

**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- 186/2013

Prishtinë/Priština,

4 August 2014

In the proceedings of:

M.V.

Belgrade

Serbia

Claimant/Appellant

vs.

K. A.

Suharekë/Suvareka

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Dag Brathole, Judges, on the appeals against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case files registered at the KPA under the numbers KPA20057 and KPA 20058), dated 14 December 2012, after deliberation held on 4 August 2014 issued the following:

JUDGMENT

1. The appeals filed by M. V., dated 12 June 2013, registered under the numbers GSK-KPA-A-186/13 and GSK-KPA-A-187/13, are joined in a single case under the number GSK-KPA-A-186/13.
2. The appeals of M. V. filed against the decision of Kosovo Property Claims Commission KPCC/D/A/180/2012 (case file registered at the KPA under KPA 20057 and KPA20058), dated 14 December 2012, are rejected as unfounded.
3. The decision of Kosovo Property Claims Commission KPCC/D/A/180/2012 (case file registered at the KPA under KPA 20057 and KPA20058), dated 14 December 2012, is confirmed.

Procedural and factual background:

1. On 21 November 2006, M.V. filed two claims with the Kosovo Property Agency (KPA) in Prishtinë/Priština for recognition of his right over the private property, claiming to be the property right holder over the claimed immovable property and seeking repossession of these immovable properties. The claims are registered with the Kosovo Property Agency under KPA20058 referring to the cadastral parcels 114 and 115, and KPA20057 referring to cadastral parcel 232.
2. Through these claims, he claims that he cannot exercise the property rights over these immovable properties due to circumstances related directly to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
3. According to the Immovable Property Rights Certificates P-72116039-00114, dated 14 April 2011, P.nr.72116039-00115, dated 13 April 2011 and P-72116039-00323, dated 13 April 2011, it is ascertained that he claimed the property right over the claimed cadastral parcels in the capacity of property right holder as per the following definitions and exact geometric sizes:

Number of case with the Supreme Court of Kosovo and number of KPA case file	Data concerning the claimed parcel
GSK-KPA-	Cadastral parcel no. 115 at the place called "Dubravë," CZ.

186/13 (KPA20058)	Salagrahdë/Salagražde, Suharekë/Suvareka, with a surface of 5.374 m ² , registered under the name of Gjokë and Palok Tunaj, in the capacity of co-owners.
GSK-KPA-186/13 (KPA20058)	Cadastral parcel no. 114 at the place called "Dubrova/Ara gat" CZ. Salagrahdë/Salagražde, Suharekë/Suvareka, with a surface of 5.284 m ² , registered under the name of Martin Tunaj.
GSK-KPA-187/13 (KPA20057)	Cadastral parcel no. 323 at the place called "Dubrova/Ara gat" CZ. Salagrahdë/Salagražde, Suharekë/Suvareka, with a surface of 1.636 m ² , registered under the name of Osman Ahmetaj.

4. These Immovable Property Rights Certificates were obtained ex officio by the Executive Secretariat and they were positively verified.
5. To support his claims, the claimant provided the KPA with the following documents-evidence:
 - Identification card no. 84365 issued on 10 September 1990 by the competent authorities of the Municipality of Prizren,
 - A settler list dated 8 June 1933,
 - A lawsuit filed with the Municipal Court of Suharekë/Suvareka dated 19.6.1997
6. Ruling of District National Court nr.-164/46-3, Ruling of County Court in Suharekë/Suvareka nr. 362/46-3 dated 24 December 1946, Judgment of County Court in Suharekë/Suvareka C-47/52 dated 14 August 1952.
7. According to the Kosovo Property Agency verification report, the above mentioned court decisions were not positively verified.
8. In 2007 and 2010, the Notification Team went to the place where the claimed parcels were allegedly located and put relevant notifications on the cadastral parcel.
9. Presenting relevant evidence before the KPA, the respondent claimed the property right over these immovable properties. They stated that the claimant is not the owner of these immovable properties and that his father sold these properties to their predecessor in 1952.
10. Kosovo Property Claims Commission (KPCC) with its cover decision KPCC/D/A/180/2012 dated 14 December 2012 rejected claims of the parties as impermissible.
11. In the reasoning of the decision referring to claims registered under KPA20057 and KPA20058 relating to cadastral parcels 114, 115 and 323, the Commission indicates that the loss of these cadastral parcels is not related to the armed conflict and that the possession of properties was not lost as a result of the conflict. The reasoning of this decision also states that these parcels were sold in 1950 and that they have not been in possession of these immovable properties ever since.

12. Furthermore, the claimant and his wife admitted these relevant facts themselves. Therefore, pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law L-03-079 (hereinafter: the Law) those claims were rejected in absence of jurisdiction.
13. The decision was served on the claimant (hereafter to be referred to as: the appellant) on 24 May 2013, and he filed an appeal on 13 June 2013. The respondent (hereafter to be referred to as: the appellee) received the decision on 3 May 2013 and he did not file a response to appeal.

Allegation of parties

14. The appellant challenges the appealed decision because of misapplication of substantive law, incomplete and erroneous determination of factual situation and procedural errors contained in this decision. In his appeal, he claims that the surface of occupied land is 08.01.36 ha. This occupation occurred in 1941. The same was then expropriated and finally occupied in 1999. The appealed decision is unclear and generalized and that the expropriation can be resolved upon the adoption of Law on Restitution by the Assembly of the Republic of Kosovo.

Legal reasoning

Joining of the appeals:

15. The Supreme Court joined the appeals.
16. 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, 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. 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.
17. The provisions of Law on Contested Procedure that are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, 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.

18. In the text of appeals filed by the appellant, the Supreme Court finds 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 all 2 (two) 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.
19. The appeals filed by M. V., registered under the numbers GSK-KPA-A-186 and 187, are joined in a single case under the number GSK-KPA-A-187.

Admissibility of the appeals:

20. Pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by the Law No. 03/L-079, the party may file an appeal against the decision of Commission within thirty (30) days of notification of parties of the decision.
21. In the case at stake, the KPCC decisions were served on the appellant on 24 May 2013, while his appeal was filed on 13 June 2013, which is less than 30 days of the receipt of notification on KPCC decisions.
22. The appellee K. A. received the appealed decision on 3 May 2013 and he received the appeal on 10 October 2013, but he did not file a response to appeal.
23. The appeals are admissible because they have been filed within the legal deadline, but they are unfounded.

Merits:

24. The Supreme Court of Kosovo finds that based on documentation provided by the appellant, allegations stipulated in the appeal and the evidence presented by the appellant, it results that the appealed decision was issued following a correct and complete determination of factual situation and correct application of substantive and procedural law, when it decided in the appealed decision to reject as impermissible the claims registered with KPA under no. 20057 and 20058, because he failed to present legally valid facts and to present valid evidence that he is not only the owner of the claimed immovable properties but also prove that their loss occurred due to circumstances related directly to or resulting from the armed conflict.
25. The Supreme Court also concludes that the appellant failed to establish by legally valid evidence the relevant facts that he cannot exercise his property rights over the claimed properties, that he is

accommodated in these properties and that he lost possession or control of these properties as a consequence of the conflict.

26. Subject of review and assessment of the Supreme Court were also the allegations of the appellant that the occupied land consisted of 08.01.36 ha, that the occupation occurred in 1941 and that it was expropriated and finally occupied in 1999, but if found such allegation in contradiction with the evidence processed and facts established, both in the proceedings conducted by the Commission and in the one before this Court.
27. This is because based on the Immovable Property Rights Certificates referring to the claim KPA 20057, which relates to the cadastral parcel 323, the same is registered under the name of O.A. Also, cadastral parcel 214 and 215 which are subject of the claim of the appellant and which refer to the claim registered under KPA20058, are registered under the name of M. T. and Gj. and P. T. according to the Immovable Property Rights Certificate.
28. Furthermore, likewise the appellant, his spouse confirmed on 3 October 2012 that the loss of possession of claimed parcel did not result from the conflict. She further stated that cadastral parcels 214 and 215 referring to the claim KP 20058 were sold in 1952. On the other hand, the parcel 323 referring to the claim 20057 was sold in 1954 and they have not been in its possession ever since.
29. Lawsuits filed with the Municipal Court of Suharekë/Suvaraka on 19 June 1997, and some copied judgments of District Court of Suharekë/Suvarakes of 1950 do not correspond with the claimed parcels and they are therefore irrelevant in this contested case.
30. In the light of foregoing and based on the evidence processed and facts established it can certainly be concluded that provision of Article 3.1 of Law was correctly applied when the claims of the claimant were dismissed in absence of jurisdiction. This provision provides that the Supreme Court has jurisdiction in cases when the property rights cannot be exercised due to circumstances related directly or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. In the case at stake, subject matter of the claim refers eventually to disputes falling outside the period prescribed under this legal provision and it has nothing to do with the conflict.
31. Given that according to the Immovable Property Rights Certificates under paragraph 3 of the reasoning of this judgment, it is ascertained that the parcels which are subject of the claim are not registered under the name of the appellant; therefore, pursuant to provision of Article 7 para 2 of Law 2002/5 on the Establishment of Immovable Property Rights Register, these data are assumed to be accurate, true and lawful as long as they are not amended based on the procedures established by law. Therefore, if the appellant eventually alleges that the immovable property rights register in Cadastral Office of Gjilan/Gnjilane is not lawful and it violates his rights, then he has

the authority and responsibility to initiate the relevant court proceedings to establish such allegations pursuant to Article 5.4 of the same Law..

32. In the light of foregoing, pursuant to Section 13 para 3 subpar (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, the appeal is rejected as unfounded and it is decided as in the enacting clause of this judgment.

Legal advice:

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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar