

MUNICIPAL COURT OF KLINA

C.No.196/06

THE MUNICIPAL COURT OF KLINA, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Vlora Johnston and international interpreters in Albanian and Serbian language Agim Hajdini and Biljana Maric, in the case of the claimant Rajko Dabizljevic from Klina, represented by attorney Aleksandar Lijovic from Belgrad, Serbia, against the respondents Limon Maloku from village Guri I Kuq, Municipality of Klina, represented by lawyer Xhafer Maloku from Klina and Mentor Maloku from the village of Plloqica, Municipality of Klina, represented by lawyer Zef Marleku from Klina, on the claim regarding annulment of contract of real estate, following a main trial session held on 07.10.2009, renders the following

JUDGMENT

With the **APPROVAL** of the claim of Rajko Dabizljevic from Klina with unique master citizen number 2208953500873, the contract of transaction signed in the name of Rajko Dabizljevic represented by Mentor Maloku, from village of Plloqica, Municipality of Klina, based on an authorization letter and with Limon Maloku from village Guri I Kuq, Municipality of Klina as buyer authenticated on 08.01.2003 in Klina Municipal Court under Vr. No. 51/2003, is hereby **DECLARED NULL AND VOID**.

The Municipality of Klina, the Cadastry and Geodesy 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 previously described in possession list 451 (now in possession list 611), cadastral parcel 1933/4 of the Cadastral Zone of Drsnik, Municipality of Klina, with a total surface of 1 429 square meters (0.14.29 hectar), in the name of Rajko Dabizljevic.

The requests of Rajko Dabizljevic for compensation of court expenses are **REJECTED** as ungrounded.

REASONING

I. Background

Upon the events following the NATO air campaign in 1999, Rajko Dabizljevic left his property in Klina, a parcel described in possession list 451, cadastral parcel 1933/4 of the Cadastral Zone Drsnik, Municipality of Klina, with a total surface of 1 429 square meters (0.14.29 hectar) (hereinafter 'the Parcel'). The Parcel was transferred to the respondent Limon Maloku through a transaction contract dated 07.01.2003 (hereinafter 'the Transaction Contract') and signed on behalf of Rajko Dabizljevic by the respondent Mentor Maloku, son of the respondent Limon Maloku, on the basis of a general power of attorney. The transaction price for the Parcel was 22 006 E and there is a statement that appears to be signed by Rajko Dabizljevic that verifies that payment was performed accordingly. The Transaction Contract was registered by the Municipal Court of Klina as Vr.No. 51/2003 on 08.01.2003 and the transfer was registered in the Cadastral Books of Klina, making Limon Maloku the registered owner of the Parcel.

Currently 0.10.00 hectares of the Parcel is registered in the name of Sefedin Halil Veseli from Aqareva. The remaining 0.04.29 hectares of the Parcel are still registered in the name of Limon Maloku.

II. The Claim

On 07.08.2006 Rajko Dabizljevic filed a claim to the Court for annulment of the Transaction Contract. The ground for the claim is that Rajko Dabizljevic claims that he never voluntarily has disposed of his property right to the Parcel and that the Transaction Contract therefore is null and void.

Simultaneously with the filing of the present claim, Rajko Dabizljevic's brothers Blagoje Dabizljevic, Slobodan Dabizljevic and Vlastimir Dabizljevic filed claims for annulment of contract of real estate against the respondents regarding similar property transactions of parcels adjoining the Parcel (see C.No. 149/06, 197/06, and 198/06 at the Municipal Court of Klina).

Limon Maloku and Mentor Maloku have disputed all the claims on the grounds that the transactions have been conducted in a legal manner on the basis of power of attorneys signed by the claimants. Limon Maloku claims that he has paid the full price of the purchases to Blagoje Dabizljevic.

III. The Procedural History

After the claim was filed in the Municipal Court of Klina on 07.08.2006, the case was assigned to a reporting judge who never scheduled any hearing.

Through a decision of a 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 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 main trial hearing on 09.07.2009, and after another two hearings, on 01.09.2009 and 07.10.2009, the proceedings were concluded.

It can be noted that Rajko Dabizlevic and Vlastimir Dabizlevic filed criminal claims against Mentor Maloku in Montenegro regarding forged authorizations of the aforementioned power of attorneys, but that the Deputy Prosecutor Maja Jovanovic at the State Basic Prosecutors Office in Podgorica rejected these claims through a decision on 15.12.2006 since there was no grounded suspicion of any criminal act.

IV. Factual and legal assessment

The following facts are undisputed in the case. Rajko Dabizljevic was the uncontested owner of the Parcel until 08.01.2003. He lived in Klina till 1996 when he settled in Krusevac, Serbia. Through the history of the Parcel, which the Court has verified by requesting the appropriate documentation from the Cadastral and Geodesy Office in Klina, it has been clarified that the Parcel was registered in the name of the claimant before being transferred to Limon Maloku through registration of the Transaction Contract at the Municipal Court of Klina (Vr.nr. 51/2003) on 08.01.2003. The main parts of the Parcel were then through subsequent transaction contracts, also verified at the Municipal Court of Klina (Vr.nr.70/2003 and Vr.nr. 645/2003) transferred first to Uke Rexhe Sejdiu and then to Sefedin Halil Veseli from Aqareva.

Rajko Dabizljevic claims that he was never aware of the Transaction Contract and that he never signed the power of attorney, authorizing Mentor Maloku to sell the Parcel on his behalf. The main question of the case is thus if Rajko Dabizljevic voluntarily has disposed of his property right to the Parcel and more specifically, if he signed the power

of attorney authorizing Mentor Maloku to conclude the Transaction Contract on his behalf.

Limon Maloku has stated the following regarding the purchase. After the war, all houses were burned and he decided to buy a one storey building. The owner Blagoje Dabizljevic used to live in Kosovo but went to Serbia during the war. The last time he saw Blagoje Dabizljevic was in 1995 or 1996. Blagoje Dabizljevic is about 2 years older than him. He got the phone number of Blagoje Dabizljevic from a person he do not wish to name and contacted him. At this time it was not possible for them to meet so Blagoje Dabizljevic agreed to prepare the documents if he would prepare the payment. They negotiated for the price for about 3 months. Blagoje Dabizljevic asked for 300 000 E for all 4 parcels, which was too much. At the end he paid 1 540 E per are, the total amount was about 160 000 E. When he had gathered the money he contacted a friend, Pajazit Havolli from Kopilic, near Skenderaj, who had studied law to ensure that all the papers were in order. He knew that Blagoje Dabizljevic had brothers and sisters and he asked for statements from them as well. Blagoje Dabizljevic provided him with the documents and his friend checked them and said that they were in order. They met at the border with Montenegro, at the Kulina pass. Blagoje Dabizljevic was together with 4-5 persons, he does not know if it was Rajko Dabizljevic, Slobodan Dabizljevic or Vlastimir Dabizljevic since he does not know these people. Blagoje Dabizljevic gave him the power of attorney and the other documents. Since new legislation came into force in the Municipality of Klina that all illegally built buildings should be destroyed, Blagoje Dabizljevic provided him with the appropriate documents for the permission. After 5 days he received the documents and he went to the Cadastry and Geodesy Office of Klina. After he provided the documents an official at the Cadastry and Geodesy Office remarked that the Parcel was not in the name of Blagoje Dabizljevic. However, he managed to put the building in his name. In 2006, UN-Habitat summoned him to Peja, they asked him for the documents, and after that they told him to go home. – Mentor Maloku never had anything to do with the transaction, he was just authorized to complete it formally.

The court has requested the ID-card of Rajko Dabizljevic and according to this ID-card Rajko Dabizljevic was born on 22.08.1953 and has unique master citizen number 2208953500873; his ID card is issued in Drsnik, Klina, on 16.05.1996 with registration number 59054 and serial number “OP”09933054.

According to the disputed power of attorney on the base of which the Transaction Contract was signed and verified in the Municipal Court of Klina, Rajko Dabizljevic has unique master citizen number 0402969372105 and the number of his ID card is 21116.

The unique master citizen number and the ID-card number stated on the power of attorney thus do not match the official ID-card issued to Rajko Dabizljevic. To analyze these discrepancies it has to be explained 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 UMCN (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 UMCN, 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 (for persons born before 1976, political region where they were first registered), 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.

It can easily be concluded that the UMCN printed in the disputed power of attorney (0402969372105) does not mach the personal data of the claimant, since this UMCN would imply that the person who signed the power of attorney was a male born on 04.02.1969 and first registered in Sisak, Banovina region, Croatia, whilst the claimant was in fact born on 22.05.1953 in Drsnik, Klina, Kosovo, and first registered in Gospic, Lika region, Croatia. Clearly, the person who signed the power of attorney was not aware of the UMCN of the claimant.

The disputed power of attorney appears to have been stamped and verified in the Basic Court of Podgorica on 06.01.2003 and given the Vr.No. 18/03. However, according to a written statement from Slavica Stijovic dated 10.08.2009, court secretary at the Basic Court of Podgorica, Montenegro, the authorization was never verified at the court.

When analyzing the collected evidence, in particular the discrepancies in the data of the original ID card of the claimant and the data in the power of attorney together with the fact that the disputed power of attorney Vr.nr. 18/03 dated 06.01.2003 was never verified at the Municipal Court of Podgorica, the Court concludes that Mentor Maloku 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 Rajko Dabizljevic received the transaction amount from Limon Maloku.

As regards the oral statement given by Limon Maloku before the Court, this is peculiar as he clearly claims to have dealt with Blagoje Dabizljevic, whom he knew previously, to conclude the transactions. However, it must be taken into account that Limon Maloku, according to his own statement, had not seen Blagoje Dabizljevic since before the war, in 1995 or 1996, so some time had passed (7 or 8 years) and they were not close acquaintances. Moreover, Limon Maloku did not in any way react on the fact that Blagoje Dabizljevic in the power of attorney had stated a UMCN that would indicate that he was born in 1965 whilst he was in fact born already in 1939. These facts and the general circumstances of the whole affair lead the Court to conclude that Limon Maloku was simply misled as to the identity of the person with whom he concluded the transactions. In fact, another person, posing as Blagoje Dabizljevic, must have signed the power of attorney, concluded the Transaction Contract with Limon Maloku and received the transaction amount. Consequently, there is no evidence supporting that the Transaction Contract was concluded with the intent or participation of Rajko Dabizljevic. 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 Rajko Dabizljevic, 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 Limon Maloku paid the price of the property is of no relevance for the property issue. He will have to seek redress from the person who received it. It appears clear to the Court that the respondents were involved as victims in a criminal scheme that aimed to profit on them 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 common language the power of attorney was fake.

Since the Transaction Contract is hereby nullified, the Cadastral and Geodesy Office of the Municipality of Klina is ordered to reverse its cadastral books and thus reinstate Rajko Dabizljevic as the legal owner of the Parcel.

V. Court Expenses

Since the claim is approved, the respondents have no right to reimbursement for their expenses. The claimant's representative claims 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. The respondents should not cover the expenses of the claimant as they were not responsible for the fake transaction. They were also victims in the criminal fraud scheme, as Limon Maloku paid the transaction amount without receiving the legal property right he paid for. It is not justified to financially burden the respondents additionally. The Court therefore rejects the request of the claimant for 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 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. 196/2006

22.10.2009

Drafted in English,
an authorized language

