

**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-164/13

**Prishtinë/Priština,
15 April 2014**

In the proceedings of:

**M R
B 5
R,
S**

Claimant/Appellant

vs.

Respondent/Appellee

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeals against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case files registered at the KPA under the numbers KPA 35340, KPA 35337, and KPA 35335), dated 5 September 2012, after deliberation held on 15 April 2014, issued the following:

JUDGMENT

1. The appeals of M R filed against the decision KPCC/D/A/164/2012 (case files registered at the KPA under KPA 35340, KPA 35337 and KPA 35335), dated 5 September 2012, are rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPCC/D/A/164 /2012, dated 5 September 2012 (case files registered at the KPA under KPA 35340, KPA 35337 and KPA 35335), dated 5 September 2012, is confirmed

Procedural and factual background:

3. On 23 April 2007, M R , in the capacity of alleged property right holder, filed three claims with the Kosovo Property Agency (KPA), seeking the re-possession right. He claims that he was the owner of the immovable properties.
4. To support his claim, he provided the KPA with the following documents:
 - Identification Card issued on 13 November 2001 by the competent authority of the Municipality of Klinë/Klina,
 - Possession List no. 59 dated 11 April 2007 issued by the Service for Cadastre of Immovable Property of the Municipality of Klinë/Klina no. 951-1/2007-559,
 - Extract from the death registry book issued by the competent authority of the Municipality of Arangelovac no. 07-203-4/15/07 dated 10 April 2007.
5. According to the Possession List no. 59 of the Service for Cadastre of Immovable Property of the Municipality of Klinë/Klina, dated 11 April 2007, the cadastral parcels claimed by the claimant, located in the cadastral zone of the Municipality of Klinë/Klina, are registered in the name of his deceased father R S , notably:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-164/13 (KPA35340)	Parcel no.1161, at the place called “Bashta”, a 3 rd class filed with a surface of 0.01.25 ha

GSK-KPA-A- 164/13 (KPA35340)	Parcel no. 1175, at the place called “Sello Bashta”, a 3 rd class filed with a surface of 0.03.99 ha
GSK-KPA-A-165/13 (KPA35337)	Parcel no. 588/1, at the place called ”Stupovi”, a 3 rd class filed with a surface of 0.11.25 ha
GSK-KPA-A-165/13 (KPA35340))	Parcel no. 588/2, at the placed called “Stupovi”, a 3 rd class filed, with a surface of 0.06,81 ha
GSK-KPA-A-166/13 (KPA 35335)	Parcel no. 442 at the place called “Veternik”, a 5 th class filed with a surface of 1.10.07 ha.

6. Later on during the proceedings, the Executive Secretariat of Kosovo Property Agency obtained ex officio the Certificate of Immovable Property Rights issued by Cadastral Office of the Municipality of Malishevë/Mališevo, UL-72310037-00059 dated 5 February 2007. This certificate establishes that the said properties are registered in the name of R M .
7. According to the verification and confirmation report, the Verification Team of Kosovo Property Agency carried out the notification of cadastral parcels which are subject of the claim as follows:
 For the claim KPA 35340 referring to cadastral parcel 1161, notification was carried out on 6 February 2009 and re-notification on 25 March 2010, and it was found that the parcel was not occupied,
 For to the claim KPA 35337 referring to cadastral parcel 581/1 and 588/2, notification was carried out on 14 May 2010 and re-notification on 26 May 2010, and the immovable property was not found occupied,
 For to the claim KPA 35335 referring to cadastral parcel 442, notification was carried out on 11 February 2008 and re-notification on 24 March 2010, and the parcel was not found occupied,
 According to the verification report dated 14 June 2012, the Verification Commission has positively verified all these documents, as mentioned in paragraph 4. According to the sale contract for the immovable property certified before the Municipal Court of Malishevë/Mališevo, Vr.nr. 1294/2007 dated 13 June 2007, the seller R M sold to Q M the cadastral parcel 442 at the place called “Veternik” with a surface of 1.10.07 ha, cadastral parcel 588/1 at the place called “Stupovi” with a surface of 0.11.25 ha ari, cadastral parcel 588/2 at the place called “Stupovi” with a surface of 0.06.81 ha and the cadastral parcel 1161 at the place called “Fshati kopsht” with a surface of 0.01.25 ha in the cadastral zone of Kijevë/Kijevo. This contract was positively verified. Furthermore, according to the verification report of Kosovo Property Agency, dated 28 April 2009 and according to the sale

contract Vr.nr. 1181/2007 dated 21 May 2007 certified before the Municipal Court of Malishevë/Mališevo, it is found that the cadastral parcel 1175 was sold to N T by the claimant. The Unit Base Data of Kosovo Cadastral Agency dated 27 April 2009, referring to cadastral parcel 1175, and shows that it was registered in the name of N T.

8. Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/164/12 dated 5 September 2012, rejected the claims of the claimant on grounds that he failed to submit legally valid evidence to prove such property right.
9. Based on the evidence disposed and legally relevant facts established, it results that the claimant sold the claimed property to a third party after the conflict in 1998-1999 based on a valid sale contract. Therefore, in view of this, the Commission concluded that the alleged immovable property right holder did not lose possession as a result of the conflict, but as a result of a voluntary sale after the conflict.
10. Therefore, as the claimant had the possibility to exercise the property right, the claims are not within the jurisdiction of the Commission and consequently they have been dismissed.
11. The KPCC decision was served on the claimant on 27 May 2013, and the same filed the appeals on 19 June 2013.

Allegations of the appellant:

12. Through the appeals filed against the KPCC decision, the appellant alleges that the decision is issued in essential violation of provisions of material and procedural law and erroneous and incomplete determination of factual situation. He therefore proposed to have the decision amended by recognizing his property rights over the claimed properties. The claimant in capacity of appellant alleges that he has never signed any contracts for the sale of cadastral parcels and that the sale contracts have been falsified. He further alleges that he did not sign any Power of Attorney for the contested parcels and that he did not receive the sale price for the sale of these immovable properties.

Legal reasoning:

Joining of appeals:

13. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereinafter: Regulation 2006/50) 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.

14. The provisions of Law on Contested Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, 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.
15. 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 3 (three) 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.
16. The appeals registered under the numbers GSK-KPA-A-164/13, 165/13 and 166/13 are joined in a single case under the number GSK-KPA-A-164/13.

Admissibility of the appeals:

17. The Supreme Court of Kosovo reviewed the appealed Judgment pursuant to provisions of Article 194 of LCP, and after the assessment of allegations in the appeals it found that:
18. The appeals are admissible because they have been filed within the period prescribed under Section 12.1 of Regulation 2006/50, which stipulates that a party may file an appeal against a decision of the Commission within thirty (30) days of the notification of the parties of the decision. This is because the decision was served on the appellant on 37 May 2013 and he filed an appeal on 19 June 2013.

Merits:

19. The Supreme Court finds that the appealed decision is founded on complete and correct determination of factual situation, and provisions of Section 3.1 of UNMIK Regulation no. 2006/50 were appropriately applied when through the appealed decision it was decided to dismiss the claims of the claimant due to lack of jurisdiction..
20. This because of the reason that pursuant to Section 3.1 of the of Regulation 2006/50, a claimant has a right to a Commission's order for re-possession of the property if the claimant proves not only the property right but also that he or she is not able to exercise such property rights because of the

circumstances that directly relate to or result from the armed conflict which occurred in Kosovo between 27 February 1998 and 20 June 1999.

21. According to this legal provision, the KPCC and the Supreme Court jurisdiction is limited only to the property claims which relate to the conflict or which are a direct consequence or result from this conflict. According to the sale contract certified before the Municipal Court of Malishevë/Mališevo Vr.nr.1294 dated 13 June 2007, the seller R M sold the parcels 442, 588/1,558/2 and 1161, which are subject of the claim, to the buyer Q M . On the other hand, according to the contract certified before the Municipal Court of Malishevë/Mališevo Vr.nr.1181/2007 dated 21 May 2007, the seller sold the parcel 1175 to N T . According to the Unit Base Data of Kosovo Cadastral Agency dated 27 April 2009, these parcels were registered and transferred to the new buyer accordingly.
22. Furthermore, pursuant to provision of Article 7 para 2 of Law 2002/5 on Establishment of Immovable Property Rights Register, the Unit Base Data of Kosovo Cadastral Agency dated 27 April 2009 for the parcels which are subject of the appellant's claim and which have been registered and transferred to the new buyer are assumed to be accurate, true and legal as long as they are not corrected pursuant to procedures established by law. Therefore, if the appellant eventually alleges that the property register for this immovable property in the name of new buyers in Cadastral Office of Kijevë/Kijevo, Municipality Malishevë/Mališevo, is not legal and violates his rights, then he has the authority and responsibility to initiate a relevant judicial proceedings to establish such allegations pursuant to Article 5.4 of the same Law.
23. Therefore, it certainly results that the claimant has not only failed to prove his property right over these properties but as well as the circumstance that the eventual loss of these properties and exercise of such rights is related to the armed conflict that occurred in Kosovo in 1998/1999.
24. This is even more so because the KPCC and hence the Supreme Court is limited to deal exclusively with the confirmation of the private immovable property right and possession because of the circumstances which are directly related to or result from the armed conflict in Kosovo during 1998 and 1999.
25. In the light of foregoing, pursuant to Section 13 para 3 subpara (c) of Regulation 2006/50, it is decided as in the enacting clause of this judgment.
26. This judgment has no prejudice to the claimant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Regulation 2006/50

Legal advice:

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

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar