

MUNICIPAL COURT OF KLINA

C.No.91/03

THE MUNICIPAL COURT OF KLINA, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Robert Abercrombie and international interpreters in Albanian and Serbian language Burim Bytyqi and Bozana Ivos, in the case of the claimant Malisha Perovic from Gurakoc, now residing in Serbia, represented by lawyer Dragisa Duric against the respondents Alush Agushi, Ruzdi Agushi, Fadil Agushi, Sokol Elizaj and Rrahim Brahim Gashit, first three respondents represented by lawyer Haxhi Millaku on the claims regarding annulment of contract of real estate, restitution of possession and compensation damages, following a main trial session held on 10.08.2010, renders the following

JUDGMENT

With the **APPROVAL** of the claim of Malisha Perovic from Gurakoc with unique master citizen number 1408951933018, the contract of transaction signed in the name of Perovic Zhivka Malisha represented by Ruzhdi Agushi, from village Drenoc, Municipality of Klina, based on authorization letter verified on 14.12.2004 in Municipal Court of Mitrovica under Vr.nr.2760/04 as seller and Fadil Haki Agushi from village Drenoc, Municipality of Klina as buyer, authenticated on 15.02.2004 in Klina Municipal Court under VR. No. 1502/2004 is hereby **DECLARED NULL AND VOID**.

With the **APPROVAL** of the claim of Malisha Perovic, the contract of transaction signed in the name of Fadil Haki Agushi, from village Drenoc, Municipality of Klina, as seller and Rrahim Brahim Gashi from village Vojnik, Municipality of Klina as buyer, authenticated on 27.12.2004 in Klina Municipal Court under VR. No. 1538/2004, is hereby **DECLARED NULL AND VOID**.

With the **APPROVAL** of the claim of Malisha Perovic, the contract of transaction signed in the name of Fadil Haki Agushi, from village Drenoc, Municipality of Klina, as seller and Sokol Miftar Elezaj from village Gjurgjeviku I Vogel, Municipality of Klina as buyer, authenticated on 27.01.2005 in Klina Municipal Court under VR. No. 150/2005, is hereby **DECLARED NULL AND VOID**.

Fadil Haki Agushi is **ORDERED** to give up possession and leave from the real estate described in possession list 505, cadastral parcel 1809/1 of the Cadastral Zone of Drsnik, with total surface of 0.09.46 ha, within fifteen (15) days from the date the present judgment is served to him. If Fadil Haki Agushi fails to do so, he shall be evicted from the said parcel.

Rrahim Brahim Gashi is **ORDERED** to give up possession and leave from the real estate described in possession list 687, cadastral parcel 1809/4 of the Cadastral Zone of Drsnik, with total surface of 0.09.10 ha, within fifteen (15) days from the date the present judgment is served to him. If Rrahim Brahim Gashi fails to do so, he shall be evicted from the said parcel.

Sokol Miftar Elezaj is **ORDERED** to give up possession and leave from the real estate described in possession list 689, cadastral parcel 1809/5 of the Cadastral Zone of Drsnik, with total surface of 0.00.50 ha, within fifteen (15) days from the date the present judgment is served to him. If Sokol Miftar Elezaj fails to do so, he shall be evicted from the said parcel.

The Municipality of Klina, the Cadastre Office, is **ORDERED** to alter its cadastral books in accordance with this judgment and to reverse the changes made in the cadastral books, thus registering the parcel described in possession list 505, cadastral parcel 1809/1 of the Cadastral Zone of Drsnik, with total surface of 0.19.06ha, in the name of Malisha Zhivka Perovic.

Fadil Agushi is **ORDERED** to pay to Malisha Perovic the following sum:

1. 22 838.78E compensation for material damages caused;
2. 4 000.18E in interest for the period starting from 29.04.2003 until 31.07.2009;
3. Further interest for both sums (22838.78E and 4000.18E) starting from 01.08.2009 until the date on which final payment is made,
4. 1 100E court expenses;

all paid within fifteen (15) days from the date this judgment is served on him.

As for the rest of compensation claim, it is **REJECTED**.

The claim of Malisha Perovic against Alush Agushi and Ruzhdi Agushi for paying jointly with Fadil Haki Agushi compensation damages in the amount of 24 351.50E with interest from 01.08.2009 to the date final payment is made, and 4,249.04E as interest for the

compensation claim (24,351.05E) the interest over it starting from 01.08.2009 to the date final payment is made, is **REJECTED** as ungrounded.

Fadil Agushi is ordered to pay to Municipal court of Klina 634.20E court tax within fifteen (15) days from the date this judgment is served on him.

The requests of Alush Agushi, Fadil Haki Agushi, Ruzhdi Agushi, Rrahim Brahim Gashi, Sokol Miftar Elezaj for compensation of court expenses are **REJECTED** as ungrounded.

REASONING

I. Background

Upon the events following the NATO air campaign in 1999 Malisha Perovic left his property in Klina, a parcel described in Possession List 505, cadastral parcel 1809/1 of the Cadastral Zone of Drsnik (hereinafter 'the Parcel'). The Parcel was transferred to Fadil Haki Agushi through a transaction contract dated 15.12.2004 (hereinafter 'the Transaction Contract') and signed on behalf of Malisha Perovic by Ruzhdi Agushi (brother of respondent Fadil Agushi), on the basis of a general power of attorney (registered at the Municipal Court of Mitrovica on 14.12.2004, Vr.nr.2760/04). The transaction price for the Parcel was 185 000 E. The Transaction Contract was registered by the Municipal Court of Klina as VR. No. 1502/2004 on 15.12.2004 and the transfer was registered in the Cadastral Books of Klina, making Fadil Agushi the registered owner of the Parcel.

With an application dated 20.12.2004 Fadil Agushi requested division of the parcel. As a result parcel 1809/1 with total surface of 0.19.06 ha was divided into three parcels: parcel 1809/1 with surface of 0.09.46 ha, parcel 1809/5 with surface of 0.00.50ha and parcel 1809/4 with surface of 0.09.10ha.

Parcel 1809/4 with surface of 0.09.10ha Fadil Agushi sold to Rahim Gashi upon transaction contracted dated 27.12.2004 verified in MC of Klina under Vr.nr.1538/04. The parcel is registered on the name of Rahim Gashi in the cadastre books.

Parcel 1809/5 with surface of 0.00.50ha Fadil Agushi sold to Sokol Elezaj upon transaction contracted dated 27.01.2005 verified in MC of Klina under Vr.nr.150/05. The parcel is registered on the name of Sokol Elezaj in the cadastre books.

Currently parcel 1809/1 of the Cadastral Zone of Drsnik with total surface of 0.09.46ha is registered on the name of Fadil Agushi.

The respondent Fadil Agushi is in possession of parcel 1809/1 on which a fuel station is built, the respondent Rahim Gashi is in possession of parcel 1809/4 on which an inspection station is built, and the respondent Sokol Elezaj is in possession of parcel 1809/5.

II. The Claim

On 29.04.2003 Malisha Perovic filed a claim to the Court for damage compensation evaluated by him on 10 000E monthly payment against the respondents Agush Agushi, Agron Agushi and Milazim Agushi for using his property- parcel 1809/1 with fuel station built on it , for the period August 1999 – April 2003. The case was registered in the court under c.nr.91/2003. On 05.11.2008 he withdrew the claim against the last two respondents. He also specified that the correct name of the respondent is Alush Agushi and not Agush Agushi. On 02.03.2009 the claimant expanded his claim also to the respondents Ruzdi Agushi and Fadil Agushi. On 6 April 2009 the claimant specified the compensation claim asking from respondents jointly 5000E monthly rent starting from 1 August 1999 till 31 December 1999 and 3000E monthly rent from 1 January 2000 until the day of the judgment. Finally the claimant specified that his compensation claim evaluation against the respondents Alush Agushi, Ruzdi Agushi and Fadil Agushi is 24 351, 50 E for illegal use of the cadastral parcel 1809/1 with surface of 0.09.46ha and the fuel station positioned on the parcel, for the period 1 August 1999 till 31 July 2009 with the legal interest over the sum starting from 1 August 2009 as well as 4 249.04E as interest over the compensation sum for the period 1 August 1999 till 31 July 2009 with the legal interest over this amount starting from 1 August 2009. The claimant also asks for court expenses.

On 6 October 2005 the claimant Perovic filed a claim to the court against Fadil Agushi for annulment of the Transaction Contract. Furthermore, he claimed that the respondent should be ordered to release the Parcel under the threat of execution and that the cadastral office of Klina should be ordered to alter their cadastral books regarding the Parcel in accordance with the judgment. The ground for the claim was that Malisha Perovic never voluntarily had disposed of his property right to the Parcel and that the Transaction

Contract therefore was null and void. The case was registered in the court under c.nr. 408/2005. At the session held on 9 July 2009 the claimant expanded the claim also against two new respondents Rahim Gashi and Sokol Elezaj claiming for annulment of the transaction contracted dated 27.12.2004 verified in MC of Klina under Vr.nr.1538/04 signed between Fadil Agushi and Rahim Gashi, as well as for the annulment of the transaction contracted dated 27.01.2005 verified in MC of Klina under Vr.nr.150/05 signed between Fadil Agushi and Sokol Elezaj.

Furthermore he claimed that the respondent Fadil Agushi should be ordered to release cadastral parcel 1809/1 with surface of 0.09.46 ha registered in possession list 505, CZ Drsnik, as well as the fuel station built in the parcel, the respondent Rahim Gashi should be ordered to release cadastral parcel 1809/4 with surface of 0.09.10h registered in possession list 687, CZ Drsnik , and the respondent Sokol Elezaj should be ordered to release cadastral parcel 1809/5 with surface of 0.00.50ha registered in possession list 689, CZ Drsnik, under the threat of execution and that the cadastral office of Klina should be ordered to alter their cadastral books regarding the Parcel in accordance with the judgment.

With a ruling the court joint case c.nr.91/03 and c.nr.408/05 and the case was proceeded under number c.nr.91/03.

The respondents Fadil Agushi, Rahim Gashi and Sokol Elezaj have disputed the claim for the annulment of the transaction contracts on the grounds that the transactions have been conducted in a legal manner on the basis of the aforementioned power of attorney signed by the claimant. They paid the full price of the purchase totally trusting the buyer.

As for the compensation claim the respondents through their lawyer objected the claim on the grounds that they are lawful owners and did not owe any compensation for illegal usage of the disputed property.

III. The Procedural History

After the compensation claim was filed in the Municipal Court of Klina on 29.04.2003 and the claim for annulment of the transaction contract was filed in the same court on 6 October 2005, the cases were assigned to reporting judges who conducted several hearings.

Parallel to the civil proceedings in the court, the Municipal public prosecutor has dealt with the criminal report filed by Malisha Perovic in September 2005 against Ruzdi Agushi, Fadil Agushi and Bedri Godanci, lawyer from Klina for the criminal offence of falsifying document. With a ruling dated 20.03.2006 under PP.nr.1861/2005 the public prosecutor dismissed the criminal report with the reason that there were no elements of criminal offence in the behavior of the defendants. The claimant brought the matter to the attention of DoJ, UNMIK. After reviewing the criminal report, an International Public prosecutor started prosecution against Ruzdi Agushi and Fadil Agushi in accordance to UNMIK regulation 2006/6as amended by UNMIK regulation 200/34 and 2001/2 section 1.3 (which authorizes international prosecutors to select and take responsibility for new and pending criminal investigations and proceedings) for committing the criminal offences of falsifying documents, legalization of false contents, fraud and unlawful occupation of real property of another person. During the investigation, registered under PCIR/72/06, testimonies of a number of witnesses were taken. With a motion dated November 2006 the International prosecutor requested to receive the originals of the documents verified in Municipal court of Klina under Vr.nr. 1502/04 dated 15.12.2004 (transaction contract, power of attorney, etc.). Additionally he requested and received from MC of Mitrovica the original of the POA verified in the court on 14.12.2004 under number Vr.nr.2760/04. Additionally the respondent Fadil Agushi handed over to the prosecutor his own original of the said POA. The intention of the prosecutor was to order handwriting expertise on the signature of the POA but this never happened. In 2008 the criminal case was closed and in 2009 sent back to Municipal public prosecutor office in Peja. Later the case was requested by the court and attached as evidence to the civil case file.

Through a decision of the EULEX Judge acting on delegation of the President of the Assembly of EULEX Judges on 21.05.2009 the case C.nr. 408/05 was assigned to EULEX Judge Virginia Micheva-Ruseva in the Municipal Court of Klina since it was concluded that the case fulfilled the requirements of art. 5.1 item c (ii) and (iii) of the Law on Jurisdiction (Law No. 03/L-53).

Through a decision of the EULEX Judge acting on delegation of the President of the Assembly of EULEX Judges on 12.06.2009 the case C.nr. 91/03 was assigned to EULEX Judge Virginia Micheva-Ruseva in the Municipal Court of Klina since it was concluded

that the case fulfilled the requirements of art. 5.1 item c (ii) and (iii) of the Law on Jurisdiction (Law No. 03/L-53).

On 25.06.2009 the Court scheduled a hearing in c.nr.408/05 and on 09.07.2009 a hearing in c.nr.91/03. Later the two cases were joined under c.nr.91/03 and following several hearings the proceedings were concluded.

IV. Factual and legal assessment

The following facts are undisputed in the case. Malisha Perovic was the uncontested owner of the Parcel until June 1999, when he fled Klina and took refuge in Serbia. A fuel station was built on the parcel and since 1995 it was run by the brother of the claimant – Budimir Perovic (see decision dated 14.10.1995, issued by the Municipal assembly of Klina). Later inspection station was built and run on the same Parcel. In 1991 the two brothers Perovic registered a company – Holding for production, trade and supply services “Perovici” settled in Gurakoc. The director of the company was Budimir Perovic, the claimant was the deputy director,. It is also undisputed that Malisha Perovic has medical education, worked as medical doctor, and the last year before the events in 1999 he was Mayor of Istog.

From exile, the claimant filed a compensation claim for damages as he found that the petrol station was occupied and used by the respondents Agushi. Fadil Agushi legitimated himself as the owner of the property following the Transaction Contract dated 15.12.2004 and verified in MC of Klina in which Malisha Perovic through his authorized representative Ruzhdi Haki Agushi, power of attorney verified on 14.12.2004 in Municipal Court of Mitrovica under Vr.nr.2760/04, sold his land, cadastral parcel 1809/1 of the Cadastral Zone of Drsnik, with total surface of 0.19.06 ha to Fadil Agushi for the price of 185 000 E. As a consequence of the Transaction Contract, Fadil Agushi has been registered as owner of the Parcel in the Cadastral Register of Klina Municipality. Later Fadil Agushi requested by municipality division of the Parcel into three new parcels. One of them, on which the patrol station is built, he left for himself, and the other two parcels he sold to the respondents Rahim Gashi and Sokol Elezaj.

In 2005 Malisha Perovic filed a claim in the court asking for annulment of the Transaction Contract and for restoration of the title of ownership. Later, finding out that part of the Parcel was sold to Rahim Gashi and Sokol Elezaj, he expanded the claim also

to them asking for annulment of their purchase contracts with Fadil Agushi and for the restoration of possession and the title of ownership.

The main question of the case is thus if Malisha Perovic voluntarily has disposed of his property right to the Parcel and more specifically, if he signed the power of attorney authorizing Ruzdi Agushi to conclude the Transaction Contract on his behalf and if he signed the statement that the payment for the parcel (185 500 E) had been completed.

Fadil Agushi alleges that he bought the parcel through the mediator Minaver Kuqukoviq. Malisha Perovic came to Mitrovica together with his mediator and the lawyer Sheremet Ahmeti from Mitrovica drafted the contract. They also agreed for the price of 185 000E. That day he paid to Malisha 10 000E in front of the lawyer Ahmeti, Ruzdi Agushi and Minaver Kuqukoviq. Malisha told him that for the rest of the money Minaver and Haxhi Toska would come after three days, when he was supposed to pay 50 000E. The respondent Fadil Agushi explains that he did not enter the court of Mitrovica but his brother Ruzdi Agushi did. He stayed outside the court together with Osman Haliti and Ahmet Mala, both from Gurakoc and knowing Perovic. Both of them confirmed that the person who came to Mitrovica to sign the POA was Perovic. All this happened after 12.00hrs that day. The respondent also states that the claimant is the same person who signed the POA in Mitrovica MC. The respondent states that he paid the price of the parcel in installments, the last one in 2006. He never received a document signed by the claimant stating that he received the money. According to him the petrol station was demolished by the claimant who took everything and sent it to Serbia, and the petrol station was completely burned.

These statements are contradicted by Malisha Perovic, who consistently denies ever authorizing somebody to sell his property. As for the disputed Parcel he explains that at the end of August 1999 he met Latif Kryeziu in Montenegro to discuss about the petrol station, as Kryeziu had already some in Kosovo. They discussed on the possibility Perovic to rent the station to Kryeziu as they would share the profit. Later Kryeziu called him to tell him that the fuel station was occupied by Alush Agushi, a KLA general. On 14.12.2004 he explains that he was in a restaurant in Kraljevo, Serbia, then he took the earnings of the petrol station, he owned in Kraljevo, to the bank and came back to the same restaurant where he stayed with friends till late. As for the petrol station the

claimants states that there were no other petrol stations in the region and the profit of his was very high. He used to earn hundreds of thousands DM.

The respondents Sokol Elezaj and Rahim Gashi object the claim stating that they legally bought the land.

As it was already mentioned above the court requested the original of the POA from Mitrovica MC and the original of the transaction contract from MC of Klina, but received answer that the originals were taken by the international prosecutor for the needs of the criminal investigation against Agushi brothers. As the court could not immediately position the criminal file, an order for conducting a handwriting expertise was issued on 25.06.2009 to examine the signature on the POA and answer to the question if the claimant had signed it. The examination was conducted by Ms Nedire Ibrahimimi, expert in the Forensic laboratory, Ministry of internal affairs, Pristina, Finally the expert did not come with any conclusion as the contested signature was a bad photocopy and she could not identify any individual characteristics.

In November 2009 the court found the criminal files in the office of the Municipal public prosecutor in Peja/Pec and among the documents there were three originals of the disputed POA. On 3.12.2009 the court issued a second order for graphology expertise to be implemented upon the original of the questioned signature. The expert had the task to compare free-style samples of signature of Perovic (a copy of the card for issuing ID card of Malisha Perovic containing his signature subscribed in Cyrillic letters, dated 19.08.1997, original of POA, dated 20.09.2005, original of a request dated 20.04.2003, original of a summon dated 10.04.2007 and an envelope attached to the summon, all of the signed by Perovic in Cyrillic letters), 50 experimental samples of the signature of Perovic in Latin letters, 16 experimental samples of his signature in Cyrillic letters and 16 Latin letters subscribed by him) to the signature in the POA dated 14.12.2004 subscribed for authoring person ("davaoc punomocja"). On 28.01.2010 the same graphology expert submitted a report according to which the questioned signature could have been written by the claimant. The expert Ms Nedire Ibrahimimi confirmed her conclusion also on the court session held on 10.11.2009 and specified that she made the conclusion following the similarities in the two signatures she compared and not the differences. As for the differences the expert explained that she found such and that was why she came to the

conclusion that the claimant *could* be the same person to had signed the questioned signature in the POA but she did not answered he was the same person.

Upon request of the claimant and taking into consideration the uncertainty of the handwriting report of the expert Ms Nedire Ibrahimimi who did not answer clearly to the question of the court if the claimant signed the POA dated 14.12.2004 and verified in MC Mitorvica under Vr.nr.2760/04, the court ordered another graphology expertise with the same task to be implemented by international expert. The court chose an expert with experience in comparing signatures subscribed in Latin and Cyrillic letters. The same expert had implemented several reports with similar tasks for Kosovo Property Agency. The expert Mr. Ilia Iliev submitted his report on 2 July 2010, officially translated to English language. According to the conclusion the signatures subscribed on the POA dated 14.12.2004 have not been subscribed by the same person who subscribed the experimental signatures (the claimant). During the court session the expert explained his methods of examination and specified that he had found out a set of differences in terms of the level of fluency, writing speed and coordination, vertical and horizontal span, combination of characters and configurations and which was sufficient for the conclusion that the examined signatures and the sample signatures taken from Malisha Perovic reflected the personal writing and motor habits of two different individuals. The sample signatures reflected a higher level of fluency and writing speed. The expert also found fundamental differences in subscribing the letters "P", "e", "E", "R", "O", "V", "I", "C", "M", "A", "L", "S".

Based on request to civil registration office of Municipality of Istog the court received the card for issuing ID card of Malisha Perovic accepted as evidence by the court.

According to the card for issuing ID Malisha Perovic was born on 14.08.1951 and has unique master citizen number 1408951933018; his ID card is issued in Istok on 19.08.1997 with registration number 64448, serial number CP10505718. In the criminal case file a copy of the ID card of Perovic is attached and it contains the same data as to the data in the card for issuing ID card.

According to the power of attorney verified at the Municipal Court of Mitrovica on 14.12.2004 under Vr.nr.2760/04 and on which base the transaction contract was signed and verified in MC of Klina on 15.12.2004 under Vr. Nr. 1502/2004 Malisha Perovic's ID number is 23450. To the power of attorney verified in Mitrovica MC a copy of the ID

card of the person who verified his signature on it is attached. According to it Malisha Perovic has unique master citizen number 1301957932016 and the number of his ID card is 23450, serial number CP14742664 issued on 14.08.1996. For full presentation it has to be mentioned additionally that the Unique Master Citizen Number (hereinafter UMCN) is a unique identification number that is assigned at birth to every citizen of former Yugoslavia. It was introduced on 31.12.1976 with the Law on the introduction of the Unique Master Citizen Number (OG of SFRY, No 58/76) and applied to all citizens born before then and alive at the time, and was still in use in Kosovo in 2003. The number is made up of 13 digits formed in 6 groups, prescribed in details in art.3 of the Law on the introduction of the Unique Master Citizen Number, where the first two digits are the day of the birth, the second two digits – the month of birth, next three digits – last three digits of the year of birth, next two digits – political region of birth, next three digits – unique number that also identifies the person as male or female (000-499 are number for male, as 500-999 for female), and the last digit is a checksum that is calculated using a special formula.

The disputed power of attorney and the attached to it copy of ID card has data that do not match to the personal data of the claimant. On the base of UMCN 1301957932016 it can be concluded that the person who signed the questioned power of attorney is a male born on 13.01.1957 in Peja region and lives in Klin Polje. The claimant is born on 27.09.1934 in Gjurakovac, Istog, and also first registered in Peja, and obviously he is not the person who signed the questioned power of attorney. The mere comparison of the photos of the ID card of Perovic and the ID card attached to the POA show that the person who identified himself with this ID in front of the registry officer in Mitrovica MC and verified his signature in the POA under Vr.nr.2760/04 on 14.12.20045 is another person, different from the claimant.

As regards to the compensation claim on 9 July 2009 the court ordered a financial expertise with a task to give conclusion what was the market monthly rent for the disputed petrol station from 1 August 1999. The entrusted expert prof. Aziz Berisha from Pristina after detailed analyses of the income of similar petrol stations in the last 10 years, as well as taking into consideration the official data about the turn over realized by the respondent Fadil Agushi since 01.07.2000 (when all businesses in Kosovo were obliged to pay lump sum tax) made the conclusion that the market monthly rent for the disputed

petrol station for the period 1.08.1999 till 31.07.2009 (the date the report was submitted by the expert) is 24 351.50 E. The monthly interest over this sum starting from the date the claim was filed till the preparation of the report is 4 242.54 E. During the session held on 10.11.2009 the expert confirms his conclusions.

The written documents attached to the criminal file are accepted as evidence in the civil case. There are several documents that are of relevance importance to this case. On 2 September 1999 Budimir Perovic in his capacity of a director of "PPPU Perovici" from Djurakovca authorized Latif Krueziju to use the petrol station and the inspection station in Klina. The claimant also presented a contract No 191-93-458-5 dated 19.03.2004 signed by him in capacity of a director of "Peroctan" d.o.o. Ratina, Kraljevo and Raiffeisen bank Belgrade according to which Perovic took credit from the bank in the amount of 180 000 E with investment purposes and 4 years term to return the credit .He also presented banking records issued by "Commercial bank" in Kraljevo dated 14.12.2004 and 15.12.2004 according to which Perovic on this dates transferred money in the bank account of the company Peroctan, Ratina. According to the statements of Perovic he made the transfers before lunch time.

Analyzing the collected evidences and more precisely: the discrepancies in the data of the original ID card of Perovic and the data of the ID card attached to the questioned power of attorney, including the discrepancies in the two photos attached to the two ID cards, and the conclusion of the international handwriting expert that the claimant did not signed the disputed power of attorney Vr.nr.2760/04 on 14.12.20045 the court concludes that Ruzhdi Haki Agushi was not duly authorized to sign the Transaction Contract in accordance with article 89 of the Law of Contracts and Torts (OG 29/78) ('LCT'). According to the same reasoning, the statement cannot be relied on to conclude that Malisha Perovic received the transaction amount from Fadil Agushi. This conclusion can not be opposed by the statement as the respondent Fadil Agushi who had never before known Perovic neither saw him sign the power of attorney nor to receive the transaction amount, and who trusted other people, mentioned by him Osman Haliti and Ahmet Mala. During the time when the disputed POA was signed in Mitrovica (around lunch time according to the respondent Fadil Agushi) the claimant was in Kraljevo transferring money in the bank (see bank records). There is no evidence supporting that the Transaction Contract was concluded with the intent or participation of Perovic. The court

gives credit to the report of the handwriting expert Mr. Ilia Iliev who upon deep examination of the differences of the two signatures (the disputed one and the samples of signatures) came to a clear conclusion that the claimant did not sign the disputed POA. The report of the expert Nedire Ibrahimimi is not clear; it lacks explanation of the methodology used to make the conclusion. The photos attached to the report presenting enlarged letters "P", "E", "C", "L", "S" and "A" of the disputed signature and the sample signatures do not truly show any similarities in the two signatures. The conclusion of the expert Iliev is also supported by the other evidences in the case file – the discrepancies in the data of the two ID cards and the two photos attached to them. Furthermore in this case the court refused to hear witnesses as to the fact if Perovic was present in Mitrovica and signed the disputed POA, as to this question answer was given by the handwriting expert Iliev. Also it has to be added that the validity of a contract can not be proved with witnesses as written documents and expertise have heavier evidence power.

In sum, it can therefore be concluded that the Transaction Contract was not a binding sale agreement of the Parcel, as it has not been proved that Malisha Perovic, as legal owner of the Parcel, was a 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 (art. 26 of the LCT). The Transaction Contract is therefore declared null and void in accordance with article 103 par.1 of the LCT. Pursuant to art.104 of LCT each of the contracting party shall retribute to the other what is received on the ground of the contract.

The fact that the respondent paid the price of the property is of no relevance for the property issue. He can pretend his money back from the person who received it. Obviously the respondent was involved as a victim in a criminal scheme that aimed to profit money through fraud. The transaction contract is authentic as it is verified in the court, but it does not have any legal effect as the person who signed it was not authorized by the real owner of the property and he could not transfer property rights he never had. In a common language the power of attorney was fake.

As to the claim for annulment of the following transaction contracts concluded between Fadil Agushi as seller and Rahim Gashi and Sokol Elezaj as buyers it can be mentioned that these two contracts failed to transfer property right to the buyers. Retroactivity to return to the previous condition in relations between contracting parties (Agushi –

Perovic) has an effect to third parties. The following buyers had "gained" rights on the bases of a null contract (something that does not exist on the legal sphere) and that is why they have no rights over the property. This is a consequence of the rule that no one can transfer more rights than he has. The property rights of the third parties fail regardless of the fact if they were aware of the nullity of the contract or not. Although Perovic is not party in these two contracts pursuant to art.109 of LCT he, in the capacity of an interested person he can claim their nullity.

Since the Transaction Contract is hereby nullified, the following two transaction contracts should also be nullified. The respondents Rahim Gashi and Sokol Elezaj are ordered to give up their possession and leave from the Parcel. The Cadastral Office of the Municipality of Klina is ordered to reverse its cadastral books and thus reinstate Malisha Perovic as the legal owner of the Parcel.

The compensation claim:

The claimant stated that the respondents Alush Agushi, Fadil Agushi and Ruzhdi Agushi unlawfully used the Parcel therefore they have to be obliged to pay him jointly compensation of 24 351, 50 E for the period 1 August 1999 till 31.07.2009 with the interest starting from 1 August 2009 and the amount of 4 249E as calculated interest for the period 1 August 1999 to 31 July 2009. The claim was filed in the court on 29.04.2003. The respondents through their legal representative objected the claim stating that they did not owe any compensation for illegal usage of the disputed property as they are lawful owners. The respondent Fadil Agushi was summoned regularly for court session for first time in 2009 when the claimant directed the compensation claim to him and his brother Ruzhdi Agushi. Nevertheless on 16.12.2005 he appeared in front of the Municipal Public Prosecutor in Peja/Pec who informed him about the criminal report of Malisha Perovic against him (see the ruling of the public prosecutor dated 20.03.2006, PP nr. 1861/2005).

It is undisputed that after the events in June 1999 Fadil Agushi occupied the Parcel and used the petrol station and the inspection station (see his statement given on the session held on 15.01.2009). His brother Ruzhdi Agushi worked on the petrol station as an employee and received a salary for this. The income from the petrol station was received by the respondent Fadil Agushi. As for the respondent Agush Agushi no evidences exist revealing any involvement of his in the illegal occupation of the Parcel. On 15.12.2004

the Parcel was transferred on the name of Fadil Agushi. On 27.12.2004 he sold a part of it together with the inspection station to Rahim Gashi and on 27.01.2005 another part (only land) to Sokol Elezaj. He continued using his part of the Parcel and the petrol station till now. It is also undisputed that after the events in June 1999 Perovic was not able to come back to Klina and to continue using the Parcel because of security reasons. That is why in August 1999 he authorized Latif Krueziju to use the petrol station and the inspection station as a result of settlement between both of them. Perovic was supposed to receive half of the income of the station as Krueziju would cover the expenses and run the business. In September he sent a written authorization letter to Krueziju. The latter contacted him saying that the petrol station was already occupied by Agushi family and they do not allow him enter into possession (see the statement of Perovic given in the session held on 03.12.2008). From these facts it can be concluded that Fadil Agushi unlawfully occupied the Parcel including the petrol station from August 1999 till 15.12.2004. As the only occupier of the Parcel he also did not allow the claimants authorized person Latif Krueziju to start operating the petrol station on behalf of the claimant. The respondent Fadil Agushi deprived the claimant from using the petrol station thus causing him material damages – profit lost. The respondent Fadil Agushi knew that he was not owner of the Parcel and the petrol station and that he had no legal reason to use them but nevertheless he continued running this business and collecting the profit of the sold petrol even after he was informed by the prosecutor about the criminal report of Perovic. According to art.154 par.1 of the Law of contracts and torts (LCT, OG of the SFRY 29/78) whoever causes injury or loss to another shall be liable to redress it unless he proves that the damage was caused without his fault. According to art.155 par.1 of the LCT loss is a diminution of someone's property (simple loss) and preventing its increase (profit lost). Fault shall exist after a tort-feasor has caused injury or loss intentionally or out of negligence (art.158 of the LCT). According to art.186 of the LCT compensation of damage shall be due from the moment of the damage taking place. In accessing the amount of the profit lost the court shall take into account the lost of profit which was reasonably expected according to the regular course of the events or particular circumstances, and whose realization has been prevented by an act or omission of the tort-feasor (art.189 par.3 of the LCT). Before making its conclusion as to the merits of the claim the court has to mention some conclusion as to its admissibility. According to

art.376 par.1 of the LCT a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tortfeasor. In any event, such claim shall expire five years after the occurrence of injury or loss. The claimant filed the compensation claim for damaged caused starting from August 1999, on 29.04.2003 against the first respondent Alush Agushi. The compensation claim against Fadil Agushi and Ruzhdi Agushi was filed on 02.03.2009, 10 years after the start of sustained loss. Several facts shall be mentioned in this respect. First, it is well known fact that the courts in Kosovo stopped working after the events in 1999 and started working again on 1 January 2000. The claimant lived out of Kosovo and it is logical that in the postwar situation for him as of Serbian nationality was very difficult to know who actually occupied his property. During the criminal investigation conducted by Peja/Pec Municipal Public Prosecutor against the respondents Fadil and Ruzhdi Agushi the claimant was not summoned or informed about the investigation. He was just informed about the ruling of the prosecutor for dismissing his criminal report. On 6 October 2005 he filed the claim for annulment of the transaction contract so the court accepts that from that date the claimant knew who is occupying his property. The court is on the opinion that as for the claimant existed insurmountable obstacles in the sense of art.383 of the LCT taking in account the war and the postwar situation during which the limitation period did not run. This concerns the period from June 1999 till 01.01.2000 (when the courts were reopened) and from 01.01.2000 till 06.10.2005 during which time for the claimant was not practically possible to come on the spot in Klina and check who is using the petrol station. Therefore the court finds that the compensation claim for material damages was filed within the five years of limitation period foreseen in art.376 par.2 of the LCT, thus it is admissible.

As for the merits, the respondent Fadil Agushi knew that the Parcel and the petrol station built on it was not his property but still he occupied them starting to use the petrol station for his own profit since August 1999. The court considers that for the period 15.12.2004 (when he transfer the ownership of the Parcel together with the buildings on his name) – 14.12.2005 (when he was informed by the prosecutor about the criminal report of Perovic) that Fadil Agushi did not intentionally caused damages to the claimant as there are no evidences in the case file revealing that he knew that the transaction was fraudulent, respectively that the POA was fake. After 14.12.2005 he caused the damages

out of negligence as he knew that he had not bought the land and the petrol station by the real owner but accepted this fact and continued using the facilities against the will of Perovic. Thus, Fadil Agushi shall be obliged to pay to Malisha Perovic 22 838,78E compensation for material damages caused by unlawful usage of the Parcel and the petrol station on it due for the periods 01.08.1999 – 15.12.2004 and 14.12.2005 - 31.07.2009 (the date the report of the financial expert was prepared). Fadil Agushi shall pay the sum together with the interest 4000.18E calculated for this sum starting from 29.04.2003 (when the claim was filed in the court) until 31.07.2009. Both sums shall be paid with the interest starting from 01.08.2009 until the final payment is made. The claim as for the rest of the requested amount, the difference between 24 351.50E and 22 838.78E and between 4249.04 and 4000.18E, shall be rejected as ungrounded.

The claim against Alush Agushi and Ruzhdi Agushi shall be rejected as the claimant did not prove that they unlawfully occupied the Parcel and the petrol station. It was ascertain that Ruzhdi Agushi worked in the petrol station as employee of Fadil Agushi and received salary from him. Thus, he did not cause damages to Perovic. As for Alush Agushi there are no evidences at all that he was somehow involved in the unlawful occupation of the property.

V. Court Expenses

Since the claims are approved, the respondents have no right to reimbursement for expenses. The claimant's representative pretends reimbursement for court expenses. Such are made for the two expertises, 200 E were paid to the financial expert and 400E to the handwriting expert. The expenses of the lawyer shall be covered according to the attorney tariff in the amount of 500E. As the court tax for the two claims is not paid, the court shall order the respondents to pay it to the court. The respondent Fadil Agushi shall pay 500E for the claim for annulment of the contract and 134.20 E for the compensation claim.

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

LEGAL REMEDY

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

Municipal Court of Klina

C.No. 91/2003

22.10.2010

Drafted in English,
an authorized language

Presiding Judge

Virginia Micheva-Ruseva

