

MUNICIPAL COURT OF PRISTINA

C.No.2355/07

THE MUNICIPAL COURT OF PRISTINA, through presiding EULEX judge Verginia Micheva-Ruseva, assisted by court recorder Stephen Parkinson and international interpreters in Albanian and Serbian language Gjergj Zimaj and Biljana Maric, in the case of the claimant Tatjana Davila from New Zeland, represented by attorney Zivojin Jokanovic against the respondents Halil Krasniqi, Enver Krasniqi and Naser Krasniqi from Pristina, on the claim regarding annulment of contract of real estate, following a main trial session held on 15.12.2010, renders the following

JUDGMENT

With the **APPROVAL** of the claim of Tatjana Davila from New Zeland the contract of transaction signed in the name of Olivera Dimitrijevic and Srdjan Karadzic as sellers, represented by Nikola Aslimoski, from Skopje, based on an authorization letter and with Halil Krasniqi, Enver Krasniqi and Naser Krasniqi from Pristina, as buyers authenticated on 27.10.2000 in Pristina Municipal Court under Vr. No. 3030/2000, is hereby **DECLARED NULL AND VOID IN THE PART** in which Srdjan Karadzic, represented by Nikola Aslimoski sold the following real estates: ½ ideal parts of cadastral parcel 4940/2 with total surface of 0.02.13 ha of the Cadastral Zone of Pristina and ½ ideal parts of cadastral parcels: 1814/2 with surface 0.21.30ha, 1818/2 with surface of 0.20.37 ha and 1819/2 with surface of 0.71.83 ha, all the three parcels in Veternik, Cadastral Zone of Pristina, all four parcels described in possession list 6633.

The Municipality of Pristina, 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 to the state it was before the registration of the transaction contract in the annulled part.

Halil Krasniqi, Enver Krasniqi and Naser Krasniqi are ordered to pay to Tatjana Davila 200 (two hundred) € for reimbursement of procedural costs, as well as 250 (two hundred and fifty) € court tax to Municipal court of Pristina.

REASONING

I. Background

The claimant is a sister of Srdjan Karadzic. Together they were co-owners of four cadastral parcels described in possession list 6633 (hereinafter 'the Parcels') – a yard and a first floor of a house in Pristina, registered as cadastral parcel 4940/2 with total surface of 0.02.13 ha of the Cadastral Zone of Pristina and cadastral parcels: 1814/2 with surface 0.21.30ha, 1818/2 with surface of 0.20.37 ha and 1819/2 with surface of 0.71.83 ha, all the three parcels in Veternik, Cadastral Zone of Pristina. The property rights over these parcels they acquired as heirs of their mother Jelena Karadzic, who died on 18.05.1984. The ground floor of the same house together with the other part of yard with total surface of 0.02.13 ha and three parcels in Veternik, Cadastral Zone of Pristina 1814/1 with surface 0.21.20ha, 1818/1 with surface of 0.20.38 ha and 1819/1 with surface of 0.71.80 ha were owned by Olivera Dimitrijevic, the wife of the late Vojislav Dimitrijevic, brother of Jelena Karadzic. All the eight parcels were transferred to the respondents Halil Krasniqi, Enver Krasniqi and Naser Krasniqi through a transaction contract dated 27.10.2000 (hereinafter 'the Transaction Contract') and signed, on behalf of the sellers Olivera Dimitrijevic and Srdjan Karadzic, by Nikola Aslimoski, from Skopje, on the basis of a power of attorney. This power of attorney was signed by Olivera Dimitrijevic personally and as an authorized person by Srdjan Karadzic. The transaction price for the Parcels was 300 000 € and there is a statement that appears to be signed by Olivera Dimitrijevic that verifies that payment of the house and the yard in the amount of 200 000 € was performed accordingly. The Transaction Contract was registered by the Pristina Municipal Court under Vr. No. 3030/2000 on 27.10.2000 and the transfer was registered in the Cadastral Books of Pristina, making Halil Krasniqi, Enver Krasniqi and Naser Krasniqi the registered possessors of : 1/6 ideal parts each of them of cadastral parcels 4940/2 , 1814/2, 1818/2 and 1819/2 (the claimant Daliva remained owner of 1/2 ideal parts of each of the four parcels) and exclusive owners of cadastral parcels 4940/1, 1814/1, 1818/1 and 1819/1.

II. The Claim

On 25 October 2007, the Claimant filed a claim to the Court for annulment of the Transaction Contract concerning the part sold on behalf of her brother Srdjan Karadzic.

The ground for the claim is that the Claimant states that her brother never authorized his aunt Olivera Dimitrijevic to authorize another person, like Nikola Aslimoski, to transfer his property right of the Parcels and that the Transaction Contract concerning the transfer of the property of Srdjan Karadzic therefore is null and void. The claimant alleges that her brother was mentally sick and was forced by the respondents to leave his property in Kosovo. He never received any money for the property and lived in poverty till end of his life.

Halil Krasniqi, Enver Krasniqi and Naser Krasniqi have disputed the claim: first on the ground that the transaction has been conducted in a legal manner on the basis of regular documentation, secondly on the ground that the Respondents have paid the transaction amount in full and at the end even received less, as at the last moment it appeared that the claimant is also owner of the Parcels, and thirdly on the ground that they were assured by Olivera Dimitrijevic's son that the part of the money paid for the transaction of the ideal part of the claimant is kept and when she appeared it would be paid to her.

III. The Procedural History

After the claim was filed in the Municipal Court of Pristina on 25 October 2007, the case was assigned to a reporting Judge. The reporting Judge held several sessions and adjourned the proceedings for indefinite time as she felt threatened by a party.

Through a decision of a EULEX Judge acting on delegation of the President of the Assembly of EULEX Judges on 24.09.2010, the case was assigned to EULEX civil Judge since it was concluded that the case fulfilled the requirements of art. 5.1 item c (ii) of the Law on Jurisdiction (Law No. 03/L-53).

The Court scheduled a main trial hearing on 15.12.2010 with which the proceedings were concluded.

It can be noted that the Claimant filed a claim also to Kosovo Property Agency for verifying her rights of property right holder over the Parcels. The claims were registered on 4 July 2006 as case number KPA1140, KPA 11401 and KPA 11399. The procedure is still on going.

IV. Factual and legal assessment

1. Admissibility of the claim

Before starting the examination of the merits of the claim, the court shall observe the admissibility of the claim. The Claimant pleads for annulment of the Transaction Contract on the base of art.103 of the Law of Contracts and Torts (OG 29/78) (LCT) as lacking the consenting will of one of the contracting parties and thus contrary to compulsory regulations (art. 26 in connection to art.91 and art.86 of LCT). According to art. 109 LCT the court shall keep in view the nullity as his task in line of duty, while it may be claimed by *every person interested*. This provision thus states that the court ex officio has to consider whether or not the contract should be regarded as a nullity and that every person that has an interest in this issue is entitled to make a claim to this effect to the court. The law does not require the claimant to be the owner from which the property was transferred by the contract or even a party to the contract. The null contract does not transfer any rights or obligations and it does not in any way change the legal relations between the parties, it is simply a nullity. This is the reason why everybody with an interest in the issue can claim the nullity of a contract. The Claimant is co-owner of the Parcels together with the respondents, she is also a sister of late Srdjan Karadzic and as close relative to his heirs she has an obvious interest in claiming annulment of it. For these reasons, there is no need for the heirs of Srdjan Karadzic to be party in the proceedings. Pursuant to art. 109 LCT, the Court therefore finds the claim admissible.

As for the proceedings within KPA, there is no crossing of jurisdictions between the court and the agency as the disputes are different. KPA, as requested by the claim of Davila, is dealing with verifying her rights of property holder of the Parcels, as the court shall solve the dispute on annulment of the transaction contract concerning the part of her brother's property rights. Furthermore the claim within the court is not conflict related one involving circumstances directly related or resulting from the armed conflict that occurred between 27.02.1998 and 20.06.1999. Thus the claim does not fall within the provisions of section 3.1 in connection to section 18 of UNMIK Regulation 2006/50. Competent to deal with it is the Municipal court of Pristina.

2. Assessment on merits

Factual assessment:

Upon presented written evidences it can be clarified that Ljubica Djordjevic, grandmother of the claimant, died on 21.07.1982, was owner of two-storey house and an yard in Pristina with total surface of 4.26 ars, registered in possession list 2290 as cadastral parcel No 4940 and three plots in Veternik, Pristina with total surface of 2.27ha registered with numbers 1814, 1818 and 1819.

With inheritance decision dated 01.09.1982 in case O.br.170/82 of MC of Pristina her property was equally divided between her children Vojislav Dimitrijevic and Jelena Karadzic. With decision dated 21.12.1982 in case R.br.636/82 of MC of Pristina the property was equally divided between the two heirs and recorded in two separate titles in the cadastre office in Pristina. Thus Jelena Karadzic became owner of the first floor of the house and half of the backyard registered as cadastral parcel 4940/2 and half of the three plots in Veternik registered as separate parcels with numbers 1814/2, 1818/2 and 1819/2. Her brother Vojislav Dimitrijevic became owner of the ground floor of the house and half of the backyard, registered as cadastral parcel 4940/1 and the other half of the three plots in Veternik registered as separate parcels with numbers 1814/1, 1818/1 and 1819/1.

After the death of Jelena Karadzic in 1984, upon decision dated 02.10.1984 in case O.br.147/84 of MC of Pristina MC her children Tatjana Davila (the claimant) and her brother Srdjan Karadzic were declared as legal successors of her property. The property was never physically divided and the two heirs were registered as co owners of it in possession list 6633.

After the death of Vojislav Dimitrijevic in 1995 his property was inherited by his widow Olivera Dimitrijevic.

On 18.08.1994 Tatjana Davila (the claimant) and her brother Srdjan Karadzic signed a gift contract according to which Srdjan Karadzic transferred his $\frac{1}{2}$ ideal part of parcel 1814/2 to his sister. The contract was verified in the court but not registered in the cadastre books.

In 1995 Davila left Kosovo. Her brother and his family occupied the first floor of the house, while the widow Olivera Dimitrijevic and her children occupied the ground floor of the house.

During the events in 1999 both families, that occupied the house, fled Kosovo and located in Serbia. They never came back again.

On 10.03.2000 Srdjan Karadzic authorized Olivera Dimitrijevic in his name and on his behalf to “conclude a sales contract for a part of the house in “M.Popovica” street No 11 in Pristina, built on the cadastral parcel 4940 as well as parcels No 1814, 1818 and 1819”. The power of attorney was verified in Municipal court of Kolasin, Montenegro under Vr.n.419/2000.

On 18.09.2000 Olivera Dimitrijevic authorized Nikola Aslimovski from Skopje to “use her real estate – cadastral parcel 4940 consisting of a house and an yard in total surface of 4.26 ares, registered in possession list 2290, and the cadastral parcels 1814/1 and 1814/2 in Veternik with total surface of 42.50 are, parcels 1818/1 and 1818/2 with total surface of 40.75 ares, parcels 1819/1 and 1819/2 in Veternik with total surface of 143.63 are, registered in possession list 2290 and 6633”. Furthermore, she authorized Nikola Aslimovski on her behalf to “conclude, sign and certify a contract regarding buying and selling the above mentioned real estate with a third party”. The power of attorney was verified in Municipal court of Bijelo Pole, Montenegro, under Vr.nr. 2508/2000.

On 27.10.2000 Nikola Aslimovski acting on behalf of Olivera Dimitrijevic and Srdjan Karadzic, based on authorization letters Ov.nr.2508/18.09.2000 and Ov.nr.419/10.03.2000 signed a transaction contract with the three respondents according to which Olivera Dimitrijevic as owner of cadastral parcel 4940/1 by culture a house and an yard with total surface of 2.13 ars, and cadastral parcels 1814/1, 1818/1 and 1819/1 located in Veternik with total surface of 1.13.38ha and Srdjan Karadzic as owner of ½ ideal part of cadastral parcel 4940/2 by culture a house and an yard , with total surface of 2.13 ars and ½ ideal part of cadastral parcels 1814/2, 1818/2 and 1819/2 with total surface of 1.13.50ha were selling this property, through their representative, to the buyers for the total price of 300 000 DM, which amount should be received on the day the contract is signed. The contract was verified in Municipal court of Pristina under Vr.nr. 3030/2000.

With a confirmation letter, without a date, Olivera Dimitrijevic confirmed that she received 200 000 DM as an agreed price of the sold house and yard with surface of 4.26 ars, parcel No 4940, located on “Miladin Popovic” street, No 11.

On 28.05.2001 Srdjan Karadzic revoked his authorization letter Vr.419/2000 to Olivera Dimitrijevic regarding “selling the house with yard in Pristina, parcel 4940 as well as regarding parcels 1814, 1818 and 1819”. The revocation statement was verified in Municipal court of Arandjelovac, Serbia under Vr.n. 1591/2001.

Srdjan Karadzic died in 2004.

Regarding the current status of parcels 4940/1 and 4940/2, according to the data provided by the cadastre office, Municipality of Pristina, and by the report of the geodesy expert Adem Ahmetaj, parcel 4940/1 is owned by the respondents Halil Krasniqi, Enver Krasniqi and Naser Krasniqi as co owners with equal parts (1/3 ideal part each), while parcel 4940/2 is owned by Tatjana Davila with 1/2 ideal part and the respondents with 1/6 ideal part each. The claimant and the respondents are also co owners of cadastral parcels 1814/2, 1818/2 and 1819/2 in Veternik, where Davila is owner of 1/2 ideal parts of the parcels and the respondents of 1/6 ideal part each of them.

Each of the parties gave statements in front of the court.

According to the claimant her brother Srdjan Karadzic and his family were forced by the respondents to leave their house in Pristina. Her brother lived in big poverty and never received any money from the purchase of the property. She presented to the court receipts for the money she sent to support her brother during the years after 1999. She stated that after 1999 Olivera Dimitrijevic called her on the phone and proposed her to sell the property in Kosovo. Davila categorically refused to sell anything. She admitted that her brother lived in apartment in Serbia, but it was not his own apartment. She insisted that her brother was mentally sick and this situation was used by Olivera and her sons to force his sell his property.

According to the respondents, they contacted Nikola Aslimoski to mediate with the owners to buy the house in Pristina. He found the telephone number of Olivera and they personally contacted her to agree on the purchase. The price for the house was agreed on 200 000DM. Nikola Aslimoski took the money to Olivera in Serbia and brought the power of attorney back. At that time Olivera also proposed them to buy her land in Veternik. They finally agreed on 100 000 DM for the land. The money was paid to Olivera. When they when in the court to verify the Transaction Contract, from the cadastre books it became clear that the claimant was also co owner of the property which they intended to buy. They immediately contacted Olivera by telephone on this issue and she explained them that nobody saw Tatjana Davila for the last years, and nobody knew where she was, but in case she appeared later, her part of the money would be kept with Olivera or her son Nebojsa. The respondents even paid 2000DM to people who occupied the disputed house to release it. In 2002 they demolished the house and started building

two new houses covering the surface of the whole parcel. In 2005 the buildings were ready. Now they are leased.

Upon request of the respondent, the court took the statements of Nikola Aslimovski as a witness. He explained that he was a priest and during the armed conflict in 1999 he worked in Pristina dealing with humanitarian issues. He worked in a shelter for refugees and during the summer of 1999 Srdjan Karadzic and his family came in the shelter. They stayed several days and then left for Serbia. Meanwhile Srdjan gave him the key of the house to take care of it, as well as a power of attorney in the same sense. In 2000 the respondents asked him to mediate with the owners of the house as they wanted to buy it. The witness found the telephone number of Olivera and gave it to the Krasniqi brothers. They agreed with Olivera and just asked him to bring the money to Olivera in Serbia and to verify the power of attorney. He remembered that at that time Serbia forbade to Serbians to sell their property to Kosovo Albanians, and that was why they went with Olivera in Montenegro to verify the power of attorney. He gave her 200 000DM. Later he went again to Olivera to take another power of attorney concerning purchase of agricultural land and brought her another 100 000 DM. The witness also remembered that they were looking for Tatjana Davila, even through the Red Cross, as when he and respondents went to the court to verify the Transaction Contract it appeared that Davila was also owner of the property, but they could not find her. He confirmed that Olivera took all 300 000DM and promised that the part of Davila would be kept with her, as for Srdjan she would buy an apartment in Serbia. The witness stated that he did not prepare the content of the power of attorney nor of the contract, he just receive the authorization letter signed by Olivera, gave her the money and brought the authorization letter back.

The statements of the witness are not contradictory with the written evidence collected by the Court and the Court fully credits them.

Legal assessment:

It is not disputed between the parties that the claimant is owner of $\frac{1}{2}$ ideal part of parcels 4940/2, 1814/2, 1818/2 and 1819/2 , where as the respondents are co owners of the other $\frac{1}{2}$ ideal part , sharing $\frac{1}{6}$ ideal parts each of them.

The question is if the transaction contract in the part in which Srdjan Karadzic sold his $\frac{1}{2}$ ideal part of these four parcels through Nikola Aslimovski, as his representative, based on

authorization letter Vr.n.419/2000 of MC of Kolasin, Montenegro and authorization letter Vr.n.2508/2000 of MC of Bjelo Pole, Montenegro is null and void or is a valid one and moreover, could Nikola Aslimoski on the base of authorization letter Vr.n.2508/2000 of MC of Bjelo Pole represent Karadzic in the purchase of the property. For clarity it should be repeated that Srdjan Karadzic authorized Olivera Dimitrijevic to sell his own part of parcels 4940/2, 1814/2, 1818/2 and 1819/2 without mentioning possibility for preauthorization. Several months later Olivera Dimitrijevic authorized Nikola Aslimoski on her behalf to sell parcels 4940, 1814/1, 1814/2, 1818/1, 1818/2, 1819/1 and 1819/2. Several months after the transaction contract was verified in the court Srdjan Karadzic revoked the power of attorney.

According to art.10 of the Law on transfer of immovable property (OG SRS 15/74, pursuant to art.64 of the law this provision was also applicable in Kosovo) the contract for transfer of immovable property rights has to be made in writing and the signatures of the contracting parties have to be certified by the court. Additionally art.33 of the Law on basic property relations (OG SFRY 6/80) gives additional requirement for validity of the transaction contract - the property right over an estate shall be acquired by registration into the cadastral books. According to art.90 of the Law of Contracts and Torts (LCT) the form prescribed by law for a contract or some other legal transaction shall apply also to the authorization for concluding such contract. Consequently the law requires the authorization for concluding transaction contract of immovable property to be in written form and the signature of the authorizing person to be verified in the court. The scope of authority is regulated in art.91 of the LCT. Par.1 states that an authorized person may undertake only those legal actions which fall within the same scope of his authorization. According to art.86 par.1 of LCT an agent shall not transfer his authority to another unless entitled accordingly by the law or contract. As an exception he may do the above after being prevented for doing the job himself, provided the interest of his principle require an immediate undertaking of the legal transaction (par.2 of art.86 LCT). In case the agent transgresses the limits of authority, his principle shall assume an obligation only after approving of the transgression.

So, in regards to representation the law precisely foresees as a rule that representative can not transfer authority to another person, except when he is authorized to do so. Srdjan Karadzic authorized Olivera Dimitrijevic to sell his own part of parcels 4940/2, 1814/2,

1818/2 and 1819/2 without mentioning possibility for preauthorization. Olivera Dimitrijevic was not authorized by Karadzic to authorize Nikola Aslimoski to sell his property to the respondents. By transferring the authorization to Aslimovski she transgressed the limits of her authority. In this case the contract could be binding for Karadzic only if he approved this transgression (at that moment the contract was valid under condition – approval by the principle). He did not approve the transgression of the limit of her authority, as on 28.05.2001 he revoked his authorization given to Olivera.

The Court therefore concludes that Nikola Aslimoski was not duly authorized on behalf of Srdjan Karadzic to sign the transaction Contract in accordance with article 89 of the LCT. There are no evidences that can be relied on to conclude that he received the transaction amount for his own property from respondents. Consequently, there is no evidence supporting that the transaction contract was concluded with the intent or participation of Srdjan Karadzic. It can therefore be concluded that the Transaction Contract was not a binding sale agreement of the parcels 4940/2, 1814/2, 1818/2 and 1819/2 for ½ ideal part, owned by Srdjan Karadzic, as it has not been proved that he, as legal owner of the Parcels, was 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 regarding ½ ideal parts of parcels 4940/2, 1814/2, 1818/2 and 1819/2 (art. 26 of the LCT). The Transaction Contract is therefore declared null and void in accordance with article 103 par.1 of the LCT in the part concerning this particular property.

The Respondents have presented evidence of their payments of the transaction amount. However, the fact that the Respondents have performed the payment in question and thus paid the price of the property is of no relevance for the property issue. The Respondents will have to seek redress from the persons who received this payment. It appears clear to the Court that the Respondents were misled by the other seller who received the whole payment while transferring only half of the property.

Since the Transaction Contract is hereby nullified in the part concerning the transaction of property rights of Srdjan Karadzic of ½ ideal parts of parcels 4940/2, 1814/2, 1818/2 and 1819/2, the Cadastral and Geodesy Office of the Municipality of Pristina is ordered to reverse its cadastral books in accordance to this judgment to the state it was before the registration of the Transaction contract.

It shall be mentioned here that regarding parcel 1814/2 the claimant did not acquire property right over the ½ ideal parts her brother wanted to gift her, as the contract was not registered in the cadastre books. The requirements for the validity of a transaction contract were already discussed above. At the moment when the Transaction Contract was signed Srđjan Karadzic was still owner of ½ ideal parts of cadastral parcel 1814/2. These property rights still belong to his patrimonium.

Procedural costs:

Pursuant to art.452.1 of the Law on contested procedure (OG 38/2008) and based on the outcome of the proceedings, the respondents shall be obliged to reimburse the claimant with all the costs incurred by her. The claimant made costs only regarding engaging her lawyer, and for this she shall be reimbursed with 200€. As the claimant did not prepay the court tax when filing the claim in the court, based on the outcome of the dispute, this tax shall be paid by the respondents. According to Administrative instruction 2008/02 for unification of court taxes the tax for the claim with value of 50 000€ is 250€. The respondents shall be ordered to pay the court tax to the bank account of MC of Pristina.

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 Pristina to the District Court of Pristina within fifteen (15) days from the day the copy of the judgment has been served to the respective party.

Municipal Court of Pristina

C.No. 2355/07

24.12.2010

Drafted in English,
an authorized language

Presiding Judge
Verginia Micheva-Ruseva