

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

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

GSK-KPA-A-254/13

Prishtinë/Priština,

12 August 2015

In the proceedings of

B. V.

Serbia

Appellant

Representative: R. D.

vs.

K. K.

M. M.

K. S.

I. G.

L. M.

R. M.

R. S.

R. S.

N. M.

H. N.

B. P.

B. G.

M. K.

I. P.

Xh. G.

B. M.

B. K.

S. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini , Presiding Judge, Elka Ermenkova and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case files registered at the KPA under the numbers KPA22867, KPA22873 and KPA22874) dated 14 December 2012 and KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA22868) dated 14 December 2012 after deliberation held on 12 August 2015, issues the following

JUDGMENT

1. The appeals of B. V., registered under the numbers GSK-KPA-A-254/2013, GSK-KPA-A-255/2013, GSK-KPA-A-259/13 and GSK-KPA-A-260/13, are joined in a single case under the number GSK-KPA-A-254/2013.
2. The appeals of B. V. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case file registered at the KPA under the number KPA22867, KPA22873 and KPA22874) dated 14 December 2012 and KPCC/D/R/183/2012 (case file registered at the KPA under the number KPA22868) dated 14 December 2012 are dismissed as belated.

Procedural and factual background:

1. On 5 April 2007, B. V., (henceforth: the Claimant) filed four separate claims with the Kosovo Property Agency (KPA), seeking repossession of property rights. The Claimant seeks, in addition to re-possession, compensation for physical damage to, or for loss of use of, the claimed properties.
2. In the claims, it is stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 17 June 1999 as the date of loss.
3. To support his claims he provided the KPA with the following documents:
 - The Possession List no. 772 issued by Center for Cadaster, Geodesy and Property of the Municipality of Klinë/Klina, dated 3 April 2002, showing that the claimed properties were in the possession of B. V.
 - The Power of Attorney dated 18 May 2012 showing that B. V. had authorized R. D. to act on his behalf before the KPA.
 - Other documents (Purchase Contracts) which are not related to the claimed properties.
4. According to the Possession List no. 772 of the Center for Cadaster, Geodesy and Property of the Municipality of Klinë/Klina, dated 3 April 2002, the cadastral parcels claimed by the claimant, located in the cadastral zone of the Municipality of Klinë/Klina, are registered in his name, notably:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-254/13 (KPA22867)	Parcel no.433/1, at the place called "Sello", a 2 nd class vineyard with a surface of 00.19.52 ha
GSK-KPA-A- 255/13 (KPA22868)	Parcel no. 433/1, at the place called "Sello", house and yard with a surface of 0.05.46 ha
GSK-KPA-A-259/13 (KPA22873)	Parcel no. 586/2, at the place called "Vakaf", a 5 th class meadow with a surface of 00.34.52 ha
GSK-KPA-A-260/13 (KPA22874)	Parcel no. 586/3, at the placed called "Vakaf", a 3 rd class meadow, with a surface of 0.44.86 ha

5. The physical notification of the properties (KPA22767 and KPA22868) was carried out on 8 May 2012 and reflects the claimed properties as public road occupied by unknown person, while for the claims (KPA22873 and KPA22874), the physical notification of the properties was carried out on 26 June 2012 and the claimed properties were found divided in new parcel numbers, each parcel occupied by different respondent who has built objects on the claimed properties.
6. The Respondent's (M. M., K. S., I.G., L. M., R. M., R. S., R. Se., N.M., H. N., B. P., B. G., M. K., I. P., Xh. G., B. M., B. K.) claimed legal rights over the claimed properties.
7. To support their claims the Respondent provided the KPA with the following documents:
 - Power of Attorney Ov.Br.1120-V-002, certified before the Municipal Court of Novi Sad on 29 May 2002. The Claimant, authorized B. Š. to find a buyer, negotiate a purchase price, to sell and to transfer the property right in the name of the buyer in regard of the parcel number 586/2 and 586/3 (claimed properties).
 - Statement Ov.Br.1121-V/002, certified before Municipal Court of Novi Sad on 29 May 2002 showing that the Claimant, his son P. V. and his daughter B. V. confirmed that they have sold the claimed properties to N. M. through their authorized representative B. Š. and they have received the amount of 100.000 euro as a result of the purchase transaction.
 - Power of Attorney Ov.Br.1360/2002, certified before the Municipal Court of Rožaje on 3 June 2002, through which Bo. Š. has authorized N. H. to sign the purchase contract on behalf of the Claimant as well as to legalize the contract before the competent court. The subjects of the purchase contract were the claimed properties.

- Purchase Contract Vr.Nr.873/2002 legalized before the Municipal Court of Klinë/Klina on 4 June 2002. The Contract was concluded between B. V. as the seller (represented by B. Š. who authorized N. H. to represent B. V.) and N. M. as the buyer of the claimed properties.
 - Statement Ov.Br.1361/2002 certified before Basic Court of Rožaje on 3 June 2002, through which B. Š. confirmed that he has sold the claimed properties to N. M.
 - Other documents showing that N. M. sold the claimed properties to third parties/Respondents. Each Respondent submitted a Certificate for Immovable Property Rights reflecting the parcel number that they bought from N. M.
8. According to the verification report dated 28 February 2008; the claimed properties were found on the name of K. K. (KPA22767 and KPA22868) while the verification report of 20 June 2012 (KPA22767 and KPA22868) shows the claimed properties on the name of N. M. and third parties. The changes were done based on the Purchase Contract Vr.Nr.873/2002 dated 4 June 2002.
 9. The Claimant's authorized representative denied that the Claimant has sold the claimed properties and alleged that all documents were forged by the persons that alleged to have bought the properties.
 10. On 14 December 2014 the Kosovo Property Claims Commission dismissed the claims in certified decisions KPCC/D/A/180/2012 and KPCC/D/R/183/2012. In paragraph 23 of the decision, KPCC/D/A/180/2012 which applies specifically to the claims no. KPA22867, KPA22873, KPA22874 and in paragraph 17 of the decision KPCC/D/R/183/2012 which applies specially to the claim KPA22868, is stated that the Claimant did not lose the possession over the claimed properties as a result of the 98-99 conflict, but rather as a result of the voluntary sale transaction after the conflict. Consequently the claims fall outside the Commissions jurisdiction.
 11. On 5 August 2013, the decision was served on B. V. He (henceforth: the Appellant) appealed the decision on 5 September 2013. The Supreme Court received the case files on 21 and 26 November 2013.
 12. K. K., received the decision on 26 April 2013 in the capacity of appellee (KPA22867, KPA22868). The decision was served on all Respondents personally on 14 May 2013, 16 May 2013 and 24 May 2013 (KPA22873 and KPA22874). The appeal was served on appellees.
 13. The Appellees did not respond to the appeal.

Allegations of the appellant

14. The appellant states that the decisions made by KPCC were based on violation of the substantive and procedural law, also erroneous and incomplete determination of the factual situation.
15. The appellant alleges that the reason for the rejection of his claims was not given in any part of the legal reasoning of the KPCC decisions.
16. According to the Appellant, based on such decisions for which no reasoning was given, he can only assume that the legal reason for rejection of his claims could be that somebody illegally alienated the properties and that he was not aware of that.
17. The Appellant stated that he never alienated his properties nor ever authorized anyone to sell his properties.
18. Moreover, the appellant added that on 17 August 2010, through his authorized representative he has requested from the Municipal Court of Klinë/Klina a copy of the evidences based on which the alleged purchase contract (showing K. K. has bought the claimed properties from him) was indeed legalized. The Basic Court of Peja/Peć, branch of Klina/Klina to date did not answer to him. This leads to the fact that the appellant has not sold the claimed properties.
19. By the end of the appeal, the appellant states that the KPCC was obliged to serve him the purchase contracts through which allegedly the claimed properties were sold if such contracts exist as well as to reflect this contracts on the reasoning of its decision, thus, he would use all the opportunities to challenge the sale and to take all needed legal actions to prove that the purchase contract actually was forged.
20. The Appellant additionally presented:
 - The Request addressed to Municipal Court of Klinë/Klina, through which the Appellant seeks to obtain the Purchase Contract which allegedly shows that he has sold parcel no 433/1 of the Possession List no. 772

Legal reasoning**Joining of the appeals:**

21. According to section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the KPCC pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.

22. The provisions of the Law on Contested Procedure (LCP) are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. Article 408.1 LCP as read with Article 193 LCP provides the possibility of joining of claims through a ruling if that would ensure court effectiveness and efficiency of the cases.
23. In the text of the appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in four cases. Only the culture (part) of parcels and parcel numbers subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
24. The appeals registered under the numbers GSK-KPA-A-254/13 to GSK-KPA-A-255/13, GSK-KPA-A-259/13 and GSK-KPA-A-260/13 are joined in a single case under GSK-KPA-A-254/13.

Admissibility of the appeal

25. The appeal is belated.
26. Section 12.1 of Law No. 03/L-079 provides as follows: "*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*".
27. The KPCC decision was served on the (representative of) the appellant on Monday, 5 August 2013. So the time limit ended on 4 September 2013 as the 30 day period on 4 September 2013. Yet the appellant filed his appeal on Thursday, 5 September 2013. This is outside the time limit.
28. Therefore the appeals have to be dismissed on procedural grounds as belated pursuant to (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) article 195.1 (a) and 196 of the LCP.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Elka Ermenkova, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nuffer, EULEX Registrar