

**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-141/12**

**Prishtinë/Priština**

**17 April 2013**

**In the proceedings of:**

**E. K.**

**H. K.**

**N. K.**

Prishtinë/Pristina

*Appellants*

vs.

**T. D.**

New Zealand

*Claimant/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/121/2011, dated 7 September 2011 (regarding case files registered at the KPA under the numbers KPA11399 and KPA11400), after deliberation held on 17 April 2013, issues the following

## JUDGMENT

- 1- The appeal of E. K. against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011 (regarding case files registered at the KPA under the numbers KPA11399 and KPA11400), is dismissed as impermissible.
- 2- The appeal of E. K., filed on behalf of H. K. and N. K. against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011 (regarding case files registered at the KPA under the numbers KPA11399 and KPA11400), is dismissed as impermissible.
- 3- The appellant E. K. has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty ) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

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

On 4 July 2006, T.D. (hereinafter “the claimant”), as property right holder filed a claim with the Kosovo Property Agency (KPA) for confirmation of her property right over parcel No. 1814/2 with a surface of 21 ar and 30 sq. m, parcel No.1818/2 with a surface of 20 ar and 37 sq.m and parcel No. 1819/2 with a surface of 71 ar 83 sq.m (she also claimed repossession).

To support the claim she presented numerous documents.<sup>1</sup> Later during the proceedings, she submitted additional evidence.<sup>2</sup>

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<sup>1</sup> Claimant’s ID card dated 20 June 2006; Possession List no. 6633, issued on 16 June 2006 by the Cadastral Office of Pristina, Republic of Serbia (showing that the claimant and her brother – S. K.) are the owners of the claimed properties), each one of them on ½ ideal part; Copy of Plan no. 953-2/2006-230, issued on 16 June 2006 by the Cadastral Office of Pristina, Kruševac, Republic of Serbia; Inheritance Decision no. 147/84, issued on 2 October 1984 by the Municipal Court of Pristina, by which the claimant and her brother were declared heirs for the parcels nos: 4940/2; 1814/2 (claimed property); 1818/2 (claimed property) and 1819 (claimed property), in general surface of 1 ha, 15 ar 61 m<sup>2</sup>; Decision on Assessment of Property Tax for natural persons no. 432-1/2265, issued

The KPA notified potential interested parties on 21 March 2008 regarding parcel 1814/2 and on 24 September 2010 regarding parcels 1818/2 and 1819/2.

On 21 March 2008 N. K. filed response with regard to parcel 1814/2 and on 1 October 2010 regarding parcels 1818/2 and 1819/2. He claimed legal rights towards all these parcels.

Neither E nor H.K. expressed interest to take part in the proceedings in front of the KPA.

To support his position the respondent N. K. presented a number of documents<sup>3</sup>.

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on 25 March 1995 by the Republic's Administration of Inland Revenue – Department for Assessment and Collection of Inland Revenue Pristina;

<sup>2</sup> Copies of Plan dated 15 September 1967 and 19 January; Possession List No. 2290, issued on 2 August 1982, by the Cadastral Office of the Municipality of Pristina, showing the name of Lj. Đ.; Pristina Municipal Court's Decision no. 170/82, dated 1 September 1982, by which after the death of Lj. Đ. (claimant's grandmother) V. D. (claimant's uncle) and J. K. (claimant's mother) were declared heirs of ½ for each in the house and land- parcels nos.: 1814, 1818, 4940 and 1819, in a total surface of 2.31.14 ha; Municipal Court Decision no. 636/82, dated 21 December 1982, which shows that the inherited co-owned immovable property - parcels nos. 4940, 1814, 1818 and 1819, registered in the Possession List no. 2290, the Cadastral Municipality PRISTINA, are divided (into two parts – ½ for each) between V. D. (claimant's uncle) - which (after the partition) obtained ownership of a house with two outhouses, a yard and other land (registered afterward under the new numbers – cadastral parcels nos.: 4940/1, 1814/1, 1818/1 and 1819/1, with the total surface of 1.15.51 ha), and J.K. (claimant's mother) – which (after the partition) obtained ownership of house with two outhouses, a yard and other land (registered afterward under the new numbers – cadastral parcels nos.: 4940/2, 1814/2, 1818/2 and 1819/2 and have the total surface of 1.51.51 ha); Copy of Plan (regarding parcel no. 4940/2) dated 10 June 1985, showing the name of claimant and her brother; Copy of Plan (without number), issued on 11 January 1987 (regarding parcels: 1814/2; 1818/2, 1819/2 and 4940/2), showing the name of claimant and her brother as users; Claimant's brother (S. K.) power of attorney, authorising O. D. to conclude purchase contract on his behalf regarding parcels: 4940; 1814; 1818 and 1819; Copy of Plan regarding parcel no. 1814/2 (without number), issued on 12 August 1994, by the Cadastral Office of Pristina, Municipality of Pristina, Republic of Serbia, showing the name of claimant and his brother; Certified Gift Contract, no. 6011/94, dated 19 August 1994, concluded between S. K. (claimant's brother), as a donor and T. K. D. (claimant) as the donee. With this contract the donor gives as a gift his ½ aliquot parts of the cadastral parcel no. 1814/2 to his sister – donee; Copy of Plan No. 953-2-2006-230 (regarding parcels: No. 1814/2; No. 1818/2 and No. 1819/2), issued on 16 June 2006 by the Cadastral Office of Pristina, Kruševac, Republic of Serbia, which shows claimant and her brother as co-users; Claimant's Law Suit submitted in front of the Municipal Court of Pristina, dated 25 October 2007, requesting annulment of certified Purchase Contract no. 3030/2000, dated 27 October 2007; Certified Power of Attorney no. 2508 dated 18 September 2008, by which O. D., authorised N. A. from Skoplje, Macedonia, to use the claimed property parcel no. 4940 and parcels nos.: 1814/1 and 1814/2, 1818/1, 1818/2, 1819/1 and 1819/2, as well as to conclude the purchase contract with the third persons in order to sell the same; Judgment no. 2355/07 of the Municipal Court of Pristina, dated 15 December 2010, by which the claim (law suit) of T. D. (claimant) is approved and transaction signed (certified purchase contract no. 3030/2000) by N. A. on behalf of O. D. and S. K., as sellers in one side, and K. brothers, as buyers in the other side, declared null and void, in the part in which S. K. sold the following real estate of ½ ideal parts of cadastral parcels nos.: 4940/2, with total surface 0.02.13 ha, Cadastral Zone of Pristina, no. 1814/2 with surface 0.21.30 ha, 1818/2 with surface of 0.20.37 ha, and 1819/2 with surface of 0.71.83 ha, all the three in Veternik, Cadastral Zone of Pristina;

<sup>3</sup> His ID Card, dated 16 July 2004; Certified Power of Attorney no. 1821/2000, dated 14 July 2000, by which O. D.(claimant's uncle wife) authorised N. A. to possess, use and conclude and sign purchase contract regarding claimed parcel no. 4940 ; Receipt (without date and number – the KPA received date is 4 April 2007, which shows that O. D. received the purchase price regarding the claimed property; Statement (without date and number – the KPA received date is 4 April 2007), which expresses the will of O. D. to sell the claimed property; Purchase Contract (without date and number – the KPA received date is 4 April 2007) regarding the claimed property, concluded between O. D. as seller and H., E. and N. (respondent) K.as buyers ; Claimant's uncle Death Certificate No. 203, dated 15 June 1995; Marriage Certificate no. 28, dated 21 June 1995, of V. D. (claimant's uncle) and O.(J.) D.; Pristina Municipal Court Inheritance Decision no. 197/95, dated 14 September 1995, by which decided that the owner of the remained properties (after the death of V. D. on 3 June 1995) is O.(J.) D.; Cadastral Plan, dated 14 January 2005; and Tapia no. 1929, dated 4 February 1929.

The claimant received a letter of information from the KPA jointly with a copy of the respondent's reply and the submitted documents.

Based on the presented documents, the data available and the procedural measures taken pursuant to section 11.3 (c) and (d) UNMIK/REG/2006/50 as amended by law No. 03/L-079 the KPCC established that the claimant is the owner of ½ of the claimed properties – parcels 1814/2, 1818/2 and 1819/2 and that she is entitled to possession of the said properties. In this regard a decision in favour of her was granted – cover decision KPCC/D/A/121/2011, dated 7 September 2011 (paragraphs 36-38 are specifically related to the disputed parcels), and decisions for identification of the properties dated 1 November 2011.

The decision was served to the respondent on 15 December 2011.

On 22 October 2012 E. K. (hereinafter: appellant) filed an appeal against the decision of the KPCC. The appeal does not state any particular complaint. It is a blank form, signed by E.K., containing the sentence “I submitted all documents I had”.

The appeal is signed only by E. K., but the text of the document states that it is filed by E., N. and H.K..

E. K. does not has a Power of Attorney to represent either H. or N.K.

The KPA Executive Director informed the claimant for the appeal against the KPCC decision.

### **Legal reasoning:**

#### **Regarding the appeal, filed on behalf of N. K. and H.K.:**

An appeal can be filed either by the person entitled to an appeal or by his/her representative – art. 85.1 of the Law on Contested Procedure (hereafter LCP), which explicitly regulates the possibility for authorized representation in all levels of civil proceedings (the systematic place of art. 85 is in chapter V of the LCP, which is in Part Two of the Law – General Provisions which determines its applicability throughout the entire process of proceedings in front of a Court, as long as it is not provided otherwise). For clarity of the arguments it may be noted that LCP is applicable in the proceedings of the Supreme Court *mutatis mutandis* – section 12.2 of UNMIK/REG/2006/50, as amended by Law No. 03/L-79).

Authorized representation can be given to any person with full capacity – art. 86.1 LCP and any action undertaken in the proceedings by the representative of a party within the scope of its authorisation has the same legal effect as if undertaken by the party itself – art. 86.2 *ibid*.

Authorisation for representation can be given in writing or orally on the record – art. 92.1 *ibid* – the written form is self-explanatory, the authorisation on the record is made in front of the respective Court. Considering the fact that no hearing needs to be scheduled in the current appeals proceedings, the authorisation could have been done in written form only. However there is no evidence that H and N. K. have authorised their brother Mr E. K. to file an appeal against the decision of the KPCC in front of the Appeals Panel of the Supreme Court. Mr N. K., who was a respondent in the first instance, was informed of the decision in question and in case he had the will to appeal the decision he could have done it himself or he could have authorised his brother in the appropriate legal way – by signing a power of attorney. Mr H. K. also did not sign a power of attorney to Mr E. K and the latter is not authorised to file an appeal on his behalf.

As a result the appeal on behalf of N. and H. K as filed by a person who has not been authorised to do that is impermissible and has to be dismissed.

In addition to that the decision was served to Mr N. K. on 15 December 2011 and even if he had authorised his brother E.K. to file an appeal on his behalf (which he did not), the appeal even permissible on grounds of correct legal representation, would have been belated as it was filed only on 22 October 2012 – long after the 30 day period within which it could have been filed – argument in section 12.1 of UNMI/REG/2006/50 as amended by Law No. 03/L-079.

As the appeal is impermissible, the Supreme Court does not have to decide on the legal questions concerning the material rights of the parties, according to art. 186 and art. 196 of the LCP.

#### **Regarding the appeal of E. K. in his personal capacity:**

This appeal is impermissible as well because the appellant has not taken part in the proceedings in the first instance.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: *“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 [...] an appeal against such decision”*. In addition art. 176.1 of the Law 03/L-006 on Contested Procedure provide that the right to file an appeal belongs to the parties at the first instance proceedings.

A party to the claim and the related proceedings is *“any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/ or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1”* (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Mr E. K. has not taken part in the first instance proceedings before the KPCC.

According to section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079: *“A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.”* In this particular case however there is no reason to believe that Mr E.K. was unaware of the proceedings before the KPCC and thus prevented from taking part in them in order to take advantage of the referred provision. Interested parties have been duly notified and one of the brothers K – Mr N.K. responded, there was no obstacle for Mr E. K. to respond as well.

Therefore the appellant E. K. cannot be admitted as a party to the proceedings in the second instance before the KPA Appeals Panel. The appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law on Contested Procedure).

As the appeal is impermissible, the Supreme Court does not have to decide on the legal questions concerning the material rights of the parties.

**Cost 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: 30 €. This amount is determined in accordance with Section 10.11 of AD 2008/2 (related to fees payable for filing an appeal).
- court fee tariff for the issuance of the judgment: € 30. This amount is calculated in accordance with Sections 10.21 (related to fees, payable for the issuance of a decision in appeals proceedings), 10.15 (related to fees, payable in cases of dismissal of a suit) and 10.1 (describing the general rule of calculating fees) of AD 2008/2.

These court fees are to be borne by the appellant who loses the case, within 15 days of the date the judgement is delivered to him.

**Legal Advice:**

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment cannot be challenged through ordinary or extraordinary remedies.

**Anne Kerber, EULEX Presiding Judge**

**Sylejman Nuredini, Judge**

**Elka Filcheva-Ermenkova, EULEX Judge**

**Urs Nufer, EULEX Registrar**