

**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-021/12**

**Prishtinë/Priština, 17 January 2013**

**In the proceedings of:**

E.K

Str. I.A, No. 11

P/P

*Appellant*

vs.

T.D

1-33 M. A. L

N.Z.

*Claimant/Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011 (regarding case file registered at the KPA under the number KPA11401), after deliberation held on 17 January 2013, issues the following

## JUDGMENT

- 1- The appeal of E.K against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011 (regarding case file registered at the KPA under the number KPA11401), is dismissed as impermissible.
- 2- The appeal of E.K, filed on behalf of H.K.and N. K. against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011 (regarding case file registered at the KPA under the number KPA11401), is dismissed as impermissible.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

### **Procedural and factual background:**

On 4 July 2006, T.D (hereinafter “the claimant”), as property right holder filed a claim with the Kosovo Property Agency (KPA) for confirmation of her property right over parcel no. 4940/2 (she claimed repossession).

To support the claim she presented numerous documents.<sup>1</sup> Later during the proceedings, she submitted additional evidence.<sup>2</sup>

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<sup>1</sup> Claimant’s ID card dated 20 June 2006; ID card of D. T. (authorised person by the claimant), dated 9 July 1996; KPA Claim Registration Receipt dated 4 July 2006; Claimant’s Power of Attorney dated 3 January 2007, authorising Mr. D. T. to represent her in front of the International and National Institutions; Possession List no. 6633, issued on 16 June 2006 by the Cadastral Office of Pristina, Republic of Serbia (showing that the claimant and her brother – S. K.) are the owners of the claimed property), each one of them on ½ ideal part; Copy of Plan no. 953-2/2006-230, issued on 16 June 2006 by the Cadastral Office of Pristina, Kruševac, Republic of Serbia; Inheritance Decision no. 147/84, issued on 2 October 1984 by the Municipal Court of Pristina, by which the claimant and her brother were declared heirs for the parcels nos: 4940/2 (claimed property); 1814/2; 1818/2 and 1819, in general surface of 1 ha, 15 ar 61 m<sup>2</sup>; Decision on Assessment of Property Tax for natural persons no. 432-1/2265, issued on 25 March 1995 by the Republic’s Administration of Inland Revenue – Department for Assessment and Collection of Inland Revenue Pristina;

<sup>2</sup> Copies of Plan dated 15 September 1967 and 19 January; Possession List No. 2290, issued on 2 August 1982, by the Cadastral Office of the Municipality of Pristina, showing the name of L. Đ.; Pristina Municipal Court’s Decision no. 170/82, dated 1 September 1982, by which after the death of L. Đ. (claimant’s grandmother); V. D. (claimant’s uncle) and J. K.(claimant’s mother) were declared heirs

On 4 April 2007 the respondent N.K signed a notice of participation to the proceedings.

On 28 February 2008 a KPA notification team visited the property to put a notification sign in order to inform other potential third parties of the claim, but the respondent N.K did not allow the sign to be placed on the building (a building is erected in the parcel). For this reason the notification team placed a sign in the municipality and the municipal court in Pristina on 9 December 2010.

Neither E nor H.K. expressed interest to take part in the proceedings in front of the KPA.

To support his appeal the respondent Naser Krasniqi presented a number of documents<sup>3</sup>.

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of ½ for each in the house and land- parcels nos.: 1814, 1818, 4940 and 1819, in a total surface of 2.31.14 ha; Municipal Court Decision no. 636/82, dated 21 December 1982, which shows that the inherited co-owned immovable property - claimed parcel no. 40940 (as well as the other parcels nos: 1814; 1818 and 1819), registered in the Possession List no. 2290, the Cadastral Municipality PRISTINA, are divided (into two parts – ½ for each) between V. D. (claimant's uncle) - which (after the partition) obtained ownership of a house no. 11-a with two outhouses, a yard and other land (registered afterward under the new numbers – cadastral parcels nos.: 4940/1, 1814/1, 1818/1 and 1819/1, with the total surface of 1.15.51 ha), and J. K. (claimant's mother) – which (after the partition) obtained ownership of house no. 11 with two outhouses, a yard and other land (registered afterward under the new numbers – cadastral parcels nos.: 4940/2, 1814/2, 1818/2 and 1819/2 and have the total surface of 1.51.51 ha); Copy of Plan (regarding parcel no. 4940/2) dated 10 June 1985, showing the name of claimant and her brother; Copy of Plan (without number), issued on 11 January 1987 (regarding parcels: 1814/2; 1818/2, 1819/2 and 4940/2), showing the name of claimant and her brother as users; Claimant's brother (S. K.) power of attorney, authorising O. D. to conclude purchase contract on his behalf regarding the parcels: 4940; 1814; 1818 and 1819, dated 21 January 1987; Copy of Plan regarding parcel no. 1814/2 (without number), issued on 12 August 1994, by the Cadastral Office of Pristina, Municipality of Pristina, Republic of Serbia, showing the name of claimant and his brother; Certified Gift Contract, no. 6011/94, dated 19 August 1994, concluded between S. K.(claimant's brother), as a donor and T. K. D. (claimant) as the donee. With this contract the donor gives as a gift his ½ aliquot parts of the cadastral parcel no. 1814/2 to his sister – donee; Certified Power of Attorney no. 1821/2000, dated 14 July 2000, by which O. D. authorised N.A. from S., to possess and use in particular parcel no. 4940, Possession List No. 2290, as well as to conclude the purchase contract regarding the same property; Certified Purchase Contract No. 3030/2000, dated 27 October 2000, concluded between O. D. and S. K. (claimant's brother)– represented by N. A.i from S., M. as sellers, and claimant (N. K.) and his brothers (H. and E. K.) as buyers; Copy of Plan No. 953-2-2006-230 (regarding parcels: No. 1814/2; No. 1818/2 and No. 1819/2), issued on 16 June 2006 by the Cadastral Office of Pristina, Kruševac, Republic of Serbia, which shows claimant and her brother as co-users; KPA Claim Registration Receipt, dated 4 July 2006, showing that the claimant submitted the claim KPA11401 on 4 July 2006; Signed claimant's power of attorney (authorisation for D. T. for signing the new KPA claim form on her behalf), dated 3 January 2007; Information letter to KPA of D. T. (the authorised person by claimant) regarding the change of the address of the claimant, dated 5 March 2007; Claimant's Law Suit submitted in front of the Municipal Court of Pristina, dated 25 October 2007, requesting annulment of certified Purchase Contract no. 3030/2000, dated 27 October 2007; Certified Power of Attorney no. 2508 dated 18 September 2008, by which O. D., authorised N. A. from S.M, to use the claimed property parcel no. 4940 (and other parcels nos.: 1814/1 and 1814/2, 1818/1, 1818/2, 1819/1 and 1819/2), as well as to conclude the purchase contract with the third persons in order to sell the same; Claimant's Passport no. EB400302, issued on 11 February 2009, W. – N. Z.; Possession List No. 10455, issued on 26 April 2010, by the Department for Cadastre, Geodesy and Property of the Pristina Municipality – Provisional Institutions of Self-Government (UNMIK), which shows the name of claimant as the owner of 3/6 ideal parts, and names of claimant and his brother as the owners of 1/6 of the ideal part (for each) of the claimed property (parcel no. 4940/2); Possession List No. 6633, issued on 26 April 2010, by the Department for Cadastre, Geodesy and Property of the Pristina Municipality – Provisional Institutions of Self-Government (UNMIK), which shows the name of claimant as the owner of 3/6 of the ideal part, and names of claimant and his brothers as the owners of 1/6 of the ideal part (for each) of the other parcels nos.: 1814/2, 1818/2 and 1819/2 (which are not subject dispute of the submitted claim – KPA11401); Judgment no. 2355/07 of the Municipal Court of Pristina, dated 15 December 2010, by which the claim (law suit) of T. D. (claimant) is approved and transaction signed (certified purchase contract no. 3030/2000) by N. A. on behalf of O. D. and S. K., as sellers in one side, and K. brothers, as buyers in the other side, declared null and void, in the part in which S. K.'s sold the following real estate of ½ ideal parts of cadastral parcels nos.: 4940/2, with total surface 0.02.13 ha, Cadastral Zone of Pristina, no. 1814/2 with surface 0.21.30 ha, 1818/2 with surface of 0.20.37 ha, and 1819/2 with surface of 0.71.83 ha, all the three in Veternik, Cadastral Zone of Pristina;

<sup>3</sup> His ID Card, dated 16 July 2004; Certified Power of Attorney no. 1821/2000, dated 14 July 2000, by which O. D. (claimant's uncle wife) authorised N. A.to possess, use and conclude and sign purchase contract regarding claimed parcel no. 4940 ; Receipt (without

On 30 March 2011 the claimant received a letter of information from the KPA jointly with a copy of the respondent's reply and the submitted documents.

Based on the presented documents, the data available and the procedural measures taken pursuant to section 11.3 (c) and (d) UNMIK/REG/2006/50 as amended by law No. 03/L-079 the KPCC established that the claimant is the owner of ½ of the claimed property and that she is entitled to possession of the said property. In this regard a decision in favour of the claimant was granted – cover decision KPCC/D/A/121/2011, dated 7 September 2011, and decision for identification of the property dated 2 November 2011.

The decision was served to the respondent on 15 December 2011.

On 13 January 2012 E.K (hereinafter: appellant) filed an appeal against the decision of the KPCC. He claims that the decision rests upon an erroneous determination of the factual situation. He is a victim of the situation and in this regard the Court needs to interrogate N.A. He proposed to the Supreme Court of Kosovo to approve the appeal, to amend the decision of the KPCC or to annul the appealed decision and to send back the case for retrial to the Pristina Municipal Court.

The appeal is signed only by E.K, but the text of the document states that it is filed by E., N. and H. K.

On 25 April 2012 the KPA Executive Director informed the claimant for the appeal against the KPCC decision.

The claimant, now appellee, responded that the appeal is ungrounded.

On 1 November 2012 the Court issued an order requesting from E.K to explain whether he is appealing the decision on his behalf only or on behalf of N. K. and H. K. as well. He was also asked to clarify why he did not take part in the proceedings in front of the KPA. Finally he was requested to present a valid power of

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date and number – the KPA received date is 4 April 2007, which shows that O. D. received the purchase price regarding the claimed property; Statement (without date and number – the KPA received date is 4 April 2007), which expresses the will of O. D. to sell the claimed property; Purchase Contract (without date and number – the KPA received date is 4 April 2007) regarding the claimed property, concluded between O. D. as seller and H., E. and N. (respondent) K. as buyers ; Claimant's uncle Death Certificate No. 203, dated 15 June 1995; Marriage Certificate no. 28, dated 21 June 1995, of V. D. (claimant's uncle) and O. (J.) D.; Pristina Municipal Court Inheritance Decision no. 197/95, dated 14 September 1995, by which decided that the owner of the remained properties (after the death of V. D. on 3 June 1995) is O. (J.) D.; Cadastral Plan, dated 14 January 2005; and Tapia no. 1929, dated 4 February 1929.

attorney for representing N. and H. K., to present copies of the identity cards of the two and to explain why H. K. did not take part in the proceedings in front of the KPA.

On 30 November 2012 E. K. filed a response to the order. He claims that the appeal is filed on behalf of his two brothers as well. It could not have been signed by them, but he considers that this may not cause any procedural problem because the case concerns them all as respondents. Further he states that they did not take part in the proceedings in front of the KPA because they were not informed about these proceedings. It was only after the decision was taken when they actually learned about it. He also informs the Court that the same issue is a subject of proceedings in front of the Municipal Court of Pristina. Finally E. K. states that he represents his brother H. K., who is abroad and will provide him with POA and that his brother N. and himself represent themselves.

With the above mentioned response E. K. did not present a power of attorney to represent Naser Krasniqi and H. K. In addition the response is not signed by N. K.

### **Legal reasoning:**

#### **Regarding the appeal, filed on behalf of N. K. and H. K.:**

An appeal can be filed either by the person entitled to an appeal or by his/her representative – art. 85.1 of the Law on Contested Procedure (hereafter LCP), which explicitly regulates the possibility for authorized representation in all levels of civil proceedings (the systematic place of art. 85 is in chapter V of the LCP, which is in Part Two of the Law – General Provisions which determines its applicability throughout the entire process of proceedings in front of a Court, as long as it is not provided otherwise). For clarity of the arguments it may be noted that LCP is applicable in the proceedings of the Supreme Court *mutatis mutandis* – section 12.2 of UNMIK/REG/2006/50, as amended by Law No. 03/L-79).

Authorized representation can be given to any person with full capacity – art. 86.1 LCP and any action undertaken in the proceedings by the representative of a party within the scope of its authorisation has the same legal effect as if undertaken by the party itself – art. 86.2 *ibid*.

Authorisation for representation can be given in writing or orally on the record – art. 92.1 *ibid* – the written form is self-explanatory, the authorisation on the record is made in front of the respective Court. Considering the fact that no hearing needs to be scheduled in the current appeals proceedings, the authorisation could have been done in written form only. However there is no evidence that H. and N. K. have authorised their brother Mr E. K. to file an appeal against the decision of the KPCC in front of the Appeals Panel of the

Supreme Court. More so, the Court explicitly requested from Mr E. K. to present proof that he has the right to represent his brothers with the above mentioned order. Regardless of the clear instruction he did not provide any proof in that regard. He did not specify any hindrances which prevented him from doing that with regard to his brother Mr N. K., who was a respondent in the first instance, who was informed of the decision in question and in case he had the will to appeal the decision he could have done it himself or he could have authorised his brother in the appropriate legal way – by signing a power of attorney. With regard to his brother H., the appellant states that H. is abroad but this fact by itself is no justification for not presenting a power of attorney considering that even from abroad an interested person could have provided a power of attorney or if this is related to some extraordinary obstacles they had to be communicated to the Court. Otherwise the explanations of the appellant Mr E. K. only seem as an attempt to procrastinate the proceedings.

As a result the appeal on behalf of N. and H. K. as filed by a person who has not been authorised to that has to be dismissed as impermissible.

As the appeal is impermissible, the Supreme Court is not allowed to decide on the legal questions concerning the material rights of the parties, according to art. 186 and art. 196 of the LCP.

**Regarding of the appeal of E. K. in his personal capacity:**

This appeal is impermissible as well as the appellant has not taken part in the proceedings in the first instance.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit [...] an appeal against such decision". In addition art. 176.1 of the Law 03/L-006 on Contested Procedure provides that the right to file an appeal belongs to the parties at the first instance proceedings.

A party to the claim and the related proceedings is "any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1" (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Mr E. K. however, has not been a party in the first instance proceedings before the KPCC. To explain such a situation, the appellant asserts that he was not aware of those proceedings. Indeed, Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 reads: “A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.”

Therefore, the Supreme Court has to check whether the appellant was notified of the claim. The way to notify of a claim in this exceptional mass claim process is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to make reasonable efforts to notify any person who may have a legal interest in the property of the claim.

It has been earlier explained that the brother of Mr E. K., Mr N. K. took part in the proceedings in front of KPA, he did not allow the KPCC officers to put the notification sign on the building, erected in the parcel. It is also known that parallel to the proceedings in front of the KPA a civil suit is on-going between Mrs D. and the K. brothers. In addition to that Mr E. K. himself claims that the issue concerns all “respondents” – himself and his two brothers. These facts lead to no other conclusion but that Mr E. K. was well aware of the existence of the proceedings in front of the KPA. He indirectly confirms it by stating that all “respondents” were concerned by this issue. In addition it may be said that it is highly improbable in the Kosovo Albanian society to have a situation where one brother would be a party to a serious civil dispute and the other brother not to be aware of that. More so, in the particular case there is enough evidence that the three brothers claim material rights regarding the property in question (*i.e.* at the least a contract for the purchase of parcel 4090/1 on which a building has been erected thus consuming also parcel 4090/2 - the disputed parcel, a contract concluded between the three brothers as buyers and another person as a seller).

In conclusion there is no justification for Mr E. K. for not taking part in the proceedings in front of the KPA. It is true that the notification sign was never physically placed on the building erected in the parcel, but this was so only because his brother Mr. N. K. prevented the placing of the sign, but it is most certain, for the reasons explained above that Mr. E.K. knew about the procedure in front of the KPCC but did not take part in it on his own choice.

As the appellant Mr E. K. did not fulfil the obligation to inform the KPA about his interest in the claim, the appellant has no excuse as to why he did not take part in the first instance proceedings before the KPA. Therefore the appellant also cannot be admitted as a party to the proceedings in the second instance before the KPA Appeals Panel. The appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law On Contested Procedure).

As the appeal is impermissible, the Supreme Court is not allowed to decide on the legal questions concerning the material rights of the parties.

**Cost of the proceedings:**

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal: 30 €. This amount is determined in accordance with Section 10.11 of AD 2008/2 (related to fees payable for filing an appeal).
- court fee tariff for the issuance of the judgment: € 30. This amount is calculated in accordance with Sections 10.21 (related to fees, payable for the issuance of a decision in appeals proceedings), 10.15 (related to fees, payable in cases of dismissal of a suit) and 10.1 (describing the general rule of calculating fees) of AD 2008/2.

These court fees are to be borne by the appellant who loses the case, within 15 days of the date the judgement is delivered to him.

**Legal Advice:**

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



**Anne Kerber, EULEX Presiding Judge**

**Elka Filcheva-Ermenkova, EULEX Judge**

**Sylejman Nuredini, Judge**

**Urs Nufer, EULEX Registrar**