

MUNICIPAL COURT OF FERIZAJ/UROSEVAC

C.No.644/05

THE MUNICIPAL COURT OF FERIZAJ/UROSEVAC, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Svetoslava Savova and international interpreters in Albanian and Serbian language Arben Pallaska and Natasa Malesevic, in the case of the claimant Miodrag Jovanovic from Ferizaj/Urosevac, now residing in Vodeniciste u Trgviste, Municipality of Vranje, Republic of Serbia, represented by attorney Dobrica Lazic from Gracanica against the respondents Musli Shabani from Ferizaj/Urosevac, represented by attorney Muhamet Beqiri on the claim on annulment of a transaction contract of real estate, following a main trial session held on 18.05.2011, renders the following

JUDGMENT

With the **APPROVAL** of the claim of Miodrag Jovanovic the **contract of transaction** signed in the name of Miodrag Jovanovic as seller, represented by Muhamet Beqiri, from Ferizaj/Urosevac, based on a power of attorney registered at the Municipal Court of Ferizaj/Urosevac on 05.09.2001 under VR.nr.964/2001, which power of attorney was issued on a base of another power of attorney registered at the Municipal Court of Jagodina (Serbia) on 03.09.2001 under VR.nr.3453, and Musli Shabani from Ferizaj/Urosevac, as buyer authenticated by the Municipal Court of Ferizaj/Urosevac on 27.11.2001 under **VR. nr.1366/2001** is hereby **DECLARED NULL AND VOID**.

Musli Shabani is **ORDERED** to give up possession and leave from the real estate described in possession list 3682, **cadastral parcel 511/11** of total surface of 0.5.64 ha of the Cadastral Zone of Ferizaj/Urosevac in Fabrika Ulja place, within fifteen (15) days from the date the present judgment is served to him. If Musli Shabani fails to do so, he shall be evicted from the said parcel.

The Municipality of Ferizaj/Urosevac, the Cadastry Office, is **ORDERED** to alter its cadastral books in accordance with this judgment and to reverse the changes made in the cadastral books due to the above mentioned transaction contract regarding cadastral

parcel 511/11 of the Cadastral Zone of Ferizaj/Urosevac, described in possession list 3682.

The claim of Miodrag Jovanovic against Musli Shabani to establish the legal validity of the purchase contract concluded between Miodrag Jovanovic and Idriz Haliti dated 22 April 2003 and verified under number Vr.nr.771/2003 of the Municipal court of Ferizaj/Urosevac is hereby **DISMISSED** as **inadmissible**.

The claim of Miodrag Jovanovic against Musli Shabani to oblige the Cadastre office of the Municipality of Ferizaj/Urosevac to change the title of ownership of cadastral parcel 511/11 of the Cadastral Zone of Ferizaj/Urosevac, described in possession list 3682 to the name of Idriz Haliti is hereby **DISMISSED** as **inadmissible**.

The requests of Miodrag Jovanovic and of Musli Shabani for compensation of court expenses are **REJECTED** as **ungrounded**.

REASONING

I. Background

The claimant was an owner of an immovable property described in possession list 3682 (hereinafter 'the Parcel') – a yard in Ferizaj/Urosevac, registered as cadastral parcel 511/11 with total surface of 0.5.64 ha of the Cadastral Zone of Ferizaj/Urosevac in Fabrika Ulja place.

Upon the events following the NATO air campaign in 1999, Miodrag Jovanovic left his property in Ferizaj/Urosevac and resided in a village in Vranje Municipality, Serbia. Initially there was a house constructed on the plot but was destroyed by the bombings and only the yard had left. The Parcel was transferred to Musli Shabani through a transaction contract dated 27.11.2001 (hereinafter 'the Transaction Contract') signed on behalf of Miodrag Jovanovic by Muhamet Beqiri, a lawyer from Ferizaj/Urosevac, also representing the respondent in these proceedings, on the basis of a power of attorney (registered at the Municipal Court of Ferizaj/Urosevac on 05.09.2001, VR. nr. 964/2001) signed by Zllata Miletic who transferred to Beqiri the authority for the transaction received from her by Miodrag Jovanovic (the power of attorney signed by Miodrag Jovanovic was registered at the Municipal Court of Jagodina (Serbia) on 03.09.2001,

VR. nr.3453). The transaction price for the Parcel was 39 480 DM. The Transaction Contract was registered by the Municipal Court of Ferizaj/Urosevac as VR.nr. 1366/2001 on 27.11.2001 and the transfer was registered in the Cadastral Books of Ferizaj/Urosevac, making Musli Shabani the registered owner of the Parcel.

II. The Claim

On 25 October 2005, the Claimant filed a claim to the Court for annulment of the Transaction Contract.

The ground for the claim is that the Claimant states that he authorized Zllata Miletiq to transfer his property rights of the Parcel but on the same day he revoked the power of attorney. Nevertheless Zllata Miletiq has sold it without his consent. Additionally, he had never received the purchase price from Zllata Miletiq, Muhamet Beqiri or Musli Shabani. The Transaction Contract concerning the transfer of the Parcel therefore is null and void. The claimant alleges that he sold the Parcel to Idriz Haliti from Ferizaj/Urosevac who paid him the price of 62 040 DM. That contract was verified in the Municipal Court of Ferizaj/Urosevac but the change of the title of ownership was not done in the registry books as the Parcel was already registered on the name of Musli Shabani. The claimant asks the court to annul the Transaction Contract, to establish the legal validity of the transaction contract signed between him and Idriz Haliti, dated 22.04.2003 and verified in Municipal court of Ferizaj/Urosevac under Vr.771/2003 and to oblige the cadastre office to change the title of ownership of the Parcel on the name of Idriz Haliti. The claimant also requests for reimbursement of court costs.

The respondent Musli Shabani has disputed the claim: first on the ground of inadmissibility stating that the claimant has no legitimacy to submit the claim since he is not anymore owner of the Parcel; and secondly on the merits of the contest, on the ground that the transaction has been conducted in a legal manner on the basis of regular documentation and he has paid the transaction amount in full. Additionally he challenged the claim under the provisions of article 460 of the Law of Contracts and Torts which provides that a sale of somebody else's goods shall be binding for a contracting party, but if the buyer was not aware of the fact that the goods belong to another, he may repudiate the contract and demand damages if, due to the above, the contract be impossible to be realized. The respondent proposes to the court to reject the claims and instruct the claimant to file a new claim for compensation against Zllata Miletiq.

III. The Procedural History

After the claim was filed in the Municipal Court of Ferizaj/Urosevac on 25 October 2005, the case was assigned to a single reporting Judge. The reporting Judge held sessions on 24 January 2006, on 19 May 2006, on 20 September 2006 and on 5 December 2006 and adjourned the proceedings for indefinite time until the court would be able to summon the witness Zllata Miletiq who lived in Serbia.

Through a decision of a EULEX Judge acting on delegation of the President of the Assembly of EULEX Judges on 23 March 2011, the case was assigned to EULEX Judge of the District court of Pristina since it was concluded that the case fulfilled the requirements of art. 5.1 item c (ii) of the Law on Jurisdiction (Law No. 03/L-53).

The Court scheduled a main trial hearing on 21 April 2011 and after a hearing on 18 May 2011 the proceedings were concluded.

IV. Factual and legal assessment

1. Admissibility of the claim

Before starting the examination of the merits of the claim, the court shall observe the admissibility of the claim. The Claimant pleads for annulment of the Transaction Contract on the base of article 103 of the Law of Contracts and Torts (OG 29/78) (LCT) as lacking the consenting will of one of the contracting parties and thus contrary to compulsory regulations (article 26 in connection to article 91 and article 86 of LCT). According to article 109 LCT the court shall keep in view the nullity as his task in line of duty, while it may be claimed by *every person interested*. This provision thus states that the court *ex officio* shall consider whether or not the contract should be regarded as a nullity and that every person that has an interest in this issue is entitled to make a claim to this effect to the court. The law does not even require the claimant to be the owner of the property transferred with the contract or a party of the contract. The null contract does not transfer any rights or obligations and it does not in any way change the legal relations between the parties, it is simply a nullity. This is the reason why everybody with an interest in the issue can claim the nullity of a contract. The Claimant is a party of the Transaction contract and may claim annulment of it. Additionally, claiming annulment is

not timely limited. Pursuant to article 109 LCT, the Court therefore finds the claim admissible.

2. Assessment on merits

2.1 Factual assessment:

The following facts are undisputed in the case. Miodrag Jovanovic was the uncontested owner of the Parcel until 1999, when he fled Ferizaj/Urosevac and took refuge in the town of Vodeniciste u Trgviste in Serbia. From exile, Miodrag Jovanovic decided to sell the Parcel and authorized Zllata Miletiq conclude a transaction contract. Later he signed a transaction contract for the Parcel to Idriz Haliti, who could not change the title of ownership in the cadastre books in the municipality of Ferizaj/Urosevac as according to the register books Miodrag Jovanovic was not anymore registered as owner of the Parcel but it was the respondent Musli Shabani. Musli Shabani has been registered as owner of the Parcel in the Cadastral Register as a consequence of the Transaction Contract.

The main question of the case is thus if Miodrag Jovanovic voluntarily has disposed of his property right to the Parcel and more specifically, if he has signed the power of attorney authorizing Zllata Miletiq to conclude the Transaction Contract on his behalf.

Upon presented written evidences it can be clarified that Miodrag Jovanovic was owner of a parcel in Ferizaj/Urosevac with total surface of 0.5.64 ha of the Cadastral Zone of Ferizaj/Urosevac, registered in possession list 3682 as cadastral parcel No 511/11 in Fabrika Ulja place.

On 5 September 2001 Miodrag Jovanovic authorized Zllata Miletiq to sell the Parcel. The power of attorney was verified in Municipal court of Vladicin Han (Serbia) under Vr.nr.526/2001.

On the same day, 5 September 2001 Zllata Miletiq re-authorized Muhamet Beqiri, attorney from Ferizaj/Urosevac to sell the Parcel on behalf of Jovanovic. In the power of attorney she stated that she transferred the authorization Vr.nr.3453 dated 3 September 2001 verified in Municipal court of Jagodina (Serbia), which authorization was given to her by Miodrag Jovanovic.

On 27 November 2001 Muhamet Beqiri, as a representative of Miodrag Jovanovic, in the capacity of a seller, signed the Transaction contract with Musli Shabani, a buyer. The price of the purchased Parcel was 39 480 DM. The Transaction contract was verified in Municipal court of Ferizaj/Urosevac on 27 November 2001 under Vr.nr. 1366 /2001.

On 31 December 2002 Musli Shabani was registered as owner of the Parcel.

It shall be mentioned that the respondent presented and the Court accepted as evidence a contract dated 4 September 2001 according to which Zllata Miletiq, as a representative of Miodrag Jovanovic, sold to the respondent Musli Shabani the Parcel for the purchase price of 39 480 DM. This contract was never verified in the court. On the same date, 4 September 2001, Zllata Miletiq signed a confirmation letter that she received from the buyer Musli Shabani the purchase price of 39 480 DM.

On 9 January 2002 Miodrag Jovanovic authorized Nexhat Qorrolli, a lawyer from Ferizaj/Urosevac to sell the Parcel on his behalf. This power of attorney was verified in the Municipal court of Vladicin Han under Vr.nr.2/2002.

On 16 January 2002 Miodrag Jovanovic as a seller signed a transaction contract with Idriz Haliti, Ferizaj/Urosevac, as a buyer, selling him the Parcel for the price of 62 040 DM. In the contract the parties stated that the seller received 40 000 DM when the contract was signed and the rest 22 040 DM would be paid one month later. This contract was never verified in the court. With a written statement dated 16 January 2002 Miodrag Jovanovic confirmed that he received 40 000 DM as part of the purchase price and the rest of it would be received in one month. A list with the banknotes' serial numbers is also attached.

On the 14 March 2002 in Merdare with a written statement Miodrag Jovanovic confirmed that he had received from Idriz Haliti 11 130 Euro as the remaining of the purchase price.

On 22 April 2003 Nexhat Qorrolli, as a representative of Miodrag Jovanovic, based on power of attorney verified in the Municipal court of Vladicin Han under Vr.nr.2/2002, signed a transaction contract for the Parcel with Idriz Haliti for the price of 30 000 Euro. The contract was verified in Municipal court of Ferizaj/Urosevac under Vr.nr. 771/03.

Idriz Haliti could not register as owner of the Parcel in the cadastre office of the municipality as Musli Shabani was already registered as such.

Upon request of the Court, Municipal court of Jagodina made inquiries and informed the Municipal court of Ferizaj/Urosevac with a letter dated 18 September 2006 that a power of attorney with number Vr.nr.3453 dated 3 September 2001 was not verified in the court.

On 3 September 2001 the court of Jagodina registered certifications starting with the number 2912/2001 and ending with the number 2927/2001. A copy of the registry book is attached to the reply of the Municipal court of Jagodina. The examination of the pages of

the registry book just conform the information received from the Municipal court of Jagodina. In 2001 a document under Vr.nr.3453 was verified in the court of Jagodina but not on 3 September and not by the claimant but by a person with the name Dusan Vidovic who verified a “declaration”.

According to the information provided by the Cadastre office in Ferizaj/Urosevac under No 01000/2011 dated 3 May 2011 the Parcel is registered on the name of the respondent on the base of the Transaction contract. The registration was ordered by a decision 953-2/2659 dated 31.12.2002 of the Cadastre and Geodesy office, Municipality of Ferizaj/Urosevac.

Each of the parties gave statements in front of the Court.

According to the claimant on 4 September 2001 Zllata Miletqi visited him in his house in the village of Radovnica, Vranje municipality, Serbia where he had settled after 1999. He did not know her. She proposed him to sell his property in Kosovo and showed him other transaction contracts she had concluded mediating between Serbian sellers and Kosovo Albanian buyers. Miodrag Jovanovic agreed to authorize her to sell his property. Zllata Miletqi slept over the night in his house and on the next day they together went to the Municipal court of Vladicin Han where Miodrag Jovanovic verified his signature under a power of attorney authorizing Zllata Miletqi to sell the Parcel. He also authorized her with another power of attorney to sell another property he had in Grebno. At 10.00hrs in the morning they finished the verifications, Zllata Miletqi took two originals of each of the powers of attorney as Miodrag Jovanovic kept one. Then they parted and Miodrag Jovanovic came back to the village of Radovnica. That day his son came back home and Miodrag Jovanovic shared with him about the authorizations. His son told him that Zllata Miletqi was known to have tricked many people with purchases of properties and they decided to go to Jagodina and find Zllata, so that Miodrag Jovanovic could revoke the issued powers of attorney. They both went on the same day, 5 September 2001, to Jagodina to meet Zllata Miletqi. She came back home at around 23.00hrs in the evening. Miodrag Jovanovic informed her that he was revoking his two powers of attorney and asked for the originals she had took earlier that day. She gave him back only one original of each explaining that the other one was taken by K-FOR at the border with Kosovo. She told him that she was in Kosovo that day and also asked him to give her two photos of his. Miodrag Jovanovic did not give her any and went back home. He did not have any

contact with her anymore until he understood that she had sold the Parcel. Idriz Haliti, to whom Miodrag Jovanovic sold the Parcel, could not register it in the cadastre books. Realizing this, Miodrag Jovanovic visited Zllata Miletqi in Jagodina and she gave him a written statement that she had not sold the property and not given him any money. Additionally Miodrag Jovanovic went to Brezovica, in Strpce to report in police against Zllata Miletqi. The police officer told him that that was not the first time people were complaining from Zllata Miletqi, but she was in Serbia and they could not do anything from Kosovo against her. The police officer did not take record on his complaint. As for the purchase contract with Idriz Haliti the claimant explained that he signed two purchase contracts with him, one in personal and one through his authorized representative Nexhat Qorolli. He received the purchase price in full. The claimant alleges that the respondent called him two or three times and asked him to give the money back to Haliti saying that he would pay him twice the price paid by Haliti.

The respondent Musli Shabani explained that a fellow from Ferizaj, Basri Topali, introduced to him Zllata Miletqi and told him that she had a property to sell. He asked her about the owner of the property and she explained him that the owner lived near Vladichin Han and that he was afraid to come to Kosovo. That was why she had a power of attorney from him to sell his land. They visited the spot, and then agreed for the price of 39 480 DM. The respondent knew the property from before as his relatives had built the house of Jovanovic. According to the respondent he can not remember exactly which date Zllata Miletqi met him for the purchase, but he confirmed that all the documents he signed in regards to the Parcel were correctly dated. The respondent, his lawyer Beqiri and Zllata Miletqi went to the court in Ferizaj/Urosevac where Miletqi re-authorized the lawyer of the respondent, Muhamet Beqiri, to sell the Parcel to the respondent Shabani on behalf of Miodrag Jovanovic, on the base of the power of attorney she had from Jovanovic, dated 3 September 2001. The transfer of the power of attorney was done because the conclusion of the Transaction contract required permission of the municipality which practically could be received in a month period and Miletqi did not agree to come to Ferizaj/Urosevac again. According to the respondent, they left the original of the power of attorney dated 3 September 2001 in the court. After the verification of the re-authorization he paid the agreed amount of the purchase price in cash to Miletqi. It was about mid day. She told him that she was going directly to the

owner to hand over the money to him. Later she brought him another authorization letter signed by Miodrag Jovanovic explaining him to take it in case he needed it.

Initially the court admitted Zllata Miletiq to examination as a witness and duly summoned her, but the latter did not appear at the court sending a fax letter, dated 19 May 2006, informing the judge that she was sick. Later the newly assigned judge rejected the request of the respondent to summon Miletiq as a witness¹.

Legal assessment:

The claimant submitted three claims to the court against the respondent. The court will review each of them in the order of their submittal.

A/ Annulment of the Transaction contract

It is undisputed in this case that Miodrag Jovanovic was the registered owner of the Parcel at the time when the Transaction Contract was signed. Then, following the presented documents, it appears that on 3 September 2001 at the Municipal court of Jagodina Jovanovic authorized Zlatta Miletiq to sell the Parcel on his behalf; then on 5 September 2001 at the Municipal court of Vladicin Han he authorized her second time to sell the Parcel on his behalf; on the same day Zllata Miletiq transferred this authorization to Muhamet Beqiri, a lawyer from Ferizaj , but based on the first power of attorney of Jovanovic, dated 3 September 2001; and on 27 November 2001 at the Municipal court of Ferizaj Muhamet Beqiri, acting on behalf of Jovanovic, signed the Transaction contract with the respondent Musli Shabani. On the base of the Transaction contract Musli Shabani was registered as owner of the Parcel.

The main question in the case is if Zllata Miletiq was duly authorized by Jovanovic to sell the Parcel on his behalf. And which power of attorney shall be considered in this regard - the one verified in the Municipal court of Jagodina on 3 September 2001 or the one verified at the Municipal court of Vladichin Han on 5 September 2001.

The Transaction contract refers to the authorization signed by Zllata Miletiq on behalf of Muhamet Beqiri and verified at the Municipal court of Ferizaj/Urosevac on 5 September. This power of attorney was presented at the court when the Transaction contract was

¹ See minutes of the main trial of 21 April, page 9 of the English version, and of 18 May 2011, page 21 and 22 of the English version

verified and it is still kept in the contract registry file. In this power of attorney it is explicitly written that Miletiq hereby transfers to Muhamet Beqiri the power of attorney Vr.nr.3453, dated 3 September 2001, and verified at the Municipal court of Jagodina which power of attorney was given to her by Miodrag Jovanovic. The power of attorney Vr.nr.3453, dated 3 September 2001, was not presented to the Court by the parties, it is not kept in the verification office of the court of Ferizaj/Urosevac, it seems to have disappeared. But from the content of the letter of the Municipal court Jagodina and the copies of the registry books of that court it can be concluded that power of attorney Vr.nr.3453, dated 3 September 2001, was not verified at the Municipal court of Jagodina as it was not registered in the respective registry book. The registry number exists in the court but under this number other document was verified and not on 3 September 2001. On the 3 September 2001 the court of Jagodina verified documents registered from number 2912 to number 2927. Hence this power of attorney was not verified in the court. According to article 10 of the Law on transfer of immovable property (OG SRS 15/74, pursuant to article 64 of the Law this provision was also applicable in Kosovo) the contract for transfer of immovable property rights has to be made in writing and the signatures of the contracting parties have to be certified by the court. Furthermore, article 33 of the Law on basic property relations (OG SFRY 6/80) gives additional requirement for validity of the transaction contract - the property right over an estate shall be acquired by registration into the cadastral books. According to article 90 of the Law of Contracts and Torts (LCT) the form prescribed by law for a contract or some other legal transaction shall apply also to the authorization for concluding such contract. Consequently the law requires the authorization for concluding transaction contract of immovable property to be in written form and the signature of the authorizing person to be verified in the court. The scope of authority is regulated in article 91 of the LCT. Paragraph 1 state that an authorized person may undertake only those legal actions which fall within the same scope of his authorization. The law allows the transfer of authorization but only if the authorizing person explicitly allowed it. According to article 86 paragraph 1 of LCT an agent shall not transfer his authority to another unless entitled accordingly by the law or contract. As an exception he may do the above after being prevented for doing the job himself, provided the interest of his principle require an immediate undertaking of the legal transaction (paragraph 2 of article 86 of LCT). In case the agent transgresses the

limits of authority, his principle shall assume an obligation only after approving of the transgression.

Miletiq was not duly authorized on behalf of Jovanovic neither to sell his property nor to authorize another person to do so as the power of attorney Vr.nr.3453, dated 3 September 2001, was not verified at the Municipal court of Jagodina contrary to the requirements of article 90 of the Law on Contracts and Torts. It is true that on 5 September 2001 Jovanovic duly authorized Zllata Miletiq to sell the Parcel and this power of attorney was verified in the Municipal court of Vladicin Han under Vr.nr. 526/2001. But the power of attorney signed by Miletiq on behalf of Jovanovic authorizing Muhamet Beqiri to sell the Parcel was not based on the power of attorney Vr.nr. 526/2001 of the Municipal court of Vladichin Han but on Vr.nr. 3453/2001 of the Municipal court of Jagodina, that appears to be forged. Miletiq could not transfer to Muhamet Beqiri rights (to conclude a transaction contract of a property on behalf of the owner) she never had. The Court does not agree that issuing a power of attorney Vr.nr. 526/2001 of the Municipal court of Vladicin Han on 5 September 2001 (which happened before Miletiq signed the authorization on behalf of Muhamet Beqiri²), Jovanovic approved the undertaken legal action. The power of attorney reflects the will of the one who issues it. When Jovanovic signed the power of attorney at the Municipal court of Vladicin Han on 5 September 2001 he did not know that Miletiq already had a forged power of attorney "issued by him", dated 3 September 2001. He did not know that before arriving at his house in Radvinca village on 4 September in the evening, Miletic was in negotiations with Musli Shabani to sell the Parcel and had even received money as purchase price. According to the written evidences on 4 September 2001 Miletiq and Shabani signed a transaction contract in which they agreed for the most essential parts of the contract and especially the price. This contract was not verified in the court, as the court needed to receive the consent of the municipality for the purchase (which according to the respondent could be obtained in a month period). On that day Miletiq received the agreed price of the Parcel in the amount of 39 480 DM. As it came out that the court will not verify the purchase contract on 4 September 2001, on the next day 5 September Miletiq came back to

² According to the claimant Zllata Miletiq visited him on 4 September 2001 and on 5 September in the morning they went to the Municipal court of Vladicin Han to verify the power of attorney. They finished at around 10.00hrs and after that she went to Kosovo. On the same day she authorized Muhamet Beqiri to sign the Transaction contract

Ferizaj/Urosevac again and issued a power of attorney to Beqiri, the lawyer of Shabani. There are no evidences indicating that Jovanovic knew about the purchase and that he confirmed the power of attorney. Additionally the confirmation shall be done in the same form required – in written verified by the court. Thus the court finds that Muhamet Beqiri was not duly authorized by Jovanovic to conclude the Transaction contract. Also there are no evidences that can be relied on to conclude that Jovanovic received the transaction amount for his own property from the respondent. Consequently, there is no evidence supporting that the Transaction contract was concluded with the intent or participation of Jovanovic. It can therefore be concluded that the Transaction Contract was not a binding sale agreement of the parcel 511/11, owned by Jovanovic, as it has not been proved that he, as legal owner of the Parcel, was consenting party to the contract in question. The Transaction Contract therefore lacks the consenting will of one of the contracting parties and no binding agreement was concluded regarding the Parcel (article 26 of the LCT). The Transaction Contract is therefore declared null and void in accordance with article 103 paragraph 1 of the LCT.

The Respondent has presented evidence of his payment of the transaction amount. However, the fact that the Respondent has performed the payment in question and thus paid the price of the property is of no relevance for the property issue. The Respondent will have to seek redress from the person who received this payment. It appears clear to the Court that the Respondent was misled by Miletic who received the payment for the property.

As to the allegations of the respondent on the application of article 460 of the LCT. The provision of article 460 of the LCT states that a sale of somebody else's goods shall be binding for a contracting party but if the buyer was not aware or had no duty to be aware of the fact that the goods belonged to another, he may repudiate the contract and demand damages, due to the above, the purpose of the contract be impossible to be realized.

The disputed contract does not fall in the scope of article 460 of the LCT, as the buyer according in the Transaction contract is the owner Jovanovic. Miletic did not sell somebody else's property³. The transaction of somebody else's property is not a null contract. It is a valid contract but does not transfer property rights. And this is a consequence of the general principle *nemo dat quod non habet* (nobody can give

³ This can be the hypothesis if the Transaction had her name as a seller of the Parcel

something that he/she does not have). As a valid contract it can be terminated by the court under the request of the buyer and the responsibility lies to the seller who has to return the price, to pay the costs of the contract and to compensate the buyer for his damages. These damages come from the fact that the buyer has to return the possession of the property to the owner. Even if valid the transaction contract of somebody else's property does not deprive the owner of his property right. He can ask the court for eviction in the procedure of obstruction of possession. On the other hand, the Transaction contract is null and void; it is something that does not exist in the legal sphere. That is why it is not possible to terminate something that does not exist. A null contract can not be also binding for any party, it does not transfer property rights and everything received in such contract shall be restituted (article 104.1 of the LCT).

The Transaction contract is authentic as it is verified in the court, but it does not have any legal effect as Muhamet Beqiri who signed as a seller was not authorized by the real owner of the property and he could not transfer property rights he never had the right to do⁴.

The general rule retroactivity to return to the previous condition in relations between contracting parties is foreseen in article 104.1 of the LOT. It is applied by the Court *ex officio*.

Since the Transaction Contract is hereby nullified, Musli Shabani is ordered to give up his possession and leave from the Parcel. As it was already stated above, as there are no evidences that Jovanovic received the price, the court can not order him to return it back to the respondent. The latter can request remedy from the person who received the money⁵.

The Cadastral Office of the Municipality of Ferizaj/Urosevac is ordered to reverse its cadastral books to the state it was before the registration of the Transaction Contract.

The representative of the respondent quotes a decision of the Supreme Court of Bosnia and Herzegovina issued on a revision procedure N0 389/90. The Court shares the opinion of the Supreme Court in general that in a situation of a competition between two written purchase contracts the one that transfers the property rights is the one registered in the cadastre books. But the conclusions made in the decision are not applicable in the current

⁴ This is a consequence of the rule that no one can transfer more rights than he or she has.

⁵ According to the confirmation letter dated 4 September 2001 Zlatta Miletic received the purchase price.

contest. Here the Court is dealing with nullity of a contract. The mere title registration in the cadastre books does not make the registered person owner of property rights that were “transferred” to him upon a null contract. The registration in the cadastre books is the last requirement for acquiring property rights. The first requirement is a valid written contract. The Transaction contract is not valid and consequently the registration of Musli Shabani in the cadastre could not make him owner of the Parcel. The quoted decision of the Supreme Court of Bosnia and Herzegovina could be applicable in a dispute between Shabani and Haliti.

In his final notes dated 23 May 2011 the representative of the respondents stated that Jovanovic knew that the Parcel was sold by Miletiq but still he sold it unfaithfully second time to Haliti. The court does not share this opinion. As the representative of the respondent truly pointed out, at the session held on 18 May 2011 the claimant admitted that on 28 October 2002 he understood that Miletiq sold his parcel, but he did not go to the cadastre office to check who was registered as owner. But the courts notes that Jovanovic authorized Nexhat Qorrolli to sell the Parcel on 9 January 2002, thus before he was informed that the Parcel is already sold by Miletiq. Additionally, it shall be noted that on 28 October 2002 the Parcel was still registered on the name of Jovanovic. The change in the cadastre books was done on 31 December 2002. The court finds no indications as to dishonest, unfaithful or misusing behavior of the claimant.

B/ To establish the legal validity of the purchase contract concluded between the claimant and Idriz Haliti dated 22 April 2003 verified under number Vr.nr.771/2003 of the Municipal court of Ferizaj/Urosevac.

The court finds this claim as inadmissible as the claimants has no legal interest to support it, contrary to art.2.4 of the Law on contested procedure. This contract was already verified in the court in 2003 and repetition of the same verification procedure is inadmissible. Besides, verification of a transaction contract is not conducted under contested procedure.

After the cadastral books are reversed to the previous situation and Jovanovic is registered as owner of the Parcel, the said contract Vr.nr.771/2003 of the Municipal court of Ferizaj/Urosevac can be presented to the cadastre office to change the title of ownership from Jovanovic to Haliti.

It shall be mentioned here that for the Court is not clear how in the verification procedure of the said contract the parties, or their representatives, presented possession list No 3683 on the name of Jovanovic dated 22 April 2003 and issued by the Municipality of Ferizaj/Urosevac as on 31 December 2002 Musli Shabani was already registered as owner of Parcel 511/11⁶. The matter shall be referred to the prosecution office.

C/ to oblige the cadastre office to change the title of ownership to the name of Idriz Haliti

The Court finds this claim inadmissible as the claimant lacks legal interest in it, contrary to art.2.4 of the Law on contested procedure.

With the approval of the first claim upon article 104.1 of the LCT the court already ordered the cadastre office of Ferizaj/Urosevac to change the registration of the parcel on the name of Jovanovic.

It was already stated above, once the change of the cadastre books were reversed to the state it was before the registration of the Transaction Contract, the interested person can presented the said contract Vr.nr.771/2003 of the Municipal court of Ferizaj/Urosevac to the cadastre and geodesy to register a new owner of the Parcel.

In case of refusal the petitioner may appeal it to the court.

V.Procedural costs:

Court Expenses

Since the claim is approved, the respondent has no right to reimbursement for expenses and the respondent's claim for reimbursement is therefore rejected. The claimants' representative pretends reimbursement for expenses according to the attorney tariff. Taking into consideration the specifics of the dispute, the court finds that each party in this case has to carry its own expenses. Respondent should not cover the expenses of the claimant as he was not responsible for the forged transaction. He had lost money as he had paid the purchase price and is not justified to be additionally financially burdened. The court rejects the request of the claimants to reimbursement for expenses.

As stated above, pursuant to article 143.1 of the Law on Contested Procedure, it is decided in accordance with the enacting clause of this judgment.

⁶ See decision 953-2/2659 dated 31.12.2002 of Geodesy office, Municipality of Ferizaj/Urosevac

LEGAL REMEDY

The parties may request revision of this judgment through the Municipal Court of Ferizaj/Urocevac to the District Court of Pristina within fifteen (15) days from the day the copy of the judgment has been served to the respective party.

Municipal Court of Ferizaj/ Urocevac

C.No. 644/2005

01.07.2011

Drafted in English,
an authorized language

Presiding Judge

Verginia Micheva-Ruseva

