

**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-179/13

**Prishtinë/Priština,
16 July 2014**

In the proceedings of

SH.H
Appellant / Respondent

vs.

D.R.D
Claimant / Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Elka Filcheva-Ermenkova and Dag Brathole, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/187/2013 (case files registered as KPA51690, KPA51691, KPA51692, KPA51693, KPA51694, KPA51696, KPA51697), dated 13 February 2013, after deliberation held on 16 July 2014, issues the following

JUDGMENT

- 1- The cases **GSK-KPA-A-181/13, GSK-KPA-A-183/13, GSK-KPA-A-179/2013, GSK-KPA-A-184/13, GSK-KPA-A-180/13, GSK-KPA-A-182/13** and **GSK-KPA-**

A-185/13 are joined in one single case registered under number GSK-KPA-A-179/13.

- 2- The appeal of SH.H against decision of the Kosovo Property Claims Commission KPCC/D/A/187/2013 (case files registered as KPA51690, KPA51691, KPA51692, KPA51693, KPA51694, KPA51696, KPA51697), dated 13 February 2013 is rejected.
- 3- The decision of Kosovo Property Claims Commission KPCC/D/A/187/2013 (case files registered as KPA51690, KPA51691, KPA51692, KPA51693, KPA51694, KPA51696, KPA51697), dated 13 February 2013 is confirmed.

Procedural and factual background:

1. On 14 November 2007 D.R.D filed claims with Kosovo Property Agency (KPA) seeking confirmation of the property right and repossession over 2/3 of parcels described as 40/32; 40/30; 40/30; 40/14/4; 40/30/2;40/30/2; 40/30/1 all situated in the lands of the village Bajcina, Podujevë/Podujevo. According to the actual cadastral plan these parcels are now 2 in total and numbered 1600 and 1601 {*ex officio* established by Executive Secretariat (ES) of the KPCC}.
2. D.R.D filed the claim as a family member of the Property Right Holder, which is his father R.D.D.. The latter inherited 2/3 of the claimed properties.
3. The property was lost due to the armed conflict in Kosovo from 1998/1999. The specified date of loss was 16 June 1999. The claimant presented an inheritance decision, issued by the Municipal Court of Podujevë/Podujevo on 3 April 1961. The decision declared that R.D and his sister O.D are inheritors of late D.D with shares of 2/3 for R.D and 1/3 for O.D. According to the decision the contested parcels form part of the inheritance of D.D. The decision was positively verified by the ES of the KPCC. The ES of the KPCC as well established that in the current cadaster the properties are still under the name of D.D.
4. The properties were physically notified in 2012. The respondent SH.H contested the claims, asserting that his father purchased these parcels in 1985 from third person B.B.

5. The KPCC accepted the claims as founded and issued the appealed decision, *i.e.* KPCC/D/A/187/2013 (case files registered as KPA51690, KPA51691, KPA51692, KPA51693, KPA51694, KPA51696, KPA51697), dated 13 February 2013
6. The KPCC recognized that the PRH (property right holder) R.D.D is the owner of 2/3 of the properties. The KPCC considered the claim well substantiated on the basis of the inheritance decision and the records in a possession list. The KPCC did not consider the assertions of the respondent proven, because the respondent only presented written statements from the alleged seller of the land B.B and his son. The decision was served on the claimant on 26 June 2013.
7. On 19 July 2013 the decision was served on SH.H. On 6 August 2013 he filed an appeal against the decision.
8. The appellant claims that the decision is unfair as it denies his right of ownership over the property after 28 years. He asserts they (his family) have purchased the property in 1985, they did not usurp it.
9. He claims his rights are proven by the statements of many witnesses and all villagers know his family has used the land since 1985.

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 seven cases. 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-181/13, GSK-KPA-A-183/13, GSK-KPA-A-179/2013, GSK-KPA-A-184/13, GSK-KPA-A-180/13, GSK-KPA-A-182/13 and

GSK-KPA-A-185/13 are joined in one single case registered under number GSK-KPA-A-179/13.

Admissibility of the appeal:

13. The appeal is admissible; it was filed within the 30 day period as provided in Section 12.1 Law 03/L-079 amending UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, hereinafter Law 03/079.

Merits of the appeal:

14. The appeal is ungrounded.
15. It is established that R.D (father of the claimant) and his sister O.D inherited the disputed properties from their late father D.D in 1961. 2/3 was the share of the R.D and 1/3 the share of O.D. There is no data that in 1985 or any other moment between 1961 and 1999 R.D transferred his 2/3 ideal parts of the property either to SH.H or any other person.
16. The presented written statements by SH.H do not represent evidence to confirm the ownership right over the claimed properties. According to article 4, paragraph 2 of the Law on Transfer of Immovable Property (Official Gazette of Republic of Serbia no: 43/81), the contracts on the transfer of rights to immovable property between ownership right holders must be concluded in writing and the signatures of the contracting parties must be certified by the courts. In the absence of such contract allegations for a transfer of ownership right is unsubstantiated.
17. In case that in 1985 there was some informal arrangement between the real owners R.D and O.D on one side and the family of the appellant on the other for the use of the property, this would not as well result in the transfer of the ownership right, which, as noted needs to be sanctioned by a written form and certification of the signatures. However in the current case there is no data that any such arrangement ever existed. The respondent is simply claiming to have purchased the property from a third person, without having any purchase contract for that and without having any proof that this third person himself had any rights over this property. In addition to that there is no evidence that the factual possession of R.D over the properties was ever interrupted before the armed conflict in the years 1998 and 1999.

18. As there is no evidence for a transfer of the right of property between 1961 and until 1999 in favor of the appellant, there is no reason for the Court to annul or modify the decision of the KPCC which has accepted the claim as grounded.
19. Therefore and in line with section 13.3 of the Law the Court has rejected the appeal and confirmed the decision.

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.

Sylejman Nuredini, Presiding Judge

Elka Filecheva - Ermenkova, EULEX Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar