

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

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

GSK-KPA-A-256/13

Prishtinë/Priština,

12 August 2015

In the proceedings of

B. V.

Serbia

Appellant

Representative: R. D.

vs.

A. and K.K.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Elka Ermenkova, and Rolandus Bruin, 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 KPA22870, KPA22871, KPA22872 and KPA22877) dated 14 December 2012, after deliberation held on 12 August 2015, issues the following

JUDGMENT

1. The appeals of B. V., registered under the numbers GSK-KPA-A-256/2013, GSK-KPA-A-257/2013, GSK-KPA-A-258/2013 and GSK-KPA-A-261/2013, are joined in a single case under the number GSK-KPA-A-256/2013.
2. The appeals of B. V. against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case files registered at the KPA under the numbers KPA22870, KPA22871, KPA22872 and KPA22877) dated 14 December 2012 are dismissed as belated.

Procedural and factual background:

1. On 5 April 2007, B. V., (henceforth: the Claimant) filed four separate claims with the Kosovo Property Agency (KPA), seeking re-possession of property rights. The Claimant seeks, in addition to re-possession, compensation for physical damage to, or for loss of use of, the claimed properties.
2. In the claims, it is stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 17 June 1999 as the date of loss.
3. To support his claims he provided the KPA with the following documents:
 - Possession List no. 772 issued by Center for Cadaster, Geodesy and Property of the Municipality of Klinë/Klina, dated 3 April 2002, showing that the claimed properties were in the possession of B. V..
 - Power of Attorney dated 14 May 2012, showing that B.V. has authorized R. D. to act on his behalf before the KPA.
 - Other documents (Purchase Contracts) which are not related to the claimed properties.
4. According to Possession List no. 772 of the Center for Cadaster, Geodesy and Property of the Municipality of Klinë/Klina, dated 3 April 2002, the cadastral parcels claimed by the claimant, located in the cadastral zone of the Municipality of Klinë/Klina, are registered in his name, notably:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-256/13 (KPA22870)	Parcel no.434, at the place called "Sello", a 2 nd class vineyard with a surface of 0.02.07 ha
GSK-KPA-A- 257/13 (KPA22871)	Parcel no. 435/1, at the place called "Sello", a 4 th class forest with a surface of 0.07.22 ha
GSK-KPA-A-258/13 (KPA22872)	Parcel no. 435/2, at the place called "Sello", a 3 rd class filed with a surface of 00.02.67 ha
GSK-KPA-A-261/13 (KPA22877)	Parcel no. 435/2, at the placed called "Sello", a 3 rd class filed, with a surface of 0.01.29 ha

5. The physical notification of the claims carried out on 8 May 2012 reflects the claimed properties as new constructed commercial buildings occupied by A. K.
6. According to the verification reports dated 16 March 2009 and 24 April 2009, the Executive Secretariat of the KPA, ex officio obtained the Certificate for Immovable Property Right UL-71006024-00978, issued by Municipal Cadastral Office of Klinë/Klina on 24 September 2009, showing the claimed properties on the name of K. K. The changes were done in 2006 based on the Purchase Contract legalized before Municipal Court of Klinë/Klina (Vr.Nr.980/2005) on 21 June 2005. The Purchase Contract was concluded between B. V. in capacity of the seller, represented by R. R. (through the Power of Attorney Vr. Nr. 687/03 dated 17 February 2003, certified before Municipal Court of Kraljevo/Serbia) and K. K. as the buyer of the claimed properties. Moreover, the Ministry of Justice of the Republic of Serbia through the official letter VIII. CY. 876/04 dated 15 October 2004 confirmed the validity of the Power of Attorney Vr.Nr.687/03 dated 17 February 2003.
7. Additionally, the Executive Secretariat of the KPA has found, the Court Decision Ac. Nr. 195/05 issued by District Court of Peja/Peč on 1 June 2005, through which the District Court of Peja/Peč quashed the decision of the Municipal Court of Klinë/Klina C.nr.243/02 dated on 9 April 2003 and send back the case to the same court for reconsideration.
With decision C.nr.243/02 dated on 9 April 2003, the Municipal Court of Klinë/Klina ordered temporary measures against B. V. (the Respondent before the court proceedings) who was

prohibited to sell the claimed properties until the end of the court proceedings or any other decision rendered. The plaintiff in this court procedure was a third party (D. G.).

8. The Executive Secretariat of KPA contacted Claimant's authorized representative on 12 March 2008, 29 May 2009 and 2 November 2009 to inform him that the properties were registered under the name of K. K. The Claimant's authorized representative said that the Claimant has not sold the claimed properties and that all documents were forged by the person that alleged to have bought the properties.
9. On 14 December 2014 the Kosovo Property Claims Commission dismissed the claims with decision KPCC/D/A/180/2012. In paragraph 27 and 77 of the decision, KPCC/D/A/180/2012 which applies specifically to the claims no. KPA22870, KPA22871, KPA22872 and KPA22877, it is stated that in all of these claims evidence was either submitted by the respective Claimant or by the Respondent and verified by the Executive Secretariat, or obtained by the Secretariat *ex officio*, showing that the Claimant, the Respondent or the Third Party filed prior to 16 October 2006 a lawsuit with the competent court seeking confirmation of his/her property right over the claimed properties. Pursuant to Section 18 of UNMIK/REG/2006/50 as adopted by Law No.06/L-079, the Commission's jurisdiction is excluded if juridical proceedings in respect of the claim have been commenced prior to 16 October 2006, the date on which UNMIK/REG/2006/50 entered into force. Accordingly all these claims stand to be dismissed.

The Claimant seeks, in addition to ownership, compensation for physical damage to, or for loss of use of, the claimed properties. Under UNMIK/REG/2006/50 as adopted by Law No.03/L-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.

10. On 5 August 2013, the decision was served on B. V. He (henceforth: the Appellant) appealed the decision on 5 September 2013.
The Supreme Court received the case files on 26 November 2013.
11. K. K., received the decision on 26 April 2013 in the capacity of appellee
12. The Appellee did not respond to the appeal.

Allegations of the appellant

13. The appellant states that the decision made by KPCC is based on violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation.
14. The appellant alleges that the reason for the rejection of his claims was not given in any part of the legal reasoning of the KPCC decision.

15. According to Appellant, based on such decision for which no reasoning was given, he can only assume that the legal reason for rejection of his claims could be that somebody illegally alienated the properties and that he was not aware of that.
16. Moreover, the appellant added that on 17 August 2010, through his authorized representative he requested from the Municipal Court of Klinë/Klina to obtain a copy of the evidences based on which the alleged purchase contract (showing K. K. has bought the claimed properties from him) was indeed legalized. The Basic Court of Peja/Peć, branch of Klina/Klina to date did not answer to him leading to the fact that the appellant has not sold the claimed properties.
17. By the end of the appeal, the appellant states that the KPCC was obliged to serve him the purchase contract through which allegedly the claimed properties were sold as well as to reflect this contracts on the reasoning of its decision, thus, he would use all the opportunities to challenge the sale and to take all needed legal actions to prove that the purchase contract actually was forged.
18. The Appellant additionally presented:
 - The Request addressed to Municipal Court of Klinë/Klina, through which the Appellant seeks to obtain the Purchase Contract which allegedly shows that he has sold parcel no. 433/1 of the Possession List no. 772.
19. The Appellee received the appeal on 6 December 2013. Nonetheless, he did not respond to the appeal.

Legal reasoning

Joining of the appeals:

20. According to section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Supreme Court 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.
21. 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.
22. In the text of the 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 four cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is 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.

23. The appeals registered under the numbers GSK-KPA-A-256/13, GSK-KPA-A-257/13, GSK-KPA-A-258/13 and GSK-KPA-A-261/13 are joined in a single case under the number GSK-KPA-A-256/13.

Admissibility of the appeal

24. The appeal is belated.
25. Section 12.1 of Law No. 03/L-079 provides as follows: *“Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”*.
26. The KPCC decision was served on the (representative of) the appellant on Monday, 5 August 2013. So the time limit ended on 4 September 2013 as the 30 day period on 4 September 2013. Yet the appellant filed his appeal on Thursday, 5 September 2013. This is outside the time limit.
27. Therefore the appeals have to be dismissed on procedural grounds as belated pursuant to (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) article 195.1 (a) and 196 of the LCP.

Legal Advice

28. 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

Elka Ermenkova, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nuffer, EULEX Registrar