

**MUNICIPAL COURT OF KLINA**

C.No.204/07

**THE MUNICIPAL COURT OF KLINA**, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Stephen Parkinson and international interpreters in Albanian and Serbian language Agim Hajdini and Biljana Maric, in the case of the claimant Garic Bogic from Klina, represented by attorney Xhelal Kelmendi from Peje/Pec against the respondent Sejdi Shala from the village of Uje Mire, Municipality of Klina, on the claim regarding annulment of contract of real estate, following a main trial session held on 09.09.2009, renders the following

**JUDGMENT**

With the **APPROVAL** of the claim of Garic Krsto Bogic from Klina with unique master citizen number 2709934932028, the contract of transaction signed in the name of Garic Krsto Bogic (Bogiq Krsta Gariq) represented by Burim Shala, from village Ujmiri, Municipality of Klina, based on authorization letter verified on 10.10.2003 in Municipal Court of Kragujevac under Vr.nr.8634/03 as seller and Sejdi Azem Shala from village Ujmiri as buyer, authenticated on 13.10.2003 in Klina Municipal Court under VR. No. 1747/2003, is hereby **DECLARED NULL AND VOID**.

Sejdi Azem Shala is **ORDERED** to give up possession and leave from the real estate described in possession list 287, cadastral parcel 554/21 of the Cadastral Zone of Klina, Kukice, with total surface of 0.05.10 ha, within fifteen (15) days from the date the present judgment is served to him. If Sejdi Azem Shala 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 287, cadastral parcel 554/21 of the Cadastral Zone of Klina, Kukice, with total surface of 510 m<sup>2</sup>, in the name of Garic Krsto Bogic.

The requests of Garic Krsto Bogic and Sejdi Azem Shala for compensation of court expenses are **REJECTED** as ungrounded.

## REASONING

### *I. Background*

Upon the events following the NATO air campaign in 1999 Garic Krsto Bogic left his property in Klina, a parcel described in Possession List 287, cadastral parcel 554/21 of the Cadastral Zone of Klina, in Kukice (hereinafter 'the Parcel'). The Parcel was transferred to Sejdi Azem Shala through a transaction contract dated 13.10.2003 (hereinafter 'the Transaction Contract') and signed on behalf of Garic Bogic by Burim Shala, son of the respondent Sejdi Shala, on the basis of a general power of attorney (registered at the Municipal Court of Kragujevac on 10.10.2003, Vr.nr.8634/03). The transaction price for the Parcel was 67 500 E and according to a written statement (registered at the Municipal Court of Kragujevac on 10.10.2003, Vr.nr.8635/03) Garic Bogic received the amount in connection with the sale. The Transaction Contract was registered by the Municipal Court of Klina as VR. No. 1747/2003 on 13.10.2003 and the transfer was registered in the Cadastral Books of Klina, making Sejdi Shala the registered owner of the Parcel.

Currently parcel 554/21 of the Cadastral Zone of Klina with total surface of 510 square meters (0.05.10 ha) is registered on the name of Sejdi Shala.

The claimant Bogic is in possession of the Parcel.

### *II. The Claim*

On 05.07.2007 Garic Bogic filed a claim to the Court 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 is that Garic Bogic never voluntarily has disposed of his property right to the Parcel and that the Transaction Contract therefore is null and void.

Sejdi Shala has disputed the claim on the grounds that the transaction has been conducted in a legal manner on the basis of the aforementioned power of attorney signed by the claimant. He paid the full price of the purchase totally trusting his lawyer, the witness

Xhafer Maloku. He asks the court not to oblige him pay the court expenses as he is in a difficult financial situation.

### *III. The Procedural History*

After the claim was filed in the Municipal Court of Klina on 05.07.2007 the case was assigned to a reporting judge who never scheduled a hearing.

Parallel to the civil proceedings in the courts, the Kosovo Property Agency ('KPA') has dealt with the contested matter following a claim for repossession of the Parcel (DS004475) submitted by Garic Bogic. The claim was processed against the respondent Sejdi Shala, as he was occupying the land. Through a decision on 21.10.2005 (HPCC/220/2005/C), the Housing and Property Claims Commission (HPCC) ordered that Garic Bogic as a category C claimant was given repossession of the Parcel since he had provided evidence supporting that he had a property right to it prior to the events following the commencement of the NATO air campaign on 24.03.1999, that he thereafter had lost possession of the property and that he had not voluntarily disposed of the property right. Following a request from Sejdi Shala for reconsideration of the decision, the HPCC upheld the first instance decision on 19.01.2007 (HPCC/REC/91/2007). On 07.05.2007 the Directorate enforced the HPCC decision to restore possession of the property and on 09.05.2007 delivered the keys of the Parcel to the claimant.

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 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 15.06.2009 the Court scheduled a hearing and on 09.09.2009, following two hearings on 09.07.2009 and 01.09.2009, the proceedings were concluded.

### *IV. Factual and legal assessment*

The following facts are undisputed in the case. Garic Bogic was the uncontested owner of the Parcel until 17 June 1999, when he fled Klina and took refuge in the town of Pirot, Serbia. From exile, Garic Bogic filed a claim for restoration of his possession at HPCC as

he found that the land was transferred on the name of Sejdi Shala who also occupied it. Sejdi Shala legitimated himself as the owner of the property following the Transaction Contract dated 13.10.2003 and verified in MC of Klina in which Garic Bogic through his authorized representative Burim Shala, power of attorney verified on 10.10.2003 in Municipal Court of Kragujevac under Vr.nr.8634/03, sold his land, cadastral parcel 554/21 of the Cadastral Zone of Klina, Kukice, with total surface of 0.05.10 ha to Sejdi Shala for the price of 67 500 E. As a consequence of the Transaction Contract, Sejdi Shala has been registered as owner of the Parcel in the Cadastral Register of Klina Municipality. The claimant received repossession of his property but still the title of ownership of the property was on the name of the respondent. That is why Garic Bogic filed a claim in the court asking for annulment of the Transaction Contract and for restoration of the title of ownership.

The main question of the case is thus if Garic Bogic voluntarily has disposed of his property right to the Parcel and more specifically, if he signed the power of attorney authorizing Burim Shala to conclude the Transaction Contract on his behalf and if he signed the statement that the payment for the parcel (67 500 E) had been completed.

Sejdi Shala alleges that he bought the parcel through the mediators Xhafer Maloku and Bujar Morina. Xhafer Maloku prepared the documents. Shala paid the money to him. He also paid 10 000E to the usurper of the Parcel (a man who occupied the property after the war and lived in it) to free it. The respondent admits that he never met Garic Bogic and did not pay the purchase price to him. Later he transferred the parcel on his name.

These statements are contradicted by Garic Bogic, who consistently denies all knowledge of Sejdi Shala and his son Burim Shala prior to his discovery of the transfer of ownership of the Parcel. He further denies ever authorizing somebody to sell his property.

The witness Xhafer Maloku, a lawyer from Klina, in front of the court in the court session held on 09.09.2009, states that he was asked by Bujar Morina from Klina to prepare the documents needed for the transaction of the property which Garic Bogic sold to Sejdi Shala. Sejdi Shala, one of his sons, Bujar Morina, and two other people named Haled Gashi and Ramadan Gashi visited him and at the meeting Sejdi Shala paid 50 000E for the property. The money was taken by Bujar Morina. In several days the respondent brought other 21 000E and Morina presented the power of attorney signed by the seller.

The money again was taken by Bujar. The witness prepared the contract and within a couple of hours it was verified in the court of Klina.

Based on court request KPA presented a copy of the file DS 004475 of the HPCC including a copy of the ID card of Garic Bogic and a copy of a page of the registry book of the MC of Kraguevac for year 2003 containing registry of documents starting from number 8632 and ending with number 8644. These documents were accepted as evidence by the court.

According to his ID Garic Bogic was born on 27.09.1934 and has unique master citizen number 2709934932028; his ID card is issued in Klina on 03.05.1989 with registration number 33448, serial number "SK" 01301448 and with no terms of expiration.

According to the power of attorney verified at the Municipal Court of Kragujevac on 10.10.2003 under Vr.nr.8635/03 and on which base the transaction contract was signed and verified in MC of Klina on 13.10.2003 under Vr. Nr. 1747/2003 Garic Bogic has unique master citizen number 2405946260010 and the number of his ID card is 116938. 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 has UMCN that do not mach to the personal data of the claimant. On the base of UMCN 2405946260010 it can be concluded that the person who signed the questioned power of attorney is a male born on 24.05.1946 in Niksic region, Montenegro. The claimant is a male born on 27.09.1934 in Klina, Kosovo and also first registered in Klina, and obviously he is not the person who signed the questioned power of attorney.

From the copy of the page of the registry book of MC of Kraguevac for year 2003 it is evident that under VR.nr. 8634 on 11.12.2003 (and not on 10.10.2003) in MC of Kraguevac was verified a photocopy of a document (and not the questioned power of attorney). Hence, the questioned power of attorney was not verified in MC of Kraguevac. Analyzing the collected evidences and more precisely the discrepancies in the data of the original ID card of Bogic and the data of the ID card contained in the power of attorney and the fact that the disputed power of attorney Vr.nr.8634/03 dated 10.10.2003 was not verified in the Municipal court of Kraguevac, the court concludes that Burim Shala 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 Garic Bogic received the transaction amount from Sejdi Shala. This conclusion can not be opposed by the witness statement as the witness Maloku has never seen Garic Bogic to sign the power of attorney or to receive the transaction amount. There is no evidence supporting that the Transaction Contract was concluded with the intent or participation of Bogic. 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 Garic Bogic, 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.

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.

Since the Transaction Contract is hereby nullified, Sejdi Shala is ordered to give up his possession and leave from the Parcel. The Cadastral Office of the Municipality of Klina is ordered to reverse its cadastral books and thus reinstate Garic Bogic as the legal owner of the Parcel.

### *V. Court Expenses*

Since the claim is approved, the respondent has no right to reimbursement for expenses. The claimant's 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 fake transaction. He was also a victim in the criminal fraud scheme, as he lost money, and is not justified to be additionally financially burdened. The court rejects the request of the claimant to reimbursement for expenses.

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. 204/2007**

**05.10.2009**

Drafted in English,  
an authorized language

Presiding Judge

Virginia Micheva-Ruseva

