

**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-84/11

**Prishtinë/Priština
26 August 2011**

In the proceedings of

Ž.B.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/98/2010 (case files registered at the KPA under the numbers KPA28015, KPA28016, KPA28017, KPA28018, KPA28019 and KPA28020), dated 7 December 2010, after deliberation held on 26 August 2011, issues the following

JUDGMENT

- 1- The appeal of Ž.B. is rejected as ungrounded.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/98/2010, dated 7 December 2010, as far as it regards the cases registered under No. KPA28015, KPA28016, KPA28017, KPA28018, KPA28019

and KPA28020, is confirmed.

- 3- Costs of the proceedings determined in the amount of € 330 (three hundred 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 23 February 2007, Ž.B., acting as a family household member on behalf of her deceased father-in-law, filed six claims with the Kosovo Property Agency (KPA) seeking to be recognized herself as the owner of different parcels of land acquired by inheritance and claiming repossession. She explained that these parcels had belonged to her deceased father-in-law S.B.. She stated that the property had been usurped after the family's expulsion in mid-June 1999.

To support her claim, she provided the KPA with the following documents:

- her Marriage Certificate of 26 August 1977, showing that she had married on 20 June 1960 R.B., the son of S.B.
- Possession List No. 64 issued by the Republic of Serbia, Municipality of Istog/Istok, Cadastral Municipality Banja e Kernines/Banjska Krnjina, on 8 February 2007.

Possession List No. 64 showed that S.B. was the owner of the claimed parcels as follows:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-84/11 (KPA28015)	Parcel no. 139, at the place called "Bresja", Banja e Kernines/Banjska Krnjina, Istog/Istok, commercial without building, a 7 th class field with a surface of 55 ar and 35 m ²
GSK-KPA-A-85/11 (KPA28016)	Parcel no. 141, at the place called "Bresja", Banja e Kernines/Banjska Krnjina, Istog/Istok, commercial without building, a 7 th class field with a surface of 32 ar and 65 m ²
GSK-KPA-A-86/11 (KPA28017)	Parcel no. 231, at the place called "Bresja", Banja e Kernines/Banjska Krnjina, Istog/Istok, commercial without building, a 3 rd class field with a surface of 1 ar and 85 m ²
GSK-KPA-A-87/11 (KPA28018)	Parcel no. 361/1, at the place called "Nikolin Grob", Banja e Kernines/Banjska Krnjina, Istog/Istok, commercial without building, a 5 th class field with a surface of 76 ar and 2 m ² together with a 6 th class field with a surface of 98 ar and 93 m ²
GSK-KPA-A-88/11	Parcel no. 361/2, at the place called "Nikolin Grob", Banja e

(KPA28019)	Kerrnines/Banjska Krnjina, Istog/Istok, commercial without building, a 6 th class pasture with a surface of 73 ar and 88 m ²
GSK-KPA-A-89/11 (KPA28020)	Parcel no. 362, at the place called “Nikolin Grob”, Banja e Kerrnines/Banjska Krnjina, Istog/Istok, commercial without building, a 3rd class forest with a surface of 1 h 87 ar and 30 m ²

Later on in the proceedings the claimant also submitted a death certificate issued by the Socialist Republic of Serbia for the Municipality of Istog/Istok on 23 November 2007, showing that N.B., wife of S.B., had died on 2 January 1998.

On 17 October 2007 (KPA28015-KPA28019) and 29 February 2008 (KPA 28020), 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 not occupied.

The submitted Possession List No. 64 as well as the claimant’s Marriage Certificate could be verified.

The KPA asked the claimant whether she could provide powers of attorney of possible inheritors and documents to prove her family connection with S.B.. The KPA also wanted to know whether after the death of S.B. an inheritance procedure had been initiated. The claimant agreed on submitting powers of attorney and certificates proving her identity but missed the given deadline of 30 days twice. Later on in the proceedings, the claimant’s daughter explained that there was no Death Certificate of S.B. because the claimant’s mother-in-law had died in 1999 (as the death had not been registered there was, she explained, there existed to Death Certificate) and the claimant’s brother-in-law, M.B., who lived in Slovenia would not provide the claimant with the necessary power of attorney.

On 7 December 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/98/2010 dismissed the claims. Under No. 24 of its decision the Commission stated that as the claimant had not submitted a death certificate of her father-in-law, his death was not proven. The Commission found that the claimant did not stand in a family household membership with the property right holder. As the claimant had not been able to submit a power of attorney from a family household member of the property right holder, but only the death certificate of her mother-in-law and had stated that her brother-in-law did refuse to provide her with a power of attorney, the KPCC declared that the claimant had failed to establish her capacity to lodge a claim on behalf of the property right holder (section 5.2 of UNMIK AD 2007/5 as amended by Law No. 03/L-079).

The decision was served on the claimant on 11 May 2011. On 7 June 2011, the claimant (henceforth: the appellant) filed six identical appeals with the Supreme Court, each of them concerning one separate claim.

The appeals are formulated exactly as the appeals in the parallel cases which are the subject of the case GSK-A-52/11. In these cases, the Possession List No. 80 showed that the parcels were in the ownership of the (deceased) mother-in-law and the brother-in-law of the appellant. In the cases which are her under consideration, however, the parcels are not specified in the Possession List No. 80, but, as mentioned above, in the Possession List No. 64. The appellant (or her legal advisor), however, obviously had missed this difference and her reasoning was the same as in the parallel cases. The appellant argued as follows:

The appellant requested that the Supreme Court should provide her daughter, L.J., with the right of repossession of the property registered as the property of N.B. (the mother-in-law of the appellant) and located in the cadastral municipality Belicë/Belica.

The appellant explained that her father-in-law, S.B., had died on 30 May 1964. The appellant explained furthermore that her husband, R.B., had died on 17 January 1996 in Veliko Gradiste and that her mother-in-law had died on 2 January 1998 in Istog/Istok.

The appellant referred to different documents submitted in the parallel case. The Court has considered this evidence, even if it would have to be submitted in this case as well.

The documents are:

- Death Certificate issued on 4 May 2011 by the Republic of Serbia, Municipality of Istog/Istok, confirming that S.B. had died on 30 May 1964, at 12.00 hrs, in Belicë/Belica,
- a Death Certificate issued on 24 January 1996 by the Federal Republic of Yugoslavia, Municipality of Veliko Gradiste, confirming that R.B. had died on 17 January 1996 and
- a Death Certificate issued on 23 November 2007 by the Republic of Serbia, Municipality of Istog/Istok, confirming that N.B. had died on 2 January 1998.

In her appeal the appellant furthermore declared that she would now submit the request not on her own behalf or that of her father-in-law, but on behalf of her daughter, L.J., born B., who allegedly was a legal successor to her grandmother N.B.. The appellant stated without further explanation that her daughter had not been able to submit the request at her own at the time when the request had to be submitted.

In the parallel case GSK-A-52/11 the appellant had provided the Court with a Marriage Certificate of her daughter as well as a power of attorney by which L.J. authorized the appellant to submit requests on her behalf regarding the eight claims which had been the subject of this decision. The numbers of these cases (KPA27996, KPA27999, KPA28001, KPA28009, KPA28010, KPA28012, KPA28013, KPA28014) are explicitly mentioned. In her appeal in the cases to be decided here, the appellant referred to these documents.

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 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 she or her daughter is restrained from exercising the claimed ownership right because of the armed conflict of 1998/1999. Taking into consideration the reasoning of the appellant in her appeal and her referral to the parallel cases, the Court has decided on the basis of all the facts submitted in the claims of the appellant. The reported facts, however, indicate that the reason for the claimant's alleged loss is a dispute related to the inheritance of the claimant's father-in-law, S.B..

S.B. had died in 1964. The eight parcels claimed in the parallel case, however, have been found not to be registered under the name of his wife, the appellant's mother-in-law, as well as under the names of both of his children, including the late husband of the appellant, but only under the names of the appellant's mother-in-law and her brother-in-law. Consequently, the loss of the parcels to the appellant's husband as well as to herself does not result from the armed conflict in Kosovo, but from the fact that the appellant's husband was not considered during the distribution of the claimed parcels after the death of the appellant's father-in-law.

From this the Court concludes, that the dispute regards as well the six parcels claimed in this case. This conclusion is supported by the fact that the appellant's brother-in-law did refuse to provide her with a power of attorney. This shows that the family does not agree on the course of action regarding the claimed parcels and suggests an underlying inheritance dispute. At last, the fact that the claimed parcels were found to be not occupied does also indicate that the alleged loss of the property is not a result of the armed conflict of 1998/1999.

The same reasoning applies as far as the appellant's daughter and her alleged inheritance of the property of N.B. (her grandmother and mother-in-law of the claimant) is involved. From the presented facts it has to be concluded that the reason for her allegedly not being able to exercise the claimed ownership right is not the armed conflict in Kosovo, but an inheritance dispute within the family.

The KPCC, however, has not to decide on such inheritance disputes.

As the claim does not lie within the jurisdiction of the KPCC, the Court needs not to decide whether a fundamental change in the claim (here: the exchange of the alleged property right as well as the exchange of the alleged property rights holder) can be validly effected in cases in which this change is made (a) after the deadline for the submission of claims prescribed in Section 8 of UNMIK Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079 and (b) only in the second instance of the proceedings.

It also remains without consequence that the power of attorney from the appellant's daughter does not refer to the six cases subject of this appeal but only to the eight cases of the parallel proceedings.

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 € 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 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.

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar