

**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-39/13

Prishtinë/Priština,
18 November 2014

In the case of:

R. R.

Podujevë/Podujevo

Appellant

vs.

M. L.

Novi Pazar
Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Willem Brouwer Presiding Judge, Esma Erterzi and Sylejman Nuredini, Member, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/141/2012 case registered at the KPA under the number KPA08458 dated 29 February 2012, after deliberation held on 18 November 2014 issues the following:

JUDGMENT

1. The appeal of R. R. against the decision of the Kosovo Property Claims Commission KPCC/D/A /141/2012, case registered at the KPA under the number KPA 08458, dated 29 February 2012, is dismissed as impermissible as it is filed by an unauthorized person.
2. The decision KPCC /D/A /141/2012 case registered at the KPA under the number KPA 08458 dated 29 February 2012 is confirmed.

Procedural and factual background:

1. On 11 January 2007, M. L. filed a claim with the Kosovo Property Agency (KPA) registered with number KPA 08458, in the capacity of household member of the alleged property right holder, respectively her deceased father D. R., alleging he was the owner of the claimed properties, and seeking the right to re-possession of parcel 94 in the surface of 0.52.90 ha.
2. In support of her claim she provided the KPA with the following documents:
 - Identification card issued on 23 May 2002, by the competent authority.
 - Possession list of the Directorate for Cadastre, Geodesy and Ownership, of date 24 September 2007, whereby is ascertained that parcel 94/1 at the place called “Seishta -te shtëpia” Cadastral Zone Peran, Municipality of Podujevë/Podujevo, is registered under the name of R. D.
 - Death certificate issued on 10 September 2008, by the competent authority in Nis, wherewith is ascertained that D. R. passed away on 28 January 1987 in the village of Peran/Perane, Municipality of Podujevë/Podujevo.
3. According to the notification and confirmation report dated 17 November 2007 and 28 December 2010, the notification team of the Kosovo Property Agency has established that based on the mentioned decision list the claimed property is registered under the name of R.D..
4. According to the report of the KPA verification commission dated 15 August 2008, all proposed evidence has been positively verified.
5. The Kosovo Property Claims Commission (KPCC) regarding the claimed properties, with its decision KPCC 141/2012, referring to the case file registered at the KPA under number KPA 08458, dated 29 February 2012, and decided that the claimant proved that D.R. is the owner of the claimed property and that the claimant has the possession right over that property. In the reasoning

of this decision is indicated that the respondent submitted the objection based on incorrect notification. Meanwhile, after the correct notification they did not withdraw the objection even though they did not claim the legal right over that property.

Appeal allegations:

6. M. L. received the decision on 10 July 2012, whereas has filed a response to appeal on 26 March 2014.
7. R.R. filed an appeal against the decision on 10 January 2013, who did not participate in the KPA notification and publication procedure. In the appealed allegation he emphasized that the commission's decision is incorrect. Sh. I. purchased cadastral parcel no. 94 in 1981 from a Serbian, and when transfer took place, mistakenly only 61 ares were transferred. This parcel is in the surface of 01.14.00 ha.

Legal reasoning:

Admissibility of the appeals:

8. Supreme Court of Kosovo, after the review and evaluation of the appealed decision and of filed appeals pursuant to Article 194 of LCP, established that:
The appeal is dismissed as impermissible because an unauthorized person has filed it.
9. Supreme Court dismissed the appellant's appeal (statement) as impermissible because an unauthorized person filed it, pursuant to Article 186 par 3 in conjunction with Article 196 of LCP. This is because R. R. not only that has not participated in the notification and publication procedure regarding the legal interest for the claimed property, to present legal valid evidence, but during the appeal procedure did not present any evidence on the active or passive legitimacy referring to this legal property case.
10. Furthermore, by challenging the KPCC decision in the form of statement, he did not provide any legally valid authorization to represent the litigant party in this legal property case.
11. In addition, the appellant cannot claim anything more than he claimed at the procedure when the appealed decision was taken. This is because pursuant to Article 258 par 1 of LCP, the amendment of claim after the finalization of the preliminary hearing or the main hearing is not allowed.
12. In the light of the foregoing, pursuant to provision of Section 13 par.3 sub-para (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, by dismissing the appeal as impermissible, it is decided as in the enacting clause of this judgment.

Legal remedy:

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

Willem Brouwer, Presiding EULEX Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar