

**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-172/13

Prishtina, 8 April 2015

In the proceedings of:

S. P.

Village Bardhosh

Pristina

Appellant

vs.

M. M. S.

Pristina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/195/2013 (case files registered at the KPA under number KPA16491) dated 18 April 2013), after deliberation held on 8 April 2015, issues the following:

JUDGMENT:

1. **The appeal of S. P. is dismissed as inadmissible, because of the lack of legal interest.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/195/2013 (regarding case file registered at the KPA under number KPA16491) dated 18 April 2013, is confirmed.**

Procedural and factual background:

1. On 30 November 2006 M. S. (hereinafter: the appellee), filed a claim on behalf of himself and his three brothers, seeking confirmation of ownership right and repossession of two parcels: no. 196/2 with surface 2 ar 74m² and 197/1 with surface 31ar 18m² in total 33ar 92m², located in Bare-Plac and Bara-Kucni Plac, in Devet-Jugovića Cadastral Zone, Municipality of Pristina. (hereafter referred as: the properties) He states that his properties were illegally usurped and that its possession was lost due to the armed conflict in 1998/99, indicating 26 June 1999 as the date of loss.
2. To support his claim the appellee submitted the following evidences:
 - The Possession List no.6 issued by Department for Cadastre, Geodesy and Property of the Municipality of Pristina on 8 February 2009.
 - The Inheritance Decision no.188/94, dated 11 October 1994, issued by Municipal Court of Pristina (here after referred to as: the Inheritance Decision)
 - A copy of ID card of M. S.
 - A copy of ID card of S. S.
3. The claim was registered with the KPA under case no KPA16491
4. Based on the Inheritance Decision, the Appellee and his brothers inherited the properties from their deceased father, each of them an ideal part of ¼ of claimed properties. The Certificate for the Immovable Property Rights no.UL-71914021-00006 issued by the Department of the Cadastre-Prishtine/Pristina on 10 August 2008 confirms that the

property right over the claimed properties had been transferred from the Claimant's father to the Claimant and his three brothers.

5. According to on the Consolidated Verification Report of KPA dated 20 April 2011, the above mentioned documents were positively verified by Executive Secretariat.
6. The properties were physically notified on 16 August 2012 based on GPS coordinates, ortophoto and the cadastral plan. The verification showed that the property is uncultivated land and not occupied.
7. The claim was contested by S. P. (hereinafter: the appellant) who approached the KPA as a responding party claiming a legal right over the claimed parcels 196/2 and 197/1, stating that he purchased 10ar of the claimed properties in 1995 from the claimant's brother.
8. On 11 March 2013 KPCC decided to conduct a hearing in order to provide some additional information regarding the claim
9. After the hearing the Kosovo Property Claims Commission (KPCC) on 13 June 2013, with its decision KPCC/D/A/195/2013 decided to:
 - grant the claim for the surface 23 ares and 92 m2 of parcels no.196/2 and no.197/1;
 - confirm the respondent S. P. as a lawful co-owner of 10 acres of the claimed properties, respectively parcels no.196/2 and no.197/1
10. The decision was served on the appellant on 13 June 2013.
11. On 20 June 2013, the appellant submitted an appeal to the Supreme Court, challenging the KPCC decision. He invokes a serious misapplication of the applicable material or procedural law and incomplete determination of facts.
12. With the appeal the appellant filed the following (copies of) documents as evidence:
 - The testimony act of witness M. Y.;
 - The possession list issued by the Kosovo Cadastral Agency on 25 April 2003;
 - A letter no.ref KPA16491/RES issued by KPA on 31 may 2010 to respondent S.P. ;
 - A copy of the Id Card of S. P.;
 - A copy of the Id Card of M. I.;
 - A copy of the Id Card of S. P.

Allegations of the parties

13. The Appellant, S. P. claims a legal right to the claimed properties. He stated that he purchased the properties in 1995 from M. S. and that M. Y. was present as a witness

when he paid the amount of DM 5000 to M. S. for the property. In the testimony act was mentioned that the witness M. Y. contacted M. S. who physically marked, in execution of the informal purchase contract, the respective 10 ares without mentioning which parcel. The Appellant further stated that in March 2001 he built a house on the purchased part of the claimed property, used for residential purposes.

14. The Appellee declares that none of the claimed parcels is sold either by him, or by any of his brothers. He stated that the statement of S. P. in which claims that he has bought a land parcel from the appellee brother on 1995, is false. To prove his statement, he submitted a positively verified The Certificate for the Immovable Property Rights no.UL-71914021-00006 issued by the Department of the Cadastre-Prishtine/Pristina on 10 August 2008, which lists the appellee and his brothers as a Property Right Holder of the claimed properties.

Legal reasoning

Admissibility of the appeal

15. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

16. The Supreme Court has jurisdiction to examine the appeal.
17. The appellant in his appeal did not specify any violation of the applicable law. Neither did the Supreme Court, following the review of the case files and allegations of the parties, find any fundamental error, nor serious misapplication of material and procedural law or erroneous and incomplete determination of facts.
18. The appellant does not have legal interest to file an appeal, because the contested decision is decided in his favour. The contested decision of the KPCC, confirmed the appellant as a co-owner of the claimed properties, respectively parcels no. 196/2 and no.197/1 with surface of 10 ar as much as requested before KPA and no eviction order is issued.
19. Based on the above the decision has no negative legal effect for the appellant. From the documents administrated in the case file, especially from the ortophoto and the copy plan the Supreme Court notes that the appellant constructed the house on the claimed property

of which the appellee and his brother are co-owners. Since the respective part of every co-owner is not specified, they are co-owners in ideal parts and the land is not marked.

20. In this context the Supreme Courts concludes that the division of the respective parts has to be done on the initiative of the involved parties before competent court, in order to change the title of co-ownership in ownership. This means that KPCC rightfully decided when confirming the appellant's ownership.
21. As the allegations of the appellant have been accepted by KPCC, the appellant lacks the necessary legal interest for the submission of the appeal. The existence of legal interest is an absolute procedural prerequisite for the permissibility of a claim, appeal, etc. in civil proceedings as it is foreseen by article 2.4 of the Law on Contested Procedure. The lack of a legal interest in general to inadmissibility according to Article 186.3 of the Law on Contested Procedure.
22. Therefore, in this specific case the present appeal had to be dismissed pursuant to the provision from article 13.3 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and art. 186.3 of the Law on Contested Procedure.
23. On the basis of the above and according to the provision of section 12.2 of the Law No. 03/L-079 and art. 196 of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice

24. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge