

**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-087/13

**Prishtinë/Priština,
12 November 2013**

In the proceedings of:

D.J

Appellant/Respondent

vs.

S.D.N

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/R/171/2012 (case file registered at the KPA under **No's. KPA 45218, 45220, 45221 and 45222**), dated 24 October 2012, after deliberation held on 12 November 2013, issues the following

JUDGMENT

1. The decision Kosovo Property Claims Commission KPCC/D/R/171/2012 regarding the case files registered at the KPA under No's. KPA 45218, 45220, 45221 and 45222 is annulled.
2. The claims of S.D.N registered at the KPA under No's. KPA 45218, 45220, 45221 and 45222 are dismissed as inadmissible.

1. Procedural background:

- 1.1. On 16 October 2007, S.D.N (appellee) filed four claims at the Kosovo Property Agency (KPA), seeking confirmation of his property right over:
 - a field of the seventh class measuring 0.13.39 ha, cadastral parcel no. 772;
 - a field of the fifth class measuring 0.20.01 ha, cadastral parcel no. 1278;
 - a field of the seventh class measuring 0.11.44 ha, cadastral parcel no. 1338;a meadow of sixth class measuring 0.09.86 ha, cadastral parcel no. 1595;
All of these parcels are in the cadastral zone Gotovushë/Gotovuša of the municipality Shtërpce/Šterpe in Gotovushë/Gotovuša.
Hereafter these different parcels will be as combined referred to as: the property.
- 1.2. The KPCC found the claims grounded.
- 1.3. The KPCC decision was served to the Appellant on 25 March 2013.
- 1.4. The appellant filed appeals against the KPCC decision at the KPA on 8 April 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.
- 1.5. The appeals were served on the Appellee 14 June 2013 who filed a response to the appeals on 27 June 2013.

2. Factual background

The Appeals Panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong, the following:

- 2.1. The property was originally owned by I.D. Ever since the death of his wife in 1964, I.D. lived in the common household of the family of the Appellant. I.D. passed away in 1985. Appellant's family took care of the burial of I.D's body.
- 2.2. In the years 1968 up to 1971 the Appellants family build a family house, partly on parcel no. 2133, a parcel that also was owned by I.D. The house is still used as the family house of the Appellant.
- 2.3. The family of the Appellant has cultivated and otherwise used the property undisturbed since 1964.
- 2.4. By a ruling of the municipal court of Urovać, dated 24 December 1985, the Appellee, among others, was announced as heir to the heritage of I.D.

3. Legal dispute:

- 3.1. The Appellant has asked the panel to decide to reconsider the decision of the KPCC/D/R/171/2012 and to declare the appellant as (co-)owner of the property. The appellant based his request on the statement that he has possessed and used the property un interrupted ever since 1964 as from that year on I.D was a member of appellant's household. The appellant refers to the provisions of article 4 of the Law on Basic Property Relations and of article 40 paragraph 1 of the Law on Property and Other Real Rights.

4. Legal Reasoning

Ex Officio: Joining cases

- 4.1. Section 408.1 of the Law No. 03/L-006 on Contested Procedure (LCP) provides that the court may join all the cases where two or more proceedings are ongoing in the same court and involving the same persons, if that would ensure court-effectiveness and efficiency of the case.
- 4.2. In the cases registered under the numbers GSK-KPA-A-087-88-89-90/13 (**KPA 45218, 45220, 45221 and 452220**), the facts, the legal grounds and the evidentiary issues are the same. Only the parcels, object 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. Insofar as all the relevant elements of the cases are the same but the parcels, it is obviously more efficient to join the appeals and to examine them in one single judgment.

- 4.3. The aforementioned cases shall become one single case registered under the number GSK-KPA-A-87/13.
- 4.4. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 (the armed conflict).
- 4.5. In its decision KPCC/D/R/171/2012 the KPCC has considered under paragraph 10: *“(...)the claimant must show (...) that he or she is not able to exercise his or her property right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.”* In uncontested cases as a rule it is taken for granted that this would be the case. However in his reaction on the claim of the Appellee, Appellant clearly stated that: *“and in return he (I.D) left for use and at the disposal to family S. his entire property who used it and cultivated it without any disturbance since 1964 to the present day”* This being a direct contestation to the appellee’s statement that the appellee has lost the possibility to exercise his property right as a result of the armed conflict.
- 4.6. Neither in his claim at the KPA nor in his reaction to the appeal of the appellant, the appellee has stated that he has exercised his property rights in the period between December 1985 (the moment he inherited the property) and the above mentioned armed conflict. In fact the appellee has stated nor proven that he ever exercised property rights at all.
- 4.7. This leads the Supreme Court to the conclusion that the matter is not within the jurisdiction of the KPA and should have been filed at the regular Court. And further that the KPCC in her decision should have deemed the claim of the Appellee inadmissible.
- 4.8. Since the matter is not within of the jurisdiction of the KPA Appeals Panel, a decision on the merits has to be obtained at the competent court.

4.9. Conclusion

The Supreme Court has decided to annul the decision of the Kosovo Property Claims Commission KPCC/D/R/171/2012 regarding the case files registered at the KPA under No. KPA 45218, 45220, 45221 and 45222 and ex officio to dismiss the claims of the Appellee at the KPA as inadmissible. Since the claim of the Appellee at the KPA has been dismissed ex officio, the Appeals Panel has not taken the merits of the appeal in consideration.

5. 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar