

**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- 145/13
GSK-KPA-A- 146/13
GSK-KPA-A- 147/13
GSK-KPA-A- 148/13
GSK-KPA-A- 149/13
GSK-KPA-A- 150/13**

**Prishtinë/Priština,
24 April 2014**

In the proceedings of:

**N Ž S
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S S**

Claimant/Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPPC/D/A/164/2012 (case files registered at the KPA under the number KPA50909, KPA50912, KPA50913, KPA50914, KPA50917, KPA50921), dated 5 September 2012, after deliberation held on 24 April 2014, issues the following:

JUDGMENT

1. The appeals registered under case no GSK-KPA-A-145-2013; GSK-KPA-A-146-2013; GSK-KPA-A-147-2013; GSK-KPA-A-148-2013; GSK-KPA-A-149-2013; GSK-KPA-A-150-2013 are joined in case no GSK-KPA-A-145-2013.
2. The appeals of the appellant N Ž S against the Decision of the Kosovo Property Claims Commission KPPC/D/A/164/2012, dated 5 September 2012, as they regard to KPA50909, KPA50912, KPA50913, KPA50914, KPA50917, KPA50921 are dismissed as inadmissible.

Procedural and factual background:

1. On 28 November 2007, the claimant N Ž S filed claims, as a member of the family household of the alleged property right holder Ž M S , asking for the repossession of the cadastral parcels in different places in Gjilan/Gnjilane. The claims are registered under separate numbers with the KPA. The details of the information related to properties claimed are as follows:

Appeals No.	Claim No.	Parcel number(s)	Surface(s)	Village	Place	Municipality
GSK-A-145-13	KPA50909	43	0.20.40 ha	Llashticë/ Vlaštica	Gladnica	Gjilan/Gnjilane
GSK-A-146-13	KPA50912	(a) 1349; (b) 1350; (c) 1351; (d) 1352.	(a) 0.25.04 ha; (b) 0.03.73 ha; (c) 0.19.67 ha; (d) 0.11.79 ha.	Llashticë/ Vlaštica	Vlaštica Kod Kuće	Gjilan/Gnjilane
GSK-A-147-13	KPA50913	1801	0.02.40 ha	Llashticë/ Vlaštica	Kriopolje Šamak	Gjilan/Gnjilane
GSK-A-148-13	KPA50914	(e) 2022; (f) 2023; (g) 2024.	(e) 0.07.20 ha; (f) 0.90.86 ha; (g) 1.59.92 ha.	Llashticë/ Vlaštica	Jelence	Gjilan/Gnjilane
GSK-A-149-13	KPA50917	2406	0.84.89 ha	Llashticë/ Vlaštica	Desna Reka Vukodovina	Gjilan/Gnjilane
GSK-A-150-13	KPA50921	(h) 2681; (i) 2682.	(h) 1.53.87 ha; (i) 0.37.66 ha.	Llashticë/ Vlaštica	Đurdjevik	Gjilan/Gnjilane

2. Together with the claim, he submitted, *inter alia*, the copy of the judgment of the District Court of Gjilan/Gnjilane P.Br 22/85 Dated 10 January 1986 on cancellation of the Contract Gift R.br. 240/77 concluded between the grandfather of the claimant (the father

of the alleged property right holder), M S , as Donor and the claimant's aunts L and L S as the Donees.

3. The notifications of the claims were carried out through publication in the KPA Notification Gazette in addition with the distribution of the list and Gazette to the governmental bodies. No notice of participation was filed in any case.
4. KPA verified that the judgement claimant provided annulling the donation contract has not become final. Furthermore, KPA found out, *ex officio*, that all claimed properties in those cases mentioned above, located in the cadastral zone Llashticë/Vlaštica, are registered under the name of L S and L S , based on the certificate number UL-70403008-00290 issued by the Municipal Cadastral Office in Gjilan/Gnjilane on 8 January 2008.
5. Subsequently, KPA asked for further evidence from the claimant to provide a document indicating his or his father's property right title over the cadastral parcels in question. The claimant did not respond positively.
6. On 5 September 2012, KPCC, with the Decision KPCC/D/A/164/2012, refused the claim of the claimant for all those parcels that were subject matter of the claims in case files registered under KPA 50909, 50912, 50913, 50914, 50917 and 50921 since the claimant failed to show ownership or any other property right over the claimed properties prior or during the 1998-99 conflict.
7. The Decision of the KPCC was served on the claimant on 16 April 2013.
8. He filed an appeal against the said Decision, via UNHCR Office, on 21 May 2013. Together with his appeal, he submitted the birth certificate of N S ; death certificate of Z S ; birth certificate of L S and death certificate of L S .

Allegations of the claimant/appellant

9. The Claimant alleges that the lands belong to his father since the donation contract from his grandfather was annulled by the Court in Gjilan/Gnjilane (See para.2 above).
10. He further maintained that he was the possessor of the lands before the conflict and lost their possession when he left Kosovo due to the security reasons during the armed conflict of 1998-1999. The loss of possession was indicated as 12 June 1999.

11. In his appeal, he alleged that the KPCC made a wrong decision since his both aunts registered as the co-owners were not alive. He alleged that L S died on 24 October 1978 and that L S disappeared during the war. Since no information was received from her for many years, it is assumed that she is dead as well. He alleged that since his aunts did not have any child, he is also inheritors of them.
12. In this regard, the Supreme Court observes that, despite he filed the claim as a member of the family household of his father; he did not present any inheritance decision for Z S or his aunt L S . Nor submitted he a document's showing the disappearance of his other aunt L S and her heirs.

Legal reasoning:

Joining of the appeals

13. 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 (hereinafter Law 03/L-079), 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.
14. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L-006 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.
15. 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 6 (six) 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.

16. The appeals registered under GSK-KPA-A-145/13 to 150/13 are joined in a single case under GSK-KPA-A-145/13.

Admissibility of the appeal

17. The Supreme Court has jurisdiction over the appeal against the decision of the KPCC.
18. The appeal was filed on Thursday 21 May 2013 whereas the decision of the KPCC challenged was served on the claimant on Tuesday 16 April 2013.
19. The deadline for filing an appeal expired on 16 May 2013, Thursday. No official holiday exists requiring the extension of the deadline. Nor did the claimant/appellant provide any excuse for the late filing of the appeal to justify it. The Supreme Court notes that the appeal was not filed within the 30 days' time- limit as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079- hereinafter Law 03/L-079).
20. The appeals are belated. The appeals of the appellant are, therefore, dismissed as inadmissible pursuant to Section 13.3 (b) of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079. The merits of the appeal will not be examined by the Supreme Court.

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.

Esma Erterzi, EULEX Presiding Judge

Sylejman Nuredini, Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar