

**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-84/13

**Prishtinë/Priština,
14 May 2014**

In the proceedings of:

I.A

and

I.H

Appellants

vs.

B.B1

Claimant/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 appeals against the decision of the Kosovo Property Claims Commission KPCC/D/A/163/2012 (case files registered at the KPA under the numbers KPA 32470, KPA 32472 and KPA 32473), dated 5 September 2012, after deliberation held on 14 May 2014, issued the following:

JUDGMENT

1. The appeals of I.A and I.H filed against the decision KPCC/D/A/164/2012 (case files registered at the KPA under KPA32470, KPA32472 and KPA 32473), dated 5 September 2012, are rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/A/163 /2012 (case files registered at the KPA under KPA32470, KPA32472 and KPA 32473,) dated 5 September 2012, is confirmed

Procedural and factual background:

1. On 03 April 2007, B.B, in the capacity of the son of alleged property right holder, filed three claims with the Kosovo Property Agency (KPA) registered at the KPA under KPA32470, KPA32472 and KPA 32473, seeking the re-possession. He claims that his deceased father B.B is registered as the co-owner of 1/6 of the ideal part of the claimed immovable properties:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A- 84/13 (KPA32470)	Parcel no. 330/50, at the place called "Fongishta", a 3 rd class field with a surface of 0.05.04 ha
GSK-KPA-A- 85/13 (KPA32472)	Parcel no. 303/51 at the place called "Fongishta", a 4 th class orchard with a surface of 0.11.90 ha
GSK-KPA-A-86/13 (KPA32473)	Parcel no. 303/52, at the place called "Fongishta" a 3 rd class field with a surface of 0.81.83 ha

2. To support his claim, he provided the KPA with the following documents:
 - His Identification Card issued on 17 April 1997 by the competent authority of the Municipality of Pejë/Peč,
 - Possession List no. 42 dated 31.05.2004 issued by the Service for Cadastre of Immovable Property of the Municipality of Klinë/Klina, no. 952-1/2004-1364,
 - Possession List no. 42 dated 20 September 2007 issued by the Department of Cadastre, Geodesy and Property of the Municipality of Klinë/Klina,
 - Extract from the death registry issued by the competent authority of the Municipality of Klinë/Klina no. 203/1499 dated 14 November 1994, which shows that B.B passed away in Klinë/Klina on 1 November 1994,

- Extract from the birth registry issued by the competent authority of Pejë/Peč no. 200-I-/1553 dated 21 February 1997, which shows that B.B1, son of B.B2, was born in Pejë/Peč on 22 May 1967.
3. According to the Possession List no. 42 of Department of Cadastre, Geodesy and Property of the Municipality of Klinë/Klina, dated 20 September 2007, his deceased father B.B2 is registered as the co-owner of 1/6 of ideal part of the mentioned cadastral parcels claimed by the claimant.
 4. According to the verification and confirmation report, the Verification Team of Kosovo Property Agency carried out the notification regarding the cadastral parcels which are subject of the claim as follows:
 5. For the claim KPA 32470 referring to cadastral parcel no. 303/50, the notification was carried out on 10 September 2010, and the respondent I.H from the village of Kralan/Kraljane, Municipality of Gjakovë/Đakovica responded to the claim, claiming the legal right over these immovable properties. I.A from the village of Kralan/Kraljane, Municipality of Gjakovë/Đakovica has also claimed the property right over the properties which are subject of the claim.
 6. To support his allegations, I.H submitted the Possession List no. 1206/1929, dated 4 May 2004, issued by the State Geodesic Entity of the Republic of Macedonia in Skopje. This Possession List shows that these data were retrieved from the cadastral records of Banovina of Vardar of 1929. This possession list also indicates that the cadastral parcel 303/47, located at the place called “Fongishta”, a meadow with a surface of 02.38.92 ha, is registered under the name of K.S.H from the village of Kralan/Kraljane, Municipality of Gjakovë/Đakovica.
 7. In the meantime, I.A submitted the Possession List no. 1206/1929, dated 12.07.2004, issued by the State Geodesic Entity of the Republic of Macedonia in Skopje. This Possession List shows that these data were retrieved from the cadastral records of Banovina of Vardar of 1929. This possession list also indicates that the cadastral parcel 303/37, located at the place called “Fongishta”, a meadow with a surface of 05.86.82 ha, is registered under the name of S.B from the village of Kralan/Kraljane, Municipality of Gjakovë/Đakovica.
 8. I.H and I.A have also submitted separate statements on 13.08.2008, whereby they stated that the parcel 303/47, a meadow with a surface of 2.38.92 ha and the parcel 303/37 were owned by the deceased S.B and that they were confiscated in 1932 without any compensation.
 9. For the claim KPA 32472 referring to cadastral parcel no. 303/51, notification was carried out on 10 September 2010. The respondents I.H and I.A claimed the legal right over the claimed properties as stipulated under previous paragraphs of this judgment.

10. For the claim KPA 32473 referring to cadastral parcel no. 303/52, notification was carried out on 10 September 2010. The respondents I.H and I.A claimed the legal right over the claimed properties by presenting evidence as stipulated under previous paragraphs of this judgment.
11. According to the verification reports dated 26 September 2007 and 04 October 2007, the Verification Commission has positively verified all these evidence-documents.
12. The Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/163/12 dated 05 September 2012, decided that B.B2 is registered as a co-owner of 1/6 of ideal part of the immovable properties, namely 303/50, 303/51 and 303/52, located at the place called “Fongishta” in cadastral zone of “Kepuz” and registered in the Possession List 42, dated 10 January 2007, of Department of Cadastre, Geodesy and Property.
13. In the reasoning of the appealed decision, it was ascertained that the claimant B.B1 submitted legally valid evidence proving that his deceased father is a co-owner of 1/6 of ideal part of the claimed properties. On the other hand, the respondents I.A and I.H, although they alleged that the claimed properties belonged to their ancestors and that in 1932 or in 1936, the then government confiscated them without any compensation, they failed to present evidence in support to their allegations. The KPCC decision was served on the claimant on 22 March 2013. Whereas, the decision was served on I.A and I.H on 7 March 2013 and they filed separate appeals on 5 April 2013.

Allegations of the appellants:

14. The appellants allege that the decision is issued in essential violation of provisions of material and procedural law and erroneous and incomplete determination of factual situation. They therefore proposed to have the decision amended, so that the appellants are acquitted of any liabilities.
15. The appellant I.A claims that the cadastral parcel 303/37, a meadow with a surface of 05.86.82 ha, was owned by his predecessor S.B and that the same was occupied in 1932 by the predecessor of the claimant B.B1. On the other hand, I.H claims that the cadastral parcel 303/47 a meadow with a surface of 02.38.92ha was owned by his predecessor and that this property was occupied in 1932 by the predecessor of the claimant B.B1.
16. To support these allegations they filed as evidence the Possession List no. 1206/1929 dated 4 May 2004 issued by the State Geodesic Entity of the Republic of Macedonia in Skopje and the Possession List no. 1206/1929 dated 12 April 2004 issued by the State Geodesic Entity of the Republic of Macedonia in Skopje/Shkup. They also enclosed to the appeal their joint statements dated 13 August 2008. Through these statements they allege that the properties over which they claim the property right were occupied in 1932 without any compensation.

17. The claimant received the appellant's appeals on 8 July 2013, and he responded to the appeals on 06 August 2013. Through his response to the appeals, he alleges that according to the presented evidence, his father was recorded as a legal owner of the immovable properties registered under his name.

Joining of the appeals:

18. 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 Regulation 2006/50), provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) of this Regulation.

19. The provisions of Law on Contested Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Regulation 2006/50 as well as provisions of Article 408.1 as read with Article 193 of 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.

20. The Supreme Court finds that apart from a different case number for which the respective appeals are filed, the facts, the legal grounds and the evidentiary issues are exactly the same in all 3 (three) 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 legal reasoning on the claims provided by the Commission is the same one.

21. The appeals registered under the numbers GSK-KPA-A-84/13 to 86/13, are joined in a single case under the number GSK-KPA-A-84/13.

Admissibility of the appeals:

22. The Supreme Court of Kosovo reviewed the appealed Judgment pursuant to provisions of Article 194 of LCP, and after the assessment of allegations in the appeals it found that:

The appeals are admissible because they have been filed within the period prescribed under Section 12.1 of UNMIK Regulation no. 2006/50, which stipulates that a party may file an appeal against a decision of the Commission within thirty (30) days of the notification of the parties of the decision. This is because the decision was served on the appellants on 7 March 2013 and they filed the appeals on 5 April 2013.

Legal reasoning:

23. The Supreme Court finds that the appealed decision is based on complete and correct determination of factual situation, and provisions of material law were appropriately applied. The appealed decision is not issued in essential violation of provisions of contested procedure, which have an impact on impartiality, legality and correctness of this decision. KPCC has fully and correctly established the relevant facts, which are important for issuing a fair and legal decision, when it decided on claims and when it recognized the property right over the cadastral parcels to the claimant B.B2, and which facts have been included in the appealed decision.
24. Subject of consideration and assessment were the allegations of the appellants that the contested properties belonged to their ancestors and that these immovable properties were occupied in 1932 without any compensation by the predecessor of B.B1, enclosing the Possession List no. 1206/1929 dated 04 May 2004 issued by the State Geodesic Entity of the Republic of Macedonia in Skopje and the Possession List no. 1206/1929 dated 12 April 2004 as well as their statements dated 13.08.2008, but the Court found that they were unfounded.
25. Although the appellants claim that the properties belonged to their ancestors and that in 1932-1936 the then government confiscated the properties without any compensation, they failed to provide legally valid evidence to support their allegations.
26. This is because the cadastral parcels 303/47 and 303/37 at the place called “Fongishte”, a meadow with a surface of 02.38.92 ha and with a surface of 05.86.82 ha, in cadastral zone of Kepuz, Municipality of Klinë/Klina, are indicated in the Possession List dated 4 May 2004 and the Possession List dated 12 April 2004, referring to records of 1929 of cadastral books of Banovina of Vardar, whereas by the appealed decision it was decided on the co-ownership right to 1/6 of ideal part of B.B2 of parcels 303/50, 303/51 and 303/52, registered under the Possession List 42 of cadastral zone of Kepuz, Municipality of Klinë/Klina. Therefore, from this factual situation it results that the allegations of the appeals regarding the claimed properties are inconsistent – are not identical with the parcels which have been decided by the appealed decision. Thus, there is no objective identity for the parcels of immovable property between the allegations in the appeals and those parcels as decided in the appealed decision.
27. Based on the same situation of the case, it results that provisions of Article 115 of Law on Property and Other Real Rights have been properly applied. This legal provision provides that a legal valid action and registration in the immovable property rights register is required for the acquisition, change of content, transfer, termination of ownership and other real rights. Given that the immovable properties which is subject of the claims were registered in Possession List no. 43 under the name of B.B2, the Supreme Court concludes that the appealed decision is fair and lawful.

28. Furthermore, pursuant to provision of Article 7 para 2 of Law 2002/5 on Establishment of Immovable Property Rights Register, it is assumed that the parcels which are subject of this claim and which are registered under the name of B.B2 according to Possession List 42 of Department of Cadastre, Geodesy and Property, dated 20 September 2007, are accurate, true and legal as long as they are not corrected based on procedures established by law. Therefore, if eventually the claimants allege that the immovable property right register in the Cadastral Office of Klinë/Klina are not legal and violates their rights, then they have the authority and responsibility to initiate relevant judicial proceedings to establish such allegations pursuant to Article 5.4 of the same law.
29. In the light of foregoing, pursuant to Section 13 para 3 subpara (c) Of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it is decided as in the enacting clause of this judgment.

Legal advice:

30. 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