

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

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

GSK-KPA-A-163/2014

Prishtinë/Priština, 1 June 2016

In the proceedings of:

I.A.

Raushiq/Raušić,

Pejë/Peć

Appellant

vs.

M.Z.

Berane,

Montenegro

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin, and Anna Bednarek, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) no. KPCC/D/C/208/2013 (the case files registered at the KPA under the numbers KPA17993, KPA28947, KPA29087, KPA29088 and KPA29108) dated 11 June 2013, after the deliberation held on 1 June 2016, issues the following

JUDGMENT

1. The appeals of I.A., registered under the numbers **GSK-KPA-A-163/2014, GSK-KPA-A-164/2014, GSK-KPA-A-165/2014, GSK-KPA-A-166/2014 and GSK-KPA-A-167/2014**, are joined in a single case under the number **GSK-KPA-A-163/2013**.
2. The appeal of I.A. against the decision of the Kosovo Property Claims Commission No. **KPCC/D/C/208/2013** dated 16 June 2013 as far as it concerns the claims with numbers **KPA17993, KPA28947, KPA29087, KPA29088 and KPA29108** is dismissed as belated.

Procedural and factual background:

1. On 15 February 2007, 13 March 2007, 29 March 2007 and 22 August 2007, M.Z. , (henceforth: the Appellee) filed five separate claims with the Kosovo Property Agency (KPA), seeking re-possession of the land and installations (electrical grain mill, power station, water pipes and power lines) on and to the cadastral parcel no. 451/12 located in village Brezhanik/Brežanik, Cadastral Zone Bellopojë/Belo Polje, Municipality of Pejë/Peć (henceforth all together: the claimed property). The Appellee alleges to be the owner of the cadastral parcel no. 451/12 and the objects – business premises - located on it as follows:
 - GSK-KPA-A-163/14 (KPA17993) business premise (electrical mill) and land,
 - GSK-KPA-A-164/14 (KPA28947) power line and water supply network,
 - GSK-KPA-A-165/14 (KPA29087) electrical mill,
 - GSK-KPA-A-166/14 (KPA29088) transformer power station and 870 m power lines,
 - GSK-KPA-A-167/14 (KPA29108) water supply system (800 m).
2. In the claims the Appellee stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss.
3. The KPA processed the claims together as they partly duplicate of and are all related to the same cadastral parcel and facilities.

4. To support his claims the Appellee provided the KPA *inter alia* with the following documents:

- A copy of the Decision no. 02-463/167 issued by the Municipal Assembly of Pejë/Peć on 10 March 1995, through which (part of the parcel) the parcel no. 451/12 (urban construction land) with the surface of 00.14.50 ha and listed in the Possession List no. 227 was allocated for use to the Appellee's company Catering and Trade Company "Polet" with the purpose of the construction of an electrical mill.
- A copy of the Contract on Use of the Urban Construction Land no. 10-352/126 concluded on 4 April 1995 between the Appellee and the Social Found for Construction Land and Roads of Pejë/Peć Municipality, through which to the Appellee was given the cadastral parcel no. 451/12 for use. Article 6 of the Contract specifies that the property which is given for use remains Socially Owned Property, while the user of the property will gain a permanent use right over the land.
- Decision no. 05-351/704 issued by Municipal Administration of Pejë/Peć, Department of Urbanism, Utilities, Housing, Construction and Property Legal Affairs on 3 May 1995 through which Appellee's company was given the consent for building the electric mill on cadastral parcel no. 451/12.
- A Copy of Plan no. 277 issued by the Department for Cadastre of the Republic of Serbia, Cadastral Municipality of Bellopojë/Belo Polje, on 17 May 1995 listing the parcel no. 451/12 under the name of the Appellee and his company.
- Possession List no. 277 issued on 14 July 1995 by the Geodetic Authority of the Republic of Serbia, Cadastral Office of Municipality of Pejë/Peć listing parcel no 451/12 in the name of the Appellee.
- Information Letter addressed to the KPA no. 3/155/13 issued by the Cadastre Agency of Kosovo on 25 March 2013 through which the later Agency declared that based on the evidences from the year 1956, the cadastral parcel no 451/12 was socially owned property and listed in the name of P.I.K. Based on the decision no. 05/463/2485/94 dated on 29 May 1997 the property was transferred under the name of Appellee's Company UTP "Polet". Currently, the claimed property is listed

in the name of Appellee, but the legal basis of that transfer is unknown for the Cadastral Agency of Kosovo.

5. The Claims nos. KPA17993 and KPA29087 were notified on 10 November 2009. The KPA found the land observed in Claim no. KPA17993 occupied by I.A. (henceforth: the Appellant). The claim no. KPA28947 was notified on 29 July 2011. The KPA found the property occupied by the Appellant. The KPA notified the claim no. KPA29108 on 4 April 2011 and the claim no. KPA29088 on 12 February 2008.
6. The Appellant claimed legal rights over a part of the cadastral parcel no 451/12 by alleging that his grandfather had owned it since 1930es. He submitted a reply to the claim, but did not provide any documents to support his allegations.
7. According to the verification reports of the KPA the following documents were positively verified:
 - Decision no. 02-463/167 issued by the Municipal Assembly of Pejë/Peć on 10 March 1995.
 - Contract on Use of the Urban Construction Land no. 10-352/126 concluded on 4 April 1995.
 - Decision no.05-351/704 issued by the Municipal Administration of Pejë/Peć, Department of Urbanism, Utilities, Housing, Construction and Property Legal Affairs on 3 May 1995.
8. Upon verification of the possession list no. 277 the KPA added *ex officio* to the file Possession List no. 699¹ of Cadastre Zone Bellopojë/Belo-Polje, issued by the Department for Cadastre Geodetsy and Property in Municipality of Pejë/Peć on 9 December 2008. The parcel no. 451/12 is registered in this Possession List in the name of the Appellee. According to the cadastre officers the changes were done in 2007 based on the Confirmation of the Directorate for Economic Development no. 09/330-5720, dated 13 June 2007.
9. By its decision of 11 June 2013 (no. KPCC/D/A/208/2013), the KPCC decided on the joined claims that the claimed property is located on the parcel number 451/12 in possession list 277 in Cadastral Zone Bellopojë/Belo Polje, Municipality of Pejë/Pec, and that the Appellee had established that he is the owner of 1/1 of the claimed property and

¹ In the different files is found the same Possession List with the same information but different dates of issue. Here only one is mentioned as they are the same.

has a user right over the underlying land. KPCC ordered that the Appellee is entitled to possession of the claimed property. The KPCC reasons that the Appellee submitted a verified allocation decision from 1995 and a contract on use. In this allocation decision was allocated to his company a use right over the parcel, classified as urban construction land. The Appellee further submitted building permits. KPCC reasons further that the Appellant failed to submit evidence to support his allegations. The KPCC further notes that the evidence submitted by the Appellee was not issued in his name, but in the name of his company, but the company is not a separate legal entity; effectively it is a trading name of the Appellee. Therefore the KPCC concluded that the Appellee is the real party-in-interest, and that the Appellee provided sufficient evidence to grant the claim.

10. On 20 August 2013, the KPCC decision on all five claims was served on the Appellee.
11. I.A., received the KPCC decision on claim no. KPA28947 on 31 October 2013 and the KPCC decision on the other claims on 2 September 2013. With the decision was also handed over to him an appeals information sheet. In the KPCC decision is written that a party may submit an appeal within 30 days of the notification of the decision.
12. The Appellant filed the appeal against the KPCC decision on all five claims separately with the Supreme Court on 18 June 2014. With the appeal form he submitted a letter, bearing a stamp of a lawyer and dated 12 June 2014.
13. The Supreme Court registered the five appeals as mentioned in paragraph 1 here for.
14. The Appellee received copy of the appeals on 25 August 2014. He responded on 27 August 2014.

Allegations of the parties:

The Appellant:

15. The Appellant states that he has no objection to hand over the claimed property to the Appellee but that he insists that he is not using the entire surface of the property. He is using only 150 or 200 m² of the cadastral parcel no. 451/12. Therefore he kindly asks the KPCC at first to notify the part of the property that he has to hand over to the Appellant and then to set the deadline for the handover procedure.

The Appellee:

16. The Appellee alleges that the appeal of the Appellant was submitted after the legal deadline as envisaged by law. Therefore he proposes the rejection of the same.

Legal reasoning:

Joining of the appeals

17. According to Section 13.4 of 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 (henceforth: the UNMIK Regulation 2006/50) the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the KPCC pursuant to Section 11.3 (a) of the UNMIK Regulation 2006/50. This Section allows the KPCC 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.
18. In this case the KPCC factually joined the five claims.
19. Except otherwise provided the provisions of the Law on Contested Procedure are *mutatis mutandis* applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50. According to Article 408.1 as read in conjunction with Article 193 of the Law on Contested Procedure the Supreme Court can join the cases through a ruling if that would ensure court effectiveness and efficiency of the case.
20. In the text of the appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective appeal are filed, the facts, the legal grounds and the evidentiary issues are the same in the five cases. Moreover, the KPCC's legal reasoning for the claims is the same one.
21. The appeals are therefore joined in a single case.

Admissibility of the appeal

22. The appeal is belated.

23. Section 12.1 of UNMIK Regulation 2006/50 provides as follows: “*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*”.
24. The KPCC decision was served on the Appellant on Monday 2 September 2013 and on Thursday 31 October 2013. So the time limit of 30 days ended on Wednesday 2 October 2013 and - with an extension to the first working day - on Monday 2 December 2013. Yet the Appellant filed his appeal on 12 June 2014. He presented no legitimate excuse for this delay. This means that he filed the appeals outside the time limit of 30 days.
25. Therefore the appeal has to be dismissed on procedural grounds as belated pursuant to Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar