

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- 24/13

Prishtinë/Priština,
28 May 2015

In the proceedings of:

M. M. P

Address ...

Bar, Montenegro

acting on behalf of

the late **S. I.** or **her legal successors**

Appellant

vs.

N. K.

Address ...

Pejë/Peć

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeals joined under case no GSK-KPA-A-24/13, against the decisions of the Kosovo Property Claims Commission (KPCC) KPPC/D/A/149/2012 (case files registered at the KPA under the number KPA17662, KPA28982, KPA28983, KPA28984, KPA28985, KPA28986, KPA28989, KPA92434), dated 19 April 2012, after deliberation held on 28 May 2015, issues the following:

JUDGMENT

1. The appeals filed by M. P., joined in case no GSK-KPA-A-24/13, against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012, dated 19 April 2012, are rejected as unfounded.
2. The decision of the KPCC no. KPCC/D/A/149/2012, dated 19 April 2012, is confirmed as far as it concerns claim nos. KPA17662, KPA28982, KPA28983, KPA28984, KPA28985, KPA28986, KPA28989 and KPA92434.

Procedural and factual background:

1. On 18 December 2006, M. P. (henceforth: claimant or the alleged Representative) filed several claims with the Kosovo Property Agency (KPA) seeking for confirmation of his property right on the parcels of land as listed below (henceforth all together: the claimed property).
2. M. P. asserted that his father M. P. had been the owner of the claimed property and that the latter lost the possession on 12 June 1999 as a result of the circumstances in Kosovo in 1998/99.
3. He further stated that he did not know who was using the claimed properties at the time.
4. The data of the claimed property, all registered in Copy of Plan No. 6 of Municipality of Pejë/Peć, Cadastral Municipality of Gorazhdec/Goraždevac, issued on 26 April 1972, are as follows:

Appeals No	KPA Case No	Parcel no and surface	Place	Village	Municipality	Remark(s)
GSK-KPA-A-24/2013	KPA 17662	(a) 499/1, (b) 499/2, (c)499/3 and (d) 499/4, total surface is 4he 40ar 79m ² *	Bezdavnica	Gorazhdec/ Goraždevac	Pejë/Peć	
GSK-KPA-A-25/2013	KPA 28982	499/1, in a surface of 0he 5ar 0m ²	Bezdavnica	Gorazhdec/	Pejë/Peć	
GSK-KPA-A-26/2013	KPA 28983	499/1 in a surface of 3he 7ar 77m ²	Bezdavnica	Goraždevac	Pejë/Peć	Within the claim form it is stated that the claimed parcel is only 499/1 in a surface of 3he 7ar 77m ² , while the KPCC decision is for all parcels: 499/1,

						499/2, 499/3, & 499/4 in a total surface of 4he 40 ar 79 m ² (same as with the case file 24/2013)
GSK-KPA-A-27/2013	KPA 28984	499/2, in a surface of 0he 24ar 14m ²	Bezdanica	Gorazhdec/	Pejë/Peć	
GSK-KPA-A-28/2013	KPA 28985	499/3, in a surface of 0he 15ar 9m ²	Bezdanica	Goraždevac	Pejë/Peć	
GSK-KPA-A-29/2013	KPA 28986	499/4, in a surface of 0he 88ar 1m ²	Bezdanica	Gorazhdec/	Pejë/Peć	
GSK-KPA-A-30/2013	KPA 28989	499/1, in a surface of 0he 5ar 0m ²	Bezdanica	Goraždevac	Pejë/Peć	same parcel as with the case file 24/13 and 25/2013
GSK-KPA-A-31/2013	KPA 92434	499/1, 499/2, 499/3 and 499/4, total surface is 4he 40ar 79m ²	Bezdanica	Gorazhdec/	Pejë/Peć	Same parcels as with the case file 24/2013

*** a) 499/1** (house-building in a surface of 78m², yard in a surface of 5Ar and 5th class arable land in a surface of 3He 07Ar 77m²), **(b) 499/2** (3rd class orchard in a surface of 24Ar 14m²), **(c) 499/3** (3rd class pasture in a surface of 15Ar 09m²) and **(d) 499/4** (3rd class pasture in a surface of 88Ar 01m²) **in a total surface of 4He 40Ar 79m²**. *The subject matter of all claims is the same property (the above mentioned parcels).*

5. To support his claims, the alleged Representative provided the KPA with the following documents:

- Copy of Plan No. 6 issued by the Cadastral Municipality of Gorazhdec/Goraždec, Municipality of Pejë/Peć on 26 April 1972, showing that the claimed property was registered under the name of I. (P.) S. (verification positive);
- Power of Attorney (PoA) OV.br/VR.nr. 538/1972 dated 28 April 1972, showing that the claimant's late aunt authorised him to conclude a contract on division and dissolution of family community with her brother M. P. (claimant's father) (verification positive);
- A sketch regarding the claimed property;
- Death Certificate of claimant's aunt I. S. issued by the Municipality of Pejë/Peć in Kragujevac, Republic of Serbia, on 23 October 2007 (prima facie verified as genuine); according to this certificate she died 10 March 1972;

- Death Certificate of claimant's father M. P. issued by the Municipality of Pejë/Peč in Kragujevac, Republic of Serbia (verification positive);
 - Notification Letter without date, stating that there is a mistake in the Death Certificate of I. (P.) S. (According to alleged Representative, the date of death was incorrectly put as 10 March 1972 which should be 10 May 1972);
 - Claimants refugee ID card No. 10001314 issued on 28 June 2003 (verification positive).
6. The KPA organized the notification of the claims several times. In 2010, 2011 and 2012 the notification team put the signs indicating that the claimed property is subject to a claim and that interested parties should file a notice of participation within 30 days. During the notification in 2011, N. K. was present and signed a notice of participation. Later on, all notifications were checked based on the cadastral data, GPS coordinates and orthophoto and were found to have been accurate.
7. According to the verification report dated 4 July 2008 the KPA Verification Unit found *ex officio* the Possession List No. 128, issued on 30 January 2007 by the Department for Cadastre Geodesy and Property, Municipality of Pejë/Peč, which shows that the claimed property was registered in the name of Property Right Holder "I. Š.". The same report explains that the Power of Attorney OV.br/VR.nr 538/72 dated 28 April 1972, verified by a Court on 28 October 1972 and submitted by the claimant, is positively verified.
8. On 19 April 2012, the KPCC in its decision KPCC/D/A/149/2012 dismissed the claims of the claimant registered under KPA17662, KPA28982, KPA28983, KPA28984, KPA28985 and KPA28986, since the power of attorney submitted by the claimant and allegedly given by his aunt to transfer the claimed properties in the name of his father is not valid. The decision explains that *"the power of attorney does not appear to be valid as according to the death certificate the claimant's aunt passed away in March 1972, so she could not have issued any power of attorney in April 1972; moreover, the Claimant was a minor at the time the power of attorney was allegedly issued"*.
9. The KPCC, in another decision issued on the same date, 19 April 2012, KPCC/D/R/152/2012, dismissed the claim no KPA28989 with the same reasoning as appears in the KPCC decision (KPCC/D/A/149/2012) that the claimant filed the claim on behalf of his aunt in the absence of a valid power of attorney whereas it refused the claim no KPA92434 in the absence of any proven property right of his father.

10. The Decisions were served on the claimant on 2 December 2012. On 3 December 2012, the decisions were served on the respondent. On 18 December 2012, the claimant (henceforth: the appellant) filed the appeals with the Supreme Court. The appeals were registered under case no GSK-KPA-A-24-25-26-27-28-29-30 and 31 respectively.
11. The alleged Representative submitted with his appeal *inter alia* four “Powers of attorney”. According to these powers of attorney S. M. J., S. S., S. B. and B. N. on 20 July 2009 authorized alleged Representative to have the claimed property of their late mother I. S. born P., ‘*at his disposal*’. They further authorize him ‘*to sell, donate, alienate*’ the claimed property ‘*in some other way*’ and ‘*to sign the contract*’ on their behalf ‘*in the competent court and also to sign other documents necessary for registry of change of ownership in land registry books*’.
12. The Supreme Court, in its ruling dated 27 May 2013, decided to join those eight cases under the number GSK-KPA-A- 24/13 due to the link between them.
13. On 28 May 2013, the Supreme Court also issued a court order to the alleged Representative asking him:
 - a. To present inheritance decision, certifying who are the legal successors of the alleged property right holder I. S., who died in 1972 (the appellant claims that S. J., S. S., S. B. and B. N. are the heirs but there is no evidence for that in the file; no inheritance decision or any other document proving that these persons are the inheritors of the property right holder) and
 - b. To explain to the Court in which way the loss of the claimed property is directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 (Section 3.1 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079), considering that the alleged property right holder died in 1972 and considering that there is no data who was using the properties after her death.
14. In response to the court order the alleged Representative states in a letter dated 30 July 2013 that the inheritance procedure was not initiated after the death of his aunt I. S. Therefore, it is impossible to provide an inheritance decision. He also refers to the powers of attorney given by the aunt’s children and attaches the birth certificates of these children as an evidence of legal heirs. He further states that his father, he and his family used the claimed property until the outbreak of the conflict.

Allegations of the parties:

15. In appeal the alleged Representative states that it is untrue that a valid power of attorney is absent and that he was not authorised to submit the claims in the name of the property right holder or her successors. He further opposes the KPCC decisions stating that he has a power of attorney dated 28 April 1972 from his late aunt S. I. and a power of attorney from the children of his late aunt, and that he can sell the properties, give or alienate by other means. He proposes the Supreme Court of Kosovo to annul the KPCC decision and return the case for a retrial.
16. The Appellee stated that the claimed property belongs to his ancestors. He claimed that in 1932 the government occupied this property without any compensation and gave it to the P. family. He added that “they” had a tapia (Ottoman document) as evidence but it was burned during the war in 1999. He stated also that they are not occupying the properties, but only using the grass for cows. Furthermore, he stated that he is interested to contact the alleged Representative in order to buy the properties, since these are in the border with his property, near to his house.

Legal reasoning:

Merits of the appeal

17. According to the statements of the alleged Representative in appeal, he files this appeal in the capacity of representative of the (alleged) property right holder of the claimed property. He states his aunt or her children are the property right holder(s). So, he no longer states to represent his father. Therefore the Supreme Court cannot respond to these allegations.
18. As far as he means to file the appeal as representative of his (deceased) aunt or her children the Supreme Court understands his appeal as meant to obtain a decision on the question whether he was entitled to represent the (alleged) property right holder and to file the claims before the KPCC.
19. The KPCC answered this question negative. So the Supreme Court will decide now whether KPCC answered this question rightfully and reasons as follows.

20. As far as the alleged Representative still states to represent his aunt this allegation must be left aside. According to 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 UNMIK 2006/50), as far as relevant, the provisions of the Law on Civil Procedures shall be applicable *mutatis mutandis* to this procedure. According to Article 95 of the Law on Contested Procedure if a person dies, the authorization issued by that person becomes ineffective. So even if the Supreme Court should follow the alleged Representative in his allegation that his aunt gave him any right to represent her and that her power of attorney also included filing a claim before KPA, this authorization is not effective anymore. So the Authorization cannot provide the basis for him to represent the (alleged) property right holder before the KPCC.
21. As far as the alleged Representative wants to represent the children of his aunt, he also did not provide the necessary evidence. In the first place he did not submit any evidence for the allegation that all four of them have or anyone of them has inherited the claimed property. Also in reaction to the Court Order he did not provide such evidence. But even if the Supreme Court would follow his allegation – substantiated with the birth certificates – that those four are the children of his aunt and they inherited the claimed property, even then the power of attorney would not suffice him to represent them in the proceedings before KPCC. The given powers of attorney authorize according to the wording the alleged Representative only to have the claimed property at his disposal, to sell, donate, or alienate the claimed property or to sign a contract on the claimed property and to sign any documents necessary for registry of change of ownership in land registry books. According to this wording they do not authorize him to represent them in a court procedure like this one before KPCC, because this procedure is about claiming ownership rights for the (alleged) property right holder.
22. For the sake of completeness the Supreme Court also notes that the alleged Representative can also not represent the property right holder as member of the family household as meant in Sections 1 and 5.2 of the UNMIK Administrative Direction 2007/5 Implementing UNMIK Regulation No 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: Annex I to Law UNMIK 2006/50). According to Section 5.2 of Annex I to Law UNMIK 2006/50 in case a natural person is unable to make a claim before the KPCC, the claim may be made by a member of the family household of

that person. Pursuant to Section 1 of Annex I to Law UNMIK 2006/50 a member of the family household means the spouse, children and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law. The alleged Representative does not fit into this definition of a member of the family household as provided in the law. First of all, the registered owner of the claimed property is his aunt who passed away already in 1972, when the claimant was a child. There is no possibility anymore that the claimant is obliged to support his aunt financially or she him. He also did not substantiate and there is no indication in the file that he and the children of his deceased aunt fit to this definition of member of the family household.

Conclusion

23. The Supreme Court concludes that KPCC rightfully decided that M. P. did not substantiate that he could represent the (alleged) property right holder in this procedure before the KPCC. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of Law 03/L-079, 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

Urs Nufer, EULEX Registrar