

**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-132/12

**Prishtinë/Priština,
17 September 2013**

In the proceedings of:

R. L.

Appellee /Claimant

vs.

I. J.

Appellant /Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 (case file registered at the KPA under No. KPA42175), dated 19 April 2012, after deliberation held on 17 September 2013, issues the following

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012, dated 19 April 2012, as far as it relates to the case file registered under number KPA42175 is annulled as rendered in the absence of jurisdiction.
2. The claim of R. L. registered under the number KPA 42175 is dismissed as not being within the jurisdiction of the KPA.
3. Costs of the proceedings determined in the amount of 60 € (sixty euro) are to be borne by the claimant/appellee and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgement is delivered otherwise through compulsory execution.

Procedural and factual background:

On 21 August 2007, R. L. as the inheritor of the property right holder filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of user right and repossession over the parcel no 581/2 located in village Sopina in Suharekë/Suva Reka with a surface of 11,70 m². He claimed that his deceased father was the owner of the said property that was usurped by unknown persons.

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

- Death certificate of N. L. showing the date of death as 8 October 2002;
- Death certificate of J. L. showing the date of death as 12 March 1976;
- Contract on sale of land between G. Sh. N. and L. M. on parcel no 0/92 which was verified at District Court in Suharekë/Suva Reka on 31.12.1958 under no OV No 331/58;
- Possession list no 76 issued by Republic of Serbia Republic Geodesy Office Centre for Cadastre and Immovable Property Pristina Department for Cadastre Suva Reka upon req no 952-1/2003-867 indicating that the cadastral parcel no 581/2 as registered in the name of J. N. L.;
- Claimant's birth certificate;
- ID card of the claimant, issued on 17 November 2003.

The KPA verified the possession list, ID card of the claimant and death certificate of N. L. and certificate for the immovable property obtained *ex officio*.

On 5 May 2008, the KPA team visited the claimed property located at Suharekë/Suva Reka. The team noted in its report that the land was occupied by I. J. who was present at the property during the visit claiming an ownership right over the property due to an agreement on exchange of lands. The report also refers to the fact that KPA contacted the claimant on the same date for clarification and he did confirm that he exchanged

the property with Mr. I. and D. J. in 1981. The second notification report of the KPA dated 4 May 2010 reflected the same arguments of the respondent.

I. J. filed a notice of participation dated 1 June 2010. He submitted ID card issued on 17 January 2011; a certificate no UL-72116043-00052 and a written statement to support his allegations. In his written statement, he explained that he had an exchange contract with N. L. whereby the parcel no 581/2 was given to him by the latter in return of cadastral parcel no 1045/1 located in the place named "Rupa drum".

KPA noted the date of loss of possession of the claimant as 1 January 1981 in its report to Kosovo Property Claim Commission (KPCC). The Annex of that report states, when contacted by the Secretariat, the Claimant asked the KPA if they could exchange the cadastral records and give him the repossession of parcel no 1045/1 instead. The KPA denied the request for repossessing that parcel instead of claimed parcel no 581/2 since it came after the claim intake period.

On 19 April 2012, the KPCC with its decision KPCC/D/A/148/2012 granted the claim. In its reasoning, in particular to claim no 42175, KPCC argued that the claimant alleged that his deceased father as the property right holder exchanged the claimed parcel no 581/2 with Respondent's parcel no 1045/1 prior to the 1999 conflict; however, this exchange was not yet reflected in the cadastral records. KPCC concluded that since both parties agreed that there had been an exchange of properties, the claim stands for parcel no 1045/1 but not the originally claimed parcel.

The decision was served on the claimant on 24 September 2012 and on the respondent on 28 September 2012 respectively, while the latter filed the appeal on 11 October 2012.

The appellant challenged the KPCC's decision on the grounds of fundamental error and serious misapplication of the procedural and material law. He claimed that he had not given the opportunity of efficient defense and that the principle of equality of the parties was breached since his witnesses shown to prove the exchange of the lands were not heard by the Commission.

On 4 April 2013, the claimant filed a response to the appeal of I. J. on the one hand asking for rejection of the appeal, on the other stating that KPCC adopted the decision in the reasoning not on the parcel he requested originally but with respect to parcel no 1045/1; however, this is not reflected in the part of confirmed decision. He asked for amendment of the decision to approve his right over the parcel no 581/1 (*in addition*) and 581/2 and stated his willingness to accept to receive parcel no 1045/1 instead provided that there is a decision of the Commission based on which he could register the property under his name.

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.

The claimant in his response to the appeal also asked for the amendment of the decision. However, there is no appeal from the appellee and the Court cannot decide on his request.

It is not contested that the claimant provided the possession list referring to parcel no 581/2 as the subject of his claim registered with KPA. However, KPA as well as KPCC established that the claimant's predecessor N. L. had exchanged parcel no 581/2 with the respondent I. J. and received parcel no 1045/1 in return.

As noted in KPA notification report dated 5 May 2008, the claimant confirmed the exchange of the claimed property with Mr. I. and D. J. in 1981. The date of loss of the property was noted as 1 January 1981 by the KPA in claim processing report to the KPCC. The concern of the claimant is whether the agreement will fully be executed in terms of the property exchanged by his predecessor. During the proceedings, he even asked from KPA a relief for parcel no 1045/1 instead of parcel no 581/2 originally claimed. KPCC verified the ownership of the claimant over parcel no 581/2 based on possession list no 76 but granted the relief in its reasoning with respect to the exchanged property, parcel no 1045/1, for which the claimant did not provide a document referring to his ownership right. The Commission did not reach its decision on the basis of claim, as required by Section 11.2 of UNMIK Regulation 2006/50 as amended by the law No. 03/L-079, but on the amended request of the claimant for another property.

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 of 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 the case at hand, the Supreme Court observes that the claimant did not lose the possession of the claimed property (parcel no 581/2) in relation or resulting from the armed conflict but due to an exchange of lands which took place between his predecessor N. L. and the respondent long before the conflict. The existence of exchange of lands is not contested whereas whether such exchange is valid or not is irrelevant in these proceedings.

The Supreme Court finds that the matter is not within the jurisdiction of the Kosovo Property Claims Commission or within the jurisdiction of the KPA Appeals Panel of the Supreme Court. Taking into account that KPCC decided on the merits of the claim despite it lacked jurisdiction since the loss of possession of claimed property has no causal link with the armed conflict, the Supreme Court considers that the appealed decision was taken by essential violation of the provision of Article 182 paragraph 2 sub paragraph (b) of the Law on Contested Procedure (LCP) which *mutatis mutandis* is applied in the proceeding before it pursuant to Section 12 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. Therefore, the same KPCC decision pursuant to Article 198 paragraph 1 of LCP should be annulled and the claimant's claim be dismissed.

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, 10.15 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 35.000: € 30 (€ 50 + 0,5% of € 35.000, yet no more than € 30).

These court fees are to be borne by the claimant who filed an inadmissible claim. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esmā Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar