

**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-112/2015  
GSK-KPA-A-114/2015  
GSK-KPA-A-118/2015  
GSK-KPA-A-123/2015  
GSK-KPA-A-125/2015  
GSK-KPA-A-129/2015**

**Prishtinë/Priština  
10 May 2017**

In the proceedings of:

**Ž. C.**

**Appellant**

Representative: L.C. D.

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: KPCC) no. KPCC/D/R/231/2014, dated 13 March 2014, (case files registered with Kosovo Property Agency under KPA29974, KPA29976, KPA44246, KPA44252, KPA44254 and KPA44259), hereinafter also, KPCC Decision, after deliberation held on 10 May 2017, issues the following:

## JUDGMENT

1. The appeals filed by Ž. C, registered under case numbers GSK-KPA-A-112/2015, GSK-KPA-A-114/2015, GSK-KPA-A-118/2015, GSK-KPA-A-123/2015, GSK-KPA-A-125/2015 and GSK-KPA-A-129/2015 pertaining to the claims registered in KPA under KPA29974, KPA29976, KPA44246, KPA44252, KPA44254 and KPA44259 are joined into a single case under GSK-KPA-A-112/2015.
2. The appeals filed by Ž. C. against the Kosovo Property Claims Commission Decision KPCC/D/C/231/2014 as far as cases registered in KPA are concerned under numbers KPA29974, KPA29976, KPA44246, KPA44252, KPA44254 and KPA44259 dated 13 March 2014, are dismissed as inadmissible because they were filed by an unauthorised person.

### Procedural and factual background

1. On 18 June 2007 and 19 June 2007, the Limited Liability Company “Kosmet Coning” (hereinafter: the claimant), with seat in Novi Sad, Serbia, represented by Ž.P. C. (hereinafter: the appellant), as legally authorised representative in his position as director filed 11 claims with Kosovo Property Agency (KPA) seeking confirmation of its property rights over residential and business premises constructed in parcels 7476/1 and 7480, Prishtina cadastral zone, “Dvarska 6” street Dardani, near the bus station in Prishtina (hereinafter: the claimed properties).
2. Claimant submitted in KPA *inter alia* the following:
  - By the Decision of the Agency for Business Registries of the Republic of Serbia dated 31 December 1999, it is ascertained that Limited Liability Enterprise Kosmet Coning for Planning, Construction Works and Engineering, no. 08201366, with seat in Novi Sad, Serbia has been registered. The appellant was registered as founder and representative of the claimant (see page 43 of file 023/2015);
  - Decision no. 351-363/93-01 of Prishtina Municipal Assembly, dated 16 July 1993, in accordance with the Law on Construction Land, concerning the allocation of parcels 7476/1 and 7480 to the claimant as construction land of the city in use for construction of residential premises for the market;

- Decision of Secretariat for Urbanism, Construction and Protection in the Prishtina Municipal Assembly no.02.no:351-1607 dated 17 April 1995, the construction of construction of residential and services premises was approved (Entry A, Floors Po+P+1+M, and entry B, floors P+1+M) in cadastral parcels 7476/1 and 7480 in Dardania in Prishtina;
  - Judgment of Municipal Court in Prishtina no. 319/04, dated 23 April 2007, concerning the proceedings between the Claimant as claimant and Prishtina Municipal Assembly as respondent. According to the enacting clause, the claimed properties were partially constructed in cadastral parcel no.7554. This judgment was quashed by the Judgment of Prishtina District Court no. 329/2008, dated 25 February 2011 and this legal-disputed matter was returned to the first instance court for reconsideration;
  - Authorisation no. 1165/08, dated 1 October 2008, certified by the Municipal Court in Kamenica, whereby lawyer L. C. D. is authorised to represent the appellant.
3. KPA notified the claim but no other party participated in the proceedings before KPCC.
4. KPA positively verified the documents mentioned under paragraph 2 and added them ex officio to the case file:
- Decision no. 139/2011 of the Commercial Court in Novi Sad, Serbia, dated 1 August 2011. According to the enacting clause, the bankruptcy procedure was initiated because of permanent inability to repay the debts. Further, it is stated that creditors and debtor have no legal interest in implementing the bankruptcy procedure, thus the bankruptcy proceedings were concluded.
5. KPA confirmed that this decision is final and binding as of 11 November 2011 and that the claimant was expunged from the registry of business in Serbia and as such it no longer exists.
6. KPCC with its decision dismissed the claims. In its reasoning (paragraph 41 of the Cover Decision), to the extent it is relevant, KPCC stated that claims were filed by the claimant as the alleged property right holder, represented by its legally authorised representative, who at the same time is the sole shareholder. KPCC also states that KPA ex officio found that claimant based on the Ruling of Novi Sad Commercial Court no. 139/2011 dated 1 August 2011, the bankruptcy was declared in 2011 and then the enterprise was erased from registry of commercial enterprises of the Agency for business registration in Belgrade. As a consequence, the claimant ceased to exist in the capacity of legal person, respectively in the capacity of a party in this legal property matter. Since the

- claimant, as a limited liability company, has a personality that is separate from his shareholders who deposited these claims in the name of the claimants, the capacity of legal successors cannot be accepted.
7. KPCC considers that although the legal basis for this bankruptcy decision was declared as unconstitutional by the Constitutional Court of the Republic of Serbia, the claimant had not filed an application for reconsideration of the court decision within the prescribed time limit.
  8. For these reasons and because the claimant/appellant ceased to exist as a party in the proceedings before the Commission, these claims thus had to be dismissed.
  9. Decisions were served onto appellant on 16 July 2014.
  10. Appellant filed appeals against the KPCC decision on 14 August 2014. Appeals refer to claim numbers and claimed properties as per the table below:

<b>Appeal number and KPA case number</b>	<b>Data concerning the claimed parcel</b>	<b><i>Number and date of the decision</i></b>
<i>GSK-KPA-A-112/2015 (KPA29974)</i>	<i>Drvarska 6 Lam.A. Entrance 1 surface of 85 square metres</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-114/2015 (KPA29976)</i>	<i>Drvarska 6 Lam.A. Entrance 1 surface of 70 square metres</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-118/2015 (KPA44246)</i>	<i>Drvarska 6 II Entrance 2 surface of 65 square metres Prishtinë</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-123/2015 (KPA44252)</i>	<i>Drvarska 6 II Entrance 2 Lam. A surface of 125 square metres Prishtinë</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-125/2015 (KPA44254)</i>	<i>Drvarska 6 Lam.A. Entrance 1 surface of 75 square metres</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>
<i>GSK-KPA-A-129/2015 (KPA44259)</i>	<i>Drvarska 6 II Entrance 2 Lam. B surface of 75 square metres Prishtinë</i>	<i>KPCC/D/R/231/2014 Dt. 13 March 2014</i>

**Allegations of the appellant**

11. The appellant states that the decision of KPCC contains essential violations of the applicable substantial and procedural law as well as erroneous and incomplete determination of the factual situation. The appellant declares he is the owner of the claimed properties. He also states that although the company does not exist as a legal entity, the claimed properties nevertheless are private property of the appellant.

**Joining of the appeals**

12. Pursuant to Section 13.4 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, the Supreme Court may decide on joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the law. This section allows the Commission to consider joining or consolidating these claims to review and render an aggregate decision on them when there are common legal and evidentiary grounds.
13. The provisions of the Law on Civil Procedure that are applicable before the Appeals Panel of the Supreme Court in accordance with Section 12.2 of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, as well as provision of Article 408.1 in conjunction with Article 193 of the Law no. 03/L006 on Contested Procedure, foresee the possibility of joining all claims by a ruling if it ensures the efficiency and cost-effectiveness of proceedings.
14. In the text of appeals filed by the appellant, the Supreme Court observes that, except for different case number for which the respective appeal was filed, the factual and legal basis, and the evidentiary issues are the same in all the cases. Only cadastral parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statements and on the same documentation. Consequently, the legal reasoning of KPCC for such claims is the same.
15. Appeals registered under GSK-KPA-A-112/2015, GSK-KPA-A-114/2015, GSK-KPA-A-118/2015, GSK-KPA-A-123/2015, GSK-KPA-A-125/2015 and GSK-KPA-A-129/2015 are joined into a single case under GSK-KPA-A-012/15.

**Legal reasoning**

14 After reviewing the case file submissions, allegations of the Appellant and evaluation of the appealed Decision pursuant to Article 194 of the Law on Contested Procedure No. 03/L-006 (hereinafter LCP) , the Supreme Court finds that:

**The appeals filed by Ž. C. are dismissed as impermissible because he is not authorised to file them pursuant to provision of Article 186, paragraph 3, as read with Article 196 of LCP.**

15. The appellant “Kosmet Coning”, Limited Liability Company from Novi Sad (hereinafter: “Legal Person”) represented by the director Ž. C., requested from KPA to confirm his property right over the claimed properties and their re-possession. However, during the proceedings, before KPCC rendered a decision, the Commercial Court in Novi Sad, Serbia, through the Ruling no. 139/2011 dated 1 August 2011, had expunged this legal person from the Registry, so the Limited Liability Company ceased to exist. Consequently, the Commission dismissed the claims filed by that legal person with reasoning that the shareholder who filed the claims in his name cannot be recognized as legal successor of the claimant.
16. The decision was served on Ž.C., who filed the appeals in which he alleged that he was the owner of the claimed properties based on the contract concluded in 1999, and he declared that he is a shareholder in all shares of this business organisation.
17. According to Article 12.1 of the Law no. 03/L-079 “Within thirty (30) days of notification of parties by the Kosovo Property Agency of the Commission’s decision on the appeal, the party may file an appeal against such decision with the Supreme Court of Kosovo through the Executive Secretariat of the Kosovo Property Agency”. In this particular case, there was only one interested party in the proceedings: “Kosmet Coning” Limited Liability Company from Novi Sad. The fact that this company was erased from the Registry upon its bankruptcy means that the party which filed the claims ceased to exist and consequently has no procedural and legal legitimacy in order to have the capacity of party in legal transaction. In addition, according to provisions of Article 3 of the Law on Business Organisation, the representative of this legal entity is prohibited from participating in these proceedings on his behalf following the declaration of bankruptcy and from becoming successor of this business. The commission was right when assessing that in such case the claim has to be dismissed as impermissible.
- 18 The appellant Ž. C. did not act as natural person on his behalf during the proceedings, but had represented the legal person. At the moment the party had bankrupted, it could not be represented neither by director nor by any other representative (Article 95.2 of the Law on Contested Procedure). The provisions of the law in force in the Republic of Kosovo do not permit a previous legal person to intervene in the proceedings on his behalf, after the legal person became bankrupt and neither do they provide possibilities for such a representative to be converted to the successor of that legal person. Moreover, the claimant that had filed claim in the name of L.L.C did not even change their content in the proceedings before KPCC based on Article 257 – 261 of the Law on Contested Procedure. For these reasons, Ž. C. cannot be considered a party in the proceedings in this

case. Thus, he cannot file a Claim on his behalf and he did not have the right to file an appeal against the decision.

- 19 Therefore, for reasons presented according to provision of Article 186 in conjunction with Article 196 of LCP, the appeals are dismissed as impermissible because they were filed by an unauthorised person; thus, the appeal allegations were not subject of consideration and evaluation by this Court.

**Legal advice**

Pursuant to Article 13.6 of UNMIK Regulation 2006/50, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Sylejman Nuredini, Presiding Judge**

**Krassimir Mazgalov, EULEX Judge**

**Beshir Islami, Judge**

**Sandra Gudaityte, EULEX Registrar**