

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-064/14

**Prishtinë/Priština,
5 December 2014**

In the proceedings of

M. K.
Kragujevački put no. 4
Ripanj, Belgrade
Serbia

Claimant/Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case files registered at the KPA under the numbers KPA35634 and KPA35655), dated 14 December 2012, after deliberation held on 5 December 2014 issues the following

JUDGMENT

- 1- **The appeal of M. K. is rejected as ungrounded.**

- 2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012, dated 14 December 2012, as far as it regards the cases registered under Nos. KPA35634 and KPA35655, is confirmed.**

Procedural and factual background

1. On 11 April 2007 M. K. (henceforth: the appellant), acting as a family household member on behalf of his deceased father, filed two claims with the Kosovo Property Agency (KPA) seeking to be recognized as the owner of different parcels of land acquired through inheritance, being repossessed and getting compensation for the illegal use. He explained that these parcels belonged to his late father, V.K. and that they were illegally occupied by an unknown person. He asserted that the possession of the property had been lost on 9 September 1999 as a result of the armed conflict.

2. To support his claim, he provided the KPA with documents related to his civil status and his parents' civil status as follows:
 - His Birth Certificate issued on 14 January 2000 by the Federal Republic of Yugoslavia, Republic of Serbia, Municipality Rahovec/Orahovac, showing his place of birth as Zoqishtë/Zoçište, Rahovec/Orahovac, the name of his father as **"K." K** and his father's birth date as **10 May 1915;**
 - His ID-card issued on 2 November 1999, showing the name of his father as **"K" K**
 - Death certificate issued on 11 September 2001 of **V. K.**, stating that he was born on **19 May 1915** and died on 28 August 2001 in Kragujevac.

3. Concerning the parcels that he allegedly inherited from V. K, the documents he submitted to the KPA are as follows:

No. of Appeal and KPA case	Data of claimed parcel	Submitted documents
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file		
GSK-KPA-A-064/14 (case file KPA35634)	Parcel No. 141 of 1673 m ² , located at Retijë/Retimlje, Rahovec/Orahovac, commercial property without buildings, 2 th class pasture	Possession list No. 163 issued by Cadastral Municipality of Rahovec/Orahovac, Cadaster Zone, Retijë/Retimlje, stating that the parcel belongs for 1/1 to V. S.K..
GSK-KPA-A-065/14 (case file KPA35655)	Parcel No. 1052/2 of 1189 m ² , located at Zoqishtë/Zočište, Rahovec/Orahovac, commercial property without buildings , 3 rd class pasture	Possession list No. 68 of Cadastral Municipality of Rahovec/Orahovac, Cadastral Zone of Zoqishtë/Zočište, stating that the parcel belongs for 1/1 to V. S. K.

The Death Certificate and the Possession Lists Nos. 68 and 163 were verified.

4. On 27 November 2007 (KPA35634), the KPA notified the claimed property by putting up a sign at the place where the parcel was allegedly located indicating that the property was subject to a claim and that interested parties should file their response within 30 days. No one responded to this notification. On 1 July 2010, KPA again notified the claimed property by publishing it in the Notification Gazette no. 3 and in the UNHCR Property Bulletin Office. The Gazette and the List were left with a village leader who agreed to make them available to the interested parties and at the entry/exit of village Retijë/Retimlje. The same publications were also left at all the Municipality's and Municipal Courts in Region, Cadastral Office in Prizren, UNHCR, CPRK, EULEX, OMBUDSPERSON and ICO.
5. On 30 September 2010 (KPA35655) KPA officers went to the places where the litigious parcel was allegedly located and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within a month. They noted that the claimed property was not occupied. Later on in the proceedings the KPA checked the notification and could, based on "ortophoto and GPS coordinates, confirm that the notification had been done properly.
6. Since no respondent filed a reply within the deadline, both claims were considered as uncontested.

7. As the Birth Certificate of the appellant indicated his father's name to be "Kostadin", whereas the Possession Lists showed the name of the owner as "Vukadin" and also the name of the deceased in the death certificate was "Vukadin", the Information Unit of the KPA contacted the claimant on 10 March 2008, 22 July 2008, 14 October 2008 and 24 February 2010 asking him to submit statements of witnesses regarding his father's name. Each time the claimant informed them that he would submit the necessary documents within a deadline of 30 days. The claimant was contacted again on 8 May 2009 and 26 April 2010 and each time he was given a deadline of 30 days to submit a certified document from the civil registration office explaining the discrepancy, otherwise his claims would be dismissed. The claimant explained that he would have his birth certificate and his identification card changed and would submit the changed documents within the deadline. Yet the claimant failed to submit these documents.
8. On 14 December 2012, the KPCC in a cover decision dismissed the claims for lack of proof of the appellant's capacity to file a claim on behalf of the property right holder (KPCC/D/A/180/2012). In the reasoning of its decision, the KPCC indicates that "[...] *Claims, in which an alleged family household relationship between the claimant and the property right holder cannot be established, cannot be considered complete claims in accordance with section 5.2 of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079. [...]* *Claims Nos. KPA35634 and KPA35655 are filed by the Claimant on behalf of his father, the property right holder. The property right holder's name is registered as V. K. in the possession list and in the death certificate submitted with the claim, while in the identification card and in the birth certificate submitted by the Claimant, his father's name is listed as K. K. The Claimant was contacted by the Executive Secretariat on five separate occasions during 2008 and 2009 to clarify the name difference and was asked to provide documents from competent institutions explaining the discrepancy. The Claimant advised that he would provide the necessary documents and would take steps to correct his father's name in the official record as his father's first name is Vukadin, not Kostadin. However, the Claimant has failed to produce any additional evidence. In the absence of any evidence confirming the family relationship between the Claimant and the property right holder, the Claimant's claim stands to be dismissed*".
9. On 5 November 2013, the Decision was served on Mladjan Krsitić. He filed an appeal before the Supreme Court on 20 November 2013.

10. The KPA Appeals Panel of the Supreme Court notes that eight (8) related appeals of the appellant were previously rejected (GSK-KPA-A-36/11) on the same basis as the explanation above.

Allegations of the Claimant/Appellant

11. The appellant alleged that the KPCC decision relies on incompletely established facts and erroneous application of the material law. He states that the Commission, in the appealed decision, invoked two of its earlier decisions: KPCC/D/A/84/2010 and KPCC/D/A/61/2010. He did not contest the fact that the Commission, at the time of making the aforementioned decisions, did not have such evidence. However, at the time of making the appealed decision, the Commission had the necessary documents so it could make a decision which would have confirmed his rights over the claimed properties. He alleges that he had initiated a procedure to correct the birth registry book and that this procedure had, due to no fault of his, lasted a long time. Finally, he states, he managed to have the data corrected and in the appeals against previous decisions, KPCC/D/A/84/2010 and KPCC/D/A/61/2010 he had submitted a second birth certificate issued on 28 October 2010, therefore the Commission was in possession of the aforementioned evidence before issuing the decision KPCC/D/A/180/2012 dated 14 December 2012.

Legal Reasoning:

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Joining of the appeals:

13. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.

14. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
15. In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in two cases. Only the parcels, subject of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
16. The appeals registered under GSK-KPA-A-064/14 to GSK-KPA-A-065/14 are joined in a single case under GSK-KPA-A-064/14

Merits of the appeal

17. Following the review of the case file and appellant's allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
18. The appellant has not proven that he is the son of the property right holder and as such either as a member of the family household could file a claim on behalf of his (deceased) father or as heir to his father could file a claim on his own behalf.
19. Section 5.2 of UNMIK Administrative Direction No. 2007/5 (UNMIK/DIR/2007/5) as amended by Law No. 03/L-079 prescribes as follows: "*In proceedings before the Commission, where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person*".
20. The appellant here states that he is the son of the deceased property owner. Yet he has not provided the KPCC but only the Court in the appeal instance with a birth certificate that indicates the name of his father to be that of the deceased property right holder: "V" K.

- a. Section 12.11 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-79 prescribes that “*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidences could not reasonably have been known by the party concerned*”. It appears rather questionable whether just the allegation of the appellant that he had not been able to obtain the birth certificate at an earlier date is sufficient to fulfill the conditions of the law. But even if the Court allows this new evidence and considers it, it is not sufficient to prove that the appellant is the son (and therewith a member of the family household in the meaning of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079) of the deceased property right holder.
- b. The Court needs not to decide, whether the birth certificate issued on 28 October 2010 was issued by the competent authority. Even if it had been issued by a competent body, it gives no proof that the deceased owner of the property was the father of the appellant.

The death certificate of the property right holder shows his name as V. K. and his birth date as 19 May 1915. Also in his claim the appellant has given the date of birth of his father as the 19 May 1915. The first birth certificate of the appellant, however, indicates the name of his father as K. K and his birth date as the 10 May 1915. Even after the correction, the birth certificate issued on 28 October 2010 gives the date of the birth of the appellant’s father as 10 May 1915. This birth date is not the same as the birth date of the deceased property owner, which is 19 May 1915. The Court is aware that mistakes do occur and that a birth date may be wrongly copied from the registry. However, a mistake seems more than improbable in cases in which the birth date is written down twice without change. So the Court has to conclude that either the birth certificate is proof that the date of the birth of the appellant’s father is not the date of the birth of the property right holder and that these are not the same person or the Court could assume that the second birth certificate does not show the entry in the registry but is just a corrected version of the first birth certificate. In both cases there is no proof of the appellant being the son of the property right holder.

21. This argumentation also applies insofar as the appellant wants to claim the property in his own name. The Court has no proof that he is the son of the deceased property right holder.

22. Therefore, the appealed decision neither relies on incompletely established facts nor erroneous application of the material law.

23. Consequently the appeal according to Section 13.3 (c) of Law No 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as is related to the cases which had to be decided upon in this Judgment (KPA35634 and KPA35655).

Legal Advice

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

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar