

**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-012/2015  
GSK-KPA-A-017/2015  
GSK-KPA-A-018/2015  
GSK-KPA-A-024/2015  
GSK-KPA-A-029/2015  
GSK-KPA-A-030/2015  
GSK-KPA-A-036/2015**

**Prishtinë/Priština  
26 April 2017**

In the proceedings of:

**Ž. C.**

Gjilan/Gnjilane

**Appellant**

Representative: L.C. D.

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeals against the Decision of the Kosovo Property Claims Commission (hereinafter: KPCC) no. KPCC/D/C/232/2014, dated 13 March 2014, (case files registered at the Kosovo Property Agency under nos. KPA21563, KPA29980, KPA29981, KPA44248, KPA44270, KPA44271 and KPA44281), hereinafter also: Decision of KPCC, after deliberation held on 26 April 2017, issues the following

## JUDGMENT

1. The appeals filed by Ž. C, registered under the casefile numbers GSK-KPA-A-012/215, GSK-KPA-A-017/2015, GSK-KPA-A-018/2015, GSK-KPA-A-024/2015, GSK-KPA-A-029/2015, GSK-KPA-A-30/2015 and GSK-KPA-A-36/2015, with regard to the claims registered with KPA under Nos. K KPA21563, KPA29980, KPA29981, KPA44248, KPA44270, KPA44271 KPA44270 and KPA44281, are joined in a single case under the number GSK-KPA-A-012/2015.
  
2. The appeals filed by Ž. C. against the decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014, dated 13 March 2014, with regard to the claims registered with KPA under Nos. KPA21563, KPA29980, KPA29981, KPA44248, KPA44270, KPA44271 and KPA44281 are dismissed as inadmissible due to the fact that they were filed by an unauthorized person.

### Procedural and factual background

1. On 18 June 2007 and 19 June 2007, Limited Liability Company “Kosmet Coning” (hereinafter: Claimant), with residence in Novi Sad, Serbia, represented by Ž. P. C. (hereinafter: Appellant) as legal representative in the capacity of the director has filed 11 claims with the Kosovo Property Agency (KPA) seeking confirmation of ownership rights over the residential and business premises constructed in parcels 7476/1 and 7480, Cadastral Zone Prishtinë/Priština, street “Dvarska 6” Dardani, near the bus station in Prishtinë/Priština (hereinafter: claimed properties).
2. Claimant has submitted *inter alia* with the KPA:
  - Decision of the Agency for Business Registration of the Republic of Serbia, dated 31 December 1999, wherewith is ascertained that a limited liability company “Kosmet Coning”, for planning, construction works and engineering, is registered with no. 08201366, with residence in Novi Sad, Serbia. Appellant is registered as founder and representative of the claimant (e.g. pg. 43 of the file 023/2015);
  - Decision no. 351-363/93-01 of the Municipal Assembly of Prishtinë/Priština, dated 16 July 1993, wherewith the cadastral parcels 7471/1 and 7480, as construction land for the construction of residential buildings and business premises, have been given for use to the claimant;

- Decision of the Secretariat for Urbanism, Construction and Protection of Environment of the Municipality of the City of Prishtinë/Priština, with no. 02.nr:351-1607, dated 17 April 1995, wherewith was approved the construction of residential- business premises (Entrance A, floors Po+P+1+M, and Entrance B, floors P+1+M) in the cadastral parcels 7476/1 and 7480 in Dardania, Prishtinë/Priština;
  - Judgment of the Municipal Court of Prishtinë/Priština, C.nr. 319/04, dated 23 April 2007, regarding the procedure between the claimant filing the claim and the Municipal Assembly of Prishtinë/Priština, as respondent. Based on the enacting clause of this judgment, there were partial constructions at the claimed properties, at cadastral parcel no. 7554. This judgment was quashed with the judgment of the District Court in Prishtinë/Priština, Ac.nr. 329/2008, dated 25 February 2011, and this legal-contested matter was referred to the first instance court for retrial;
  - Power of attorney, Vr.nr. 1165/08, dated 1 October 2008, certified at the Municipal Court of Kamenicë/Kamenica, wherewith lawyer L. C. D. is authorized to represent the appellant.
3. The KPA has notified the claim but no other party has participated in the procedure before the KPCC.
  4. The KPA has positively verified the above-mentioned documents under paragraph 2 and added ex officio in the case file the following:
    - Ruling no. 139/2011 of the Commercial Court of Novi Sad, in Serbia, dated 1 August 2011. According to the enacting clause of this ruling, the bankruptcy procedure was initiated due to permanent impossibility to pay the debts. In addition is stated that the creditors and debtor have no legal interest to implement the bankruptcy procedure, therefore the bankruptcy procedure is closed.
  5. The KPA verified that this ruling is final and enforceable since 11 November 2011 and that the claimant was deleted from the business registry in Serbia and as such it does not exist any longer.
  6. The KPCC with its decision decided – to dismiss the claims. In the reasoning (paragraph 41 of the Cover Decision), as far as relevant, the KPCC emphasized that the claims have been filed by the claimant in the capacity of the alleged property title holder, represented by his legal representative, who at the same time is the sole shareholder. The KPCC also emphasizes that the KPA has found ex officio, that the claimant based on the ruling of the Commercial Court in Novi Sad, with no. 139/2011, dated 1 August 2011, was announced as bankrupted in 2011 and later on was deleted from the registry of commercial companies, maintained by the Business Registration Agency in Belgrade. Consequently, the claimant has seized to exist in the capacity of legal person, respectively in the capacity of party in this legal-property matter. Since the claimant, as a limited liability company, has separate personality from his

shareholders who deposited those claims on behalf of the claimant, their capacity as legal successors cannot be accepted.

7. The KPCC considers that even that the Constitutional Court of the Republic of Serbia announced the legal ground for this decision on bankruptcy as non-constitutional the claimant did not file a claim for the review of court decision within the prescribed legal timeframe.
8. For these reasons the claimant- appellant has seized to exist as party in the procedure before the Commission, therefore also those claims should have been dismissed.
9. The decisions were served on the appellant on 16 July 2014.
10. The appellant filed appeals against the decision of the KPCC on 14 August 2014. The appeals refer to the number of claims and claimed properties according to the following table:

<b>Number of appeal and the KPA case number</b>	<b>Data regarding the claimed parcel</b>	<b>Number and the date of decision</b>
<i>GSK-KPA-A-12/2015 (KPA21563)</i>	<i>Parcel 7554 Cadastral Zone Prishtinë/Priština, Drvarska 6 in the surface of 20 square meters</i>	<i>KPCC/D/C/232/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-17/2015 (KPA29980)</i>	<i>Parcel 7554 Cadastral Zone Prishtinë/Priština, Drvarska 6 in the surface of 30 square meters</i>	<i>KPCC/D/C/232/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-18/2015 (KPA29981)</i>	<i>Parcel 7554, Cadastral Zone Prishtinë/Priština, Drvarska 6 in the surface of 30m<sup>2</sup></i>	<i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i>
<i>GSK-KPA-A-24/2015 (KPA44248)</i>	<i>Parcel 7554 Drvarska 6 Lam. B. Entrance 1 and 20 square meters</i>	<i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i>
<i>GSK-KPA-A-29/2015 (KPA44270)</i>	<i>Parcel 7554 Cadastral Zone Prishtinë/Priština, Drvarska 6 in the surface of 30 square meters</i>	<i>KPCC/D/C/232/2014 Dt. 13 March 2014</i>

<i>GSK-KPA-A-30/2015 (KPA44271)</i>	<i>Drvarska 6 No. 6 in the surface of 30 square meters, Prishtinë/Priština</i>	<i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i>
<i>GSK-KPA-A-36/2015 (KPA44281)</i>	<i>Drvarska 6 Lam. A. Entrance 3 in the surface of 20 square meters</i>	<i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i>

### **Allegations of Appellant**

11. The appellant states that the decision of the KPCC contains essential violations of the procedural and substantive law as well as erroneous and incomplete determination of the factual situation. The appellant states that he is the owner of claimed properties. He also states that although the company does not exist as legal entity, the claimed properties are private properties of appellant.

### **Joining of the appeals**

12. According to Section 13.4 of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079, 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 Article 11.3 (a) of the law. This Article allows the Commission to take into consideration the joining or merger of claims in order to review and issue a unique decision when there are common legal and evidentiary issues as well as same legal ground.
13. The provisions of Law on Civil Procedure that are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the 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 respective legal case.
- 14 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, factual and legal grounds are exactly the same in these four cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation, and consequently, the KPCC's legal reasoning for such claims is the same.
- 15 . The appeals registered under the numbers GSK-KPA-A-012/215, GSK-KPA-A-017/2015, GSK-KPA-A-018/2015, GSK-KPA-A-024/2015, GSK-KPA-A-029/2015, GSK-KPA-A-30/2015 and GSK-KPA-A-36/2015, are joined in a single case under the number GSK-KPA-A-012/15.

### Legal Reasoning

16 After the assessment of casefiles, allegations of appellant and the evaluation of the appealed decision according to the provision of Article 194 of the Law on Contested Procedure No. 03/L-006 (hereinafter: LCP) the Supreme Court finds as follows:

**The appeals filed by Ž. C. are dismissed as impermissible because he is not an authorized person to file them pursuant to provision of Article 186 paragraph 3 as read with Article 196 of the LCP.**

17. The appellant “Komset Coning” a Limited Liability Company from Novi Sad (hereinafter: “legal person”) represented by the director Ž. C., sought from the KPA to confirm his ownership right over the claimed properties as well as their re-possession. However, during the procedure, before the KPCC has issued the decision, the Commercial Court of Novi Sad, in Serbia, with the ruling no. 139/2011 dated 1 August 2011, has deleted this legal person from the Registry, hence the limited liability company seized to exist. Consequently the Commission dismissed the claims filed by that legal person with the reasoning that the shareholder who filed the claims on his behalf, cannot be recognized as a legal successor of the claimant.

18. The decision was served on Ž. C., who filed the appeals, wherewith he alleged that he is the owner of claimed properties based on the contract concluded in 1999, as well as he stated to be the shareholder of all shares of this business association.

19 .Pursuant to Article 12.1 of the Law No. 03/L-079, “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”. In the respective case in procedure was only one interested party: “Kosmet Coning” a Limited Liability Company in Novi Sad. The fact that after this company bankrupted it was deleted from the Registry, means that the party that filed the claims seized to exist and consequently it has no legal-procedural legitimacy to have legal capacity. In addition, pursuant to provisions of Article 3 paragraph 1 of the Law on Business Organizations, a representative of this legal entity is not allowed to participate in these procedures on his behalf after the announcement of bankruptcy and neither to be a successor of this company. The Commission was right when assessed that in such a case the claim should be dismissed as impermissible.

20 The appellant, Ž. C. during the procedure did not act as natural person, on his behalf, but he represented a legal person. When the party in procedure has bankrupted as a company, it could not be represented neither by its director nor by any other representative (Article 95.2 of the Law on Contested Procedure). None of provisions of the law in force in the Republic of Kosovo does allow that a previous representative of legal person interferes in the procedure on his behalf after the legal person has bankrupted neither to ensure possibility that such a representative becomes the successor of that legal person. In addition, appellant who filed the claims on behalf of the LLC, neither changed their content during the procedure before the KPCC pursuant to Articles 257 – 261 of the Law on Contested Procedure. Therefore, Ž. C. cannot be considered as party in procedure in

the case at hand. Thus, he cannot file a claim on his behalf nor had any right to file an appeal against the appealed decision.

- 21 Therefore, in the light of foregoing reasons pursuant to provision of Article 186 in conjunction with Article 196 of the LCP, the appeals are dismissed as impermissible, because they were filed by an unauthorized person, and consequently the appealed allegations were not subject of review and assessment of this court.

**Legal advice**

Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary legal remedies

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami Judge

Sandra Gudaityte, EULEX Registrar