

**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-133/12

**Prishtinë/Priština,
15 April 2014**

In the proceedings of:

A. R., H. R., I. R., B. R.

Municipality of Klinë/Klina

Hereafter all together referred to as:

Appellants

vs.

D. P.

Belgrade/Borca Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/126/2011 (case files registered at the KPA under No. 14555 and 14556), dated 26 October 2011, after deliberation held on 15 April 2014, issues the following

JUDGMENT:

1. The appeals are founded;
2. The decision of the KPCC KPCC/D/A/126/2011 dated 26 October 2011 as far as it regards the case files registered at the KPA under No. 14555 and 14556 is modified;
3. The claims registered at the KPA under No. 14555 and 14556 are dismissed as not admissible.

Procedural and factual background:

1. On 7 November 2006 D. P. filed two claims, registered under no.'s KPA14555 and KPA14556, at the Kosovo Property Agency in order to seek repossession of the properties (here after all together referred to as the property) listed in Possession List no. 14, issued on 16 September 2003 by the Immovable Cadastral Service of Municipality of Klinë/Klina, as following:

Place	parcel no	culture	class	surface ha	KPA no.	GSK-KPA-A-no.
Zelenilo	175/1	meadow	1	00.46.33	14556	133/12
Zelenika	175/2	orchard	1	00.34.04	14556	133/12
Zelenika	175/3	field	2	00.07.60	14556	133/12
Zelenika	175/3	garden	2	00.02.00	14556	133/12
Zelenika	175/4	field	2	00.55.38	14556	133/12
Selo	172/1	orchard	3	00.09.96	14555	132/12
Selo	172/2	orchard	3	00.09.26	14555	132/12
Selo	173	orchard	3	00.13.47	14555	132/12
Selo	174	orchard	2	00.03.80	14555	132/12

2. A physical notification of the property was carried out by the KPA on 17 April 2008 (KPA 14555) and on 17 December 2008 (KPA 14556).

3. The notification of the property through publication was carried out on 30 July 2010. The notification and confirmation reports of both claims (KPA 14555 and 14556) mention that the

claimed property is: *“commercial without buildings”* whereas KPA14555 mentions: *“The property is damaged orchard”*, and KPA 14556: *“the property is orchard and uncultivated land”*.

4. The notification of the claim through publication was carried out on 30 July 2010. Details of the property, shown in a list and an instruction on the procedure was published and disseminated as a supplement to the daily Koha Ditore and the KPA website. A notice to this document was published in two daily newspapers. The list was placed in: The KPA office in Pejë/Peć, the town hall, municipal court and cadastral office of Klinë/Klina. The notification of the claim was sent to the head of the village and also placed in the village entry and exit.

5. The claims were decided by the KPCC as non-contested in a decision of 26 October 2011, no KPCC/D/A/126/2011. It was decided that D. P. had established that he was the sole owner of the property. And further that any other person occupying the property would have to vacate the property within 30 days of the delivery of the decision.

6. The decisions were served upon the Appellants on 9 October 2012.

7. The Appellants filed the appeals against the KPCC decisions at the KPA on 16 October 2012 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property (hereafter: UNMIK Regulation 2006/50).

8. D. P. filed a response to the appeal on 4 December 2012.

Joining of the appeals:

9. 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.

10. In the cases registered under the numbers GSK-KPA-A-133-134/13 (KPA 14555 and 14556), the facts, the legal grounds and the evidentiary issues are the same. Only the parcels, object 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. Insofar as all the relevant 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.

11. By an order of 8 March 2013 the Supreme Court decided to join the two cases GSK-KPA-A-133/12 and GSK-KPA-A-134/12, now all together registered as: GSK-KPA-A-133/12.

12. The Supreme Court issued an order to the Appellants as well as to the Appellee dated on 8 March 2013. This order was served upon the Appellants on 25 March 2013 and upon the Appellee on 10 July 2013.

13. The Appellants filed a response on 3 March 2013, the Appellee did not respond.

14. The Supreme Court issued an order upon the KPA on 25 October 2013 to which the KPA responded on 12 November 2013 (this answer hereafter referred to as the memorandum).

15. On 3 July 2008 a verification report was made by the KPA telling that, according to the possession list no. 14 the property was registered to the name of V. P. the deceased mother of D. P.

16. According to a ruling on inheritance of the Municipal court in Pejë/Peć, dated 3 April 1996, (no.O.br.30/96) D. P. inherited the whole property being the sole heir of V. P.

17. In the in paragraph 14 afore-mentioned order dated 25 October 2013 of the Supreme Court to the KPA two questions were asked:

1. Whether the Appellants had expressed their legal interest regarding the property during the claims-procedure;

and:

2. Whether there are houses built on the property and if yes when they were build.

Facts deriving from the memorandum by the head of the KPA:

Concerning the first question:

18. No answer was given to the first question.

Concerning the second question:

19. As far as the claim KPA14555 is concerned: There were buildings on the parcels 172/1, 172/2, 173 and 174. At least according to the orthophoto's from the years 2000 and 2009. And according to the cadastral map of 1977 there were buildings on the parcels 172/2 and 173.

20. As far as the claim KPA14556 is concerned: There was a building on parcel 175/4 according to the orthophoto of the year 2000 and on the parcels 175/4 and 175/2 according to the orthophoto of the year 2009.

21. There is no further earlier cadastral information available on the parcel.

22. In the memorandum of the head of the KPA it is mentioned that the physical notifications of the property on respondent 17 April 2008 and 17 December 2008 were considered to be incorrect and a decision made by the KPCC of 15 May 2010, regarding both KPA 14555 and KPA14556 therefore has been overturned and the case was referred back for reprocessing.

Legal reasoning:

Allegation of parties:

The Appellants:

23. The Appellants demand annulment of the decision of the KPCC and confirmation of their ownership of the property.

To support their appeal the appellants state the following:

- No opportunity was given to appellants to present themselves at the KPCC in order to give their statements;
- The decision of the KPCC was given without establishing the real factual situation;
- The property was sold by D. P., the father of D. P., to R. Z. R. Z. sold part of the property to S. S. G.;
- Then in 1973 the father of appellants S. R. bought (part of the) the property of R. Z. and his son H. In 1978 S. R. bought the remaining part of the property from S. S. G. Thus becoming the sole owner of the property;
- S. R. paid DM 450.000 to Z. and DM 120.000 to G.;

- At the time D. P. sold the property he was living in Pejë/Peć, before that he was living in Pjeterq i Epërm/Gornji Petrić;
- In 1983 the father of the appellants constructed a house on the property;
- This house was not finished before the armed conflict in 1998-1999 and burned down by Serb troops;
- The appellants renovated the house after the armed conflict and the whole family lived in it together until 2002;
- In 2002 the appellants disunited the family, H. R. kept living in the fore mentioned house and his two brothers constructed their own residential houses on the property in which they are living still.

24. To support their statements appellants present witness statements of: A. R. M., R. R. R. and A. Z. Z., as far as the buying of the property of by the father is concerned and the statements of H. R. Z. and S. S. G., as far as the selling of the property by D. P. is concerned.

The Appellee:

25. The Appellee states that the appeal has been filed untimely. The decision of the KPCC was taken on 25. October 2011 and the appeal was filed on 16 October 2012 which is not within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50. The appeal therefore should be dismissed as being inadmissible.

26. The Appellee further states that the Appellants do not have any right to file an appeal and therefore cannot be a party in the proceedings. The Appellants were no party in the claim procedure since they did not inform the Executive Secretariat of such a fact within 30 days as from the notification as mentioned in Section 10.2 of the UNMIK Regulation 2006/50.

27. The appellee further states that the appeal should be rejected as unfounded. His rightful ownership of the property has been fully proven by the possession list no. 14 and the Ruling on heritage of the Municipal court in Pejë/Peć dated 3 April 1996 (no.O.br.30/96) duly confirmed by the KPCC. Therefore the appellee requests the Supreme Court to confirm the decision of the KPCC.

Admissibility

28. According to Section 10.3 of the UNMIK regulation 2006/50 A person with a legal interest in the claim who did not receive a notification of the a claim may be admitted in as a party at any point in the proceedings.
29. As noticed here fore in paragraph 22 at least the first notification of the claim has not been performed properly. The Supreme Court therefore admits the appellants in the proceedings.
30. The appellants are admissible in their appeals since the appeals were filed within the period of 30 days after the decision of the KPCC was served upon them.

Jurisdiction

Ex officio:

31. According to Section 3.1 of Regulation 2006/50, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable 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.
32. Appellants stated that they are in possession, in fact that they are the owners ever since their father bought the property in 1973. Appellants and their family have lived on the property ever since. The evidence given consists of the testimonies of villagers and photographs of the previous and the actual situation.
33. Appellee states that he is the owner of the property by heritage ever since 1996, as such confirmed by the Ruling on heritage of the Municipal court in Pejë/Peć dated 3 April 1996 (no.O.br.30/96).
34. The ruling is based on the possession list no 14 that was registered to the name of the Appellee's mother. The two copies of the same possession list that are in the file date resp.16 September 2003 and 21 March 2008. Whereas the possession list used by the Municipal Court of Pejë/Peć apparently was dated 30 January 1996 is not in the file. Both of the possession lists in the case-file still mention the deceased mother of the Appellee as the owner of the property.
35. In the ruling it says that both the Appellee and his deceased mother were living in Pejë/Peć. So they did not have their residence on the property. In fact nowhere in the file there is any clue whether the Appellee ever exercised his property rights at all.

Conclusion

36. The aforementioned leads to the conclusion that, even if the Appellants would not be the owners of the property, the usurpation of the property by the Appellants and the building of the first family house took place long before the armed conflict of 1997/1998. This means that this case is not within the jurisdiction of the KPA and has to be decided by the ordinary court.
37. Since the aforementioned leads to an ex officio decision, the other statements of the parties will not lead to another decision and therefore need no reasoning.
38. Therefore the decisions of the KPCC dated 26 October 2011 as far as KPA 14555 and KPA 14556 is concerned have to be modified and the claims filed by the Appellee are inadmissible according to Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by the Law 03/L-079.

Legal Advice

39. 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.

Willem Brouwer, EULEX Presiding Judge**Sylejman Nuredini, Judge****Esma Erterzi, EULEX Judge****Urs Nufer, EULEX Registrar**