

**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-212/14**

**Prishtinë/Priština,**

**8 September 2016**

In the proceedings of:

**Z.M.B.**

Klicinë/Klincina,  
Pejë/Peć

**Appellant**

v/s

**1.M.M.**

Darinke Radević 18 2  
11250 Železnik, Čukarica BG,  
Serbia

and

**2.V.A**

Pańska 24/3  
Skopje,  
FYROM,

**Appellees**

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014 (case files registered at the KPA under the numbers

KPA93182 and KPA93183), dated 13 March 2014, after the deliberation held on 8 September 2016, issues the following

### **JUDGMENT**

1. **The Appeals filed by Z.M.B. , registered under the numbers GSK-KPA-A-212/2014 and GSK-KPA-A-213/2014, are joined in a single case under the number GSK-KPA-A-212/2014.**
2. **The Appeals filed by Z.M.B. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014, dated 13 March 2014, with regard to the Claims registered with KPA under the numbers KPA93182 and KPA93183 are rejected as unfounded.**
3. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014, dated 13 March 2014, with regard to the Claim with the numbers KPA93182 and KPA93183, is confirmed.**

#### **Procedural and factual background**

1. On 6 October 2006, M.M. (henceforth: the Appellee 1) in his capacity of family household member of the alleged property right holder- his deceased mother S.M. , filed two separate Claims with the Kosovo Property Agency (henceforth: the KPA), registered under the case No KPA13649 and No KPA13651, seeking the repossession of the claimed parcel No 52 with the surface of 1.46.63 ha and parcels 49 with surface of 2.77.01 Ha and 50 with surface of 00.15.10 Ha, all of them located in the cadastral zone of Klicine/Klincina, Municipality of Pejë/Peć (henceforth: the claimed property).
2. On 23 November 2013 M.M. 's sister V.A. (henceforth: the Appellee 2) approached the KPA alleging legal rights over  $\frac{1}{4}$  ideal part of the claimed property. She had not contested M.M. 's ideal part and the possibility that her brother has sold his part to another person (the Appellee) .
3. The KPA contacted M.M. on 19 June 2013 and he confirmed that the Claim could be processed by considering him as the co-owner of the  $\frac{3}{4}$  ideal part of the claimed property. He also stated that he was negotiating with a third party ~~for~~ the sale of the property.
4. The KPA separated the original Claims and created new Claim under the name of V.A. , namely No KPA93182 and No KPA93183.

5. During a subsequent conversation on 27 November 2013 the Appellee 1 stated that he has sold his ideal part of the claimed property to Z.M.B. (henceforth: the Appellant) and submitted the letter of withdrawal of the original Claims.
6. The Appellee 1 submitted *inter alia*, to the KPA:
  - The Possession List No 7 issued on 16 January 1992 showing the claimed property under the name of the deceased mother of the Appellee's, S.M. ;
  - The Death Certificate issued on 1 September 1997 certifying that S.M. passed away on 30 April 1991;
  - The Birth Certificate No 14/1936 showing that the Appellee's mother is S.M. ;
  - The Inheritance Decision No 133/07 issued on 06 February 2008 by the Municipal Court in Pejë/Peć, declaring the Appellee 1 as the sole inheritor of his mother S.M. .
7. The KPA obtained *ex officio* the Certificate for the Immovable Property Rights No 7/2014 listing V.A. and M.M. as co-owners of the claimed property, with  $\frac{1}{4}$  and  $\frac{3}{4}$  ideal parts respectively.
8. All of the abovementioned documents were positively verified.
9. The Claims were notified on 13 January 2013. The claimed property was found occupied by Z.M.B. (henceforth: the Appellant) who participated as a Respondent in the proceedings by signing a Notice of Participation and claimed legal rights over the claimed property.
10. The Appellant provided the KPA with:
  - The Agreement dated 05 December 2011 between the Appellee 1 at one hand as a seller and Hasan and Z.B. (the Appellant) at other hand as the buyers, on purchase of  $\frac{3}{4}$  ideal parts of the claimed property.
  - The Statement dated 10 October 2012 of the Appellee 1 confirming the voluntary sale of  $\frac{3}{4}$  ideal part of the claimed property to the buyers H. and Z.B.. and the receipt of the sale price in cash.
11. On 13 March 2014, the KPCC with its Decision KPCC/D/A/227/2014 granted the Claims with the reasoning that the Appellee 1 has established that the Appellee 2 is the owner of  $\frac{1}{4}$  ideal part of the claimed property.
12. The KPCC's Decision was served on the Appellant on 10 June 2014. On 12 June 2014 the Appeals were filed by the Appellant.

**Allegations of the Appellant**

13. In his Appeals, the Appellant alleges that the Decision of the KPCC involves a fundamental error and serious misapplication of the applicable material or procedural law. The Appellant states that he has bought the claimed property from the Appellees and provided the same documents (Agreement dated 05 December 2011 and Statement dated 10 October 2012) as the Appellee 1.

**Legal reasoning****Admissibility of the Appeals**

14. The Appeals were filed within the time limit of 30 days set in Article 12.1 of the Law No. 03/L-079 and they are admissible.

**Joining of the Appeals**

15. Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 states that the Supreme Court can decide upon 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 Supreme Court to take into consideration the joining or merger of appeals in order to review and render judgments when there are common legal and evidentiary issues.
16. The provisions of Law on Contested Procedure that are applicable in the proceedings 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 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.
17. In the text of the Appeals filed by the Appellant, the Supreme Court observes that apart from the different case number for which the respective Appeals are filed, the facts, the legal grounds and the evidentiary issues are exactly the same in both 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.
18. Therefore the Appeals registered under GSK-KPA-A-212/14 and GSK-KPA-A-213/14 are joined in a single case under the number GSK-KPA-A-212/14.

**Merits of the Appeal**

19. The Appellant claims legal rights over the claimed property, asserting that he purchased  $\frac{3}{4}$  ideal parts of this property from the Appellee 1. Together with the Appeal he provided the same documents as during the proceedings before the KPCC, showing that the Appellant together with a third party purchased  $\frac{3}{4}$  ideal parts of the claimed property from the Appellee 1. The purchase was confirmed by the Appellee 1. The Appellant does not assert, and the documents provided by him both with the Response of the Claim and with the Appeal do not show, any legal rights over the rest  $\frac{1}{4}$  ideal parts of the claimed property. At the same time the Appellee 2 alleges property rights over these  $\frac{1}{4}$  ideal parts of the claimed property and the Executive Secretariat of the KPA obtained *ex officio* the Certificate for Immovable Property Rights No 7/2014 listing the Appellee 2 as a co-owner of the claimed property with  $\frac{1}{4}$  ideal parts. Consequently, as the case at hand refers to the part of the land parcel not sold by the Appellee 1 and the Appellant did not claim to have bought the whole parcel, he may not be considered as being entitled to repossession of the whole land parcel.
20. Accordingly, the KPCC was correct to grant the claims and to recognize the property rights of the Appellee 2 over the claimed property. Neither violation of substantive or procedural law nor an incomplete determination of the facts has been made. Therefore the Supreme Court finds the Appeals unfounded.
21. 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.

**Legal Advice**

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

**Beshir Islami, Presiding Judge**

**Krassimir Mazgalov, EULEX Judge**

**Anna Bednarek, EULEX Judge**

**Sandra Gudaityte, EULEX Registrar**