

**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-173/13**

**Prishtinë/Priština,  
23 April 2014**

In the proceedings of

**R.H**

*Appellant*

vs.

**Z.C.T**

*Claimant/ Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva- Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered as KPA34037, and KPA34039), dated 22 June 2011 and Kosovo Property Claims Commission KPCC/D/A/140/2012 (case file registered as KPA34038), dated 29 February 2012, after deliberation held on 23 April 2014, issues the following

## JUDGMENT

- 1- The cases GSK-KPA-A-173/13, GSK-KPA-A-174/13 and GSK-KPA-A-175/2013 are joined in one single case registered under number GSK-KPA-A-173/13.
- 2- The appeal of R.H against the decisions of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered as KPA34037 and KPA34039), dated 22 June 2011 and KPCC/D/A/140/2012 (case file registered as KPA34038), dated 29 February 2012 is accepted.
- 3- The decisions of Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered as KPA34037 and KPA34039), dated 22 June 2011 and KPCC/D/A/140/2012 (case file registered as KPA34038), dated 29 February 2012 are modified, and the claims of Z.C.T registered as KPA34037, KPA34038 and KPA34039 are rejected.

### **Procedural and factual background:**

1. On 23 March 2007 10 October 2006 Z.C.T filed claims with Kosovo Property Agency (KPA) seeking confirmation of her property right over three parcels and their repossession, all situated in the lands of the village of Drobesh, Viti/Vitina. According to the cadastral plan the parcels are numbered as following: 202, 236 and 238. The claimant explained that her property was lost due to circumstances that occurred in Kosovo during 1998/1999 and that the date of loss was 12 June 1999. She presented various documents in support of her claims. All documents were verified by the KPA verification team.
2. The claims were physically notified in 2007. Later it turned out the notification signs were placed in wrong places and the properties were re-notified but this time with publication in the Official Gazette of the KPA – in August 2010.
3. The claims were treated as uncontested.
4. Further on the KPCC accepted the claims as founded and issued the appealed decisions, *i.e.* KPCC/D/A/112/2011 (case files registered as KPA34037, and KPA34039), dated 22 June

- 2011 and KPCC/D/A/140/2012 (case file registered as KPA34038) dated 29 February 2012.
5. The KPCC recognized that the claimant is the owner of ¼ of the properties. The decisions were served on the claimant on 28 February 2012.
  6. On 28 June 2013 R.H filed appeals against the decisions claiming that they are issued in the absence of evidence and in violation of material law.
  7. He presented a contract for the purchase of the same properties from 28 November 2011. On the same date the signatures of the parties were verified in the Municipal Court in Viti/Vitina. The contract was concluded between the appellant as a buyer on one side and the claimant and the other members of her family on the other (Z.C.T, I.R, S.P and G.M – they were co-owners with equal rights in ideal parts).
  8. On 10 October 2013 the claimant now appellee Z.C.T filed a response to the appeal stating that there is no basis for the appeal, because the properties are already sold to the appellant. She claims to have submitted a request for closure of the cases and there is no reason for these appeals procedures.
  9. The Court interprets the response as a request for a waiver of the claims.

**Legal reasoning:**

**Joining the cases:**

10. The Court refers to art. 408.1 of the Law on Contested Procedure (hereinafter the LCP), applicable *mutatis mutandis* (as appropriate) in the procedure in front of the Supreme Court (section 12.2 of Law 03/L-079). It provides for the possibility the Court to join proceedings if such joining contributes to the efficiency of those proceedings.
11. In the text of the appeals filed by the appellant, the Supreme Court finds that the whole factual and legal grounds, as well as the evidentiary issues are completely the same in these three cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are grounded on the same explanatory statement and on the same documents. Furthermore, the legal reasoning given by the Commission on the claims is the same.

12. The cases registered under the numbers GSK-KPA-A-173/13, GSK-KPA-A-174/13 and GSK-KPA-A-175/13 are joined in a single case registered under the number GSK-KPA-A-173/13.

**Admissibility of the appeal:**

13. The appellant was not properly notified regarding the proceedings in front of the KPA, therefore his right of appeal has not been precluded.
14. Section 10.2 Law 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim.
15. The law in section 10.1 *ibid* provides that the Secretariat shall “make reasonable efforts to notify any other person who may have legal interest in the property”. It does not provide for a specific description of what “reasonable efforts” means with the exception that “in appropriate cases, such reasonable efforts may take form of an announcement in an official publication”. The grammatical interpretation of the text invokes the conclusion that publication is rather an exception than a rule and that the rule itself has to be deducted on the basis of common logic and existing customs.
16. It is up until now accepted that by rule the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the notification is considered correctly done and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise.
17. In the current case it is not disputed that in 2007 the notification signs were not put in the right place. Afterwards, in 2010 a new notification was made, but through publication.
18. Therefore the appellant cannot be considered duly notified and he did not lose his right to take part in the proceedings, *i.e.* the appeal is admissible.

**Waiver of the claims (quitclaim):**

19. The claimant Z.C.T waived her claims (the waiver is explicitly expressed in the written response to the appeal).

20. The Court refers to art. 149.1 of the LCP.
21. The provision states that if prior to the main hearing (which is irrelevant in the current appeal proceedings) of a case a claimant waives the claim the court shall reject the claim. Unlike the withdrawal of a claim, regulated in art. 261.1 LCP, the waiver of a claim does not require the consent of the other party regardless of the time it has been made. Therefore the Court needs not to consult the waiver with the appellant.
22. In the context of the proceedings in front of the KPA Appeals Panel this means that the Court had to accept the appeal and modify the appealed decisions, by rejecting the claims.
23. On the basis of the above and with reference to section 13.3 (a) of Law 03/L-079 and section 12.2 ibid in relation with art. 149.1 LCP the Court decided as in the enacting clause.

### **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**

**Dag Brathole, EULEX Judge**

**Erdogan Haxhibeqiri, Judge**

**Urs Nufer, EULEX Registrar**