

IN THE NAME OF THE PEOPLE

DISTRICT COURT OF PRIZREN, in a panel composed of EULEX judge Vladimir Kanev as Presiding judge, EULEX Judge Klaus Huener and Kosovo Judge Kujtim Pasuli as panel members, in the civil case relating to the claim on confirmation of ownership of claimants Haki Berisha from Suharekë/Suvareka, represented by the authorized attorney Besim Kuçi from Suharekë/Suhareka, against the respondents: Ali Rexhaj and Sinan Palushi from village Shiroka – Suhareke, represented by authorized attorney Durak Fondaj, deciding on the appeal of representative of the respondents, filed on 08.02.2010 against the Judgment of the Municipal court in Suharekë/Suvareka C.no. 181/2006 dated 14.01.2010 in the panel session held on 05.11.2010, renders the following:

J U D G E M E N T

The appeal of representative of the respondents filed on 08.02.2010 on the behalf of the respondents is **Reject** as ungrounded.

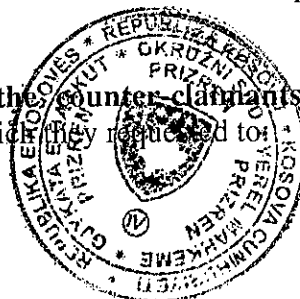
The Judgment of the Municipal court of Suharekë/Suha Reka C.no.181/2006, dated 14.01.2010 is **Confirmed**, quoting,

I. “The Claim request of Haki Berisha from Suhareka for verification of ownership on immovable property that was illegally taken away from respondents Ali Rexhaj and Sinan Palushi from village Shiroka - Suhareka of the cadastral parcels no. 779/4, in the place called “Shiroke”, registered in the possession list no. 275 C.Z. Sopijë, which borders with cadastral parcel no. 780. And to oblige the respondents to release and handover disputed property/land, is **GRANTED** as grounded”.

1. Sinan Palushi from Shiroka Mun. of Suhareka is obliged to return and vacate the part of the immovable property, to the claimant Haki R. Berisha from Suhareka, the cadastral parcel 779/4 in the location called “Shirokë” which is registered in the possession list no. 257 CZ Sopijë and that the surface of 44 m², bordering the cadastral parcel 780 with the following measurements: with the width at the top by the road being 1.2m, in the direction of south in length of 40.1m and at the bottom with the width being 1m, or to compensate on behalf of the immovable property with the surface of 44m² the sum of 3.080 Euro

2. Ali Rexha from Shiroka Mun. of Suhareka is obliged to return and vacate the part of the immovable property, to the claimant Haki R. Berisha from Suhareka, the cadastral parcel 779/4 in the location called “Shirokë” which is registered in the possession list no. 257 CZ Sopijë and that the surface of 39 m², bordering the cadastral parcel 780 with the following measurements: with the width at the top by the road being 1m, in the direction of south in length of 38.9m and at the bottom with the width being 1m, or to compensate on behalf of the immovable property with the surface of 39m² the sum of 2.780 Euro.

II. The counterclaim of the counter claimants is REJECTED is in its entirety as ungrounded and by which they requested to:



“Confirm that counterclaimants Sinan Palushi and Ali Rexha from Shiroka Mun. of Suhareka are owners of parts of the cadastral parcel 779/4 in the location called “Shirokë” CZ Sopijë, namely Sinan Palushi in the surface of 44 m² and Ali Rexhaj in the surface of 39 m² parts which have been used by the counterclaimants for more then 24 years.

The respondents are obliged to jointly pay the claimant’s procedural expenses in the amount of 1.789€.

R e a s o n i n g

Admissibility and Grounds of the Appealed Decision C.nr.181/2006 of MC Suhareka.

The representative of the respondents as an unhappy party filed an appeal within a legal time limit dated 08.02.2010 against the judgment C.no. 181/2006 of the Municipal court of Suhareke/Suvareka dated 14.01.2010 for:

- Violations of essential litigating proceedings provisions, Article 181, par.1, Item a) in connection with article 182, par.2 Item n) and article 199 of LLP;
- Erroneous and incomplete findings of the state of facts as per Article 181, par.1 Item b) in connection with Article 183 of LLP;
- Erroneous application of substantive law as per Article 18, par.1, Item c) in conjunction with Article 184 of LLP;

With proposal that the court of second instance to render a Judgment – BY CHANGING – the appealed Judgment in such a way that the claim filed by the claimant Haki Berisha to be rejected as ungrounded, whereas the request made in the counterclaim filed by the counterclaimants Sinan Palushi and Ali Rexhaj, both from Shiroka, Suhareka Municipality, be granted as grounded.

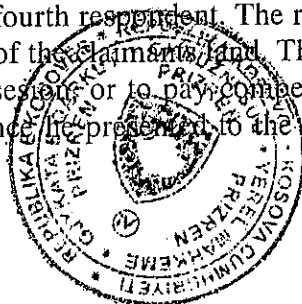
District court Panel considered the appeal was timely submitted and Appellants have legal interest to appeal.

Procedural background

On 03.05.2001, the claimant filed a claim in MC Suhareke/Suvareka for verification of ownership over immovable property that was illegally occupied by respondents Ali Rexhaj and Sinan Palushi from village Shiroka - Suhareka of the cadastral parcels no. 779/4, in the place called “Shirokë”, registered in the possession list no. 275 C.Z. Sopijë, which borders with cadastral parcel no. 780. And to oblige the respondents to release and handover disputed property/land.

According to the claim, the Claimant declares he is legal owner of the disputed plot registered in the possessor list Nr.257 KM Sopiji/Suvareke as cadastral parcel 779/4, in surface of 44 ar 37 m² of which a portion of 44 square meters occupied by the respondents in unlawfull manner.

Ex-owner Dervish Rexhep Gashi had sold his land/ plot which borders to the plot of the claimant, to the second, third and the fourth respondent. The respondents during the construction of their walls occupied part of the claimant’s land. The claimant repeatedly contacted defendants to retsore his possession or to pay compensation but they have not responded to the request. As a evidence he presented to the Court a Possessor list and copy of land plan of disputed plot.



The respondents denied the allegations that they have occupied the land of the claimant and they stated that they are legal owners of the disputed land base on the sales contract made with the ex-owner Dervish Gashi.

On 24.12.2001, the Municipal court of Suharekë/Suhareka, in its first interlocutory Judgment C.no. 92/2001, has confirmed the ownership of the claimants on the disputed property, and obliged the respondent to handover disputed property/land. On 19.12.2004, within the appeal procedure the DC Prizren Acno.40/2002 in it's ruling regarding to the appeal of the respondent abolished the appealed Judgment and remitted case to MC for reconsideration.

On 30.06.2003 the Respondents Sinan Palushi and Ali Rexhaj filed counter claim against the claimant Haki Berisha with allegation that they are legal owners of the disputed property based on positive prescription of more than 24 years tenure.

On 18.10.2004, The MC of Suhareke in its Judgment C.no.254/2002, Approved the claim request and confirmed the ownership of the claimant on disputed property, obligated the respondents Sinan Palushi and Ali Rexhaj to hand over occupied property and refused the respondents counterclaim request entirely as ungrounded.

DC Prizren in it's Ruling Ac 421/2004 issued on 05.06.2006 "ABOLISHED" the appealed Judgment and returned the case to MC for reconsideration.

On 14.01.2010, The MC of Suhareke in its Judgment C.no.181/06, obligated the respondents Sinan Palushi to hand over occupied property of claimant in total surface of 44m² or to pay compensation for land occupied in the amount of 3.080 Euro, and the respondents Ali Rexhaj to hand over occupied property of claimant in total surface of 39m² or to pay compensation for land occupied in the amount of 2.780 Euro. Also with this Judgment refused the respondents counterclaim request "to acquire the ownership right over the thing through adverse possession over a 24 year period "entirely as ungrounded.

The respondents filed an appeal on 08/02/2010 before Prizren DC on against the Municipal court of Suhareka/Suvareka Judgment C.no.181/06 of date 14.01.2010. Relating to this appeal the claimants didn't submit a reply to the appeal.

Legal assessment

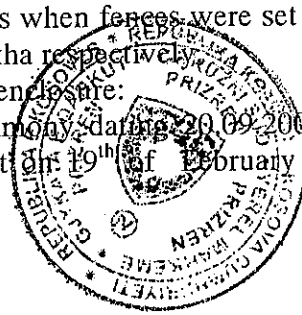
Appeal in consideration is focused on the counter-claim that has been rejected. Appellants claim they had acquired ownership through reverse possession for 24 years. Appeal reads first instance wrongly assessed facts related to scrupulous and lawful reverse possession.

Second instance checked ex officio first instance proceedings and found no violation of essential procedural provisions. Second Instance is also satisfied that first instance court correctly established facts in issue and has correctly applied substantive law.

Appellants failed to prove alleged reverse possession over land in dispute.

.During the proceeding at MC 14 witnesses testified. All but two gave evidence as to time when appellants build their houses. Having in mind that houses are not constructed on disputed land, such evidence is irrelevant. It is not contested, that now land in issue is fenced by appellants and they use it as part of their yards. Therefore, issue at stake that had to be proven was when fences were set thus annexing the are to possessions of Mr. Palushi and Mr. Rexha respectively.

Only two witnesses refer to the enclosure:
Witness **Mexhit Krasniqi** in his testimony, dated 29.09.2004 before the Municipal court of Suhareka/Suvareka stated that on 19th of February 1998 at the request of



Claimant he visited contested parcel By that time it had already been fenced. However, counting from 1998 does not provide enough tenure for positive prescription. Witness **Besim Hoti** in his testimony of the dating 06.10.2004 before the Municipal court of Suhareka/Suva Reka stated:

. "I remember very well that in 1977 when I was only 13 years old, I was travelling with my father to Sopi, and in the way back I met Shefki Gashi in the land of Sinan, respectively his father when they were having coffee and in that time they were living in that house, and were currently building a wall."

This testimony is fairly not enough for positive conclusion on the time when reverse possession was established. Furthermore, even evidence of Mr. Hoti is credited, it does not refer to that part of the fence that stands in between parcels of the Claimant and Appellants.

For the reasons set fourth above the court has rendered the enacting clause pursuant to Article 195.1 (d) of the LCP.

DISTRICT COURT IN PRIZREN
AC.no.88/2010 dated 05.11.2010

Legal remedy: No appeal is allowed against this ruling.

Presiding Judge

Vladimir Kanev

