

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

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

GSK-KPA-A-010/15

**Prishtinë/Priština
19 April 2017**

In the proceedings of:

Z. P. C.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 (case files registered at the KPA under the numbers KPA21561, KPA29979, KPA29985, KPA44269, KPA44278 and KPA44285), dated 13 March 2014, after deliberation held on 19 April 2017, issues the following:

JUDGMENT

1. The appeals filed by Ž. P. C, registered under the numbers GSK-KPA-A-010/2015, GSK-KPA-A-016/2015, GSK-KPA-A-022/2015, GSK-KPA-A-028/2015, GSK-KPA-A-034/2015 and GSK-KPA-A-039/2015, are joined in a single case under the number GSK-KPA-A-010/2015.
2. The appeals of Z. P. C. against the decision of the Kosovo Property Claims Commission KPCC/D/C/232/2014 dated 13 March 2014, with regard to the claims registered with KPA under Nos. KPA21561, KPA29979, KPA29985, KPA44269, KPA44278 and KPA44285, are dismissed as inadmissible due to the fact that they were filed by an unauthorized person.

Procedural and factual background

1. On 18 June 2007 and 19 June 2007, the Limited Liability Enterprise “Kosmet Coning” (hereinafter: the claimant), with seat in Novi Sad, Serbia, represented by Ž. P. C. (hereinafter: the appellant) in his position as director of the claimant, filed several claims with Kosovo Property Agency (KPA) seeking confirmation of its property rights over residential and business premises, and other units in several floors of two commercial buildings A and B, which are supposed to have been constructed in parcels 7476/1 and 7480, located at street “Dvarska 6”/ Dardanija, near the bus station in Priština (hereinafter: the claimed properties).
2. Claimant submitted in KPA *inter alia* the following documents:
 - Ruling on Registration of Business Entity, of 31 December 1999, issued by the Agency for Business Registries of the Republic of Serbia regarding the registration of the Claimant with full name: Limited Liability Enterprise Kosmet Coning for Planning, Construction Works and Engineering, No 08201366, with seat in Novi Sad, Republic of Serbia. The Appellant was registered as a founder and representative of the Claimant; (page no 43 të the case file 023/2015);
 - Ruling No 351-363/93-01 of Priština Municipal Assembly on Allocation of the City Construction Land for Use (the land parcels 7471/1 and 7480) dated 16 July 1993;

- Ruling of the Secretariat for Urbanism, Construction and Protection of the Municipal Assembly of Prishtinë/Priština, granting permission to the Claimant to construct residential premises (Entry A, Floors Po+P+1+M, and entry B, floors P+1+M) on the cadastral parcels 7476/1 and 7480, in Dardania in Priština;
 - Power of Attorney signed on 20 May 2008 by Ž. C., acting as “the Director and the owner” of L.L.C. “Kosmet Coning” from Novi Sad on the basis of which lawyer L. C. D. was authorised to represent the Appellant;
 - Certificate on Immovable Property Rights, dated 24 June 2011, indicating that land parcels Nos 7476/1 and 7480 are registered under the name of Prishtinë/Priština Municipality.
3. The documents mentioned at paragraph no 2 of the Judgment were positively verified by Executive Secretariat of KPA. Moreover, the Secretariat found ex officio the following document:
- Decision of the Commercial Court in Novi Sad (Republic of Serbia) 139/2011, dated 1 August 2011, in the procedure to establish the existence of reasons for the claimant’s bankruptcy. According to the enacting clause, the bankruptcy procedure was initiated because of permanent inability to repay the debts. Further, it is stated that creditors and debtor have no legal interest in implementing the bankruptcy procedure. The bankruptcy proceedings were concluded and the debtor’s property, if there was any, according to the law was transferred under the ownership of the Republic of Serbia.
4. The Decision is final since 11 November 2011 and that the claimant was expunged from the registry of business in Serbia and it no longer exists.
5. According to the Appellant’s statement and the search in registries of legal persons, the claimant was not registered as a business entity in Kosovo.
6. KPCC with its Decision KPCC/D/C/232/2014 dismissed the claims. In its reasoning (paragraph 41 of the Cover Decision), the KPCC stated that claims were filed by the claimant as the alleged property right holder, represented by its legally authorised representative, who at the same time is the sole shareholder. As the Executive Secretariat of the KPA established that the Claimant went declared bankrupt in 2011 and subsequently was deleted from the register of commercial companies. As a consequence, the Claimant ceased to exist as a party in the procedure before the KPCC. The Commission further concluded, that “since the Claimant as a limited liability Corporation, possessed a legal personality separate from its owners (shareholders), the shareholder who

filed these claims with the Commission on behalf of the Claimant cannot be recognised as a legal successor of the Claimant in relation to the alleged property rights”.

7. Decisions were served onto appellant on 16 July 2014.

8. Appellant filed appeals against the KPCC decision on 14 August 2014. Appeals refer to claim numbers and claimed properties as per the table below:

| Appeal number and KPA case number | Data concerning the claimed parcel | Number and date of the decision |
|--|--|--|
| <i>GSK-KPA-A-10/2015 (xxx)</i> | <i>Parcel 7554, Pristina cadastral zone, Drvarska 6, surface of 20 square meters</i> | <i>KPCC/D/C/232/2014 Dt. 13 March 2014</i> |
| <i>GSK-KPA-A-16/2015 (xxx)</i> | <i>Parcel 7554 Zona kadstrale Prishtinë, Drvarska 6 sipërfaqe pre 30 metra katrorë</i> | <i>KPCC/D/C/232/2014 Dt. 13 Mars 2014</i> |
| <i>GSK-KPA-A-22/2015 (xxx)</i> | <i>Parcel 7554, Prishtina cadastral zone, Drvarska 6, surface of 30 square meters</i> | <i>KPCC/D/C/232/2014 Dt. 13 Mars 2014</i> |
| <i>GSK-KPA-A-28/2015 (xxxx)</i> | <i>Parcel 7554, Prishtina cadastral zone Drvarska 6, surface of 30 square meters</i> | <i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i> |
| <i>GSK-KPA-A-34/2015 (xxxxx)</i> | <i>Parcel 7554 Drvarska 6, Lam.B. Entry 1 and 2, surface of 700 square meters</i> | <i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i> |
| <i>GSK-KPA-A-39/2015 (KPAxxxxx)</i> | <i>Parcel 7554, Prishtina cadastral zone, Drvarska 6, surface of 200 square meters</i> | <i>KPCC/D/C/232/2014 st. Dt. 13 March 2014</i> |

Allegations of Appellant

9. The Appellant alleges in his appeal that that the KPCC Decision involves a fundamental error or serious misapplication of the applicable material and procedural law, as the Appellant was not allowed to actively participate in the proceedings before the KPCC to dispute the facts and the allegations of the other parties and participants in the proceedings. The Appellants states that he is a sole owner of the legal entity Kosmet Koning LLC and at the same time the owner of the claimed properties. He further alleges that the fact that the company does not exist as a legal entity is wrongly determined, because the claimed properties are private property of the Appellant.

Legal reasoning:

Joining of the appeals

10. According to section 13.4 of 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.
11. 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 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.
12. 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 all the 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. Therefore, the appeals registered under the numbers GSK-KPA-A-010/2015, GSK-KPA-A-016/2015, GSK-KPA-A-022/2015, GSK-KPA-A-028/2015, GSK-KPA-A-034/2015 and GSK-KPA-A-039/2015 are joined in a single case under the number GSK-KPA-A-010/15.

Admissibility of the Appeal

13. After reviewing the case file, allegations of the Appellant and after the assessment of the challenged Decision pursuant to provisions of Article 194, the Supreme Court finds that **the abovementioned appeals of Z. C. have to be dismissed as inadmissible due to the fact that the Appellant is not authorized to file them as it is stipulated in article 186.3** in conjunction with Article 95 of the Law on Contested Procedure (LCP).
14. The Claimant: “Kosmet Coning” Limited Liability Corporation from Novi Sad (hereinafter “the Corporation”, “the L.L.C”, “the legal entity”), represented by the Director Ž. C. requested the KPA to confirm its property rights over the claimed properties and their re-possession. During the proceedings however, before the KPCC issued the Decision, the legal entity was expunged from the Register by the competent court in the Republic of Serbia, thus the L.L.C ceased to exist. Consequently, the Commission dismissed the Claims filed by the Corporation explaining that the shareholder who filed the Claims on behalf of the legal entity cannot be recognised as a legal successor of the Claimant. The Decision was then served on Ž. C, who filed the Appeals, in which claimed that he was the owner of the claimed properties on the basis of the contract concluded in 1999, as well as declared that being the shareholder of all the shares of the Corporation, he owned all its assets.
15. According to Section 12.1 of the Law No 03/L-079 “within thirty (30) days of the notification 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”. In the case at hand there was only one party to the proceedings: “Kosmet Coning” Limited Liability Corporation from Novi Sad. The fact that the Corporation after being declared bankrupt was expunged from the Register means that the party which submitted a Claim ceased to exist and therefore cannot support it anymore. Furthermore, pursuant to provisions of Article 3 paragraph 1 of the Law on Business Organisations, it is not allowed that the representative of this legal entity participates in these proceedings on his name after the declaration of bankruptcy and neither be an inheritor of the stated enterprise. The Commission was correct then when it assessed that in such a case the Claim stands to be dismissed.
16. The Appellant: Ž. C. did not act during the proceedings as a natural person, on his own behalf, but represented the legal entity. Once the party to the proceedings went bankrupt it may not be represented by neither the director, nor any other representative anymore (Article 95.2 of the Law on Contested Procedure). None of the provisions of the law in

force in the Republic of Kosovo allows for the previous representative of the legal entity to step in to the proceedings on his own behalf after the declaration of bankruptcy, neither it provides that such a representative becomes the successor of the Corporation. Furthermore, the Appellant, who filed the Claims on behalf of the LLC has not amended their content during the proceedings before the KPCC on the basis of the Articles: 257 – 261 of the Law on Contested Procedure neither. For those reasons Ž. C. cannot be considered as a party to the proceedings in the case at hand, hence he could not support the Claims on his behalf, neither was he entitled to file an Appeal against the Decision. The Appeals stand to be dismissed though.

17. Therefore the Appeals had to be dismissed as inadmissible on procedural grounds (Section 13.3(b) of Law No 03/L-079). As a consequence the Supreme Court could not examine the grounds indicated in the Appeals.

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.

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar