

MUNICIPAL COURT OF KLINË/KLINA**Presiding Judge:****EULEX Judge Riku Jaakkola****29.07.2011****C nr. 210/2009**

Claimants	Vukoje Rajić, Dolac, Klinë/Klina; Vukmir Rajić, Celjije, Lajkovac, Serbia; Zorka Kujundžić, Kotez, Palilula (Belgrade), Serbia; all presented by lawyer Jasmina Županjac
Respondent	Nurije Selimi, Prishtinë/Pristina; presented by lawyer Ahmet Gjinovci
Issue	Annulment of a sale contract of real estate, value of the dispute 5.000 Euros
Main hearing	2 nd of June, 6 th and 20 th of July 2011

JUDGMENT

The claim is APPROVED. The real estate transaction contract dated 15.10.2002, concerning cadastral parcel no. 3 in the cadastral zone of Dolac in Klinë/Klina municipality with surface of 3122 m2 and signed in the name of Vukoje Rajić as the seller and Nurije Selimi as the buyer is declared null and void.

The cadastre office in Klinë/Klina is ordered to delete the false registration and to restore the real estate in question on the name of deceased Stanica Rajić.

REASONING**Undisputed background**

Stanica Rajić (maiden name Vukanić) has died on 20th October 1998. According to possession list no. 52 of CZ Dolac, Klinë/Klina municipality, issued on 21 August 2002, she has been the sole owner of cadastral parcel no. 3 with surface of 3122 m2. Claimants Vukoje and Vukmir Rajić are sons of the deceased Stanica Rajić. Zorka Kujundžić is a daughter of Stanica Rajić.

According to a power of attorney the claimants of this case have as inheritors of Stanica Rajić authorized lawyer Ahmet Gjinovci to conclude an inheritance procedure and a real estate transaction contract regarding the above mentioned cadastral parcel. According to this document it was verified by the Municipal Court of Jagodina in Serbia on 17 April 2002 (OV.br. 6123/2002).

The Municipal Court of Klinë/Klina has on 11 October 2002 rendered a ruling on inheritance and declared that Vukoje Rajić is the sole legal inheritor of the deceased Stanica Rajić. The court has based its ruling primarily on the above mentioned power of attorney.

According to a contract on real estate transaction, dated on 15 October 2002, Vukoje Rajić has sold the parcel in question to Nurije Selimi.

Claim

The claimants are requesting that the real estate transaction contract dated 15.10.2002 and considering the cadastral parcel no. 3 in the cadastral zone of Dolac in Klinë/Klina municipality with surface of 3122 m² is declared null and void. The claimants are also requesting that the cadastre office in Klinë/Klina is ordered to delete the false registration and to restore the real estate in question on the name of deceased Stanica Rajić.

Grounds for the claim

The claimants are inheritors of deceased Stanica Rajić. As her inheritors, they are also the real owners of the parcel in question. The sale contract dated 15.10.2002 and also the inheritance procedure at the municipal court of Klinë has been concluded without the knowledge of the claimants and by using a fake authorization. The claimants have not signed this authorization.

Reply

The respondent has contested the claim. The respondent has also requested that the claimants are obliged to compensate to her the cost of proceedings, 603,06 Euros.

Grounds for the reply

Firstly, the authorization and the sale contract in question are both real and valid. The respondent has also paid the sale price to the claimants.

Secondly, if the authorization is forged, as the claimants are claiming, also the inheritance procedure is not valid. Therefore the inheritance procedure is not concluded and the claimants are lacking active legitimacy to proceed with the case.

The procedural history

Through a decision of a Eulex Judge acting on delegation by the President of the Assembly of Eulex Judges on 4 November 2010, the case was assigned to Eulex Judge Riku Jaakkola.

The Court conducted two preliminary hearings on 1 March and 20 April 2011. According to the original claim dated 3 August 2009 there was only one claimant, namely Vukoje Rajić. After the second preliminary hearing the claim was amended and also Vukmir Rajić and Zorka Kujundžić joined the claim.

At the hearing 1 March 2011 the Court issued a ruling on exemption of the costs of the proceedings regarding claimant Vukoje Rajić (see minutes of hearings 1 March 2011, page 5 and 20 April 2011, page 2). At the hearing 20 April 2011 the Court issued a ruling on exemption of the costs of the proceedings regarding claimants Vukmir Rajić and Zorka Kujundžić (see minutes of hearing 2 June 2011, page 3).

At the hearing 20 July 2011 the claimants withdrew the claim request that the respondent is ordered to hand over the possession of the cadastral parcel in question.

The Court has also issued a ruling on correction of the claim 25 November 2010 and rulings for expert evidence on graphology.

List of evidence

On the list below it is first mentioned which party presented the evidence. After the title of the piece of evidence, there is a description of what this piece of evidence allegedly proves.

Documentary evidence

Claimants:

- 1) Copy of the possession list no. 52, issued 21 August 2002
 - The real estate in question has been registered on the name of Stanica Rajić.
- 2) Copy of the possession list issued 15 February 2008
 - After the sale contract the real estate has been registered on the name of the respondent.
- 3) Contract on real estate transaction dated 15 October 2002
 - Contract has been concluded with forged power of attorney.
- 4) Power of attorney 17 April 2002, OV.br. 6132/02
 - Document is forged.
- 5) Inheritance ruling of the Municipal Court of Klina, T 36/2002
 - Forged power of attorney has been used to get this ruling.
- 6) Reply letter from the Municipal Court of Jagodina, 16 February 2011
 - Power of attorney is forged.
- 7) The real document registered as OV.br. 6132/02 in Municipal Court of Jagodina
 - Power of attorney is forged.
- 8) Birth certificates of the claimants
 - The claimants are inheritors of Stanica Rajić.

Hearing of the claimants

- 1) Vukoje Rajić
- 2) Vukmir Rajić
- 3) Zorka Kujundžić

Witnesses

Respondent:

- 1) Arbon Desku
 - The contract was real and the purchase price was paid.
- 2) Kujtim Hoxha
 - The contract was real and the purchase price was paid.

Expert witness

Claimants:

- 1) Graphology expert, Nadire Ibrahimimi (also a written expert report)
 - The authorization in question is forged.

Factual and legal assessment

Introduction

Articles 26, 28, 89 and 103 of the Law on Contracts and Torts (SFRY 29/1978, later LCT) provide the legal basis for the case. According to article 26 “a contract shall be concluded after the contracting parties have come to an agreement as to the essential constitutive elements (terms) of the contract”. Article 28 introduces the main element of an agreement: expression of will to enter into a contract. A contract does not exist without an expression of will to enter into a contract. A person may conclude a contract also by issuing an authorization to another person according to articles 89 of LCT.

In this case it is clear, that if the contract has been concluded with a forged authorization, without the knowledge of the claimants and if the claimants haven't received the sale price, in fact no agreement exists between the parties according to articles 26 and 28 of LCT. Therefore the contract is contrary to compulsory regulations and has to be declared void according to article 103 of LCT.

The Court notes that the claimants have the burden of proof that the power of attorney is forged. The respondent has argued that she has paid the purchase price to the claimants and therefore she has the burden of proof that the claimants have received the money.

In case the power of attorney is proven to be forged, it also has to be decided do the claimants have active legitimacy to proceed with the case, since also the inheritance procedure is based on a fake authorization.

Evidence

All *the Claimants* have testified that they have not signed the power of attorney (evidence no. 4) and they have not been aware about the contract on real estate transaction (evidence no. 3). They have not received any money for the parcel either. Vukoje Rajić had learned about this arrangement when he had visited the parcel for the first time after the war in 2008. Vukmir Rajić and Zorka Kujundžić had then learned about the sale from Vukoje Rajić.

Witness Arbon Desku has testified that he was involved in the sale contract in question. He knew the buyer, Nurije Selimi, who contacted him and told that she would like to buy the parcel in question. Arbon Desku had then contacted a lawyer called "Zlata", with whom he had done business before, and asked if she could contact the owners of that parcel. "Zlata" then contacted the owners of that parcel and an agreement was concluded. He did not meet with the sellers. According to Arbon Desku one of the owners, whose name he could not remember, contacted him by phone from Obiliq and asked if the contract could be concluded without any lawyers since they charge so much. Arbon Desku had replied that since he is only a "middle man", he does not accept anything without a lawyer. Arbon Desku had also paid the sale price on behalf of Nurije Selimi. The price had been paid at the border crossing point of Merdare in two different occasions. He had handed over the money to "Zlata", who had been accompanied by two men whom he had not known. The sale price had been paid in DM-currency. Also Villson Quni and Kujtim Hoxha had been present. Arbon Desku has not identified any of the claimants as persons who received the money. He has also testified that he did not meet any of the sellers at any stage.

Witness Kujtim Hoxha has testified that he was with Arbon Desku and some other man when they handed over the money to a woman, whose name he does not remember. This woman was accompanied by two men. Kujtim Hoxha could not describe the persons on the scene and he could not identify any of the claimants as being one of the persons. He told that Vukoje Rajić looks somewhat familiar, but he could not identify where he had seen him.

The claimants have presented as evidence the *power of attorney* in question (evidence no. 4), the *letter from the Municipal Court of Jagodina* 16 February 2011 (evidence no. 6) and the *real document registered as OV.br.6132/02* in the Municipal Court of Jagodina (evidence no. 7).

The Court notes that the real personal identification numbers of Vukmir Rajić and Zorka Kujundžić do not match with the identification numbers listed in the power of attorney, while the personal identification number of Vukoje Rajić does. The identification numbers of the claimants have been checked in the hearing from the original identification cards. According to the power of attorney the personal identification number of "Rajić Mitra Vukmir" is 27056539344995, while the correct number is 0107956934981. According to the power of attorney the personal identification number

of "Kojundžić Rajić Mitra Zorica" is 1012964937016, while the correct number is 1012964959988. The Court notes that the first seven digits of the personal identification number indicate the date of birth, so that Vukmir Rajić was born on 01.07.1956 and Zorka Kujundžić was born on 10.12.1964. The Court also notes that these first seven digits are correct regarding Zorka Kujundžić, but incorrect regarding Vukmir Rajić. Furthermore the Court notes that Zorka Kujundžić is called "Zorica" in this power of attorney although that is not her real name.

Regarding the certification of the power of attorney in question the Court notes that this document has been certified with number OV.br.6132/02 at the Municipal Court of Jagodina. According to the letter from a court secretary in the Municipal Court of Jagodina (evidence no. 6) the case filed under the number OV.br.6132/02 does not concern the power of attorney in question. This can be noted also from the real document certified with this number (evidence no. 7).

A graphology expert, Ms. Nadire Ibrahim has studied the signatures in the power of attorney in question (evidence no. 4) and compared those signatures with handwriting samples from the claimants. According to her testimony and written report she has analyzed the signatures and samples by looking for some individual and common characteristics regarding for example the formulation of letters (slant, size and height of letters), spaces between letters, position of the initial point and direction of the hand during the writing. She has made the following findings:

- The signature no. 1 of "Rajić Mitra Vukmir" in the power of attorney (evidence no. 4) *is not* written by the same person as the handwriting samples of Vukmir Rajić.
- The signature no. 2 of "Kojundžić Rajić Mitra Zorica" in the power of attorney (evidence no. 4) *might be* written by the same person as the handwriting samples of Zorka Kujundžić.
- The signature no. 3 of "Rajić Mitra Vukoje" in the power of attorney (evidence no. 4) *is* written by the same person as the handwriting samples of Vukoje Rajić.

Evaluation of evidence

The Court notes that the presented evidence is partly contradictory. The Court finds that the letter from the Municipal Court of Jagodina 16 February 2011 (evidence no. 6) and the real document registered as OV.br.6132/02 in the Municipal Court of Jagodina (evidence no. 7) prove without any reasonable doubt that at least the registration in this power of attorney in question (evidence no. 4) is forged. This is also a clear indication that the signatures in the power of attorney are forged. Also the fact that the personal identification numbers of Vukmir Rajić and Zorka Kujundžić are not correct in the power of attorney indicates that this document is not signed by Vukmir Rajić and Zorka Kujundžić. It furthermore indicates that the person who forged these signatures was not aware of the personal identification numbers of these two claimants. The fact that all the digits of the identification number of Vukmir Rajić are incorrect and the first seven digits of the identification number of Zorka Kujundžić are correct indicates that the person who forged these signatures was aware of the date of birth of Zorka Kujundžić, but not of the date of birth of Vukmir Rajić.

On the other hand, the testimony and written report of a graphology expert, Ms. Ibrahim, is confusing. According to the expertise report, the signatures of Vukmir Rajić and Zorka Kujundžić are forged, but the signature of Vukoje Rajić is authentic. Also the fact that the personal identification number of Vukoje Rajić stated in the power of attorney is correct, but the other two are incorrect, supports this conclusion. Still it does not seem to make any sense that the signature of Vukoje Rajić would be authentic and the signatures of other two claimants would be forged. The only somehow reasonable explanation for this would be that Vukoje Rajić is responsible for forging the signatures of Vukmir Rajić and Zorka Kujundžić. However, it seems very unlikely that he would have made mistakes regarding the identification numbers of his brother Vukmir Rajić and his sister Zorka Kujundžić – it would have been easy for him to check the correct identification numbers. Especially unlikely is that he would have made this mistake regarding the first seven digits of the identification number of Vukmir Rajić since these numbers indicate the date of birth of a person – it is highly unlikely that he would not know even the year his brother was born. Also the fact that “Zorka” is called “Zorica” indicates that whoever wrote the power of attorney was not aware of the real name of Zorka Kujundžić. In case Vukoje Rajić has not forged this document, another possibility would be that somebody has found some authentic document signed by Vukoje Rajić and copied that signature very skillfully in this power of attorney in question. The Court finds that it is possible to copy a signature so well that even a handwriting expert does not notice the forgery. Taking into account all the above mentioned factors the Court finds that it is highly unlikely that Vukoje Rajić would have been involved in forging the signatures of Vukmir Rajić and Zorka Kujundžić.

The Court notes that there is no reason to question the credibility of the testimonies of witnesses Arbon Desku and Kujtim Hoxha. Their testimonies prove that the respondent Selimi Nurije has paid the purchase price to some female lawyer whose name is “Zlata”. According to the lawyer of the respondent, Mr. Ahmet Gjinovci, the full name of this lawyer is Zlata Miletic. Mr. Gjinovci had received the authorization in question from her. However, the testimonies of Arbon Desku and Kujtim Hoxha do not even indicate that the claimants have ever received the money. Neither witness has identified any of the claimants as being involved in the arrangement in any way.

Conclusions

Regarding the signatures of Vukmir Rajić and Zorka Kujundžić, the Court notes that all the presented evidence supports the testimonies of the claimants. As stated above, the power of attorney in question (evidence no. 4), the letter from the Municipal Court of Jagodina 16 February 2011 (evidence no. 6) and the real document registered as OV.br.6132/02 in the Municipal Court of Jagodina (evidence no. 7) prove that the registration of the power of attorney is forged. The fact that the personal identification numbers of Vukmir Rajić and Zorka Kujundžić and also the name of Zorka Kujundžić are incorrectly stated indicates that also their signatures are forged. Moreover the testimony of the graphology expert is strong evidence that these signatures are forged.

Regarding the signature of Vukoje Rajić the evidence is contradictory. The testimony of the graphology expert is strong evidence that his signature is not forged. On the other hand, the fact that the registration of the power of attorney is proven to be forged is a strong indication that also the signature of Vukoje Rajić is forged. Also the incorrect information in the power of attorney regarding Vukmir Rajić and Zorka Kujundžić suggests that Vukoje Rajić has not been involved in this forgery. Furthermore, there is no other evidence indicating that Vukoje Rajić would have been involved in this real estate transaction in any way: the respondent has not even claimed that she would have met any of the claimants; witnesses Arbon Desku and Kujtim Hoxha have not connected Vukoje Rajić to this transaction in any way. The Court finds that this can only lead to one conclusion: Vukoje Rajić has not signed this power of attorney. Therefore, contrary to the expert opinion, it is more likely that also the signature of Vukoje Rajić is forged, probably copied skillfully from some other document he has signed.

Active legitimacy

The respondent has argued that if the power of attorney is found to be forged, the claimants don't have the active legitimacy to proceed with the case since also the inheritance procedure is not valid.

The Court notes that since the power of attorney has been proven to be forged, also the inheritance ruling (T 36/2002) of the Municipal Court of Klina (evidence no. 5) is based on a forged document. Although this ruling has not yet been annulled and it therefore is still legally valid, the Court finds that it can no longer be considered binding. However, the Claimants have not requested anything which would require an inheritance procedure to be completed. According to article 109 of 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". The Court notes that the birth certificates of claimants (evidence no. 8) prove that they are inheritors of the deceased Stanica Rajić. As his inheritors the claimants have a legal interest to file the claim in question.


Final conclusions

On these grounds the Court finds that the claimants have the active legitimacy to proceed with the case. Furthermore the claimants have proved that the power of attorney in question is forged. Therefore lawyer Ahmet Gjinovci has not been duly authorized (article 89 of LCT) to conclude the real estate transaction in question. Consequently also the main element of a contract, expression of will to enter into a contract (article 28 of LCT), is lacking. Since the respondent has not proved that the claimants have received the sale price either, none of the elements of a contract is concluded and also no contract is concluded (article 26 of LCT). The claim has to be approved and the real estate transaction contract has to be declared null and void (article 103 of LCT).

LEGAL REMEDY

The parties may file an appeal against this judgment in the District Court of Pejë/Peć through the Municipal Court of Klinë/Klina within fifteen (15) days of the day the copy of the judgment has been served to the party.

The Municipal Court of Klinë/Klina, 29 July 2011


Riku Jaakkola
Presiding Judge
EULEX Judge

