

**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-100/11

Prishtinë/Priština, 8 March 2012

In the proceedings of:

V.A.G.

Claimant/ Appellant

vs.

N.F.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011 (case files registered at the KPA under Nos. KPA16011, KPA16012, KPA16013, KPA16014, KPA90427, KPA90428, KPA90429, KPA90432, KPA90433, KPA90435 and KPA90436), dated 23 February 2011, after deliberation held on 8 March 2012, issues the following

JUDGMENT

- 1- The appeal of V.A.G. is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011, dated 23 February 2011, as far as it regards the cases registered under Nos. KPA16011, KPA16012, KPA16013, KPA16014, KPA90427, KPA90428, KPA90429, KPA90432, KPA90433, KPA90435 and KPA90436, is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 530 (€ five hundred thirty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 25 August 2006, V.A.G., using four claims forms, filed several claims with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of different parcels of land acquired by inheritance and claiming repossession. He explained that these parcels had belonged to his deceased mother, S.I.G., and that after her death he had inherited them. Two of the claims forms signed by the claimant, concerning the claims GSK-KPA-A-102/11, GSK-KPA-A-103/11, GSK-KPA-A-104/11, GSK-KPA-A-105/11, GSK-KPA-A-106/11, amongst others reads as follows: "By signing this form, the claimant establishes that his/her property right is related to the immovable private property that was lost as a result of the circumstances in 98/99 in Kosovo and states that the date of loss is 01/01/1999". The other two claims forms concerning the cases GSK-KPA-A-100/11, GSK-KPA-A-101/11, GSK-KPA-A-107/11, GSK-KPA-A-108/11, GSK-KPA-A-109/11 and GSK-KPA-A-110/11, which also were signed by the claimant, however read as follows: "By signing this form, the claimant establishes that his/her property right is related to the immovable private property that was lost as a result of the circumstances in 98/99 in Kosovo and states that the date of loss is 01/01/1981".

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

- a Death Certificate issued by the Republic of Serbia, Municipality of Prokuplje, issued on 25 November 1983, showing that S.G., née J., daughter of I.J., with the permanent residence and address in Prokuplje, Bitoljska 54, had died on 19 November 1983 in Prokuplje;
- Possession List No. 22, issued by the Republic of Serbia, Municipality of Pristina, Cadastral Municipality of Podujevë/Podujevo, on 25 November 2002.

Possession List No. 22 showed that G.I.S. from Llaushë/Lauša was the owner of the claimed parcels located in the municipality of Podujevë/Podujevo in the cadastral zone of Llaushë/Lauša as follows:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-100/11 (KPA16011)	Parcels nos. 1603(I) and 1604, at the place called “Via-Ner Shpija” : Parcel no. 1603 (I) consisting of a 3 rd class pasture with a surface of 1 ar 12 m ² ; Parcel no. 1604, a 3 rd class pasture with a surface of 4 ar 71 m ²
GSK-KPA-A-101/11 (KPA16012)	Parcel no. 1605, at the place called “Via-Ner Shpija”, a 6 th class field with a surface of 72 ar and 67 m ²
GSK-KPA-A-102/11 (KPA16013)	Parcel no. 1606, at the place called “Via-Ner Shpija”, a 5 th class meadow with a surface of 27 ar and 26 m ²
GSK-KPA-A-103/11 (KPA16014)	Parcel no. 1603 (II), at the place called “Via-Ner Shpija”, Llaushe/Lausa, a 4 th class forest with a surface of 11 ar 41 m ²
GSK-KPA-A-104/11 (KPA90427)	Parcel no. 1633, at the place called “Via-Tu Shpija”, a 5 th class meadow with a surface of 7 ar and 12 m ²
GSK-KPA-A-105/11 (KPA90428)	Parcel no. 1640, at the place called “Via-Lidvadhi Mas Sp”, a 5 th class meadow with a surface of 29 ar and 88 m ²
GSK-KPA-A-106/11 (KPA90429)	Parcels nos.1616(I) and 1617: Parcel no. 1616(I), at the place called “Via-Oborr”, a 5 th class pasture with a surface of 5 ar 93 m ² ; Parcel no 1617, at the place called “Via-Tu Shpija”, a 3 rd class orchard

	with a surface of 17 ar 30m ²
GSK-KPA-A-107/11 (KPA90432)	Parcels nos. 1616(II and III) and 1619: Parcel no. 1616(II), at the place called “Via-Oborr”, a house and buildings, with a surface of 90 m ² ; Parcel no. 1616(III), at the place called “Via-Oborr”, a yard with a surface of 5 ar; Parcel no. 1619, at the place called “Via-Tu Shpija”, a 3 rd class pasture with a surface of 79 ar and 66 m ²
GSK-KPA-A-108/11 (KPA90433)	Parcel no. 1625, at the place called “Via-Ner Shpija”, a 3 rd class pasture with a surface of 2 ar and 71 m ²
GSK-KPA-A-109/11 (KPA90435)	Parcel no. 1620, at the place called “Via-Ara Ner Shpija”, a 6 th class field with a surface of 1 ha, 0 ar and 27 m ²
GSK-KPA-A-110/11 (KPA90436)	Parcel no. 1624, at the place called “Via-Ner Shpija”, a 4 th class field with a surface of 4 ar and 11 m ²

Later on in the proceedings the claimant also submitted his Birth Certificate.

The submitted Possession List No. 22 as well as the claimant’s Birth Certificate and the property right holder’s Death Certificate could be verified.

In 2009 and 2010, the KPA notification team went to the places where the claimed parcels allegedly were located 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. All of the property was found occupied by the F. family whose members claimed a legal right to the property which, they declared, had been bought approximately 50 years ago. The notification was checked by GPS and orthophoto later on in the proceedings and was found to have been correct. Only in case GSK-KPA-A-110/11, the notification was repeated by notification through publication in the gazette.

On 24 June 2009, N.F. filed a response with the KPA, stating that he was the property right holder. He explained that S.G. had sold the property to H.S. and that R.S. and his father U.S. had been witnesses. He declared that the money had been paid and that afterwards the F. family – as the third buyers - had bought the property from H.R.. He submitted written statements of two witnesses, who confirmed that the land had

been sold 52 years ago, and a receipt about the payment of taxes for an immovable property of 86 m², dating the 15 March 2004.

In his letter of 13 January 2011, concerning the claims registered under the nos. KPA16011, KPA16014 and KPA90428, the claimant declared that the respondent had not submitted any valid evidence of the alleged purchase of the properties and that, if the purchases had taken place in 1957 or 1958, they certainly would have been registered. Furthermore he explained: “The house of my deceased parents is from the mid-fifties of the last century. It remained as the last house in the place Donja Lauša near Podujevo, from ten Serbian families who lived in this village after the Second World War. Every day we lived in fear of Albanian neighbours, and this is why the other Serbian families had to sell their property and had been forced to leave Donja Lauša. As I previously stated, I also left Donja Lauša in 1962 with my family while my late mother S. was alone in the village. My late mother was under everyday pressures and blackmail by a family S. to sell our property in the village. However, she did not want to sell the property and remained on it, and shortly before her death she moved to live with me in Prokuplje, where she died in 1983”.

On 23 February 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/102/2011 dismissed the claims as they did not fall within the jurisdiction of the KPCC. Under no. 28 the decision reads as follows: “It was initially claimed that the claimant lost the properties as a result of the 1998-1999 conflict, however the Claimant later advised the Executive Secretariat that his family did not have possession of the claimed properties from 1970 onwards. He also confirmed that he was neither in possession nor using the claimed properties at the time of the 1998-1999 conflict in Kosovo. In these circumstances the Commission concludes that the alleged loss of property rights cannot be said to be related to the conflict. Consequently, the Claimant’s claims fall outside the jurisdiction of the Commission and stand to be dismissed”.

The decision was served on the claimant on 20 June 2011. On 19 July 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC’s decision on the grounds of incompletely established facts and the erroneous application of the material law.

The appellant declared that the KPCC had quoted his statements in an incorrect way. He stated that he had never claimed that he had lost the property during the conflict in Kosovo in 1998 and 1999, that also he never claimed that the property had not been in his possession in 1998 and 1999 and that also he never had claimed that his family had not been in possession of the property since 1970. The appellant confirmed that he and his family had been the owners of the property for 80 years now. He also indicated that the appellee

had not given any valid evidence of the property ever being sold by the appellant's mother and highlighted that the property is illegally usurped for 12 years now.

The appellant requests that the appeal shall be resolved in his favour and the decision of the KPCC be quashed.

The appeal was served on the respondent (henceforth: the appellee) on 9 August 2011. The appellee did not react.

The Supreme Court has joined the claims.

Legal reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the Court finds neither incomplete establishment of facts nor erroneous application of the material law. The cases are not within the jurisdiction of the KPCC.

The Court wants to emphasize that the KPCC has not quoted the appellant inaccurately. In two of his claims the appellant had signed a form with which he confirmed that he had lost the property due to the conflict of 1998/1999 and has given the date of the loss with 01/01/1999. The statement of the claimant that he, however, had left for Prokuplje already in 1962 implies that since this time he had not been in possession of the property. The Court therefore does not find any wrong establishment of the facts by the KPCC.

The Court agrees with the KPCC that the cases are not within the jurisdiction of the KPCC.

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 ownership of private immovable 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.

In this case, however, the claimant has not proven that he is restrained from exercising the claimed ownership right because of the armed conflict of 1998/1999. The appellant does not allege that he or his mother had to leave the property because of the armed conflict. According to the reasoning in his appeal, he himself moved to Prokuplje already in 1962. The appellant, however, states that his mother, the property right holder, “lived on the land”, that is in the municipality of Podujeve/Podujevo, until her death in 1983. This statement, however, collides with the death certificate submitted by the claimant and also his statement given on 13 January 2011. The death certificate shows that his mother died in 1983, but not in Podujevë/Podujevo, but in Prokuplje. On 13 January 2011 the claimant stated that his mother left Podujevë/Podujevo in 1981. So the facts given by the claimant in his appeal seem more than questionable. But even according to his own statement, neither his mother nor he himself lived on the property after 1983. The claimant also does not state that he tried to take possession of the property in any way after the death of his mother.

Accordingly, there is no sign or even evidence that the claimant lost the property as a result of the armed conflict in Kosovo in 1998/1999. On the contrary, the facts given by the claimant in his appeal and above all in his written statement of 13 January 2011 give reason to believe that the property was lost (in which way ever) already before the claimant’s mother died in 1983. In his statement the appellant says: “My late mother was under the everyday pressures and blackmail by a family S. to sell our property in the village. However, she did not want to sell them the property and remained on it, and shortly before her death she moved to live with me in Prokuplje”. This statement shows that there have been difficulties with the property already in the 1980ies and maybe even before. Taking into consideration the fact that the appellant in two of the claim forms gave the date of the loss with “01/01/1981”, the Court assumes that the loss of possession of all of the property occurred already long before the conflict of 1998/1999.

As therefore the claim is out of the jurisdiction of the KPCC, the KPCC had not to decide on the ownership of the appellant, the KPCC therefore did not need to further investigate.

Because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed properties or not. Therefore, the decision of the Court is without prejudice to the decision of a competent court.

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 comprised at more than € 100.000: € 500 (€ 50 + 0,5% of € 100.000, but 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, 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 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 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar

**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-100/11

Prishtinë/Priština, 18 April 2012

In the proceedings of:

V.A.G.

Claimant/ Appellant

vs.

N.F.

Respondent/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, after deliberation held on 18 April 2012, issues the following

RULING

The caption of the judgment of 8 March 2012 (GSK-KPA-A-100/11) is modified because of deficiencies regarding the form of the written judgment (Article 165.1 LCP) and corrected as follows:

V.A.G.

Claimant/ Appellant

vs.

1. N.F.

2. R.F.

3. I.F.

4. E.F.

Respondents/Appellees

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar