

**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-078/13

**Prishtinë/Priština,
12 February 2014**

In the proceedings of

M. G.

Kraljevo, Serbia

Claimant/Appellee

vs.

R. S.

Kosova/Kosovo

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 (case file registered at the KPA under the number KPA 47967) dated 23 February 2011, after deliberation held on 12 February 2014, issues the following:

JUDGMENT

1. **The appeal of R.S. is accepted as founded.**
2. **The decision of the KPCC/D/A/100/2011, dated 23 February 2011, regarding the case file registered at the KPA under the number KPA 47967, is annulled and sent back to the KPCC for reconsideration.**

Procedural and Factual Background

1. On 18 October 2007, M.G. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of an agricultural property registered as parcel no. 1492 with a surface of 0.31.60 ha, in the place called “Crkolez”, Cadastral Zone Cërkolez/Crkolez, Municipality of Istog/Istok and asking compensation for the period she was deprived of possessing it. With the claim, she submitted the copy possession list no 29, issued on 13 August 1986 Directorate for Geodesy of the Municipality of Istog/Istok, indicating the registered owner as J. G. She also submitted the death certificate of the said person as well as the copy of the marriage certificate. All those documents are positively verified by the KPA.
2. In the claim it was stated that property was occupied by an unknown person. The name of the occupant is not mentioned. No notification of the claim was done directly on the alleged usurper.
3. On 28 January 2009, the KPA made a notification of the claim with a sign put on a property which was not the correct claimed property. It was noted as not being occupied at the time of visit.
4. It was established that the notification of the claim was not done correctly. With the Resolution of KPCC dated 24 May 2010, No KPCC/RES/20/2010, the previous decision of the KPCC was rescinded and the claim was referred back to the Executive Secretariat for further processing the correct identification and proper notification of the claimed property and a hearing of any respondent(s) to the claim.
5. A notification through publication in the KPA Gazette and UNMIK property Office Bulletin was made on 24 September 2010. No actual identification of the property or notice to the user, if any, was made. No notice of participation was filed.

6. On 23 February 2011, the KPCC granted the claim of ownership and possession, and ordered any person occupying the property to vacate within 30 days.
7. The KPCC decision was delivered to R.S. -as the current occupant- on 25 March 2013. He filed an appeal against the decision on 28 March 2013.
8. The appeal was served on the claimant on 25 July 2013. She filed a response on 26 August 2013.

Arguments of the parties

9. The claimant relies on the possession list no 29 registered under the name of J. G. and demands to have property right restored. The appellant does not contest this registration; however, claims that his father bought it from S. (R.) B.in 1992 who had previously bought it from J. G.in 1988. He claims to have been using this land without any interference since then. He also claimed to have witnesses to this sale and submitted copy of a document for payment of the money for the purchase wherein it is stated M. G. (the claimant), the wife of J. G. was present during the handing over of the money. He submitted an invoice no 10468, dated 27 March 2013, referring to his name. He claimed that the land could not be registered under the names of the buyers due to the discriminatory laws of then forbidding sales between Serbs and Albanians.

Legal reasoning

Admissibility of the appeal

10. The appellant was not a party in the proceedings before the KPCC. According to Art. 12.1 a decision by the KPCC can be appealed by a “party” before the KPCC. However, the Supreme Court has stated in numerous cases, *inter alia* in case nr. GKS-KPA-A-109-2012 that this circumstance cannot go to the detriment of an appellant with a legal interest who has not been correctly notified of the claim.
11. In the present case the possessor/usurper of the property was not mentioned in the claim or notified of the claim. A sign was put up on the property which turned out to be a wrong one. An announcement was made in the Notification Gazette of the KPA and the UNHCR Bulletin. The KPA has not made “reasonable efforts” to notify of the claim as required by section 10.1. Accordingly the appellant, who has a legal interest in the case, was not aware of the claim, and did not have a possibility to respond to the claim.

12. R. S. appealed the KPCC decision within 30 days after he was made aware of the case and the decision of the KPCC. The Supreme Court finds the appeal admissible.

Merits of the appeal

13. At the time the KPCC made its decision, the claim was uncontested. Accordingly, the KPCC had no opportunity to assess the arguments of the appellant with regard to buying it from a third party in 1992 who had bought it allegedly from the registered owner in 1988. The documents he submitted were not examined or verified by the KPA. KPCC was not able to hear the arguments of the both parties or examine the evidence proposed by the appellant who could only submitted them in the appeal proceedings.
14. The Supreme Court has in several cases, where the claim was treated as uncontested and the appellant was unaware of the claim, found it necessary to annul the decision of the KPCC and return the case for reconsideration. The Court refers to case nr. GSK-KPA-A-14-2012. This procedure allows the appellant to take part in the proceedings before the first instance, and allows the losing party to appeal a decision that has been made after a full review of all relevant aspects of the case.
15. In the present case the Supreme Court finds this procedure necessary in order to obtain a fair trial. The decision of the KPCC is annulled and sent back for reconsideration. KPA is to verify the documents submitted by the appellant. This research may effect also the determination on whether the loss of property is related to circumstances of the armed conflict or a previous sale; accordingly even the jurisdiction of KPCC might be in question. When reconsidering the case, the KPCC must decide whether:

-The KPCC has jurisdiction over the case in accordance with Section 3.1 of UNMIK Regulation 2006/50, as amended by Law No 03/L-079 and;

-If yes, assess the merits of the case, taking into account the arguments of the appellant.

Legal Advice

16. Pursuant to Section 13.6 of UNMIK 2006/50, as amended by law No 03/L-079, this judgment is final and cannot be challenged through ordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar