

**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-108/2015
GSK-KPA-A-109/2015
GSK-KPA-A-115/2015
GSK-KPA-A-120/2015
GSK-KPA-A-126/2015
GSK-KPA-A-131/2015
GSK-KPA-A-132/2015**

**Prishtinë/Priština
3 May 2017**

In the proceedings of:

Ž. C.

The Appellant

Representative: L. C. D.

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges Sylejman Nuredini, Presiding Judge Krassimir Mazgalov and Beshir Islami, members, deciding on the appeals against the Decision of the Kosovo Property Claims Commission (hereinafter: KPCC) no. KPCC/D/R/231/2014, dated 13 March 2014, (case files registered at the Kosovo Property Agency under the numbers, KPA29970, KPA29971, KPA29977, KPA44249, KPA44255, KPA44262, and KPA44263), hereinafter also known as: KPCC Decision, after deliberation held on 3 May 2017, issues the following:

JUDGMENT

1. Appeals of Ž. C. registered under the numbers **GSK-KPA-A-108/2015, GSK-KPA-A-109/2015, GSK-KPA-A-115/2015, GSK-KPA-A-120/2015, GSK-KPA-A-126/2015, GSK-KPA-A-131/2015 and GSK-KPA-A-132/2015**, regarding the case files registered at the KPA under the numbers **KPA29970, KPA29971, KPA29977, KPA44249, KPA44255, KPA44262 and KPA44263** are joined into a single case under the number **GSK-KPA-A-108/2015**.
2. Appeals of Ž. C. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/231/2014, regarding the case files registered at the KPA under the numbers **KPA29970, KPA29971, KPA29977, KPA44249, KPA44255, KPA44262 and KPA44263** dated 13 March 2014, are dismissed as inadmissible due to the fact that they were filed by an unauthorised person.

Procedural and factual background

1. On 18 June 2007 and 19 June 2007, the Limited Liability Company “Kosmet Coning” (hereinafter: the Claimant), with its seat in Novi Sad, Serbia, represented by Ž. P. C. (hereinafter: the Appellant) in his position as the Director of the Claimant, filed several claims with the Kosovo Property Agency (KPA) seeking confirmation of its property rights over residential and business premises and other units in several floors of two commercial buildings A and B, which supposedly were constructed in parcels 7476/1 and 7480, at “Dvarska 6” Street, Dardania, near the bus station in Prishtinë/Priština (hereinafter: the claimed properties).

2. The Claimant submitted with the KPA among others the following documents:
 - Ruling No 08201366 on the registration of Business Entity, dated 31 December 1999, issued by the Agency for Business Registries of the Republic of Serbia, where the Claimant was registered under its full name Limited Liability Company Kosmet Coning, for Planning, Construction Works and Engineering with its seat in Novi Sad, Republic of Serbia. The Appellant is evidenced as a founder and representative of the Claimant (page no. 43 of the case file 023/2015);
 - Decision No 351-363/93-01 of the Prishtina/Priština Municipal Assembly, dated 16 July 1993, on the allocation of parcels 7471/1 and 7480 (construction land) to the Claimant for use, for the construction of residential blocks for sale;
 - Decision of the Secretariat for Urbanism and Construction granting the permission for the construction of Residential and other Facility Blocks (Entry A, Floors B+G+1+M, and Entry B, floors B+1+M) on cadastral parcels 7476/1 and 7480, in Dardania, Prishtina/Priština;
 - Power of Attorney no. 1165/08 legalised before the Municipal Court of Kamenicë/Kamenica on 1 October 2008, authorising the lawyer L. C. D. to represent the Appellant.
 - Certificate on Immovable Property Rights, dated 24 June 2011, indicating that land parcels Nos 7476/1 and 7480 are registered under the name of Prishtinë/Priština Municipality.
3. The documents mentioned in paragraph 2 of the Judgment were positively verified by Executive Secretariat of the KPA. Moreover, the Secretariat found ex officio the following document:
 - Decision no. 139/2011 of the Commercial Court in Novi Sad, dated 1 August 2011, establishing the reasons for the Claimant's bankruptcy. According to the enacting clause, the bankruptcy proceedings were initiated because of the Claimant's permanent inability to repay its debts. Further, it is stated that creditors and debtor have no legal interest in implementing the bankruptcy proceedings. The bankruptcy proceedings were concluded and the debtor's property, if there was any, according to the law was transferred under the ownership of the Republic of Serbia.
4. The KPA established that this decision is final and enforceable since 11 November 2011 and that the Claimant was expunged from the Business Registry in Serbia and it no longer exists.

5. According to the Appellant's statement and the search in registries of legal persons, the Claimant was not registered as a business entity in Kosovo.
6. The KPCC with its Decision decided to dismiss the claims. In its reasoning (paragraph 41 of the Cover Decision), the KPCC stated that claims were filed by the Claimant as the alleged property right holder, represented by its legally authorised representative, who at the same time is the sole shareholder.
7. Decisions were served onto the Appellant on 16 July 2014.
8. The Appellant filed appeals against the KPCC Decision on 14 August 2014. Appeals refer to claim numbers and claimed properties as per the table below:

Appeal number and KPA case number	Data concerning the claimed parcel	Number and date of the decision
<i>GSK-KPA-A-108/2015 (KPA29970)</i>	<i>Parcel 7476/1 and 7480, cadastral zone Priština Drvarska 6, 85 m²</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-109/2015 (KPA29971)</i>	<i>Parcel 7476/1 and 7480, cadastral zone Priština Drvarska 6, 85 m²</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-115/2015 (KPA29977)</i>	<i>Parcel 7476/1 and 7480, cadastral zone Priština Drvarska 6, 125 m²</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-120/2015 (KPA44249)</i>	<i>Parcel 7476/1 and 7480, cadastral zone Priština Drvarska 6, 125 m²</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-126/2015 (KPA44252)</i>	<i>Parcel 7476/1 and 7480, cadastral zone Priština Drvarska 6, 70 m²</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-131/2015 (KPA44262, KPA44267)</i>		<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>

<i>GSK-KPA-A-132/2015 (KPA44279)</i>	<i>Parcel 7554 Prishtinë/ Priština cadastral zone, Drvarska 6, surface of 70 square meters</i>	<i>KPCC/D/R/231/2014 Dt. 13 Mars 2014</i>
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Allegations of the appellant

9. The Appellant alleges that the KPCC Decision contains fundamental error and misapplication of the applicable substantial and procedural law, because the appellant was not allowed to participate actively in the proceedings before KPCC so he could challenge the facts and allegations of other parties and participants in the proceedings. The Appellant stated that he is the owner of the Claimant and at the same time the owner of claimed properties. He also asserted that the fact that company does not exist as a legal entity any longer was wrongfully ascertained because the claimed properties are Appellant's private property.

Joining of the appeals

10. Pursuant to Section 13.4 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, the Supreme Court may decide on joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the law. This section allows the Commission to consider joining or consolidating these claims to review and render a decision on them when there are common legal and evidentiary grounds.
11. The provisions of the Law on Civil Procedure that are applicable before the Appeals Panel of the Supreme Court in accordance with Section 12.2 of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, as well as provision of Article 408.1 in conjunction with Article 193 of the Law no. 03/L006 on Contested Procedure, foresee the possibility of joining all claims by a ruling if it ensures the efficiency and cost-effectiveness of proceedings.
12. In the text of appeals filed by the Appellant, the Supreme Court observes that, except for different case number for which the respective appeal was filed, the factual and legal basis, and the evidentiary issues are the same in all the cases. Only property units, object of the property right which is alleged in each claim, are different. The appeals are based on the same

explanatory statements and on the same documentation. Consequently, the legal reasoning of KPCC for such claims is the same, hence, the Appeals registered under the numbers GSK-KPA-A-108/2015, GSK-KPA-A-109/2015, GSK-KPA-A-115/2015, GSK-KPA-A-120/2015, GSK-KPA-A-126/2015, GSK-KPA-A-131/2015 and GSK-KPA-A-132/215 are joined into a single case under GSK-KPA-A-108/2015. The court separated appeals based on the type of property according to the KPCC Decision into commercial properties and residential properties.

Legal reasoning

13. After reviewing the case file, allegations of the Appellant and after the assessment of the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure no. 03/L-006 (hereinafter: LCP) the Supreme Court finds that the abovementioned appeals of Z. C. have to be dismissed as impermissible due to the fact that the Appellant is not authorised to file them as provided by Article 186 paragraph 3 in conjunction with Article 95 of the LCP.
14. The Appellant “Kosmet Coning” Limited Liability Company from Novi Sad (hereinafter: “Company”, “Legal Person”) represented by its Director Ž. C., requested from the KPA to establish its ownership right over the claimed properties and their repossession. During the proceedings however, before the KPCC issued its Decision, the competent Court in the Republic of Serbia expunged the legal person from the Registry, therefore the Limited Liability Company ceased to exist. Consequently, the Commission dismissed the Claims filed by the Company with the reasoning that the shareholder who filed the Claims on behalf of the legal entity cannot be recognised as a legal successor of the Claimant. The Decision was then served on Ž.C, who filed the Appeals, in which he claimed that he was the owner of the claimed properties, based on the contract concluded in 1999, and added that he is the sole shareholder of the Company.
15. According to Article 12.1 of the Law No 03/L-079 “within thirty (30) days of the notification of parties by the Kosovo Property Agency of a Commission’s decision on the appeal, 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 case at hand there was only one party

to the proceedings: “Kosmet Coning” Limited Liability Corporation from Novi Sad. The fact that the Company after being declared bankrupt was expunged from the Register means that the party which submitted the Claims ceased to exist and therefore could not support the claim anymore. Furthermore, pursuant to provisions of Article 3 paragraph 1 of the Law on Business Organisations, it is not allowed that the representative of this legal entity participates in these proceedings on his own behalf after declaration of bankruptcy and neither be a successor of the stated Company. The Commission was correct when it assessed that in such a case the Claim stands to be dismissed.

16. The Appellant Ž. C. during the proceedings did not act as a natural person, on his own behalf, but represented the legal person. Once the party to the proceedings went bankrupt it could not be represented by neither the director nor any other representative anymore (Article 95.2 of the Law on Contested Procedure). None of the provisions of the law in force in the Republic of Kosovo allows for the previous representative of the legal entity to step in to the proceedings on his own behalf after the declaration of bankruptcy by the Company/Legal Person, neither it provides that such a representative becomes the successor of the stated Company. Furthermore, the Appellant, who filed the Claims on behalf of the LLC has neither amended their content during the proceedings before the KPCC on the basis of Articles 257 – 261 of the Law on Contested Procedure. For those reasons Ž. C. cannot be considered as a party to the proceedings in the case at hand, hence, he cannot file a Claim on his own behalf neither was he entitled to file an Appeal against the Decision.
17. Therefore the Appeals stand to be dismissed as impermissible on procedural grounds (Article 13.3 (b) of the Law No 03/L-079). As a consequence, the Supreme Court could not examine the grounds indicated in the Appeals.

Legal advice

Pursuant to Article 13.6 of the Law No 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar