. The KPCC and hence the Appeals Panel of the Supreme Court has no jurisdiction to decide on the matters which are related to the socially-owned property of the socially-owned enterprises and consequently the privatization process as in this respective case.

23- Consequently, the claims had to be dismissed because they were not under the jurisdiction of this Court. Pursuant to Article 198 par1 of LCP the Court annulled *ex officio* the KPCC Decision and issued a new decision dismissing the claim.

24- This judgment has no prejudice to the claimant’s right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the 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

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar