

**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-070/13**

Prishtinë/Priština, 28 May 2015

In the proceedings of:

**M P**

N R 226

85... S

M

acting on behalf of

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

***Appellant***

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/156/2012 dated 6 June 2012 (case files registered at the KPA under Nos. KPA17663 & KPA28987 & KPA28988), henceforth also: the KPCC Decision, after deliberation held on 28 May 2015, issues the following

**JUDGMENT:**

1. The appeals filed by **M P** against the Decision of the KPCC no. **KPCC/D/A/156/2012**, dated 6 June 2012 are rejected as unfounded.
2. The decision of the KPCC no. **KPCC/D/A/156/2012**, dated 6 June 2012, is confirmed as far as it concerns claim no. **KPA17663 & KPA28987 & KPA28988**.

**Procedural and Factual background**

1. On 8 December 2006 M P, born 20 September 1956, (henceforth: the alleged Representative) filed a claim at the Kosovo Property Agency (KPA), seeking repossession of parcels of land, cadastral zone Gorazhdefc, in Graboc/Grabovac, municipality Pejë/Pec, numbers 498/1 and 498/2, with a surface of respectively 1.57.41 ha and 1.06.87 ha (henceforth together: the claimed property). In the claim form he stated his father M P was the property right holder. KPA registered this claim under nr. KPA17663.
  
2. The alleged Representative submitted with this claim *inter alia* to KPA:
  - a copy of a cadastral plan from cadastral municipality Gorazdevac, Peja/Pec, dated 26 April 1972 (henceforth: copy of the plan); according to this copy of the plan user, owner or usufructuary of the claimed property was S I born P;
  - A document under the title “Authorization” and dated 28 April 1972 (henceforth: the Authorization), which reads *inter alia*:  
*I hereby authorize my nephew P M, from Pec, that he can in my name and on my behalf make a contract on division and dissolution of household with my brother P M (...) in which the property from (...) Gorazdevac (...) cadastre parcels no: (...) 498/1 and 498/2 (...) My representative P M (...) can, in my name, conclude the contract on division and transfer all the property to my brother M, he can also confirm this fact during the dispute or non-contentious division procedure (...) Authorization given by: S I, born P, from Brežanik.*
  - A death certificate dated 23 October 2007; according to this certificate I S born P, died 10 March 1972.
  
3. According to a verification report from KPA, dated 1 February 2007, after verification at the Department of Cadastre the copy of the cadastral plan was found and KPA added ex officio to the case file copy of the possession list nr. 128, dated 30 January 2007, cadastral zone Gorazhdefc, municipality Pejë/Pec. According to this list *inter alia* the parcel numbers 498/1 and 498/2, are in the name of Sh I (P).
  
4. When the alleged Representative was confronted by the Executive Secretariat of KPA with the fact that not his father was mentioned as property right holder on the copy of the plan and the possession list, but I S, the alleged Representative answered that I S is his aunt. He filed on 14

September 2007 two new claims at KPA for repossession of the claimed property, stating that his aunt I S is property right holder of the claimed property and that she died in 1972. KPA registered the new claim referring to parcel 498/1 under KPA28987 and the new claim referring to parcel 498/2 under KPA28988.

5. The alleged Representative submitted with this new claims *inter alia* to KPA:
  - The copy of the plan;
  - The Authorization;
  - The death certificate dated 23 October 2007; according to this certificate I S born P, died 10 March 1972.
6. The alleged Representative stated during proceedings before KPA that his aunt died on 10 May 1972 instead of 10 March 1972 as stated in the death certificate.
7. No other person participated in the proceedings before KPCC.
8. The KPCC decided to refuse the claims KPA17663, KPA28987 and KPA28988. For the reasoning KPCC refers in the certified decision to paragraphs 12, 201 and 202 in the Cover decision. In its reasoning, as far as relevant, KPCC states that the alleged Representative filed the claims in his capacity as a family household member of the alleged property right holder, namely his father and the alleged Representative sent in the Authorization as power of attorney of his aunt. KPCC reasons that the power of attorney could not be verified as genuine. According to the death certificate the aunt passed away in March 1972 and could not have issued the power of attorney in April 1972. KPCC also notes that the claimed property is listed in the name of the aunt and not in the name of the father, the alleged property right holder.
9. The decision was served upon the alleged Representative on 15 March 2013.
10. The alleged Representative filed an appeal against the KPCC decision on 11 April 2013. The Registrar of the Supreme Court registered the appeal under three case numbers, each case referring to one of the three claims before KPA: GSK-KPA-A-07/2013 to KPA17663, GSK-KPA-A-071/2013 to KPA28987 and GSK-KPA-A-072/2013 to KPA28988.

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 Nada on 20 July 2009 authorized Appellant 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. No other party participated in the appeal procedure before the Supreme Court.
13. In its ruling, dated 21 August 2013, the Supreme Court joined the three cases under the number GSK-KPA-/A-70/13.
14. On 21 August 2013 the Supreme Court also issued a court order. According to this order the alleged Representative was requested:
  1. To present inheritance decision, certifying who are the legal successors of the alleged property right holder Ikonija Stepić, who died in 1972 (the appellant claims that S J, S S, S B and B Nada are 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
  2. 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.
15. In answer to the court order the alleged Representative states in a letter, dated 2 March 2015, 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 submits with this answer 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 party**

16. The alleged Representative alleges in appeal that it is untrue that due to the absence of a valid death certificate for his late aunt I S the claims must be refused. He repeats that the date of

death of his aunt on the death certificate is incorrect as she died on 10 May 1972. He also states he is authorized to file the claim in the name of the property right holder or her legal successors and possesses powers of attorney granted by his aunt on 28 April 1972 and her children as legal successors who authorized him to have the claimed property at his disposal. He proposes to annul the KPCC Decision and return the case for a new deliberation by KPCC.

**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 the allegations he made in support to claim KPA17663.
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 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**

24. Pursuant to Section 13.6 of Law UNMIK 2006/50 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**