

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI**

GSK-KPA-A-045/15

Prishtinë/Priština

8 March 2017

In the proceedings of:

B. P.

Appellant

vs.

A. K.

Represented by:

B. L., lawyer from Pejë/Peć

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 (the case files registered at the KPA under numbers: KPA32128, KPA93324, KPA93332, KPA93338, KPA93339 and KPA93356), after the deliberation held on 8 March 2017, issues the following:

JUDGMENT

1. The Appeals of B. P., registered under the numbers GSK-KPA-A-045/2015, GSK-KPA-A-046/2015 and GSK-KPA-A-51/2015, GSK-KPA-A-057/2015, GSK-KPA-A-058/2015 and GSK-KPA-A-063/2015 are joined in a single case under the number GSK-KPA-A-045/2015.
2. The Appeals of B. P., filed against the Decision KPCC/D/A/228/2014 (the case files registered at the KPA under the numbers KPA32128, KPA93324, KPA93332, KPA93338, KPA93339 and KPA93356), dated 13 March 2014, are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014, as far as it regards the Claims registered under the numbers KPA32128, KPA93324, KPA93332, KPA93338, KPA93339 and KPA93356 is confirmed.

Procedural and factual background

1. On 23 March 2007, M. P. filed three Claims to the Kosovo Property Agency (hereinafter “the KPA”) seeking the confirmation of the ownership right and repossession over the cadastral parcel No 260/1, cultivated land with the surface of 03.00.00 ha (KPA32128), cadastral parcel No 91/1, cultivated land with the surface of 5.99.99 ha (KPA32129) and cadastral parcel No 90/1, meadow with the surface of 1.27.15 ha (KPA32127); all located at the place called “Piskote” at Municipality of Gjakova/Đakovica (hereinafter “the claimed properties”).
2. M. P. declared that the possession over the claimed properties initially was lost due to the armed conflict, indicating 15 June 1999 as the date of loss, but later on he had authorized A. K. (hereinafter “the Appellee”) to divide the claimed properties and create new cadastral parcels with the purpose of selling them. The latter person misused the Power of Attorney that was given to him and misused the claimed properties.
3. Together with the Claim, M.P. provided the KPA with the following documents:
 - The Power of Attorney through which he authorized the Real Estate Agency “Kontakt” from Pejë/Peč, respectively its owner A. K., to undertake all actions aimed at measuring and physical division of the cadastral parcels: 90/1 and 91/1 with the total surface of 07.27.14 ha, registered in the Possession List No 1013, the Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Đjakovica. The signature of M.P. below the Power of Attorney was legalised by the Municipal Court of Kragujevac on 9 October 2004 under the No 463/2004;
 - The Decision No 952-02-347/04 issued by the Directorate of Cadastre of the Municipality of Gjakovë/Đjakovica, dated 25 April 2005, approving the Request of the Appellee for physical division of the cadastral parcel No 90/1 and 91/1; and creation of new cadastral parcels.
 - The Possession List No 93 issued on 20 June 2005 by the Department for Cadastre, Geodesy and Property of the Municipality of Gjakovë/Đjakovica, listing the M. P. as the co-owner with 4/5 ideal parts of the cadastral parcel No 260/1.
 - The Transcript of the Possession List No 1013 issued by the Geodesic Authority of Republic of Serbia, Municipality of Gjakova/Đakovica, listing the claimed properties under the name of M. P. (no date of issuance indicated).

- The copy of the Criminal Charge filed by M. P. before the Municipal Prosecution Office in Gjakovë/Đjakovica on 19 December 2006 against the Appellee due to the grounded suspicion of the latter one having committed a criminal offence of fraud.
 - The Lawsuit filed by M. P. before the Municipal Court of Gjakovë/Đjakovica on 15 January 2007 against the Appellee and I. P., through which M. P. sought the Court to order for the temporary measures related to the claimed properties.
 - The Written Statement of M. P., dated on 23 March 2007 declaring that the Appellee, in a capacity of the owner of the Real Estate Agency “Kontakti” from Pejë/Peč with the assistance of Ms. M. M., the owner of the Real Estate Agency “Horizont” from Kragujevac contacted him and offered his services for mediation and sale of the claimed properties. M. P. agreed with the Appellee to sell the claimed properties for the price 1000 Euro per ar. The first sale on the M. P. account was made by the Appellee on 28 December 2004. Later on, he revoked the Power of Attorney that was given to the Appellee, but the latter one abused it and continued selling part of the properties. Moreover, the Appellee usurped the rest of the properties and so far M. P. was not aware what the Appellee did with them.
 - The Response of the M. P. (to the Appellee’s allegation) filed before the KPA on 12 December 2013 confirming that the Appellee and I.P. concluded the Contract on Sale related to the cadastral parcel No 260/1. The Contract was certified (No 2418/05) by the Municipal Court of Mitrovica/Mitorvica on 18 September 2005.
 - The copy of the Death Certificate No 203-790/2014, issued by the Civil Registration Office of Arandëlovac on 23 May 2014 showing M. P. passed away on 13 May 2014. The Certificate was submitted by B.P., the son of M. P.
4. From the findings of the Executive Secretariat of the KPA (Verification Reports dated 7 and 13 February 2014) it may be concluded that the claimed properties (cadastral parcel 90/1 and cadastral parcel 91/1) were divided into new cadastral parcels, as well as, there were created new Claims’ numbers. The new number of the Claims and Cadastral Parcels claimed by the M. P. are registered as follows:

Appeal and KPA Case number	Data concerning the claimed parcel
GSK-KPA-A-045/15 KPA32128	Parcel No 260/1 located at the place called “Piskote”, with the surface of 03.00.00 ha
GSK-KPA-A-046/15 (initial Claim No KPA32129, new Claim No KPA93324)	Parcels No 91/47, 91/48 and 91/49 located at the place called “Piskote”, with the surface of 00.30.00 ha
GSK-KPA-A-051/15 (initial Claim No KPA32127, new Claim No KPA93332)	Parcel No 91/40 located at the place called “Piskote”, with the surface of 00.09.62 ha
GSK-KPA-A-057/15 (initial Claim No KPA32127, new Claim No KPA93338)	Parcel No 91/59 located at the place called “Piskote”, with the surface of 00.20.00 ha
GSK-KPA-A-058/15 (initial Claim No KPA32127 new Claim No KPA93339)	Parcel No 91/62 located at the place called “Piskote”, with the surface of 00.20.00 ha
GSK-KPA-A-063/15 (initial Claim No KPA32127)	Parcel No 91/51 located at the place called “Piskote”, with the surface of 00.50.00 ha

new Claim No KPA93356)	
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5. The notification of the Claim with regard to the cadastral parcel No 260/1 was performed on 18 November 2013. The property was found to be occupied by unknown person
6. The notification of the Claim with regard to the cadastral parcels with the numbers 91/47, 91/48, 91/49, 91/40, 91/59, 91/62 and 91/51 was performed on 12 November 2014. They were found to be occupied by the Appellee.
7. The Appellee claimed a legal right over the claimed properties and presented the following documents supporting his allegations:
 - The Contract on Sale No 164/03 concluded on 21 January 2003 before the Municipal Court of Gjakovë/Đjakovica between M. P. as the seller and R.K. as the buyer. According to the Contract, M. P. sold the surface of 00.60.00 ha from the cadastral parcel No 260/1.
 - The Power of Attorney granting the Appellee the authority to sell the property of M. P., namely the cadastral parcel No 260/1 to I. P. and to undertake all necessary actions for transferring the above mentioned parcel under the name of the buyer. The signature of M. P. below the Power of Attorney was legalised under the number 3203/2005 by the Municipal Court of Mitrovica/Mitrovica on 8 September 2005.
 - The Statement of M. P. declaring that he sold the cadastral parcel No 260/1 through the authorized person (the Appellee) to I. P. The sale was performed by his own free will and he received the sale price from the buyer. The signature of M. P. was legalised under the number No 3224/2005 by the Municipal Court of Mitrovica/Mitrovica on 8 September 2005.
 - The Additional Contract on Sale concluded on 11 January 2006 before the Municipal Court of Gjakovë/Đjakovica (No 65/06) between M. P. (represented by the Appellee) in the capacity of the seller and I. P. in the capacity of the buyer. Based on this Contract the point 1 of the Contract on Sale No 2418/05 dated on 12 September 2005 was corrected. M. P. and R. K. are registered as the co-owners of cadastral parcel No 260/1, cultivated land with the surface 2.40.00 ha and the cadastral parcel No 260/5, cultivated land with the surface of 00.60.00 ha. M. P. sold to I. P. his part of the property, not affecting the ideal part of other co-owner, R. K.
 - The Certificate for the Immovable Property Rights No 00093 issued by the Municipal Cadastral Office of Gjakovë/Đjakovica on 18 July 2013 listing I. P. as the co-owner over 4/5 ideal part of the cadastral parcel 260/1 and 260/5. The updates were done on 2 August 2011.
8. The Verification Report, dated 7 February 2014 shows that the division of the cadastral parcels was done based on Cadastral Ruling No 952-02-347/04 dated 11 October 2004 which was issued upon the Request of the Appellee in the capacity of an authorized person. The Cadastral Department has confirmed that the claimed properties had undergone many changes that relate to the owners. To the Verification Report it was attached the Chronological History No 952-03-8-2010 dated on 12 February 2010, explaining the changes over each cadastral parcel which was claimed. The current situation is as follows:
 - Cadastral Parcel No 260/1 was sold to I. P. based on the Contract on Sale No 164/03, concluded on 21 January 2003 before the Municipal Court of Gjakovë/Đjakovica.
 - Cadastral Parcel No 91/47 was sold to A. H. based on the Contract on Sale No 1929/05, dated 4 August 2005.

- Cadastral Parcel No 91/40 was sold to Q. H. based on the Contract on Sale No 2390/05, dated 9 September 2005.
 - Cadastral Parcel No 91/59 was sold to C. D. based on the Contract on Sale No 2268/05, dated 30 August 2005
 - Cadastral Parcel No 91/62 - the ideal part of 4/5 was re-sold from Xh. T. to T.S. and the ideal part of 1/5 to L. I., both on the basis of the Contract on Sale No 1394/06, dated 31 May 2006
 - Cadastral Parcel No 91/51 was sold to S. K.
9. With its Decision KPCC/D/A/228/2014 dated 13 March 2014, the Kosovo Property Claims Commission (hereinafter “the KPCC”) dismissed the Claims. In its reasoning, the KPCC stated that M. P. did not lose possession over the claimed properties as a result of the 1998-1999 conflict, but as a result of the voluntary disposal after the conflict, consequently, the Claims fell outside of the Commissions jurisdiction.
10. M. P. passed away on 13 May 2014 after the KPCC’s Decision was issued. The Decision was served on M. P. son, B. P. on 25 August 2014. On 22 September 2014, B. P. (hereinafter “the Appellant”) filed an Appeal against the KPCC’S Decision. The Appeal was served to the Appellee on 12 February 2014. He responded to the Appeal on 6 March 2015.

The allegations of the parties

The Appellant

11. The Appellant declared that the KPCC’S Decision contains fundamental errors and serious violation of the substantive law and it rests on erroneous and incomplete determination of facts.
12. The Appellant asserts that the claimed properties belonged to his father (M. P.) and now belong to him, as a successor. The reasoning of the KPCC’s Decision stating that his deceased father voluntarily alienated the claimed properties to the third party does not stand, because the alienation occurred in illegal manner, thus, the civil and criminal proceedings have been initiated and they are still ongoing.
13. Finally, the Appellant motions the KPA Appeals Panel of the Supreme Court of Kosovo not to allow further alienation of the claimed properties until the civil and criminal proceedings are over, meaning not to dismiss his Claims.

The Appellee

14. The Appellee’s Response referrer to the KPCC’s Decision No KPCC/D/A/227/2014 dated 13 March 2014. The Appellee denies the allegations of the Appellant and claims the Appellant had sold the claimed properties through him as a representative.
15. The Appellee is in possession of the documents confirming that regarding the same issue the Appellant has initiated civil proceedings demanding the compensation of the value of the real estate. The proceeding is ongoing before the Basic Court of Pejë/Peç. Further, the Appellee gives the detailed explanations relating to the stages of the court proceedings. He requests the Supreme Court to reject the Appeals of the Appellant as ungrounded. According the Appellee, the Supreme Court should declare itself incompetent on the

grounds of *litis pendentie*, because there is already a civil case C No. 196/12 pending before the Basic Court in Pejë/Peč regarding the claimed properties, as well as the parties to the proceedings are the same.

16. To support his allegations, the Appellee submitted the following documents to the KPA Appeals Panel of the Supreme Court of Kosovo:
 - A Power of Attorney through which the M. P. authorized the Real Estate Agency "Kontakt" from Pejë/Peč, respectively its owner A. K., to undertake all actions necessary for measuring and physical division of claimed parcels 90/1 and 91/1 with the total surface of 07.27.14 ha, registered in the Possession List No 1013, at the Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Đjakovica. The signature of M.P. was legalized by the Municipality of Kragujevac on 9 October 2004 (No 463/2004).
 - A Confirmation Letter of the Municipal Assembly of Gjakovë/Đjakovica of 22 April 2005, giving its consent for division of the properties.
 - The Decision No 952-02-347/04, issued by the Directorate of Cadaster of the Municipality of Gjakovë/Đjakovica, dated 25 April 2005, approving the request of M. P. for physical division of land parcels 90/1 and 91/1 and creation of new parcels. The request refers also to the claimed properties described in the table presented in paragraph 4 of this Judgment.
 - The Lawsuit filed by M. P. on 18 December 2006 to the Municipal Court of Gjakovë/Đjakovica against the Appellee for payment of debt in the amount of 155.00.00 Euro.

Legal reasoning

Joinder of the Appeals

17. 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.
18. The provisions of Law on Civil Procedure that are applicable in the proceeding before the KPA 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 in conjunction 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.
19. 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 six 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.
20. The Appeals registered under the numbers GSK-KPA-A-045/2015, GSK-KPA-A-046/2015 and GSK-KPA-A-51/2015, GSK-KPA-A-057/2015, GSK-KPA-A-058/2015 and GSK-KPA-A-063/2015 are thus joined in a single case under the number GSK-KPA-A-045/2015.

Jurisdiction

21. According to Section 3.1 of the Law 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, the obligation of the Appellant during the proceedings is not only to prove his ownership right over a private immovable property, but also to show 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.
22. The KPCC decided that the matter does not fall within its jurisdiction since the loss of possession does not derive from the circumstances of the armed conflict, but as a result of the voluntary disposal after the conflict.
23. The Supreme Court concludes that the ownership right and possession over the claimed properties were not lost because of the armed conflict of 1998-1999 in Kosovo. This conclusion is based on the updated cadastral records showing the names of the new owners of the claimed parcels. Moreover, the Appellant's father, through his written statement dated on 23 March 2007, confirms that the Appellee offered him his services for mediation and sale of the claimed properties. The Appellant's father agreed with the Appellee to sell the claimed properties for the price of 1.000 Euro per each are. Based on the written statement, the first sale on the Appellant's father account was performed by the Appellee on 28 December 2004.
24. It is not contested between the parties that the Appellant's father was the property right holder of the claimed properties till 2004, but the loss of the property rights derives from an alleged Contract on Sale. Moreover, the Appellant's father precisely stated that he demanded the KPA to order the Appellee to give to the seller the remaining part of the sale price.
25. The first sale of the property allegedly took place on 28 December 2004, between the Appellant's father and the Appellee, meaning quite some time after the conflict and then followed by other sales (the KPA documents in the file refer to years 2003, 2005 and 2006).
26. The Appellant alleges that the sale of the claimed properties occurred in illegal manner, and for that reason he has initiated civil proceedings for the compensation of the value of the real estate.
27. Nevertheless, the circumstance whether the Contracts are legally valid is not relevant for the current proceedings. The allegation on forgery cannot be examined by the KPCC or the Supreme Court herein. The alleged Contracts, regardless of whether they are forged or not, bearing the years 2003 and 2006 indicate that the dispute at hand between parties is not directly related to nor results from the armed conflict that occurred in Kosovo in 1998/99. The contested matter between the parties whether the contracts were forged or signed under pressure does not fall within the scope of jurisdiction of the KPCC, since it has no direct link with the armed conflict.
28. The challenged Decision of the KPCC was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied.
29. Therefore, the Supreme Court concludes that the KPCC by dismissing the Claims as falling outside its jurisdiction has rendered a correct Decision. Consequently, the Appeals have to be rejected as unfounded.
30. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

31. This Judgment is without prejudice of the right of the Appellant to pursue its alleged right before the competent court, if he considers it necessary.

Legal Advice

32. Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar