

**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-227-236/14

Prishtinë/Priština, 19 February 2016

In the proceedings of:

Ag. K.

Representative: B. SH. L.,

Appellant /Respondent

Vs.

The heir(s) of **M. P.**

Representative: B. P., son of the deceased

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Beshir Islami, members, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014 (case files registered at the KPA under the numbers KPA32127, KPA32129, KPA93319, KPA93320, KPA93321, KPA93322, KPA93323, KPA93326, KPA93328 and KPA93329), dated 13 March 2014, after deliberation held on 19 February 2016, issues the following:

JUDGMENT

1. The appeals of A. K., registered under the numbers GSK-KPA-A-227/2014, GSK-KPA-A-228/14, GSK-KPA-A-229/2014, GSK-KPA-A-230/2014, GSK-KPA-A-231/2014, GSK-KPA-A-232/2014, GSK-KPA-A-233/2014, GSK-KPA-A-234/2014, GSK-KPA-A-235/2014, and GSK-KPA-A-236/2014, which concern the case files registered at the KPA under the numbers KPA32127, KPA32129, KPA93319, KPA93320, KPA93321, KPA93322, KPA93323, KPA93326, KPA93328 and KPA93329, are joined into one case under the case number GSK-KPA-A-227/2014.
2. The appeals of A. K. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014, as far as they concern the case files registered at the KPA under the numbers KPA32127, KPA32129, KPA93319, KPA93320, KPA93321, KPA93322, KPA93323, KPA93326, KPA93328 and KPA93329, dated 13 March 2014, are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/227/2014, as far as it concerns the claims registered at the KPA under the numbers KPA32127, KPA32129, KPA93319, KPA93320, KPA93321, KPA93322, KPA93323, KPA93326, KPA93328 and KPA93329, dated 13 March 2014, is confirmed.

Procedural and factual background

1. On 23 March 2007, M. P. (henceforth: the Appellee) filed a claim at the Kosovo Property Agency (KPA), seeking ownership right over cadastral parcels 90/1 and 91/1, Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Đakovica and return of possession.
2. With these claims he alleged that the claimed properties were lost due to circumstances related to the armed conflict in Kosovo during 1998/99.
3. In support of his claims he submitted at the Kosovo Property Agency the following documents:
 - The Possession list no.1013 issued by the Department of Cadaster and Geodesy of the Municipality of Gjakovë/Đakovica proving that the Appellee is owner of parcel 90/1, culture pasture, with surface of 1.27.15 ha and parcel 91/1, culture field of grade 2, with a surface of 5.99.99 ha.

- A Statement dated 23 March 2007, where the Appellee informs that he has had an agreement for the division and sale of parcels with the private agency on the trade of immovable property “K” whose owner is A.K.(the Appellant);
- ID card issued on 31 March 1982 by the Internal Affairs Department in Arandelovac, Republic of Serbia.

The KPA found the possession list with parcels 90/1 and 91/1 amended into the new CDP (cadastral division of parcels) no. 00981 – as far as relevant for the claimed properties in this case - with parcels nos. 90/1, 91/34, 91/35, 91/36, 91/37, 91/38, 91/39, 91/55, 91/56, 91/57, 91/60 and 91/61. These, cadastral parcels, claimed by the Appellee, are located in the cadastral zone Piskotë, at the place called Jahoc/Jahoc. They are still registered in the name of M. P. as follows:

Appeal and KPA Case number	Data concerning the claimed parcel
GSK-KPA-A-227/14 (KPA32127)	Parcel no. 90/1 at the place called “Jahoc”, with a surface of 0.08.14 ha
GSK-KPA-228/14 (KPA32129)	Parcel no. 91/34 at the place called “Jahoc”, with a surface of 0.13.03 ha
GSK-KPA-A-229/14 (KPA93319)	Parcel no. 91/35 at the place called “Jahoc”, with a surface of 0.13.48 ha
GSK-KPA-A-230/14 (KPA393320)	Parcel no. 91/36 at the place called “Jahoc”, with a surface of 00.13.30 ha
GSK-KPA-A-231/14 (KPA93321)	Parcel no. 91/37 at the place called “Jahoc”, with a surface of 00.13.57 ha
GSK-KPA-A-232/14 (KPA93322)	Parcel no. 91/38 at the place called “Jahoc”, with a surface of 0.14.12 ha
GSK-KPA-A-233/14 (KPA93323)	Parcel no. 91/39 at the place called “Jahoc”, with a surface of 0.14.76 ha
GSK-KPA-A-234/14 (KPA93326)	Parcels no. 91/55, 91/56 and 91/57 at the place called “Jahoc” with a surface of 0.60.00 ha

GSK-KPA-A-235/14 (KPA93328)	Parcel no. 91/60 at the place called "Jahoc" with a surface of 00.02.00 ha
GSK-KPA-A-236/14 (KPA93329)	Parcel no. 91/61 at the place called "Jahoc" with a surface of 00.27.87 ha

4. On 22 July 2008, 12 November 2013 and 6 February 2014, the KPA notified the claims by placing a notification sign on the claimed properties. According to the notification report, dated 12 November 2013, the Agency has established that the property has been identified precisely through Orthopoto and GPS coordinates.
5. A. K., the Appellant, participated in the proceedings by presenting. He alleged that the Appellee had sold the claimed properties through him as a representative.
6. In support of his allegations the Appellant submitted the following documents:
 - A Power of Attorney dated 9 October 2004, with Ref.no. II 463/2004, certified before the Municipal Court of Kragujevac, Serbia, through which the Appellee authorized the Real Estate Agency "Kontakt" from Pejë/Peć respectively its owner, A. K., to undertake all actions for measuring and physical division of claimed parcels 90/1 and 91/1 with a total surface of 07.27.14 ha registered in the Possession List no. 1013 at the Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Đakovica.
 - The Decision Ref. no. 952-02-347/04 issued by the Directorate of Cadastre of the Municipality of Gjakovë/Đakovica, dated 25 April 2005, for approving the request of the Appellee for physical division of parcels 90/1 and 91/1 and creation of new parc Among these parcels are the parcels in the scheme here for in paragraph 3.
 - A Statement Ref. 1394/2005, dated 25 May 2005, on the voluntary sale of an immovable property and accepting the agreed sales price. The Appellee stated that he voluntarily sold the cadastral parcel 91/46 through A. K. Additionally, he alleged that he accepted the sales price set by him also for rejecting other claims or annulment of the sales contract and other statements which prove the sale of parcels which are not subject of review by the KPCC Decision and consequently the appeal.
 - Power of Attorney Ref. no. 1928/2005, dated 27 May 2005, certified before the Municipal Court of Mitrovicë/Mitrovica through which the Appellee authorized the Real Estate Agency "K" from Pejë/Peć, respectively its owner A.K., to sell the parcel no. 91/45 and finalize the transaction.
 - Power of Attorney Ref. no. 2711/2005, dated 25 July 2005, certified before the Municipal Court of Mitrovicë/Mitrovica, through which the Appellee authorized the Real Estate Agency "K" from Pejë/Peć, respectively its owner A.K., to sell the parcel no. 91/51 and finalize the transactions.

- The Civil lawsuit of the Appellee against the Appellant for payment of debt at the amount of 155.00.00 Euro submitted with the Court of Gjakovë/Đakovica on 18 December 2006.
 - Decision no. 952-02-347/04 of the Department of Cadaster of the Municipality of Gjakovë/Đakovica, dated 25 April 2005, through which physical division of the claimed parcels is approved.
 - Various other documents (contracts, powers of attorney and statements of Appellee), like the ones here summarized, on the sale of parcels which are not subject of the claims meant in the scheme here fore and that were not subject of the Decision of the KPCC as far as it subject of the appeal in this case.
7. According to the KPA verification report, the possession list with the amendments (after division) and the documents submitted by the Appellee were positively verified.
 8. The KPCC in its Decision no. KPCC/D/A/227/2014, dated 30 March 2014, confirmed that the Appellee had proven that he has the ownership right over the properties claimed with claims KPA32127, KPA32129, KPA93319, KPA93320, KPA93321, KPA93322, KPA93323, KPA93326, KPA93328 and KPA93329 and ordered that the claimed properties are returned under the possession of M. P. KPCC ordered further that the Appellant or any other person who has usurped the property must vacate the property within 30 days from the receipt of the Decision and that, if he should fail to do so, he will be evicted by force. With the same decision the KPCC reasoned that the Appellant did not provide any legal evidence to prove his allegations on the claimed properties.
 9. The Appellee passed away on 13 May 2014. B. P. is as his son (one of) his heir(s).

Legal reasoning:

Joining of appeals

10. According to Section 13.4 of the 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, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the KPCC pursuant to Section 11.3 (a) of that law. 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.
11. The provisions of the Law on Contested Procedure are applicable in the proceedings before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. Article 408.1 as read in connection with Article 193 of the Law on Contested Procedure (Law No. 03/L006, henceforth: LCP), provides for the possibility of joining of cases through a ruling if that would ensure court effectiveness and efficiency of the case.

12. In the text of the appeals filed by the Appellant the Supreme Court observes 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 cases. Only the cadastral 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 KPCC's legal reasoning for the claims is the same
13. The appeals registered under the numbers GSK-KPA-A-227/2014, GSK-KPA-A-229/2014, GSK-KPA-A-230/2014, GSK-KPA-A-231/2014, GSK-KPA-A-232/2014, GSK-KPA-A-233/2014, GSK-KPA-A-234/2014, GSK-KPA-A-235/2014, and GSK-KPA-A-236/2014 are therefore joined into a single case under the number GSK-KPA-A-227/2014.

Admissibility of the appeals

14. The Appellant received the KPCC Decision on 12 June 2014 and filed an appeal at the Supreme Court of Kosovo through the Kosovo Property Agency on 11 July 2014.
15. As the Appellant received the challenged decision on 12 June 2014, and he filed an appeal on 11 July 2014 he filed the appeal timely within the 30 days time limit of Section 12.1 of UNMIK Regulation 2006/50 and therefore the appeal is admissible.

Merits of the appeal:

Allegations of the Appellant

16. The Appellant alleges that the KPCC Decision contains fundamental errors, violations of procedural provisions, misapplications of the substantive law, and an incomplete determination of the factual situation. He seeks primarily from the Supreme Court to amend the KPCC decision, and reject the claims of the Appellee as ungrounded. He seeks secondly from the Supreme Court to declare itself incompetent on the grounds of litispentence because there is already a civil case C.No. 196/12 pending at the Basic Court in Pejë/Peć: the claimed properties are subject of that procedure and the parties are the same.
17. The Appellant submits the same documents as he submitted to the KPA in first instance. Furthermore he submits a contract on purchase of parcel 91/60. According to this contract he represents the Appellee as seller.
18. The Appellant seeks from the Supreme Court to impose a provisional measure which needs to be ordered against the Appellee in order that he could not alienate the property and make adjustments in cadastral books until there is a resolution on the dispute
19. In paragraphs 58 to 62 of the cover decision it is stated that the Appellee seeks confirmation of ownership right and repossession of the property. The Executive Secretariat found that the claimed property was subject to re-parcelisation in 2005 and cadastral records prove that parcels 90/1, 91/34, 91/35, 91/36, 91/37, 91/38, 91/39, 91/55, 91/56, 91/57, 91/60 and 91/61 are evidenced as property of the Appellee. The Respondent alleges to have obtained an authorization from the Appellee for performing parcelization of the property and later for

selling it. The Respondent, now the Appellant failed to prove that the abovementioned parcels have been legally sold.

20. The Appellant challenges the reasoning given by the Commission in paragraphs 58-62 of the cover decision because his name as a Respondent is not mentioned. Furthermore, the Appellant alleges that with the division of the immovable property into smaller parcels, some of them were turned into roads based on the agreement between the parties during the sale of other properties which are not subject of this KPCC decision. He alleges that accepting the claims will create difficulties to the buyers of the other parcels and the order as such will be difficult to execute.
21. Furthermore, the Appellant alleges that he received an authorization from M. P., the Appellee, to divide the parcels 90/1 and 91/1 into smaller cadastral units and that to perform all administrative measures on behalf of the Appellee. Based on this authorization the Appellant has received the consent of the authorities in Gjakovë/Djakovica and they divided parcels 90/1 and 91/1 into 49 small parcels destined to be construction parcels.
22. The newly created parcels 91/55, 91/56, 91/57 and 91/60, as per the allegation of the Appellant, although they are registered as properties of M. P., the Appellee, they are in fact property of the Appellant. He received these parcels as compensation for all the work and the costs incurred on behalf of M. P., the Appellee.
23. Attached with the appeal are documents about the parcels that were sold with the consent of the Appellee. For all these cases contracts were concluded and the cadastral data are amended.
24. Finally the Appellant alleges that the KPCC with its decision has violated the provisions of the European Convention on Human Rights and provisions of the Law on Property and Other Real Rights and as such the Decision must be amended and the claims of the Appellee must be rejected. The Appellee has to wait for the matter to be resolved by a final court decision in relation to the civil lawsuit.

Allegations of the Appellee

25. The Appellee confirms that he has given the authorization for the division of the claimed property into smaller parcels but he categorically denies to have sold the claimed properties or parcels that are subject of the KPCC Decision.

Reasoning of the Supreme Court:

26. As far as the Appellant alleges that the Supreme Court must quash the KPCC decision on the ground of lack of jurisdiction because another lawsuit on the same topic is pending, this allegation is not based on the law because pursuant to Article 3.1 of the Law no. 03/L-079, the KPCC has the competence to solve the following claims, which relate to property rights that cannot be exercised because of circumstances directly related to or resulting from the

armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999: a) property claims in relation to private immovable property, including agricultural and commercial property, and b) claims that relate to use rights over private immovable property where the Appellee for both categories is not able to exercise such property rights. This KPCC jurisdiction is according to Article 18 of the UNMIK Regulation 2006/50 exclusive to other lawsuits filed after 6 October 2006 on the issue of returning of private immovable property that was lost as a result of the conflict or circumstances related to the conflict.

27. From the case file it results that the Appellee had the property right over the claimed properties and he lost the same as a result of the conflict and conflict related circumstances. On the other hand the issuance of the authorization by the Appellee to the Appellant for the division of the parcels cannot be considered as a voluntary alienation after the conflict, because the authorization is limited to the division and does not include a power of attorney to sell all the parcels. The fact that the authorization did not include the sale of the claimed properties in this case is also evidenced in the fact that the name of the Appellee is still in the Cadaster connected to the claimed properties and the Appellant did not prove that the claimed properties were purchased.
28. Issuance and revoking of the Power of Attorney depends on the will of the POA Giver based on the legal provisions of the LCP. The Appellee issued POA's on each of the sales he realized, but that sales do not relate to the claimed properties that are the subject of this case. Therefore, the KPCC position that the Appellant did not submit valid evidences to dispute the fact that the claimed property is still in the name of the Appellee and that the same has not been alienated is correct.
29. The allegation of the Appellant that by the division of the parcels 90/1 and 91/1 some of the claimed parcels have changed their destination and now are roads does not change the ownership relation. Those parcels still are property of the Appellee. The allegation that the newly created parcels 91/55, 91/56, 91/57 and 91/60, although evidenced as property of M. P., the Appellee, become property of the Appellant as compensation for all the work and costs incurred on behalf of M. P., the Appellee, is ungrounded and unsupported by any evidence. There is no evidence that this transfer was part of the agreement between parties.
30. In appeal the Appellant submitted a document on sale of parcel 91/60 (case nr. 235/2014), dated 8 September 2005. In this contract he is representing the Appellee as selling party. He did not present a justification why he did not present this document to the KPA. Therefore, according to Section 12.11 of UNMIK Regulation 2006/50 this evidence cannot be accepted by the Supreme Court in this proceeding. Besides, the contract is not verified by KPA and with this contract on sale is not submitted a power of attorney that authorized the Appellant to represent the Appellee in this purchase. Therefore this evidence cannot prove the allegation that the Appellee sold this parcel.
31. The issue of debt repayment which is pending before the Basic Court of Pejë/Peć, civil lawsuit C.Nr196/12, does according to Section 3.1 of UNMIK Regulation 2006/50 not fall under the jurisdiction of the KPCC because according to the statement that claim is about

failure of settling the debt between the parties, and not a claim for repossession or establishing ownership.

32. The Appellant reiterates further the same allegations as he made before the KPCC. KPCC rightfully rejected these allegations. Additionally, the Appellant submitted no new evidence that was not previously taken into consideration by the KPCC. The KPA had verified the cadastral evidence and found that for all claimed properties in this case there was no evidence presented by the Appellant that proves that the claimed properties respectively the stated parcels are sold by the Appellee.
33. The Supreme Court found that the KPCC has issued a correct decision based on a comprehensive and correct procedure. The other presented grounds of appeal cannot lead to another decision. Therefore, there is neither a violation of substantive law nor an erroneous or incomplete determination of the facts. The Supreme Court found that the appeal is unfounded and the KPCC Decision is lawful.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar