

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

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

**GSK-KPA-A-003/12**

**Prishtinë/Priština**

**2 August 2012**

**In the proceedings of:**

**M.K.1**

*Claimant/Appellant*

vs.

**S.H.**

*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, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/113/2011 (case files registered at the KPA under the numbers KPA24201, KPA24202, KPA24214, KPA24216, KPA24220, KPA24222, KPA24225, KPA24227, KPA24228 and KPA24229), dated 22 June 2011, after deliberation held on 2 August 2012, issues the following

## JUDGMENT

- 1- The appeal of M.K.1 is rejected as ungrounded.
  
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/113/2011, dated 22 June 2011, as far as it relates to the cases registered under the numbers KPA24201, KPA24202, KPA24214, KPA24216, KPA24220, KPA24222, KPA24225, KPA24227, KPA24228 and KPA24229 and regards the ownership claims of M.K.1, *ex officio* is annulled and the claims are dismissed as they do not fall within the jurisdiction of the KPCC.
  
- 3- Costs of the proceedings determined in the amount of € 530 (five hundred and thirty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

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

On 8 February 2007, M.K.1 filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of several parcels of land acquired by inheritance. He claimed confirmation of property rights and repossession as well as compensation for caused damage and illegal usage. He asserted that his late grandfather had been the owner of the claimed parcels, that he had inherited them and that they were lost on 14 June 1999 as a result of the circumstances in Kosovo in 1998/99.

The data of the claimed parcels, all registered in Possession List No. 39 of Podujevë/Podujevo, Cadastral Municipality of Metehi/Metohija, issued on 13 February 1969, are the following:

Number of appeal and KPA case file	Data of the parcels
GSK-KPA-A-003/12 (KPA24201)	Parcel No. 704, at a place called “Bregu i kromit-dvor” in Metehi/Metohija, Podujevë/Podujevo, a yard with a surface of 31 ar and 95 m <sup>2</sup> , the house on which has been destroyed (100 m <sup>2</sup> , built in 1920);

GSK-KPA-A-004/12 (KPA24202)	Parcel No. 305 in Metohija, a 3 <sup>rd</sup> class pasture with a surface of 7 ar and 25 m <sup>2</sup> ;
GSK-KPA-A-005/12 (KPA24214)	Parcel No. 705, at a place called “Bregu i kromit-kod kuce” in Metehi/Metohija, Podujevë/Podujevo, a 3 <sup>rd</sup> class orchard with a surface of 13 ar and 5 m <sup>2</sup> ;
GSK-KPA-A-006/12 (KPA24216)	Parcel No. 706, at a place called “Bregu i kromit-kod kuce” in Metehi/Metohija, Podujevë/Podujevo, a 5 <sup>th</sup> class field with a surface of 53 ar and 57 m <sup>2</sup> ;
GSK-KPA-A-007/12 (KPA24220)	Parcel No. 866, at a place called “Ara e gat dugacke njive” in Metehi/Metohija, Podujevë/Podujevo, a 5 <sup>th</sup> class field with a surface of 15 ar and 62 m <sup>2</sup> and a 6 <sup>th</sup> class field with a surface of 8 ar and 41 m <sup>2</sup> ;
GSK-KPA-A-008/12 (KPA24222)	Parcel No. 872, at a place called “Ara e gat dugacke livade” in Metehi/Metohija, Podujevë/Podujevo, a 5 <sup>th</sup> class meadow with a surface of 33 ar and 60 m <sup>2</sup> ;
GSK-KPA-A-009/12 (KPA24225)	Parcel No. 889, at a place called “Ara e gat dugacke livade” in Metehi/Metohija, Podujevë/Podujevo, a 5 <sup>th</sup> class meadow with a surface of 5 ar and 60 m <sup>2</sup> ;
GSK-KPA-A-010/12 (KPA24227)	Parcel No. 893, at a place called “Ara e gat dugacke livade” in Metehi/Metohija, Podujevë/Podujevo, a 5 <sup>th</sup> class meadow with a surface of 54 ar and 48 m <sup>2</sup> ;
GSK-KPA-A-011/12 (KPA24228)	Parcel No. 1143, at a place called “Veliki lug kod reke” in Metehi/Metohija, Podujevë/Podujevo a 2 <sup>nd</sup> class pasture with a surface of 18 ar and 90 m <sup>2</sup> ;
GSK-KPA-A-012/12	Parcel No. 1511, at a place called “Ner kis-preko reke” in Metehi/Metohija, Podujevë/Podujevo a 4 <sup>th</sup> class field with a surface of 25 ar and 64 m <sup>2</sup> and a 5 <sup>th</sup> class field with a surface of 19 ar and 62 m <sup>2</sup>

To support his claim, the claimant during the proceedings provided the KPA with the following documents:

- Possession List No. 39 issued by the Municipal Geodesy Office in Podujevë/Podujevo for the cadastral zone of Metehi/Metohija on 13 July 1969, showing that the claimed parcels were registered under the name of B.B.J;
- Death Certificate issued by the Republic of Serbia, Municipality Podujevë/Podujevo in Niš on 19 December 2006, showing that B.B.J, born in....., had died on 15 May 1968 in Metehi/Metohija;

- Birth Certificate, issued by the Republic of Serbia for the Municipality of Kursumlija on 31 January 2007, showing that M.M.1 was born on ..... as the child of M.M.2 and J.J;
- Contract on the purchase of immovable property concluded on 15 October 1970, showing that J.K from Kragujevac and M.J from Metehi/Metohija as co-owners sold cadastral parcels No. 706, 704, 705 and 1143 to S.H.

The KPA found Possession List No. 51 of the Municipality of Podujevë/Podujevo, Cadastral Zone Metehi/Mitohija, which showed that the claimed parcels were not in the possession of B.B.J but in the possession of B.D.J. In several cases the surface of the parcels differs from the surface of the parcels registered in Possession List No. 39.

In March and May 2007, July 2008 (GSK-KPA-A-0003/12) as well as May 2010 and March 2011, KPA officers went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The KPA officers found most of the parcels occupied. Later on the notifications were checked based on the cadastral map, orthophoto and GPS coordinates and were found to have been accurate.

On 31 July 2008 and again in November 2011 Sh.H approached the KPA and stated that his uncle had bought several parcels from the claimant's mother. He did not know the number of the parcels but claimed that the whole litigious property was bought and used since the 70ies by his family. Later on in the proceedings he provided the KPA with a contract on the purchase of immovable property concluded on 15 October 1970, showing that J.K from Kragujevac and M.J from Metehi/Metohija as co-owners sold cadastral parcels No. 706, 704, 705 and 1143 to S.H.

Asked by the KPA on 16 February 2011 about the use of the property during 1998/1999, the claimant answered that he was living continuously in Kragujevac since 1950. He added that he was the youngest on his mother's side and that all the others died before him. He also alleged that the litigious property had not been in use before the conflict but only this property had been used which had been sold to the respondent's family in 1970. Only after the conflict the respondent's family had occupied the other property.

On 22 June 2011, the KPCC in its decision KPCC/D/A/113/2011 dismissed the claim in regard to the requested compensation for lack of jurisdiction. As for the request to confirm the ownership right and be given repossession, the KPCC refused the claim as in their opinion the claimant had not

specified which properties he was claiming and had failed to furnish any evidence to establish ownership of any of the claimed properties.

The decision was served on the claimant on 1 December 2011. On 8 November 2011, the decision had been served on the respondent.

On 28 December 2011, the claimant (henceforth: the appellant) sent an appeal by mail to “Kosovo Property Claim Commission – izvršni Sekretariat – (ža Vrhovni Sud Kosovo) – Priština – street Justiniana 5. The delivery failed and the documents were given back to him on 9 January 2012. On 10 January 2012 he sent an e-mail to the KPA, explaining that he wanted to file an appeal and attaching a copy of the appeal and a copy of the envelope he had used on 28 December 2011.

The appellant explained the delay of his appeal. As to the content of the appeal he stated that the KPCC’s decision rested upon an incomplete determination of facts, especially as the respondent (from here on: appellee) had not presented evidence for his ownership. The appellant added that only 40 ar of the property had been sold and that price had not been totally paid, the outstanding amount according to him was € 15.000. According to him the situation was that of an usurpation and he requested an objective court which should confirm that he had proven his ownership. Anything else would not be based on the law.

A translated version of the appeal was served on the appellee on 19 January 2012, however, he did not respond.

The Supreme Court has joined the appeals.

**Legal reasoning:**

The appeal has been filed within the deadline given by the law. Yet it is not grounded.

However, as the cases are not within the jurisdiction of the KPCC, the appealed decision had to be annulled as far as it regards the claims of the appellant and the claims be dismissed (not refused). The claims could not be granted as the cases are not within the scope of jurisdiction of the KPCC (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). As the KPCC did not dismiss the claims due to the lack of jurisdiction, but decided on the merits of the cases and

refused the claims, this decision *ex officio* had to be annulled and the claims instead of being refused had to be dismissed.

1. The appellant has filed his appeal within the deadline of 30 days prescribed by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The appellant, who had been served with the KPCC's decision on 1 December 2011, by submitting a copy of the envelope he used has proven that he sent the appeal documents by mail on 28 December 2011, that is within this period. That the mail was not delivered does not go to his detriment, as the envelope was correctly addressed. After receiving notice of the failed delivery on 9 January 2012, the appellant repeated the appeal without further delay by sending an e-mail on 10 January 2012. The Court does not assess the fact that the appeal was sent only by e-mail and whether this would be formally correct. As the following will show, the case is without the jurisdiction of the KPCC so that even a formally correct appeal would not have any success.
2. The appeal is not grounded.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the cases fall within the scope of its jurisdiction (Art. 194 and 182.2 b) of the Law on Contested Procedure).

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves a right to the property but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.

For cadastral parcels No. 706, 704, 705 and 1143 it is obvious already from the statements of the Appellant that the loss was not due to circumstances related to the conflict of 1998/1999 in Kosovo. The appellant himself by providing the KPA with a purchase contract admits that these parcels had been sold already in 1970.

Yet also in regard to the remaining parcels there is no indication whatsoever that they were lost because of the conflict. According to the statement of the appellant, the property right holder died already in 1968. From the purchase contract concluded in 1970 it appears that the family of the appellant, namely his mother, the daughter of the property right holder, lived in Kragujevac.

The appellant himself also told the KPA officers that his family lived in Kragujevac. Whereas the Court, if the appellant or his family had fled from Kosovo during the conflict, usually assumes that the loss of the property was related to the conflict, this is not possible here. The fact that the family of the appellant lived in Kragujevac already in 1970 and also the fact that at least four of the claimed parcels were sold in 1970 on the contrary indicates that the loss of the property had nothing to do whatsoever with the conflict but was caused either by purchase of all of the parcels or (the Court cannot decide on that) by occupation in connection already with the purchase. The mere allegation of the appellant that the occupation was conducted during the conflict is not sustained by one single piece of evidence and consequently is not sufficient in order to assume that the loss is conflict-related. Also the fact that Possession List No. 51 shows the parcels in the possession of a female property right holder who may be a relative of the claimant's grandfather but is not the claimant's mother indicates that the alleged loss of the property has nothing to do with the conflict but that there might be an inheritance dispute behind all this.

Consequently, the claim had to be dismissed as not being within the jurisdiction of the Court. The Court therefore *ex officio* annuls the decision of the KPCC (which refused the claim) and issues a new decision dismissing the claim.

For reason of clarification the Court notes that the decision of the KPCC has not been challenged and is not annulled insofar as the Commission dismissed the claim of the appellant for compensation for lack of jurisdiction.

**Costs 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. As a consequence, 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 (10.21 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being above € 90.000: € 500 (€ 50 + 0.5% of 90.000, yet not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. 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 in 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 the 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**