

**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-209/13

Prishtinë/Priština, 8 July 2015

In the proceedings of:

Municipality of Pudojevë/Pudojevo

Pudojevë/Pudojevo

Appellant

Representative: Xh. R., lawyer

Pudojevë/Pudojevo

vs.

R. R.I.

Serbia

Appellee/Claimant

and vs.

Socially Owned Enterprise Agricultural Cooperative P.

Pudojevë/Pudojevo

Appellee/Respondent 1

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/187/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA38112), henceforth also: the KPCC Decision, after deliberation held on 8 July 2015, issues the following

JUDGMENT:

1. The appeal of Municipality of Pudojevë/Pudojevo against the Decision of the KPCC no. KPCC/D/A/187/2013, dated 13 February 2013, as far as it concerns claim no. KPA38112 (parcel nr. 238/1 cadastral zone Livadicë/Livadica) is rejected as unfounded.
2. The decision of the KPCC no. KPCC/D/A/187/2013 is confirmed as far as it concerns claim no. KPA38112.

Procedural and Factual background

1. On 29 October 2007 Appellee/Claimant (further: Appellee) R. R. I. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over and repossession of a parcel of land at Livadicko Polje, Municipality of Pudojevë/Pudojevo, cadastral zone Livadicë/Livadica, number 238/1, class 4 field, commercial without buildings (land or forest), surface 88.90 are, (henceforth: the claimed property). He states that his mother A. I. (henceforth: mother of Appellee), at that time was property right holder and she lost possession of the claimed property due to the war circumstances in 1998/1999 on 18 June 1999. He further states that the parcel was usurped by a unknown person who got the land in use from Pudojevë/Pudojevo Municipality.
2. Appellee submitted *inter alia* to KPA:
 - a) Possession list and copy of the plan, dated 24 July 2007, no. 160 (Municipality Pudojevë/Pudojevo; cadastral municipality Livadicë/Livadica). According to this list parcel no. 238/1 (88.90 are), the claimed property, is 1/1 ideal part in the name of A. I.;
 - b) A judgment of the Municipal Court in Kursumlija, nr. P.br. 44/95, dated 25 March 1996. In the judgement is decided that a contract, dated 17 July 1967, between Agricultural cooperative Sloga, now P., and the late J. N. on purchase of immovable property is annulled and that P. is obliged to handover cadastral

parcel 238/1 in Livadica (the claimed property) to the possession of A. I. and five other legal successors of J. N.;

- c) A decision of the Republic Geodesy Office, Immovable property cadastre service, of the Republic of Serbia, dated 4 March 1997, nr. 952-02-2/97-124-134 on division of property. According to the decision – inter alia – parcel 238/1 (the claimed property) is registered in the name of A. I. and four others;
- d) A death certificate of the municipality of Kursumlija, Serbia, no. 412/2002, dated 24 April 2002. According to this certificate A.I. died on 7 April 2002;
- e) A decision on inheritance of Municipal Court of Kursumlija, Serbia, no. O.br. 79/2002, dated 28 June 2002. According to this decision Appellee, son of A. I., inherited inter alia the immovable property in possession list no. 160 (Municipality Pudojevë/Pudojevo; cadastral municipality Livadicë/Livadica) parcel no. 238/1.

3. KPA positively verified all these documents.

4. According to the notification report date 7 May 2008, KPA team located the claimed property, which was found an uncultivated land and not occupied. . On that date KPA put a notification of the claim on the claimed property. KPA states that on 5 June 2008 the claim was published. On 17 May 2010 KPA confirmed that the notification of the claimed property was accurate.

5. Socially Owned Enterprise Agricultural Cooperative Perparimi (henceforth: Respondent 1) participated in the proceedings before KPCC. At first also Football Club B., then represented by lawyer Xh. R., sent a declaration as responding party, but withdrew this declaration before KPCC decided on the claim.

6. Respondent 1 submitted to KPA a document: Partial Possession List nr. 47, dated 13 May 2008; according to this document Pronë Shoqërore Kooperativa Bujqësore-Podujevë is social property right holder of parcel 238, Cadastral Zone Livadicë, Municipality of Pudojevë/Pudojevo.

7. Football Club B. submitted to KPA a contract on lending. This contract is concluded between the club and Municipality of Pudojevë/Pudojevo. The club submitted some other documents that all relate to parcel nr. 235 and not to nr. 238/1.

8. The KPCC decided in the KPCC Decision that Appellee had established to be the 1/1 owner of the claimed property, that he is entitled to possession of that property and that Respondent 1 had to vacate the property. In paragraphs 38-42 of the Cover Decision KPCC reasons as follows: The claim is based on the evidence provided by Appellee and in absence of valid defence from the side of Respondent 1 stands to be granted.
9. The decision was served upon Appellee on 19 June 2013 and on Respondent 1 on 13 June 2013.
10. Municipality of Pudojevë/Pudojevo, the Appellant, filed an appeal, dated 12 July 2013, against the KPCC decision. In that same letter of appeal Appellant also appealed against KPCC Decision no. KPCC/D/A/187/2013 as far as it concerned the claim from Appellee no. KPA38107 on parcel nr. 235. KPA stamped 19 July 2013 as date of receipt of the appeal on the letter of appeal. With the appeal Appellant submitted:
- a Possession List in which parcel 235 is mentioned but not the claimed property,
 - a decision on the allocation of parcel 235 to Football Club B.,
 - a record of 2002 on measurement on inter alia the claimed property,
 - a status on parcel 235,
 - a document 'Unit Base Data' that relates on the claimed property only the Culture,
 - a document not related to any parcel stating Pronë Shoqërore Kooperativa Bujqësore-Podjevë as an owner/possessor,
 - possession list nr. 154 on parcel 235,
 - a document 'Unit Base Data' that relates to parcel 235,
 - a document which refers to Municipal property, but not to any parcel number
- and
- a document 'old status' on parcel 235.
11. The appeal is served on Appellee by mail, sent on 9 October 21013.
12. No other party participated in the appeal procedure before the Supreme Court.
13. The Supreme Court sent a Court Order to Appellant. The Supreme Court orders Appellant as follows:
1. *In the letter of appeal is referred not only to claim 38107 (on parcel 235) but also to claim 38112 (on parcel 238/1). KPA suggests the appeal relates to both claims. In proceedings before KPCC on claim 38112 only Agricultural Cooperative Përparimi is identified as Respondent. Appellant must*

- state if Municipality of Pudojevë/Pudojevo also intends to appeal against the KPCC decision on claim 38112 (parcel 238/1).*
2. *If the answer to question 1 is yes, appellant has to substantiate, provided with evidence, why Municipality of Pudojevë/Pudojevo has a legal interest in this case and has a right to appeal.*
 3. *If the answer to question 1 is yes, appellant has to substantiate, provided with evidence, that the appeal is not belated. The Supreme Court notes that according to the delivery paper from KPA (...) the KPCC decision to claim 38112 was delivered to Agricultural Cooperative Përparimi on 13 June 2013 and the appeal was according to the stamp of KPA on the letter of appeal received by KPA on 19 July 2013.*
 4. *If the answer to question 1 is yes, appellant has to clarify how the grounds of the appeal, that seem to be related only to the decision on the claim 38107 can affect the decision of KPCC on claim 38112.*
14. Appellant answered to the Order with a letter, dated 27 November 2014. With this letter he submitted copies of documents that he submitted also with the appeal. The answers that he gave to the questions in the court order are as far as relevant summarized as follows:
15. In the appeal against claim 38107 regarding parcel 235 Appellant also included his appeal against the decision on the claim 38112 on parcel 238/1.
 16. Appellant has an interest to challenge the KPCC decisions on both claims for the reason that the parcels present a special interest for Appellant which is mentioned in the letter of appeal.
 3. (...)
 17. The base to the appeal is related to both claims nr. 38107 and 38112 because it has to do with the same real estate recorded in the possession list no. 47, cadastral zone of Livadice with the cadastral parcel 235 and 238/1.

Legal reasoning:

Admissibility of the appeal

18. The appeal is inadmissible if the appellant had not taken part in the proceedings before KPCC, unless appellant is an interested party who did not receive a notification of the claim and otherwise was not aware and reasonably could not be aware of the claim before he filed the appeal (Section 12.1 in conjunction with Sections 10.1 – 10.3 of

UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law UNMIK 2006/50). According to Section 12.1 of Law UNMIK 2006/50 a party may submit an appeal within 30 days of the notification to that party of the KPCC decision.

19. Appellant was not a party in proceedings before KPCC.
20. Appellant states to have an interest in this case because the parcel in this case and the parcel in proceedings on claim 38107 (on parcel 235) have a special interest to him. In regard to the question whether Appellant is an interested party the Supreme Court concludes that this allegation is sufficient because this allegation can be interpreted as stating that Appellant has a right to the claimed property.
21. The claim was notified by putting a sign on the field. Besides that, KPA states that the claim was published, but the file does not contain any further information on the publication. Under these circumstances the Supreme Court concludes that Appellant cannot have been aware of the claim earlier than at the moment of filing the appeal. Other than decided in the judgment of 24 August 2011, case nr. GSK-KPA-A-7/10, the Supreme Courts considers putting a sign on the claimed property is not enough to count as an effort that qualifies as reasonable effort of notification of the claim with effect on the admissibility of a later filed claim, unless there are indications that the (third) party otherwise became aware of the claim. Such indications did the Supreme Court not find in this file. That publication of the claim in any media is done properly in the sense that Appellant was aware of the claim through publication can also not be concluded from the file.
22. There is also no indication that Appellant waited more than 30 days with filing the appeal after becoming aware of the claim and the KPCC Decision.
23. Therefore the appeal is admissible. The Supreme Court leaves aside whether the letter of appeal in this case contains grounds for challenging the KPCC decision as required in article 178 of the Law on Contested Procedure that is applicable in this procedure according to Section 13.4 of Law UNMIK 2006/50. The rather brief reference to the grounds of appeal against the decision on claim 38107 (on parcel 235) in case 2008/2013 suffices in that regard in this case.

Merits of the appeal

24. KPCC decided, based on the evidence provided by Appellee and Respondent 1, that Appellee is the owner of the claimed property and that the possession was lost due to armed conflict.
25. Neither in the letter of appeal nor in the answer to the court order Appellant brings any ground of appeal that relates to the claimed property and that could be a reason to conclude differently on the claim than KPCC did.
26. The documents that Appellant submitted with the letter of appeal and the response to the court order either do not relate to the claimed property but to the disputed parcel in appeal case 208/2015 on claim 38107 (on parcel 235) or do not contain any relevant fact that can lead to another evaluation of the evidence submitted by Appellee and Respondent 1 before KPA/KPCC. Furthermore, Appellant is not mentioned in any of these documents as having a right to the claimed property. Only Football Club B., who withdraw his claim, and the socially owned enterprise are mentioned in some of the documents. KPCC already convincingly reasoned why the reference to the socially owned enterprise and the football club in these documents can dispatch from the evidence presented by Appellee.
27. Therefore the appeal stands to be rejected and the KPCC Decision to be confirmed.

Conclusion

28. Consequently, from the abovementioned reasons and pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

29. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar