

**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-AKP-A-61/11

Prishtinë/Priština, 1 March 2012

In the proceedings of:

V.S.

*Appellant
as legal successor of*

M.J.S.

Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, on the appeals against the decision of the Kosovo Property Claims Commission KPCC/D/R/88/2010 (case file registered at the KPA under the number KPA 47307) and KPCC/D/A/84/2010 (case files registered at the KPA under the numbers: KPA 47288, KPA 47289, KPA 47290, KPA 47292, KPA 47293, KPA 47294, KPA 47295, KPA 47296, KPA 47299, KPA 47301, KPA 47304, KPA 47305, KPA 47306, KPA 47308, KPA 47309, KPA 47310, KPA 47311, KPA 47312, KPA47313 , KPA47314 and KPA 47315), dated 2 September 2011, after deliberation held on 1 March 2012, issues the following:

JUDGMENT

- 1- The appeals filed by V.S. on 27 May 2011 and registered under the numbers GSK-KPA-A-61/11 up to 82/11 are joined in a single case and registered under the number GSK-KPA-A-61/11.
- 2- The appeals filed by V.S. on 27 May 2011 are rejected as impermissible.
- 3- The decisions of the Kosovo Property Claims Commission KPCC/D/R/88/2010, as far as it relates to the case registered under the number KPA47307 and KPCC/D/A/84/2010, as far as it relates to the case registered under the numbers KPA47307, KPA47288, KPA47289, KPA47290, KPA47292, KPA47293, KPA47294, KPA47295, KPA47296, KPA47299, KPA47301, KPA47304, KPA47305, KPA47306, KPA47308, KPA47309, KPA47310, KPA47311, KPA47312, KPA47313 , KPA47314 and KPA47315 are confirmed.
- 4- Costs of the proceedings determined in the amount of € 240 (two hundred forty) are to be borne by the appellant, V.S., and to be paid to the Kosovo Consolidated Budget-Supreme Court within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 28 November 2007, M.J.S., acting as a family household member on behalf of her father-in-law S.Đ.S., filed 21 (twenty one) claims with the Kosovo Property Agency (KPA), seeking confirmation of ownership of the property.

To support her claim, she provided the KPA with the following documents:

- 1- Her marriage certificate No. 03-202-2003/V/808, issued on 15 December 2003 by the Municipality of Gžilan, Republic of Serbia, with its seat in Vranje ;

- 2- A tax booklet No. 10325 for her father-in-law, without evident issuance date, by the Municipality of Gjilan;
- 3- A transcript from Possession List No. 77, Nr. 952-1/2007, issued unsigned and unstamped on 14 November 2007 by the Republican Geodesy Institute – Cadastre and Immovable Property Service, Republic of Serbia, Municipality of Gjilan, Cadastral Municipality of Parlove; and
- 4- Her ID card No. CP00007469, issued on 23 December 1999 by the Municipality of Gjilan, Republic of Serbia.

The Certificate on the Immovable Property Rights No. UL-70403046-00077, issued on 3 July 2008 by the Municipal Cadastral Office of Gjilan, and the Transcript of Possession List No. 77, issued by the Republican Geodesy Institute – Cadastre and Immovable Property Service, Republic of Serbia, Municipality of Gjilan, Cadastral Municipality of Parlove –, shows that S.D.S. is the owner of the following immovable properties:

KPA case number	Data on the parcel that is object of the dispute	Documents submitted and provided
Case number KPA 47307	Cadastral parcel No. 4365, at the place called “Jakovçane”, with a surface of 0, 07, 78 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47288	Cadastral parcel No. 3790, at the place called “Gasanci”, with a surface of 0, 17, 23 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077
Case number KPA 47289	Cadastral parcel No. 3820, at the place called “Gasanci” with a surface of 0, 16, 34 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47290	Cadastral parcel No. 3959, at	Transcript of Possession List

	the place called “Gasanci”, with a surface of 0, 21, 18 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47292	Cadastral parcel No. 3996, at the place called “Çestak”, with a surface of 0, 68, 97 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47293	Cadastral parcel No. 4017, at the place called “Çestak”, with a surface of 0, 40, 96 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 38322	Cadastral parcel No. 4018, at the place called “Çestak”, with a surface of 0, 17, 42 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47295	Cadastral parcel No. 4033, at the place called “Kadinje Trnje”, with surface of 0, 21, 68 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47296	Cadastral parcel No. 4038, at the place called “Kadinje Trnje”, në sipërfaqe prej 0, 9, 59 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47299	Cadastral parcel No. 4254, at the place called “Prise”, with surface of 0, 18, 23 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.

Case number KPA 47301	Cadastral parcel No. 4260, at the place called “Prise”, with surface of 0, 2, 51 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47304	Cadastral parcel No. 4356, at the place called “Padina”, with surface of 0, 23, 93 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47305	Cadastral parcel No. 4357, at the place called “Padina with surface of 0, 31, 11 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47306	Cadastral parcel No. 4358, at the place called “Padina”, with surface of 0, 13, 21 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47308	Cadastral parcel No. 4366, at the place called “Jakovćane”, with surface of 0, 7, 18 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47309	v. 4367, at the place called “Livađa”, with surface of 0, 89, 73 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47310	Cadastral parcel No. 4368, at the place called “Livađa”, with	Transcript of Possession List No. 77 and the Certificate on

	surface of 0, 89, 73, cadastral zone (CZ) of Paralove, Municipality of Gjilan	the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47311	Cadastral parcel No. 4369, at the place called “Osoje”, with surface of 0, 24, 13 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47312	Cadastral parcel No. 4370, at the place called “Osoje”, with surface of 0, 11, 42, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47313	Cadastral parcel No. 4371, at the place called “Osoje”, with surface of 0, 56, 23 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47314	Cadastral parcel No. 4415, at the place called “Stevin Zabelj”, with surface of 0, 30, 87 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.
Case number KPA 47315	Cadastral parcel No. 4422, at the place called “Markove Kruške”, with surface of 1, 15, 34 ha, cadastral zone (CZ) of Paralove, Municipality of Gjilan	Transcript of Possession List No. 77 and the Certificate on the Immovable Property Rights No. UL-70403046-00077.

In April 2008 (KPA47299: pasture, KPA47301: garden, KPA47304: pasture, KPA47309: pasture, KPA47310: meadow, KPA47311: agricultural land and KPA47312: pasture) and in November (KPA47305: forest, KPA47306 meadow, KPA47308: grove, KPA47313: forest, KPA47314: forest, KPA47315: forest, KPA47292: forest, KPA47293: non-agricultural land, KPA47294: forest, KPA47295: meadow, KPA47296: forest, KPA47307: two houses with yard, KPA47289: forest) and in December 2009 (KPA47290: forest, KPA 47288: damaged forest), the KPA notification team

went to the locations the litigious parcels were allegedly located and put up signs, indicating that the property was subject to a claim and that the interested parties should have filed their response within 30 days. None of the parcels was found to be occupied.

Later on in the proceedings the KPA checked the notification and found, based on “orthophoto and GPS coordinates” that had been properly done.

The KPA verification reports show that the documents submitted by the claimant could be verified. During the proceedings, the KPA contacted the claimant and requested of her to provide the property right holder’s death certificate. Also she was asked whether the inheritance procedure had been initiated after his death and if yes to provide with respective court inheritance decision. Claimant was given deadline to submit required document.

Since nobody responded to the claim pursuant to Section 10.2 of UNMIK Regulation 2006/50 as amended and supplemented by Law No. 03/L-079 and within the deadline set forth under the same legal provisions, all claims filed thereof have been considered as non-contested.

The Kosovo Property Claims Commission, by its decisions KPCC/D/R/88/2010 and KPCC/D/A/84/2010, both dated 2 September 2011, decided to dismiss the claims (Section 11.4 (a) of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property and Section 8.6 (c) of Annex III of Administrative Direction (AD) 2007/5, implementing UNMIK Regulation No. 2006/50, as amended by the same law). The Commission concluded that the claimant did not have a capacity to represent the property right holder. The Commission stated that the claimant as the daughter-in-law of the property right holder according to the legal definition under Section 1 of Administrative Direction (AD) 2007/5 could not be considered as family household member of the property right holder. Also the claimant had not submitted a power of attorney of a family member of the property right holder. Furthermore, the Commission stated that the claimant had not submitted any evidence that would establish the death of the property right holder.

On 23 May 2011, the decisions were served to V.S., the husband of the claimant and son of the property right holder since the claimant had passed away on 26 November 2008.

On 27 May 2011, V.S. (hereinafter “the appellant”), with one letter filed 21 appeals with the Supreme Court of Kosovo, challenging the decisions of the KPCC as far as they regard the cases KPA47307, KPA47288, KPA47289, KPA47290, KPA47292, KPA47293, KPA47294, KPA47295, KPA47296, KPA47299, KPA47301, KPA47304, KPA47305, KPA47306, KPA47308, KPA47309, KPA47310, KPA47311, KPA47312, KPA47313 , KPA47314 and KPA47315.

The appellant filed the appeals on the following grounds set forth under Section 12.3 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079:

- Erroneous and incomplete establishment of factual situation;
- Essential violation of procedural provisions; and
- Erroneous application and violation of substantive law.

He requested from the Supreme Court of Kosovo to dismiss the appealed decisions because of the foregoing reasons and to find a positive solution in his favour for his above-mentioned cases and eventually to confirm that he is the owner of the claimed immovable properties.

V.S. explained that the litigious parcels were owned by his father who passed away on 22 November 2000 and that the claims relating to these immovable properties were filed by now his late wife, M.S.. He underlined that as from the beginning of the war he lived together with his wife M.S., his children and his parents until the time when his family (his wife and children) left their village and Kosovo because of the war, whereas their parents remained to live in Paralovo. He disputed the fact that his wife needed a special power of attorney.

On 24 December 2010, V.S. in order to prove the family connection between himself and the claimant – his now late wife – and his family connection with the property right holder – his father - provided the Supreme Court with the following documents:

- His birth certificate issued on 7 December 2009 by the Municipality of Gjilan, Republic of Serbia;
- His marriage certificate with M.S. (maiden name: M.), issued on 8 December 2008 by the Municipality of Gjilan, Republic of Serbia ; and
- M.S.’s death certificate, issued on 2 December 2008 in Nis, Republic of Serbia.

The Supreme Court has joined the appeals.

Legal reasoning:

Joinder of appeals:

The appeals registered under the numbers GSK-KPA-A-61/11 up to 82/11 are joined in a single case and registered under the number GSK-KPA-A-61/11.

Section 13.4 UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide to join or merger the appeals when such joinder or merger was duly decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section enables the Commission to join or merge the claims in order to deal with and render decision when common legal issues and evidence are to be taken into consideration.

Provisions of Law on Civil Procedure, applicable in the appeal proceedings before the Supreme Court of Kosovo pursuant to 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, Article 408.1, in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, provide that if two or more trials between the same persons are ongoing before the same court, or if a person is an appellant to different claimants or respondents, the court can join all of them by a decision in order to deal jointly with them if such joinder contributes to the proceeding's efficiency.

In the cases at hand, the appellant filed his appeals in one letter in which he enumerated the cases for which he had filed his appeal. From this the Court concludes that the appellant implicitly gave his consent for the joinder of cases as provided for under Article 408.3 of LCP. Furthermore, the Supreme Court finds that the facts, legal grounds and the submitted evidence are completely the same in all of the 21 (twenty one) cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. As all elements of the cases are the same except for the parcels, it would be more efficient if the appeals were joined and examined in a single judgment.

Admissibility of the appeals:

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal against a decision within thirty (30) days of the parties' notification of the decision.

In the present case, since the KPCC decision were served to the appellant on 23 May 2011 and the appeals were filed by him on 27 May 2011, that is to say less than 30 days after the receipt of the notification of the KPCC decisions.

The appeals, however, have not been filed by the (late) claimant, whose claims had been dismissed, but by her husband. His appeals could only be admissible if he was the legal successor of the claimant, especially as her heir. Otherwise – as he had not been a party to the proceedings before the KPCC – he would not have the right to appeal (Section 10.2 of the aforementioned UNMIK Regulation 2006/50, see also Art. 176.1 LCP). The Supreme Court does not dispose of any facts concerning the question of legal succession. The fact alone that the appellant has been the husband of the claimant does not make him a legal successor. The question whether the appellant is the legal successor of the claimant, however, can remain unanswered. As the appellant has not submitted the necessary evidence to prove that the claimant had been entitled to file the claim, the appeal is not grounded:

The merits:

1- The civil status issues (admissibility of the claim):

The Supreme Court observes that, based on the documents provided by the claimant and on the verification reports of the Executive Secretariat, the Commission has correctly assessed that the parcels, object of the claims, belonged to S.D.S..

However, the Supreme Court considers and is of the same opinion as the Commission that M.S. as the daughter-in-law of the property right holder could not file the claims as a “family household member”. The legal definition under Section 1 of AD 2007/5 reads: “*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 persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder". According to that definition, daughters-in-law are not amongst the family household members and there is no law obliging the daughter-in-law to support her father-in-law. The statement of the appellant, that he had lived with his wife, his children and his parents together until he, his wife and children moved out of Kosovo whereas the parents stayed does not change the legal opinion of the Court.

Consequently, the claimant would have had the right to file the claim only if she had submitted a power of attorney of the property right holder or a family household member of the property right holder as provided for under Section 5.2 of the same AD, which reads "..... *The claimant may be represented by an authorized natural person with a valid and duly executed power of attorney.....*". The claimant, however, did not provide the necessary power of attorney, although the KPA several times asked for such. Accordingly, the decision of the KPCC is correct.

The Supreme Court also considered the question whether the fact that the appellant, the son of the property rights holder, now filed an appeal could be interpreted as giving a power of attorney. Furthermore, the Supreme Court considered the question whether the necessary power of attorney, which had not been forwarded in the first instance (the KPCC proceedings) could be submitted and considered by the Court in the second instance. Eventually, however, the Court did not need to answer these questions for the following reasons:

As the KPCC in its decision also correctly stated, the claimant had not been able to prove the death of the property right holder. The appellant as – allegedly - the legal successor of the claimant also has to prove the death of the property right holder. However, in his statement of 24 December 2010, the appellant declares that he is not able to provide his father's death certificate. As date of his father's death he mentions the 22 November 2000. Yet this is not sufficient to prove his father's – the property right holder's – death.

The Court wants to add that the additional documents submitted by the appellant, such as the death certificate of the claimant, his and the claimants marriage certificate and his birth certificate, are not suitable to do prove the appellant's right to assert the rights of the property right holder.

2- Claim filed by the appellant

In fact, the appellant in his appeals has formulated a new claim, asking from the Supreme Court to recognize now his property right over the immovable property at stake.

Filing an additional claim means amending the claim. Pursuant to Articles 258.1 and 258.2 of Law 03/L-006 on Contested Procedure, the claimant can amend the claim no later than the conclusion of the main trial in the first instance. If there is no trial in the first instance, it is clear that the amendment of the claim should be done before the advisory session in order to be able to be dealt with by the first instance court. However, this cannot be done for the first time before the second instance court.

As a result, this claim shall be dismissed.

Consequently, based on all the above legal reasoning, the decisions of the KPCC shall be upheld.

This decision is without prejudice to the right of the appellant to seek confirmation of his property right over the claimed properties before the competent local courts.

Costs of the proceedings:

Pursuant to Section 8.4 of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission.

However such exemption is not foreseen for the proceedings before the Supreme Court.

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 Supreme Court.

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

- Court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): 30 €
- Court fee tariff for the issuance of the judgment (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand, composed of 0.14.67 ha of

meadows and 0.64.08 ha of forest in the Cadastral Municipality of Zebince and surface of 3.38.60 ha of arable land, 0.60 ha of meadows and 6.60.21 ha of forests in the Cadastral Municipality of Paralove could be reasonably estimated as being € 32.000: € 50 + 0.5% of 32.000 = € 210.

These court fees are to be borne by the appellant that loses the case.

According to Article 46 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment 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 is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Signed by: Anne Kerber, EULEX Presiding Judge

Signed by: Elka Ermenkova, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar