

MUNICIPAL COURT OF PEJË/PEĆ**Presiding Judge:****EULEX Judge Riku Jaakkola****20.09.2011****C no. 1061/07**

Claimants	Čedomir Cerović, G. Milanovac, Serbia; Milovan Cerović, Belgrade, Serbia; Kosa Cerović, G. Milanovac, Serbia; Milenko Cerović, Velika Plana, Serbia; All represented by lawyer Naser Husaj
Respondents	Agron Kelmendi, Pejë/Peć; Represented by lawyer Ferid Gjokolli Gani Krasniqi, Pejë/Peć; Represented by lawyer Haxhë Nikçi Nuo Kabashi, Pejë/Peć; Selim Jusaj, Dečan/Dečani; Both represented by lawyer Selim Berisha
Issue	Annulment of sale contracts of real estate, value of the dispute 55.000 Euros
Main hearing	6 th and 8 th of September 2011

JUDGMENT

The claim against Gani Krasniqi, Nuo Kabashi and Selim Jusaj is APPROVED. The following real estate transaction contracts are hereby declared null and void:

- Contract dated 10.11.2000 and verified at the Municipal Court of Pejë/Peć on 24.11.2000 under the number 1771/00, signed in the name of Čedomir Cerović, Milovan Cerović, Vuko Cerović and Milenko Cerović as sellers and Gani Krasniqi as the buyer, considering real estates located in cadastral parcels no. 295/8, 295/3, 295/17 and 294/2 in Cadastral Zone of Bjelo Polje.
- Contract dated 2.7.2002 and verified at the Municipal Court of Pejë/Peć on 15.10.2002 under the number 9015/02, with Gani Krasniqi as the seller and Nuo Kabashi as the buyer, considering cadastral parcel no. 294/2 in Cadastral Zone of Bjelo Polje.

- Contract dated 21.5.2004 and verified at the Municipal Court of Pejë/Peć on 30.7.2004 under the number 3353/04, with Nuo Kabashi as the seller and Selim Jusaj as the buyer, considering cadastral parcels no. 294/2 and 294/7 in Cadastral Zone of Bjelo Polje.

The Cadastre Office in Pejë/Peć is ordered to delete the false registrations and to restore the registrations of these parcels to previous state.

The claim of Čedomir Cerović, Milovan Cerović and Milenko Cerović against Agron Kelmendi is REJECTED. The claim of Kosa Cerović against Agron Kelmendi is WITHDRAWN.

Procedural costs

Gani Krasniqi, Nuo Kabashi and Selim Jusaj are jointly obliged to pay the claimants the total amount of 1.325 Euros as compensation of procedural costs.

The claimants are jointly obliged to pay Agron Kelmendi 80 Euros as compensation for procedural costs.

REASONING

Undisputed background

According to a property transaction contract dated 10.11.2000 Čedomir Cerović, Milovan Cerović, Vuko Cerović and Milenko Cerović from Pejë/Peć, currently residing outside Kosovo, have sold their real estate in cadastral parcels no. 295/8, 295/3, 295/17 and 294/2 in Cadastral Commune of Bjelo Polje in Pejë/Peć municipality to Gani Krasniqi from Vranoc village in Pejë/Peć. The surfaces of these cadastral parcels and the buildings located in those parcels are listed in the contract. According to the contract the sellers have been represented by an authorized person, namely Agron Kelmendi from Pejë/Peć. According to a power of attorney attached to the contract the sellers have authorized Agron Kelmendi from Pejë/Peć and Miroslav Zonjić from Belgrade to sign a transaction contract regarding their above mentioned real estates and to receive the money and complete all the actions regarding transaction and registration. In this power of attorney it is stated that it was verified at the municipality of Čačak on 31.10.2000.

Prior to the above mentioned transaction contract the cadastral parcel no. 295/8 has been registered in the name of Čedomir Cerović, the cadastral parcel no. 295/3 in the name of Milovan Cerović, the cadastral parcel no. 295/17 in the name of Vuko Cerović and the cadastral parcel no. 294/2 in the name of Milenko Cerović.

After the transaction contract the parcels in question have been registered in the name of Gani Krasniqi on 30.8.2001. Nuo Kabashi has bought the above mentioned parcel no. 294/2 from Gani Krasniqi on 2.7.2002 and it has been registered in his name on 7.7.2003. Nuo Kabashi has then divided this parcel into three parcels, which have been registered under numbers 294/2, 294/7 and 294/8. Selim Jusaj has bought parcels 294/2 and 294/7 from Nuo Kabashi on 30.7.2004 and parcels have been registered in the name of Selim Jusaj on 16.8.2004. Parcel number 294/8 has remained on the ownership of Nuo Kabashi.

The Claim

The claimants are requesting that the following real estate transaction contracts are declared null and void:

- Contract dated 10.11.2000 and verified at the Municipal Court of Pejë/Peć on 24.11.2000 under the number 1771/00, signed in the name of Čedomir Cerović, Milovan Cerović, Vuko Cerović and Milenko Cerović as sellers and Gani Krasniqi as the buyer, considering real estates located in cadastral parcels no. 295/8, 295/3, 295/17 and 294/2 in Cadastral Zone of Bjelo Polje.
- Contract dated 2.7.2002 and verified at the Municipal Court of Pejë/Peć on 15.10.2002 under the number 9015/02, with Gani Krasniqi as the seller and Nuo Kabashi as the buyer, considering cadastral parcel no. 294/2 in Cadastral Zone of Bjelo Polje.
- Contract dated 21.5.2004 and verified at the Municipal Court of Pejë/Peć on 30.7.2004 under the number 3353/04, with Nuo Kabashi as the seller and Selim Jusaj as the buyer, considering cadastral parcels no. 294/2 and 294/7 in Cadastral Zone of Bjelo Polje.

The claimants have also requested that the respondents are jointly obliged to compensate them the costs of proceedings, 4.875 Euros.

Grounds for the claim

The claimants are the real owners of the parcels in question. The transaction contract dated 10.11.2000 has been concluded without the knowledge of the claimants and by using a fake authorization. The claimants have not signed this authorization.

When Nuo Kabashi has bought the parcel in question from Gani Krasniqi, he has been aware that Gani Krasniqi is not the real owner of this parcel. Selim Jusaj has been aware that Nuo Kabashi is not the real owner of the parcels in question, when he has bought these parcels from Nuo Kabashi.

The Reply of Agron Kelmendi

The respondent has contested the claim. He has also requested that the claimants are jointly obliged to compensate him the costs of proceedings 80 Euros.

Grounds for the reply

The claim is ungrounded, because there is no legal relationship between the respondent and the claimants. The respondent has appeared as an authorized person in this real estate transaction contract, but he is not a contracting party. He does not have the real estates in question in his possession either. Therefore he is lacking passive legitimacy to be a respondent in the contest.

Furthermore, if it is going to be found that somebody else's property was sold, such a contract shall not be a subject of nullity, because according to article 460 of Law on Contracts and Torts (SFRY 29/1978, later LCT) the sale contract of somebody else's goods shall be binding for a contracting part. This means that this contract gives legal effects to the contracting parties and it is therefore valid.

The Reply of Gani Krasniqi

The respondent has contested the claim. He has also requested that the claimants are obliged to compensate him the costs of proceedings 252,80 Euros.

Grounds for the reply

The respondent has paid the purchase price to Agron Kelmendi, who was authorized by the sellers to conclude the contract and to receive the money. If the power of attorney was forged, the respondent had no knowledge of that and he had no reason to suspect the validity of the document.

The Replies of Nuo Kabashi and Selim Jusaj

The respondents have contested the claim. They have also requested that the claimants are jointly obliged to compensate them the costs of proceedings 1.317 Euros.

Grounds for the reply

Nuo Kabashi has bought the parcel in question from Gani Krasniqi, who was registered as the owner of that parcel at the time of contract. Selim Kabashi has bought the parcels in question from Nuo Kabashi, who was registered as the owner of that parcel at the time of contract. Both of these transaction contracts are valid. Taking into account article 7 of the Law on the Establishment of an Immovable Property Rights Register (2002/05), both Nuo Kabashi and Selim Berisha had the right to rely on the correctness and exactness of the registry on registration of ownership right. Nuo Kabashi and Selim Jusaj were not aware and nor could they have been aware, if their registered predecessor Gani Krasniqi was not the real owner of the parcel in question.

The issue of the validity of the previous transaction contract between Milenko Cerović/Agron Kelmendi and Gani Krasniqi does not have any effect to the validity of the later transaction contracts of Nuo Kabashi and Selim Jusaj.

The procedural history

C 1061/07 is a new number for the case number C 243/05. On 14 February 2005 Ćedomir Cerović, Milovan Cerović, Vuko Cerović and Milenko Cerović filed a claim against Agron Kelmendi and Gani Krasniqi. This case got the number C 243/05. On 1 March 2007 the Municipal Court of Pejë/Peć issued a ruling and decided to suspend the procedure, because of an ongoing criminal procedure (P No. 217/07) regarding the same issue. On 26 November 2007 the Municipal Court decided to resume with the proceedings. At this point the case number C 243/05 got a new number C 1061/07. 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 C 243/05 (valid number C 1061/07) was assigned to Eulex Judge Riku Jaakkola.

Later it was found out that Milenko Cerović had already on 4 June 2010 filed a new claim with the number C 330/10 against Agron Kelmendi, Gani Krasniqi, Nuo Kabashi and Selim Jusaj. This case was about the issue as the case number C 1061/07 (former 243/05). This case had not been brought to the attention of Eulex judges.

On 30 March 2011 Milenko Cerović filed a request to merge cases C 243/05 (valid number C 1061/07) and C 330/10. Through a decision of a Eulex Judge acting on delegation by the President of the Assembly of Eulex Judges on 18 July 2011, the case C 330/10 was also assigned to Eulex Judge Riku Jaakkola.

The Court conducted a preliminary hearing regarding both of these cases on 23 August 2011. At the preliminary hearing the Court issued a ruling about merging the cases C 1061/07 (former C 243/05) and C 330/10. At this hearing the claimants also amended their claim. Furthermore the Court issued a ruling to determine the value of the claim and about the amount of court taxes to be paid. At the end of the preliminary hearing the parties and their representatives were invited to the main hearing on 6 September.

The main hearing was conducted on 6 and 8 September 2011. The day before the main hearing the Court received a motion from the lawyer of the claimants to expand and extend the claim against additional respondents.

At the main hearing on 6 September the Court issued a ruling to reject the motion to expand and extend the claim against additional respondents since according to article 264 paragraph 2 of the Law on Contested Procedure (later LCP) if a claimant wants to expand the claim to include additional respondent, this has to be done prior to the conclusion of the preliminary hearing and only upon the consent of the additional respondent. These requirements were not fulfilled.

At the main hearing on 6 September the lawyer of respondents Nuo Kabashi and Selim Jusaj proposed that the court should order some expert evidence regarding graphology. The lawyer of respondent Gani Krasniqi proposed to hear respondent Agron Kelmendi as a witness. The Court decided that the main hearing will not be postponed in order to require this proposed new evidence, since the parties have according to article 402 paragraph 1 of LCP had “the duty to present all evidence that they intend to be collected during the course of the proceedings no later than the preliminary hearing.” At the preliminary hearing the parties made no proposals regarding this new evidence. Regarding the hearing of Agron Kelmendi the Court also stated that Agron Kelmendi is was invited to the main hearing as a respondent, but he did not show up and he can't be forced to testify since according to article 377 of LCP “if a party fails to appear for questioning no coercion may be imposed on that party, nor may it be forced to give a statement”.

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 real estate transaction contract, verified at the Municipal Court of Pejë/Peć on 24.11.2000
 - The real estate transaction contract in question has been concluded with forged documents.
- 2) Copy of the power of attorney, no. 2671/2000 dated 31.10.2000
 - The power of attorney in question is forged.
- 3) Copy of the death certificate of Vuko Cerović
 - Vuko Cerović has died on 7.7.1995 and therefore he could not have signed the power of attorney in question.
- 4) Ruling on inheritance of the Municipal Court of Pejë/Peć, O.no. 151/95, dated 17.10.1995
 - Kosa Cerović has inherited the cadastral parcel no. 295/17 from the deceased Vuko Cerović
- 5) Copy of the reply letter from Čačak Municipality, dated 2.2.2005
 - The power of attorney in question is forged.

Hearing of the claimants

- 1) Čedomir Cerović
- 2) Milovan Cerović
- 3) Milenko Cerović

Hearing of the respondents

- 1) Gani Krasniqi
- 2) Nuo Kabashi
- 3) Selim Jusaj

Factual and legal assessment

Introduction

The case is about the annulment of three real estate property transaction contracts. According to the claimants the first contract (dated 10.11.2000, buyer Gani Krasniqi) has been concluded in the name of registered owners, but with forged power of attorney. Regarding this first contract the main issue to resolve is whether the power of attorney is forged or not. The other issue regarding this first contract is the status of Agron Kelmendi. He has argued that he can't be a respondent in this case since he is not a contracting party.

Regarding two latter contracts the situation is different. Nuo Kabashi has bought the parcel in question from registered owner Gani Krasniqi and later Selim Jusaj has bought the parcels in question from the registered owner Nuo Kabashi. It has not even been claimed that these contracts would not be binding between these contracting parties - this is not an issue to be resolved in this case. The issue to be resolved is whether these contracts are also binding in relation to the real owner, in case it turns out that the seller Gani Krasniqi was not the real owner. Regarding these contracts the pre-question to be resolved is the validity of the prior contract with Gani Krasniqi as the buyer.

The Court has assessed the above mentioned questions in relation to each respondent.

The Claim against Agron Kelmendi

Because Kosa Cerović has withdrawn her claim against Agron Kelmendi in the main hearing and Agron Kelmendi has consented to her withdrawal of the claim, the Court considers the claim of Kosa Cerović withdrawn.

Agron Kelmendi has appeared as an authorized person for the sellers in the first real estate transaction contract. It is clear that he is not a contracting party in this contract. He is not and he has never been registered as the owner of the parcels in question. Therefore the question of nullity of this contract does not concern and affect him at all. The Court is of the view that Agron Kelmendi can't be a party in this case. The Court finds that the claim of Čedomir Cerović, Milovan Cerović and Milenko Cerović against Agron Kelmendi has to be rejected.

The Claim against Gani Krasniqi

According to the claimants the first contract (dated 10.11.2000, buyer Gani Krasniqi) has been concluded in the name of registered owners, but with forged power of attorney. The Court notes that articles 26, 28, 89 and 103 of the Law on Contracts and Torts (SFRY 29/1978, later LCT) provide the legal basis for resolving the possible nullity of this first transaction contract. 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 he has paid the purchase price to the claimants and therefore he has the burden of proof that the claimants have received the money.

Presented evidence

Claimants *Čedomir Cerović, Milovan Cerović and Milenko Cerović* have testified that they have not signed the power of attorney (evidence no. 2) and they have not been aware of the contract on real estate transaction (evidence no. 1). They had not received any money for the parcels either. They had heard about this transaction contract sometime after the contract had been concluded. The claimants were unable to specify the date or even the year they heard about this transaction.

The respondent *Gani Krasniqi* has testified that after the war in year 2000 he and some members of his family got interested in buying some parcels located near the place their family came from. When Gani Krasniqi was not able to find out the owners of these parcels from the cadastre, he contacted a real estate agency. This agency had headquarters in Belgrade and an office in Pejë/Peć. Agron Kelmendi was the contact person of this agency in Pejë/Peć and the name of the contact person in Belgrade was Miroslav Zonjic. The agency acquired the possession lists regarding the parcels in question from the cadastre and the power of attorney to sell these parcels from the owners. Gani Krasniqi never met or spoke with the owners, all the contacts were made through representatives of the agency, Agron Kelmendi and Miroslav Zonjic. Gani Krasniqi never met Miroslav Zonjic, only Agron Kelmendi. Gani Krasniqi paid the purchase price to Agron Kelmendi, who was authorized by the sellers.

The claimants have presented as documentary evidence copies of the *power of attorney* in question (evidence no. 2), the *death certificate of Vuko Cerović* (evidence no. 3), *ruling*

on inheritance of the Municipal Court of Pejë/Peć (evidence no. 4) and the reply letter from Čačak Municipality 2.2.2005 (evidence no. 5).

The Court notes that according to the power of attorney in question it was verified at the municipality of Čačak on 31.10.2000 with the number 2671/2000. The death certificate of Vuko Cerović, who was registered as the owner of parcel no. 295/17, proves without a doubt, that Vuko Cerović could not have signed this power of attorney, since he had died already on 7.7.1995. Ruling on inheritance proves that when this power of attorney and later the transaction contract were signed, Kosa Cerović had already inherited the parcel no. 295/17 and was therefore the real owner of that parcel. According to the reply letter from Čačak municipality, dated 2.2.2005 and addressed to Kosa Cerović, the power of attorney in question was not verified at the Office of Municipal Administration and General Services of Municipality of Čačak under the number 2671/2000 on 31.10.2000, since the numbers of verifications on that date were much higher than on this document. The Court finds that this reply letter proves that the power of attorney in question was never verified in the municipality of Čačak.

Evaluation of evidence

The Court notes that all the presented documentary evidence supports the testimonies of the claimants. Especially the fact that Vuko Cerović could not have signed the power of attorney since he had already died more than five years prior to the alleged date in question, is an extremely strong indication that this document is forged. Also the reply letter from Čačak municipality indicates the same, since it proves that at least the verification of that document is forged.

The respondent has not presented any evidence suggesting that the power of attorney is not forged. The Court does not doubt that Gani Krasniqi is telling the truth, but his testimony does not in any way support the argument that the power of attorney in question would be real. It may very well have been that Gani Krasniqi did not have any reason to suspect the authenticity and validity of the document. Furthermore, Gani Krasniqi has not provided any evidence that the claimants would have received the purchase price. He has himself testified that he paid the purchase price to Agron Kelmendi, not to the claimants.

Conclusions

On these grounds the Court finds that the claimants have proved that the power of attorney in question is forged. Therefore Agron Kelmendi has not been duly authorized (article 89 of LCT) to conclude the real estate transaction and to sell the parcels in question to Gani Krasniqi. 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 purchase price either, none of the elements of a contract is concluded and therefore no contract is concluded. The claim against Gani Krasniqi has to be approved and according to article 103 of LCT the transaction contract dated 10.11.2000 and verified at the Municipal Court of Pejë/Peć on

24.11.2000 under the number 1771/00 has to be declared null and void. According to article 110 of LCT the right to claim nullity shall not expire.

The Claim against Nuo Kabashi and Selim Jusaj

As stated above the Court has determined that the transaction contract dated 10.11.2000 has to be declared null and void. This means that Gani Krasniqi has not been the real owner of the parcel no. 294/2, when he has sold this parcel to Nuo Kabashi on 2.7.2002 and Nuo Kabashi has not been the real owner of parcels 294/2 and 294/7, when he has sold these parcels to Selim Jusaj on 30.7.2004. The issue to be resolved is, whether these contracts are still binding in regards to the real owner Milenko Cerović.

Knowledge of the respondents

The respondents have argued that they had not been aware of any flaws regarding the previous contract between Čedomir Cerović, Milovan Cerović, Vuko Cerović and Milenko Cerović as the sellers and Gani Krasniqi as the buyer. They had bought their parcels from the registered owner and they had had the right to rely on the correctness, truthfulness and exactness of the registry on registration of ownership right. The claimants on the other hand have argued that both Nuo Kabashi and Selim Jusaj had been aware of the nullity of the previous contract, when they had concluded their contracts.

The Court notes that both the claimants Čedomir Cerović, Milovan Cerović and Milenko Cerović and the respondents Nuo Kabashi and Selim Jusaj have testified in the main hearing. None of these testimonies has in any way indicated that Nuo Kabashi or Selim Jusaj would have been aware of any flaws regarding the previous contract, when they have bought their parcels. The claimants (in their testimonies) were unable to specify when they had contacted the respondents for the first time, but it was clear that this had happened after both these contracts in question were already concluded. The Court therefore finds that there is no evidence indicating that Nuo Kabashi or Selim Jusaj had any knowledge of the flaws of the previous contract, when they entered into their contracts.

Legal assessment

The Court notes that the decision about the validity of these contracts as regards to the real owner Milenko Cerović has to be established on the following facts:

- Milenko Cerović is the real owner of the parcels in question.
- Gani Krasniqi was the registered owner of parcel 294/2 when he sold the parcel to Nuo Kabashi.
- Nuo Kabashi was the registered owner of parcels 294/2 and 294/7 when he sold these parcels to Selim Jusaj.
- When Nuo Kabashi and Selim Jusaj bought their parcels they were acting in good faith (bona fide), so they were not aware of the nullity of the previous transaction.

The Court notes that the basic, universal principle regarding transfer of property rights is called *nemo dat quod non habet*, which means that no one can transfer a better title in property than he himself has. One exception of this basic principle is the principle of good faith, which means that if one has been acting in good faith, that is, without knowledge of the flaw in the prior transaction, he will gain the title in question. Further requirement for applying this principle is also, that the person acting in good faith had no reason to suspect the validity of the prior contract. Regarding real estate transactions this requires at least that the person has checked from public registry, who is the registered owner of the property right in question.

In this case it is clear that Gani Krasniqi has not been the real owner of the parcel he has transferred to Nuo Kabashi and Nuo Kabashi has not been the real owner of the parcels he has transferred to Selim Jusaj. When applying the principle of *nemo dat quod non habet*, it means that they have not been entitled to transfer these parcels forward. The respondents have argued that they were acting in good faith, since they had bought these parcels from registered owners. The respondents have referred to article 7 of the Law on the Establishment of an Immovable Property Rights Register (2002/05) and also on the legal praxis of all former Supreme Courts of SFRY and autonomous provinces of SFRY. According to article 7 of the Law on the Establishment of an Immovable Property Rights Register (2002/05) entries in the Register of immovable property rights enjoy the presumption of accuracy, truthfulness and legality until and unless corrected by means of the procedures established by this law.

The Court notes that according to article 10 of the Law on the Establishment of an Immovable Property Rights Register (2002/05) this law shall enter into force the day it is adopted by the Assembly of Kosovo and promulgated by the Special Representative of the Secretary-General. Special Representative of Secretary-General has on 20.12.2002 (UNMIK/REG/2002/22) promulgated this law subject to the condition that it will become effective once specified supplementary legislation is adopted by the Assembly and duly promulgated. The required Law on Amendments and Additions to Law No. 2002/05 on the Establishment of an Immovable Property Rights Register (2003/13) has been promulgated by the Special Representative of Secretary-General on 18.8.2003 (UNMIK/REG/2003/27). This means that this law has actually entered into force on 18.8.2003. In this case it means that when Nuo Kabashi has bought the parcel in question from Gani Krasniqi on 2.7.2002 this law has not been in force yet. Since Nuo Kabashi has been registered as the owner on 7.7.2003, this registration has also been done before the law entered into force, which means that this registration has not been concluded according to this law either. Therefore the ownership registration of Nuo Kabashi has not had the legal effects described in article 7. On these grounds the Court finds that this law can't be applied to the transaction contracts in question.

The Respondents have also referred to legal praxis of all former Supreme Courts of SFRY and autonomous provinces of SFRY. The Court notes that the factual situation regarding registers of immovable property rights in Kosovo is very different from the factual situation in former SFRY and its autonomous provinces. It is a commonly known

fact that during the war time in 1998 - 1999 some registries of Cadastre in Kosovo were either destroyed or transferred to Serbian territory. Reconstruction of registers has begun after the war, but it is still ongoing. It is impossible to know whether the data registered in Cadastre was up to date and reliable at the time when these transactions in question were concluded. Also the fact that many people had to flee from the war and leave their properties from their possession, creates special circumstances, in which the Cadastre can't be found as a reliable source of information. For many years after the war refugees were unable to return to check their properties and registries. The Court finds that because of this well-known situation in Kosovo, the registries in the Cadastre can't be considered as a reliable source of information after the war. Therefore, since the factual situation is different, the legal praxis of former Supreme Courts of SFRY and its autonomous provinces can't be considered applicable either.

Conclusions

On these grounds the Court finds that Nuo Kabashi and Selim Jusaj are not protected by the principle of good faith. Taking also into account that the immovable property in question was taken from the real owners, the claimants, by a fraudulent action, the principle of *nemo dat quod non habet* has to be considered as primary in this case. Since Gani Krasniqi has not been the real owner of parcel no. 294/2, he hasn't had the right to sell this parcel to Nuo Kabashi, and Nuo Kabashi hasn't had the right to sell parcels no. 294/2 and 294/7 to Selim Jusaj. Therefore, the claim against Nuo Kabashi and Selim Jusaj has to be approved and according to article 103 of LCT the transaction contracts in question have to be declared null and void. According to article 110 the right to claim nullity shall not expire.

The procedural costs

Since Gani Krasniqi, Nuo Kabashi and Selim Jusaj have lost the case, they are according to articles 452 and 453 of LCP obliged to reimburse all the necessary costs of the proceedings to the claimants. All four claimants have requested 1.000 Euros for each as a reimbursement of travel, accommodation and additional food costs during the main trial. Additionally they have requested 550 Euros as a fee of their lawyer Naser Husaj and the paid court tax of 325 Euros. According to lawyer Naser Husaj his fee consists of 100 Euros for the claim, 300 Euros for two main hearings and 150 Euros for the preliminary hearing. The respondents have accepted the amount of the fee of the lawyer, but they have not accepted the amount requested by claimants themselves.

The Court notes that the claimants have not specified the amount of the costs they are requesting as article 463 paragraph 2 of LCP foresees. Only the fee of their lawyer and the amount of paid court taxes has been duly specified. The Court is therefore obliged to estimate the amount of necessary costs in accordance with article 453 paragraph 1 of LCP. Without having any further information of the real costs of the claimants and taking into account that the claimants are residing in Serbia, the Court finds that 150 Euros is sufficient amount for each claimant present in the main hearing. This means that Čedomir


Cerović, Milovan Cerović and Milenko Cerović are entitled for a compensation of 150 Euros each, so altogether 450 Euros. Since Kosa Cerović has not been present in the hearings, no travel or accommodation costs could have been caused either. When the fee of the lawyer 550 Euros, which amount the respondents have accepted, and the paid court taxes 325 Euros are added, the total amount of necessary costs will be 775 Euros.

Since Čedomir Cerović, Milovan Cerović and Milenko Cerović have lost the case against Agron Kelmendi, they are obliged to reimburse his costs according to article 452 of LCP. Kosa Cerović has withdrawn the claim against Agron Kelmendi. According to article 456 paragraph 1 of LCP also a claimant who withdraws the claim has to reimburse the costs if the respondent. Therefore all the claimants are obliged to jointly compensate the costs of Agron Kelmendi. The requested amount, 80 Euros, is a set fee of a lawyer for filing two replies to a claim. The Court therefore accepts the requested amount.

LEGAL REMEDY

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

The Municipal Court of Pejë/Peć, 20 September 2011


Riku Jaakkola
Presiding Judge
EULEX Judge

