

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

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

GSK-KPA-A-242-13

**Prishtinë/Priština,
23 April 2014**

In the proceedings of:

V.M

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Dag Brathole Presiding Judge, Elka Filcheva Ermenkova and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA34249, KPA34251, KPA 34253, KPA34256, KPA34263, KPA34265, KPA34266, KPA34267, and KPA34268), after deliberation held on 23 April 2014, issues the following:

JUDGMENT:

1. The cases GSK-KPA-A-242-13 to GSK-KPA-A-250/13 are joined in one single case registered under number GSK-KPA-A-242-13.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/188/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA34249, KPA34251, KPA 34253, KPA34256, KPA34263, KPA34265, KPA34266, KPA34267, and KPA34268) is annulled and the claims of Vladan Mihajlović are dismissed as the cases are not within the scope of jurisdiction of the KPCC.

Procedural and factual background:

1. On 20 April 2007 V.M filed nine claims with the Kosovo Property Agency (KPA), seeking confirmation of his ownership/property right over nine parcels of land in Krushë e Madhe/Velika Kruša and Celinë/Celina in Rahovac/Orahovac, and in Randobravë/Randobrava in Prizren.
2. In the claims V.M stated that his late grandfather D.M is the owner of his properties. As evidence he submitted Certificate/Allocation Decision no. 523 dated 1 October 1939 issued by the Commission for Agrarian Reform which had been obtained from archives in Belgrade. According to the certificate, D.M was allocated the claimed properties in 1939.
3. The claims were registered as nine cases by the Kosovo Property Agency (KPA). As will be shown later, the Kosovo Property Claims Commission (KPCC) has made a decision in all nine cases, and all decisions have been appealed to the Supreme Court, where the appeals have been registered as nine cases. The table below gives an overview of the case number at the KPA, the case numbers at the Supreme Court, the municipality, the cadastral zone, and the parcel no.

<i>Case no. KPA</i>	<i>Case no. Supreme Court</i>	<i>Municipality</i>	<i>Cadastral Zone</i>	<i>Parcel no.</i>
KPA34249	GSK-KPA-A-242/13	Rahovac/Orahovac	Krushë e madhe / Velika Kruša	132

KPA34251	GSK-KPA-A-243/13	Rahovac/Orahovac	Krushë e madhe / Velika Kruša	134/1 134/2
KPA34253	GSK-KPA-A-244/13	Rahovac/Orahovac	Krushë e madhe / Velika Kruša	113
KPA34256	GSK-KPA-A-245/13	Rahovac/Orahovac	Krushë e madhe / Velika Kruša	77
KPA34263	GSK-KPA-A-246/13	Prizren	Randobravë/Randobrava	562
KPA34265	GSK-KPA-A-247/13	Prizren	Randobravë/Randobrava	570
KPA34266	GSK-KPA-A-248/13	Prizren	Randobravë/Randobrava	571
KPA34267	GSK-KPA-A-249/13	Prizren	Randobravë/Randobrava	569
KPA34268	GSK-KPA-A-250/13	Rahovac/Orahovac	Celinë/Celina	698

4. In the claims it is stated that the properties were lost on 15 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.
5. The KPA has *ex officio* obtained possession lists issued by the Municipal Directorate for Geodesy, Cadastre and Property of Rahovac/Orahovac and Celinë/Celina, and certificates issued by the Ministry of Public Services, Kosovo Cadastral Agency. These documents give the following information about the parcels referred to in the claims:

<i>List No.</i>	<i>Cadastral Zone No.</i>	<i>Cadastral Zone</i>	<i>Area</i>	<i>Parcel No.</i>	<i>Registered Property Right Holder</i>	
19	71513005	Krushë e Madhe / Velika Kruša	2 225 m2	132	SH.D.SH	
25	71513005	Krushë e Madhe / Velika Kruša	1 098 m2	134/1 134/2	D.S.SH	
9	71513005	Krushë e Madhe / Velika Kruša	539 m2	113	I.R.R	
61	71513005	Krushë e Madhe / Velika Kruša	1 905 m2	77	Z. E.L. B.	
	71813069	Randobravë/Randobrava	700	562	M. B.K.	
	71813069	Randobravë/Randobrava	8 173 m2	570	A.S. K.	
	71813069	Randobravë/Randobrava	2 158	570	M.S.Z	
	71813069	Randobravë/Randobrava	1 079	569	J.J.SH SH.XH.J	1/2 1/2
33	71513083	Celinë/Celina	2 052 m2	698	M.A.D M.R.D	4/36 6/36

					R.N.D	3/36
					R.A.D	4/36
					R.R.D	4/36
					SH.H.D	6/36
					SH.A.D	4/36
					V.N.D	3/36

6. A notification of the claims was made on the properties. No respondent contested the claims before the time limits set.
7. On 13 February 2013 the Kosovo Property Claims Commission (KPCC) in Cover Decision KPCC/D/A/188/2013 (case files registered at the KPA under the numbers KPA34249, KPA34251, KPA 34253, KPA34256, KPA34263, KPA34265, KPA34266, KPA34267, and KPA34268), rejected the claims. The KPCC stated that the claimant had failed to show ownership or any other property right over the claimed properties immediately prior to or during the 1998-1999 conflict.
8. The decision was served upon M. on 12 August 2013. He appealed the nine decisions in one appeal dated 21 August 2013. There are no respondents in the case, and accordingly no appellees. The Supreme Court received the case files on 21 February 2014.

Allegations of the appellant

9. V.M challenges the decision due to serious violation of the applicable substantial and procedural right and erroneous and incomplete determined facts.
10. The properties are owned by V.M grandfather D.M, who died 28 April 1947. V.M has filed the claim as a member of the family household.
11. In the decision of the KPCC it is stated that the KPA *ex officio* has checked and established that several third persons have ownership rights over the properties. However V.M states that these persons have no legal ground to use the property of the M. family. They use the properties illegally. Neither D.M nor the father or any of V.M uncles have concluded any contract with third persons.
12. Accordingly no third person has bought any of the properties, which still belong to the M. family.

Joining of cases

13. V.M has filed appeal against KPCC's decision in the cases registered at the KPA under the numbers KPA34249, KPA34251, KPA 34253, KPA34256, KPA34263, KPA34265, KPA34266, KPA34267, and KPA34268. The cases have been filed at the Supreme Court as case numbers GSK-KPA-A-242-13 to GSK-KPA-A-250/13. All the cases concern claims from the same claimants. There are no respondents. The cases deal with the same issues. A joinder of the cases will contribute to the efficiency of the proceedings.
3. Accordingly the Supreme Court hereby issues an order to join the cases under the numbers GSK-KPA-A-242-13 to GSK-KPA-A-250/13 in one single case registered under number GSK-KPA-A-242-13 in accordance with the Law on Contested Procedure Art. 408.1 and Art. 193, which are applicable *mutatis mutandi* according to Section 12.2 1 UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*).

Legal reasoning:

Admissibility of the appeal

14. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of Law No. 03/L-079).

Jurisdiction

15. While preparing the cases for the KPCC the KPA has collected the possession lists and certificates mentioned in paragraph 5. These show that all the properties are registered on different third parties.
16. While verifying the possession lists/certificates, the KPA ascertained that D.M had at no time been registered as possessor of any of the properties. The KPA also ascertained that all the registered possessors had been registered earlier than the armed conflict in Kosovo in 1998/1999. Based on these facts, the KPCC rejected the claims because V.M had failed to prove ownership or property use rights over the properties.

17. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict-related claims concerning ownership over or property rights to private immovable property, including agricultural and commercial property. The KPCC is only competent if the claims are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
18. In the present case it has been established that third parties were registered as property right holders before 1998. A dispute between V.M and the registered property right holders is therefore not related to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Accordingly, the claim is outside the jurisdiction of the KPCC.
19. An eventual dispute between V.M and the registered property right holders will therefore have to be resolved before the ordinary courts in Kosovo.
20. In the light of this,, pursuant to Section 12.2 under (c) of Law 03/L-079 and Art.. 198.1 of the Law on Contested Procedure (Law No. 03/L-006), it was decided to annul the decision of the KPCC and dismiss the claim

Legal Advice

21. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Dag Brathole, EULEX Presiding Judge

Elka Filcheva - Ermenkova, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EULEX Registrar