

**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-240/11

Prishtina, 3 October 2012

In the proceedings of:

Z. T.,

Address ...

Claimant/Appellant

vs.

N. J.,

Address ...

Respondent / Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva - Ermenkova and Sylejman Nuredini, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/108/2011 (case file registered at the KPA under numbers KPA34698, KPA34699, KPA347000, KPA34701 and KPA34702), dated 13 May 2011, after deliberation held on 3 October 2012, issues the following:

JUDGMENT

- 1- The appeals filed by Ž. T. on 12 December 2011, registered under numbers GSK-KPA-A-240/11, GSK-KPA-A-241/11, GSK-KPA-A-242/11, GSK-KPA-A-243/11, GSK-KPA-A-244/11, are joined in a single case under the number GSK-KPA-A-240/11.
- 2- The appeals filed by Ž. T. against the decision of Kosovo Property Claims Commission KPCC/D/A/108/2011, dated 13 May 2011 are rejected as ungrounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/108/2011, dated 13 May 2011, as far as it regards the cases registered at the KPA under Nos. KPA34698, KPA34699, KPA34700, KPA34701 and KPA34702, is confirmed.
- 4- The appellant has to pay the costs of the proceedings which are determined in the amount of € 350 (three hundred fifty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 30 November 2007, Ž. T. filed five claims with the Kosovo Property Agency for private property on behalf of his now deceased uncle Lj. T., who according to him was the property rights holder of immovable properties of agricultural land, claiming re-possession of cadastral parcels of agricultural land. The above-mentioned claims refer to the cases registered in this court: GSK-KPA-A-240/11, GSK-KPA-A-241/11, GSK-KPA-A-242/11, GSK-KPA-A-243/11 and GSK-KPA-A-244/11. With these claims, he alleges that the possession was lost on 16 June 1999 and that the right to those immovable properties cannot be exercised 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.

In the Certificate on Property Rights of Cadastral Office in Fushë Kosova UL-7251407100006, dated 27 June 2008, J. N., who responded to the claim, is registered as the owner of the following cadastral plots:

| Case number at the Supreme Court and case number at the KPA | Data concerning the claimed parcels |
|---|---|
| GSK-KPA-240/11 (KPA34698) | No. 397, at the place called "Dole Bresjaka": field class 2, with surface area of 0.76.13 ha, Cadastral Zone Ugljar, Fushë Kosovë/Kosovo Polje Municipality |

| | |
|------------------------------|---|
| GSK-KPA-241/11 (KPA34699) | No. 467/2, at the place called “Donja Livada”: meadow class 3, with surface area of 0.15.39 ha, Cadastral Zone Ugljar, Fushë Kosovë/Kosovo Polje Municipality |
| GSK-KPA-242/11 (KPA34700) | No. 468, at the place called “Donja Livada”: field class 3, with surface area of 0.12.81 ha, Cadastral Zone Ugljar, Fushë Kosovë/Kosovo Polje Municipality |
| GSK-KPA-243/11 (KPA34701) | No. 499, at the place called “Livade Smonica”: field class 3, with surface area of 0.35.94 ha, Cadastral Zone Ugljar, Fushë Kosovë/Kosovo Polje Municipality |
| GSK-KPA-244/11 (KPA34702) | No. 789, at the place called “Kecmanovo”: field class 5, with surface area of 0.73.98 ha, Cadastral Zone Ugljar, Fushë Kosovë/Kosovo Polje Municipality |

To support his claims, the claimant provided the KPA with the following documents-evidence:

- Extract from the Death Register, issued by the Municipality of Fushë Kosovë/Kosovo Polje, No 05, dated 04 November 1991, by which it is ascertained that **Lj. T.** died in the village of Uglare, in Fushë Kosovë/Kosovo Polje, on 9 September 1991;
- Possession List issued by the Municipal Geodesy Directorate in Prishtinë/Priština on 18 October 1988;
- Identification Card under the name of **Ž. T.** dated 22 February 2000.

N. J. in the capacity of the respondent contested the claims of the claimant **Ž. T.** stating that she is the property rights holder of the claimed properties. Attached to the response to the claim she submitted the following evidence:

- Contract on transfer and parcelling of the property, VR. no. 3315/10, dated 13 May 2010;
- Ruling of the Municipal Court in Prishtinë/Priština, T.no. 7/92, dated 16 January 1992, by which **J. N.** – the respondent - was declared inheritor of the inheritance mass of **T. Lj.** which is the subject of the claim;
- Possession List No. 285 of the Cadastre Service for Immovable Properties No. 952-01-1/97, dated 21 August 1997;
- Certificate on Property Rights from Fushë Kosovë/Kosovo Polje Cadastral Office, UL-7251407100006, dated 27 June 2008;
- Decision of the Cadastral Office in Fushë Kosovë/Kosovo Polje, No. 527/2008, dated 26 June 2008.

The KPA Executive Secretariat, during the process of verifying the submitted documentation has positively verified the Possession List No. 285 dated 21 August 1997, by which it is ascertained that the parcels claimed by the claimant are under the name of the respondent as property holder. The Possession List corresponds to the Certificate on Property Rights of Fushë Kosovë/Kosovo Polje Cadastral Office, UL-7251407100006, dated 27 June 2008. The Judgment C.nr.1296/94, dated 31 March 1998, and the Ruling of the Municipal Court in Prishtinë/Priština T.nr.7/92, dated 16 January 1992, however were not found in the archive of the Municipal Court. Yet the Certificate on Property Rights, dated 11 October 2010, which presents the actual situation of claimed parcels and indicates that the respondent is the owner of the contested properties, was found ex officio by the official for verification at the KPA Executive Secretariat.

In 2008 and 2010, the KPA, through the Notification Team, visited the sites where the parcels were allegedly situated and put up signs in the respective cadastral parcels. Later on in the proceedings, **N. J.** as respondent appeared at the Executive Secretariat and contested the filed claims by presenting respective evidence.

By presenting evidence before the KPA, the respondent declares that she is the property right holder of the immovable property claimed by **Ž. T.**. She further states that the claimant is not the owner of these immovable properties and that he made the claim without being authorised for such an action.

The Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/108/2011, dated 13 May 2011, decided to dismiss as inadmissible the claims of the claimant **Z. T.** with the reasoning that he failed to present authorisation by the family household member – his uncle – in order to be able to perform the legal act of depositing the claim under the name of property right holder.

The decision was served to the claimant on 2 December 2011.

On 12 December 2011, **Ž. T.** (hereinafter: appellant) filed an appeal with the Supreme Court, challenging the KPCC decision on grounds of erroneous and incomplete determination of the factual situation, misapplication of the substantive law and essential violations of the procedural provisions, requesting the Court to decide positively on his appeal. Furthermore, in his appeal he states that upon the death of his uncle **Lj. T.** and his spouse **D. T.**, inheritors of the inheritance mass should have been his brothers **T., D.** and his sister **L.T.** . Whereas, the uncle's sister **N. T.** , who is the respondent, carried out a fraudulent transaction and based on the inheritance ruling T.nr.7/92 dated 16 January 1992, without the knowledge of other family members, was declared as sole inheritor and based on this ruling she became owner in the cadastral office.

The claimant's father **T. T.** obtained Judgment C.nr.1296/94 dated 7 November 1998, with which it was ascertained that **N. T.** was not the daughter of **Lj. T.**. In the end, the claimant states that they made a mistake by not preparing and implementing the inheritance proceedings in timely manner to resolve the legal property relations within the family, but he hopes to do it soon.

The appellee **N. J.** filed a response to the appellant's appeal on 16 January 2012, contesting his appeal, whereby because of the lack of the appellant's authorisation and property right, she motioned for the appeal to be dismissed. Based on the inheritance ruling T.nr.7/92 dated 16 January 1992 and Possession List No. 285 of Cadastral Zone Ugljare, she is the owner of immovable properties claimed by the claimant and that the claimant's claim has nothing to do with the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, according to Section 3.1 of UNMIK Regulation 2006/50 the KPA had no jurisdiction to decide on this legal matter.

Because **Ž. T.** was not the owner of the claimed property and because he had not lost the right due to circumstances directly related to or resulting from the armed conflict, his claim should be dismissed as inadmissible due to lack of jurisdiction thereby dismissing his appeal as well.

The Supreme Court joined the claims.

Legal reasoning:

Joining of the appeals:

Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide to join or merge the appeals when such joining or merger was duly decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section enables the Commission to join or merge the claims in order to deal with and render decisions when there are common legal issues and evidence in place.

Provisions of the Law on Civil Procedure, applicable in the appeal proceedings before the Supreme Court of Kosovo pursuant to Section 12.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, then those of Article 408.1 in conjunction with Article 193 of Law No. 03/L006 on Contested Procedure, provide for the possibility of joining all appeals through a ruling of the court if such joining contributes to the efficiency of the proceedings.

In the text of the appeals filed by the appellant, the Supreme Court finds that besides the different number of the case which the relevant appeal is exactly filed for, the whole factual and legal ground, as well as the issue of evidence is completely the same in all 5 (five) cases. Only the parcels subject to the property right, which are claimed in each claim, are different. The appeals are grounded on the same explanatory statement and on the same documents. Furthermore, the legal reasoning given by the Commission on the claims is the same.

The appeals filed by **Ž. T.** dated 12 December 2011, registered under the numbers GSK-KPA-A-240/11 until GSK-KPA-A-244/11 are joined in a single case registered under the number GSK-KPA-A-240/11.

Admissibility of the appeals:

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision.

In the present case, the KPCC decisions were served to the appellant on 2 December 2011, whereas his appeals were filed on 12 December 2011, which is less than 30 days after the receipt of the notification on the KPCC decisions.

The respondent/appellee **N. J.** received the appealed decision on 10 December 2011, she received the appeal on 16 December 2011 and filed the responses to the appeals on 30 December 2011.

The appeals are admissible because they were filed within the legal time frame; however, they are ungrounded.

Merits:

The Supreme Court observes that based on the documents provided by the claimant, the allegations stated in the appeal and the evidence provided by the respondent/appellee, it results that the appealed decision was rendered by an accurate and complete determination of factual situation as well as a just application of the substantive and procedural law, when it was decided in the appealed decision that the claims registered in KPA no. 34698, 34699, 34700, 34701 and 34702 should be dismissed due to the failure of the claimant/appellant to have and show the legally valid authorisation of having the legal capacity to deposit the claims, appeals respectively, under the name of property right holder, foreseen according to the provisions of Article 5.2 of UNMIK Administrative Directive no. 2007/5 as amended by the Law No. 03/L-079. This legal provision explicitly foresees that in the proceeding before the Commission, in case a natural person is incapable of filing the claims, the claims can be filed by a family household member of such person. The claimant can be represented by a natural person authorised with valid authorisation and processed properly.

The claimant, however, has not proven such an authority. The claimant, as a nephew of the deceased **Lj. T.** is not a family household member of this former property rights holder. From this concludes that the claimant has to provide the KPA and the Court with a power of attorney issued by the persons who now are the

property owners or has to prove that he himself is the owner of the property. The claimant has used neither of these possibilities. He, however, has provided the Court with a decision of the Municipal Court of Prishtinë/Priština - No. 1296/94 of 31 March 1998 – by which it was decided that **N. J.-T.** was not an heir to **Lj. T.** This decision, however, does not constitute proof that the claimant is either the representative of the property owners or the property owner himself. Firstly, the Court notes that this decision is not certified as a final one but could be appealed. Secondly, the decision says nothing about the ownership to the litigious property.

In addition, the Court finds that the case is 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 case at hand, the subject matter of the claim is obviously related to an old conflict between the appellant and the appellee about the inheritance of **Lj. T.** which existed before the armed conflict and is not related at all 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.

Cost 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. Consequently, 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 (Sections 10.21, 10.12 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated at € 50.000: € 300 (€ 50 + 0,5% of € 50.000).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him. 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 within 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 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