

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

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

GSK-KPA-A-034/12

Prishtinë/Priština,

12 December 2012

In the proceedings of:

M.S

Claimant/Appellant

vs.

**1. M.A represented by
E.Q (Lawyer)**

2. D.A

3. S.A

4. N.B

5. B.H

Respondents/Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/120/2011 (case files registered at the

KPA under the numbers KPA13473, KPA13474, KPA13475, KPA13476 and KPA13477), dated 7 September 2011, and on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/122/2011 (case file registered at the KPA under the number KPA13478), dated 7 September 2011, after deliberation held on 12 December 2012, issues the following

JUDGMENT

- 1- The decisions of the Kosovo Property Claims Commission KPCC/D/A/120/2011, dated 7 September 2011, as far as it relates to the cases registered under the numbers KPA13473, KPA13474, KPA13475, KPA13476, KPA13477, and KPCC/D/R/122/2011, dated 7 September 2011, as far as it relates to the case registered under the number KPA13478, are confirmed.

- 2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 18 September 2006, M.S filed six claims with the Kosovo Property Agency (KPA), claiming to be recognized as the co-owner to $\frac{1}{4}$ of several parcels of land and a house acquired by inheritance and seeking repossession. He asserted that the claimed parcels were lost on 12 June 1999 as a result of the circumstances in Kosovo in 1998/99.

The data of the claimed parcels, registered in Possession Lists No. 363 Lladovë/Vladovo and No. 382 Llashticë/Vlaštica, municipality of Gjilan/Gnjilane, Cadastral Office Gjilan/Gnjilane, both lists issued on 29 August 2006, are the following:

| | |
|------------------------------------|---------------------|
| Number of appeal and KPA case file | Data of the parcels |
|------------------------------------|---------------------|

| | |
|--------------------------------|--|
| GSK-KPA-A-034/12 (KPA13473) | Possession List No. 363, Parcel No. 190/1, at a place called “MERAJA VLADOVO” in Lladovë/Vladovo, municipality of Gjilan/Gnjilane, a 3 rd class field with a surface of 46 ar and 91 m ² ; |
| GSK-KPA-A-035/12 (KPA13474) | Possession List No. 363, Parcel No. 197/2, at a place called “MERAJA” in Lladovë/Vladovo, municipality of Gjilan/Gnjilane, a 4 th class field with a surface of 42 ar and 40 m ² ; |
| GSK-KPA-A-036/12 (KPA13475) | Possession List No. 363, Parcels No. 227/2, 227/3 and 228/2 at a place called “SUKA RID” in Lladovë/Vladovo, municipality of Gjilan/Gnjilane, a 4 th class field with a surface of 1 ha, 7 ar and 89 m ² ; |
| GSK-KPA-A-037/12 (KPA13476) | Possession List No. 382, Parcel No. 319/2, at a place called “BEZIMENTI” in Llashticë/Vlaštica, municipality of Gjilan/Gnjilane, a 2 nd class meadow with a surface of 22 ar and 60 m ² ; |
| GSK-KPA-A-038/12 (KPA13477) | Possession List No. 382, Parcel No. 325/1 at a place called “JARUGA” in Llashticë/Vlaštica, municipality of Gjilan/Gnjilane, a 2 nd class meadow with a surface of 18 ar and 60 m ² ; |
| GSK-KPA-A-039/12 (KPA13478) | Possession List No. 382, Parcel No. 2582/1 at a place called “PRZHAR DVORISHTE” in Llashticë/Vlaštica, municipality of Gjilan/Gnjilane, a house with a surface of 130.4 m ² ; |

To support his claim, the claimant provided the KPA amongst others with the following documents:

- Possession List No. 363 issued by the Republic of Serbia, Republic Geodesy Office, Municipality of Gjilan/Gnjilane, cadastral zone Lladovë/Vladovo on 29 August 2006, showing that the claimed parcels were registered under the name of M.S as co-owner to ¼ part of the property;
- Possession List No. 382 issued by the Republic of Serbia, Republic Geodesy Office, Municipality of Gjilan/Gnjilane, cadastral zone Llashticë/Vlaštica on 29 August 2006, showing that the claimed parcels were registered under the name of M.S as co-owner to ¼ part of the property;
- Inheritance Decision O.br. 55/70, issued by the Municipal Court of Gjilan/Gnjilane on 21 December 1971, according to which M.S inherited ¼ of the entire estate of his grandfather P.S;
- Contract on the division of the immovable property Cv.br.1213/79 concluded on 2 November 1979 in Gjilan/Gnjilane about several of the disputed parcels;

- For GSK-KPA-A-034/12 (KPA13473) and GSK-KPA-A-035/12 (KPA13474): judgment K.br. 267/86, issued by the Municipal Court of Gjilan/Gnjilane on 19 September 1986, with the injured party being M.S, sentencing B.A having committed the criminal offence of forging public documents;
- For GSK-KPA-A-034/12 (KPA13473) and GSK-KPA-A-035/12 (KPA13474) court record P.no.I-860-89, issued by the Municipal Court of Gjilan/Gnjilane on 5 June 1990, about an on-site visit to implement the final decision of the Municipal Court of Gjilan/Gnjilane P.no. 57/87, dated 11 September 1987, which annulled a sales contract of 15 August 1975:

The KPA verified according to the verification report from 20 December 2006 the Possession Lists No. 363 and 382. The inheritance decision O.br. 55/70 was found in the Municipal Court of Gjilan/Gnjilane and the contract on division Cv.br.1213/79 was verified positively.

The KPA organized the notification of the claims several times. The notification team went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. Later, at last in 2010, all notifications were checked based on cadastral data, GPS coordinates and orthophoto and were found to have been accurate.

The respondents submitted to the KPA the following additional documents and statements (besides others):

- For GSK-KPA-A-034/12 (KPA13473) the respondent M.A through his lawyer E.Q submitted a judgment P.no. 473/75, issued by the Municipal Court of Gjilan/Gnjilane on 7 October 1977, about a land dispute between B.S and B.A;
- For GSK-KPA-A-034/12 (KPA13473) and GSK-KPA-A-035/12 (KPA13474) the respondent M.A, inheritor of B.A, through his lawyer E.Q submitted another judgment K.no. 263/85, issued by the Municipal Court of Gjilan/Gnjilane on 23 October 1986, confirming a decision P.no. 119/85, issued by the Municipal Court of Gjilan/Gnjilane on 8 May 1985;
- For GSK-KPA-A-036/12 (KPA13475) the respondent D.A states that the property was bought from M.S in 1971. He explains that documents were burnt during war in 1999 and that he paid the property tax since 1971;

- For GSK-KPA-A-037/12 (KPA13476) the respondent S.A states that his father G.A bought the claimed property in 1972, no sales contract was issued at that time and according to S.A the claimants family moved in 1972 to Belgrade;
- For GSK-KPA-A-038/12 (KPA13477) the respondent N.B states that his father XH.B bought the property from M.S in 1973. Documents were burnt during war in 1999;
- For GSK-KPA-A-039/12 (KPA13478) the respondent B.H states that his elder brother S.H bought the property and he has possession since 1976. B.H presents a hand written invoice for a house and parcel from 21 January 1976 and another hand written invoice from 23 January 1977 where the seller declares that the purchase price of five million seven hundred fifty thousand dinars has been paid for a field and a forest by S.H.1, allegedly signed by M.S and S.H.2.

The KPA verified positively the judgment P.no.119/85 and the judgment K.no.263/85.

On 7 September 2011, the KPCC in its decisions KPCC/D/A/120/2011 and KPCC/D/R/122/2011 dismissed the claims. The KPCC/D/R/122/2011 reads: “As the claimant alleges that he left Kosovo during the 1970s and moved to Belgrade where he continues to reside. The Claimant states that the claimed property has been occupied by persons unknown to him since then. Accordingly, if the claimed property was occupied already in the 1970s, the Claimant’s alleged loss of possession cannot be related to the 1998-99 conflict.”

The decision was served on the claimant on 20 December 2011. On December 2011, the decision had been served on the respondents respectively to the representative of the respondent.

On 10 January 2012, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court.

The appellant challenged the decision for reason of serious violation of the procedure and incorrect and incomplete establishment of facts. He stated that he never had informed the KPA during the procedure that he lost the possession before the war 1998-99, as noted in the KPCC’s decisions. He admits that since the 80s he had disputes before the competent courts and other state bodies with the respondents or their parents due to possession disturbances and forgery regarding the parcels. He claims that all procedures were finished in his favor from the competent judicial authorities and these decisions were implemented and the respondents were during the 80s and 90s removed from his property by the competent authorities, but they continued to disturb at times his property by their

actions which were not of permanent but temporary character. The appellant claims cancellation of the KPCC decisions and the cases to be sent for reconsideration to KPA or a decision for repossession of the claimed property.

The appeal was served to the appellees on 29 February 2012. The appellees did not submit a reply to the appeal within a 30 days deadline.

The Court has joined the cases.

Legal reasoning:

The appeal has been filed within the deadline of 30 days prescribed by the law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Yet it is not grounded.

The Supreme Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law. The KPCC correctly assessed that the claims do not fall within the scope of its jurisdiction.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves a right to the property but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

Obviously there have been disputes about the property between the appellant and the appellees since the 1970s. Starting with Inheritance Decision O.br.55/70, issued by the Municipal Court of Gjilan/Gnjilane on 21 December 1971 going on with disputes in the 1980s, for example judgment K.no.263/85, issued by the Municipal Court of Gjilan/Gnjilane on 23 October 1986, confirming a decision P.no.119/85, issued by the Municipal Court of Gjilan/Gnjilane on 8 May 1985. The appellant admits in his appeal that since the 80s he had disputes before the competent courts and possession disturbances regarding the claimed parcels.

In the files, the Court found a note of a KPA officer from 15 August 2011, who described a conversation with the appellant about the claimed property: “The ES contacted the Claimant in order

to clarify why he during the Claim intake stated that he lost the possession of the claimed property during 99, and afterwards he stated he lost the possession of the claimed property in 1970. The claimant stated he left Kosovo in 1970 and went to Belgrade where he is still living. He did not give any explanation why there is such discrepancy between his statements. The ES also wanted to know if there was any purchase of the claimed parcels. The Claimant initially denied that there was a sale, however after it was mentioned to him that there is a Judgment in the claim file, submitted by the RP, mentioning a purchase of the properties from the pl.363 he admitted there was a sale, but by his mother and he does not know more...”

The appellant has not proven that the dispute concerning the property in question and the loss of the property is in any connection with the armed conflict of 1998/1999 but to the moving of the appellant to Belgrade in the 1970s and the longstanding disputes since the 1970s.

Therefore the Court finds that the cases are not within the scope of its jurisdiction pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079. According to this provision, the Supreme Court has jurisdiction in case the property rights cannot be exercised due to circumstances directly linked or resulting from the armed conflict that occurred within the period from 27 February 1998 until 20 June 1999. In the cases at hand, the subject matter of the claim is obviously related to old conflicts between the appellant and the appellees which existed before the armed conflict and is not related to this conflict.

According to all this, the appeals had to be rejected and the decision of the KPCC as far as it regards the litigious property confirmed.

The Courts decision is without prejudice to the right of the appellant to seek confirmation of his property before the competent local authorities.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. 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 Appeals Panel.

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 (10.21, 10.12, 10.1 and 10.15 mutatis mutandis of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being above € 100.000: € 30 (€ 50 + 0.5% of 90.000, yet not more than € 30).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar