

**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-239/13

Prishtinë/Priština,
14 January 2015

In the proceedings of:

S.B.
Mitrovicë/Mitrovica

Appellant

vs.

A. D.

Mitrovicë/Mitrovica
Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Sylejman Nuredini and Esma Erterzi, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/191/2013 dated 13 February 2013 (case files registered at the KPA under Nos. KPA00966 and KPA91499), henceforth also: the KPCC Decision, after deliberation held on 14 January 2015, issues the following

JUDGMENT:

1. Cases GSK-KPA-A-239/13 and GSK-KPA-A-240/13 are joined in a single case under the number GSK-KPA-A-239/13.
2. The appeal of S. B. against the Decision of the KPCC no. KPCC/D/A/191/2013 dated 13 February 2013 as far as it concerns claims nos. KPA00966 and KPA91499, is dismissed as inadmissible, because S.B. does not have the right to appeal.

Procedural and Factual background

1. On 22 June 2007 N.M. (henceforth: the claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her property right over and repossession of three parcels of land/house at Shipol/Šipolje, municipality Mitrovicë/Mitrovica. One of the parcels is parcel no. 129 in cadastral zone Shipol/Šipolje (henceforth: the claimed property). On 27 September 2010 the KPA Secretariat separated the claim concerning parcel no. 129 from the claims regarding the other parcels. The claim is registered at KPA under no. KPA00966.
2. On 3 December 2007 the claimant filed another claim at the Kosovo Property Agency (KPA), seeking confirmation of her property right over the same property and three other parcels. This claim as far as it concerned the claimed property was registered under no. KPA91499.
3. KPA joined the claims nos. KPA00966 and KPA91499 because they are legal duplicate claims. Henceforth the claims together are mentioned as claim (singular).
4. A. D., henceforth: the Appellee, participated in the proceedings before KPCC and contested the claim.
5. With KPCC Decision KPCC/D/A/191/2013 dated 13 February 2013 the claim was refused.
6. The claimant deceased after filing the claim. The decision was served upon M. M. on 27 June 2013 and upon the Appellee the day before that.
7. S.B, henceforth the Appellant, filed an appeal, dated 23 July 2013, against the KPCC decision. The appeal was received by KPA on 24 July 2013 and served on Appellee on 12 December 2013.
8. The Appellee did not participate in the appeal procedure before the Supreme Court.
9. The Supreme Court registered the appeal under two case numbers, one referring to claim no. KPA00966: appeal file no. GSK-KPA-A-239/13 and one referring to claim KPA91499: appeal file no. GSK-KPA-A-240/13.

10. According to art. 408.1 of the Law on Contested Procedure (hereinafter the LCP), applicable in the procedure in front of the Supreme Court (section 12.2 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 03/L-079), the Court may join the case if this contributes to the efficiency of the proceedings.
11. In the cases at hand the Court found that the factual and legal grounds, as well as the evidentiary issues are the same. Therefore the cases registered under numbers GSK-KPA-A-239/2013 and GSK-KPA-A-240/2013 are joined in a single case registered under number GSK-KPA-A-239/2013.
12. The Supreme Court issued an order for the KPA to establish and document:
 1. whether the Appellant was a household member of the Claimant at the time of her death, as defined in Section 1 of UNMIK Administrative Direction no. 2007/5 as amended by Law No. 03/L-079 into Annex I to Law 03/L-079) and
 2. Whether Appellant is an heir after Claimant.
13. The KPA replied that the Appellant is a household member of the Claimant. The KPA based this conclusion on the evidence brought by the Appellant, the statements of her sister and brother (B. V. and M. M.) and a birth certificate of the Appellant S. B. proving that she is a sister of the Claimant N. M. However no evidence is presented related to the question whether S. B. is a legal heir to her deceased sister. The Secretariat of KPA established, confirmed by Appellant, her sister and brother, there is still no legal succession to the Claimant following her death.

Legal reasoning:

Admissibility of the appeal

14. The appeal is filed by one of the sisters of the deceased Claimant. Therefore the Supreme Court has to decide if the Appellant is entitled to file an appeal.
15. Under the Law on Contested Procedure, which is applicable mutatis mutandis (meaning as appropriate) in the proceedings before the Supreme Court in this case (see section 13.5 Of Law No. 03/L-079), a successor takes over the proceedings originally initiated by his/her ancestor, who passed away after the initiation of the procedure. The Supreme Court relates to Article 280.1 LCP.

16. To decide on this point the Court has to decide whether the Appellant is a legal heir to the Claimant and thus having the right to take over the proceedings by filing an appeal against the decision of the KPCC.
17. The rules of succession (inheritance) are set out in the Law on Inheritance (Law No 2004/26). The inheritance of siblings is regulated under article 15 of the Law. It is established that siblings only inherit as a second rank inheritor in case the deceased has no descendants, and the deceased parents died before him. In the case at hand the appellant provided no evidence that she is the legal heir of her deceased sister and therefore she has no procedural right to file an appeal against the decision of the KPCC.
18. The Supreme Court leaves aside whether Appellant could file the appeal as a family household member, because the letter of appeal and the facts brought by KPA do not support the conclusion Appellant wants to and can act as representative in that capacity.
19. The conclusion is that Appellant is not entitled to file an appeal against the KPCC Decision and the Appeal must according to article 186.3 LCP be declared inadmissible.

Conclusion

20. Consequently, pursuant to sections 13.3 (b) and 13.5 of Law No. 03/L-079 and arts. 180 (1) and 296 LCP the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

21. Pursuant to Section 13.6 Law No. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, Presiding Judge

Sylejman Nuredini, EULEX Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar