

**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-062/13

**Prishtinë/Priština,
12 February 2014**

In the proceedings of

N. M. S.
Serbia

Claimant/Appellant

vs.

H. L.
Podujeve/Podujevo

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/135/2011, dated 07 December 2011 (case file registered at the KPA under KPA 36714), after deliberation held on 12 February 2014, issues the following:

JUDGMENT

1. **The decision of the Kosovo Property Claims Commission KPCC/D/A/135/2011 dated 07 December 2011, as far as it regards to the case file registered at the KPA under number KPA36714, is annulled.**
2. **The claim for the private property of N. S., regarding the case file registered in KPA under number KPA36714, is dismissed as impermissible.**

Procedural and Factual Background:

1. On 26 June 2007 N.S., in the capacity of the family household member, filed a claim with the Kosovo Property Agency (KPA) requesting that his father, M. S., be recognized as the owner of the cadastral parcel no. 439, at the place called „Kodra e Merqezit/Mečesko Brdo“, with surface of 0.50.52 ha, Cadastral Zone Shtedim/Štedim, registered in possession list no. 7, Municipality of Podujevë/Podujevo. Claimant stated that possession over the immovable property was lost on 15 June 1999 as a result of the circumstances in Kosovo in 1998/1999. He claimed confirmation of property right and repossession.
2. In support to his claim, the claimant submitted to the KPA the following evidence:
 - (a) Possession list No. 7, issued by the Department of Cadastre, Geodesy and Immoveable Property of the Municipality of Podujevë/Podujevo, dated 28 December 2007 (UNMIK). According to the possession list, it is established that S. N. is the property right holder over the cadastral parcel which is subject of the claim;
 - (b) Death certificate of N. S., dated 06 May 1989, issued by the Municipality of Podujevë/Podujevo, confirming that the same died on 02 June 1989 in Shtedim/Štedim, Municipality of Podujevë/Podujevo. The verification team of KPA Executive Secretariat positively verified these evidences.
3. On 10 November 2007, the KPA notified the claim by placing a notification sign at the place where the parcel was allegedly located. In 2010, the KPA again conducted notification of the claim, this time through Publication in the Notification Gazette No. 10 and the Bulletin of UNHCR Property Office. Gazette and List were left to the head of village who accepted to make it available for interested persons. The same were also placed at the entrance and the exit of the village Shtedim/Štedim and in some public offices in Podujevë/Podujevo as well.

4. H. L., in a capacity of the respondent in the proceedings, claims that in 1974 his father had exchanged the claimed parcel for another parcel with the claimant's grandfather, N. R. S.

5. With its decision KPCC/D/A/135/2011, dated 07 December 2011, Kosovo Property Claims Commission rejected the claim with the reasoning that the claimant confirmed statement given by the respondent that his father had exchanged the claimed property with the claimant's grandfather in 1974. Even though the claimant confirmed the aforementioned transfers, the same did not withdraw the claim.

6. On 27 December 2012, the KPCC decision was served on the claimant (hereinafter: appellant) whereas on 02 May 2013 the same decision was served on respondent.

7. On 24 January, 2013, the appellant filed an appeal with the KPA stating that in the mid-90's the heirs of the deceased S. R. N. exchanged parcel No. 439 (field with surface of 0.5.00 ha, at the Cadastral Zone Shtedim/Štedim) for another parcel at the place called "ara e fatit", with surface of 20 ares with H. L. brother, B. L. In his appeal he also stated that if the respondent/appellee's brother agrees to comply with the reached oral agreement regarding the exchange, then he is ready to legalize this action and transfer possession to new owner. He further stated that he considers that there is no legal ground to get negative result regarding claim KPA36714.

Legal Reasoning:

8. The appeal is admissible.

9. Pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, the party can file an appeal within thirty (30) days after being notified regarding decision.

10. The Supreme Court concludes that the appealed decision of KPCC contains essential violations of provisions of Article 182 paragraph 2 subparagraphs (b) of LCP and Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079; violations of the absolute nature and for which this Court acts *ex officio*. Therefore, based on this legal ground, the appealed decision is annulled and the claim is dismissed due to lack of jurisdiction of this Court and consequently of the KPCC pursuant to the provisions of Article 198 paragraph 1 of LCP.

11. Pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the claimant has the right to an order by the Commission for repossession of the property if the claimant not only proves his/her ownership over the property, but also that currently she or he is not able to exercise

the rights over that property due to circumstances directly related to or resulting from the armed conflict in Kosovo between 27 February 1998 and 20 June 1999.

12. The appellant/claimant does not dispute the fact that his late grandfather S. R. N., in 1974 exchanged parcel No. 439, field with culture, class 5, with surface of 0.50.52 ha, at the Cadastral Zone Shtedim/Štedim, registered in possession list No. 7 of the Municipality of Podujevë/Podujevo, for another field at the place called “ara e fatit”, with surface of 20 ares, with appellee’s (H.L.) brother, Bajram Lutfiu. In addition, the appellant stated that he is prepared to legalize the exchange of these immovable properties if the appellee agrees to do so.

13. Thus, from such factual situation, it clearly and indubitably results that it is uncontested that the allegations of the claimant/appellant regarding the loss of possession are not related to or result from the armed conflict of 1998/1999.

14. Based on the aforementioned the decision of KPPC regarding the said claim is annulled and claim dismissed since the same does not fall into the scope of jurisdiction of KPCC and this Court pursuant to provision of article 198 paragraph 1 of LCP.

Legal remedy:

15. Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50 as amended by Law 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar