

**BASIC COURT OF PEJË/PEĆ  
BRANCH DEÇAN/DEČANI**

**C. no. 250/11**

**THE BASIC COURT OF PEJË/PEĆ BRANCH DEÇAN/DEČANI**, through EULEX Judge Franciska Fiser, acting upon decision of EULEX Judge delegated by the President of the Assembly of EULEX Judges, dated 11 December 2012, in the civil case of the claimant ML from Deçan/Dečani St. “Luan Haradinaj” n.n., represented by lawyer QF from Deçan/Dečani against the respondent HL from Deçan/Dečani St. “Luan Haradinaj” n.n., represented by lawyer HÇ from Deçan/Dečani, on division of joint marital property, following main trial session held on 20 May 2013, renders the following

**J U D G M E N T :**

**I.**

It is **CONFIRMED** that the claimant ML, born on 12 June 1951, from Deçan/Dečani St. “Luan Haradinaj” n.n. is owner of the ideal part from  $\frac{1}{2}$  of an immovable property:

- cadastral parcel no. 01161-0, located in Deçan at the place called “Marshalli Tito-Fshati”, registered in the possession list no. 00246 Cadastral Zone Deçan of a total surface area from 589 m<sup>2</sup>;
- cadastral parcel no. 00295-0, located in Deçan at the place called “Gogishte-Seishta”, registered in the possession list no. 00246 Cadastral Zone Deçan of a surface area from 1770 m<sup>2</sup>;
- cadastral parcel no. 00001-0, registered in the possession list no. 00136 Cadastral Zone Prilep of a surface area from 6304 m<sup>2</sup> and,
- cadastral parcel no. 00002-0, registered in the possession list no. 00136 Cadastral Zone Prilep of a surface area from 12601 m<sup>2</sup>.

**II.**

The respondent is ordered to pay the claimant the amount of 970,32 EUR in respect of procedural costs, within the period of 15 days after the receipt of this decision under the threat of execution.

### III.

The rest or different claim request is **REJECTED** as unfounded.

#### **R e a s o n i n g :**

The claimant filed a claim with the Municipal Court in Deçan/Deçani on 20 July 2011 against the respondent because of division of joint marital property. She alleged in her claim that she and the respondent got married on 12 May 1972 and they have four children from this marriage. The matrimonial relationship lasted until 14 August 1996, when their marriage was dissolved.

During their marriage the parties through common efforts and work had bought certain real estates at several locations, that is, in Prilep village and to certain places in Deçan.

A piece of land consisting of 0.16,76 ha possession list no. 604 Cadastral Zone Deçan at Str. "Marshal Tito" was bought and sold to co-owners R(A)J and S(A)J.

With the submission dated 23 April 2012 the claimant amended her claim requesting from the court to establish she is owner of the ideal part from ½ of an immovable property cadastral parcel no. 01161-0 registered in the possession list no. 00246 Cadastral Zone Deçan of a culture basement + business premise + private residential house of the type basement + P + #, as well as yard of a total surface area from 0.5,89 m<sup>2</sup>; cadastral parcel no. 00295-0 located in Deçan at the place called "Gogishte-Seishta" of a surface area from 0.17,70 m<sup>2</sup>; cadastral parcel with the number 00001-0 according to the possession list no. 00136 Cadastral Zone Prilep at the place called "Gurina-Gerdaja" of a surface area from 6304 m<sup>2</sup> and, cadastral parcel with the number 00002-0 at the place called "Gurina-Gerdaja" of a surface area from 12601 m<sup>2</sup>.

The claimant also asked court to oblige the respondent, through physical division, to handover ideal parts of these parcels into practical possession of the claimant and as material compensation

for the property sold to co-owners R(A)J and S(A)J, to pay to the claimant amount of 100.000 euros.

With the ruling dated 11 December 2012 issued by the Vice President of the Assembly of EULEX Judges the case has been taken over in EULEX Judges jurisdiction and assigned to the EULEX Civil Judge at the Mobile Unit at Basic Court Level according to the provisions of the Law No. 03/L-053 on Jurisdiction, Case Selection, Case Allocation of EULEX Judges and Prosecutors in Kosovo.

At the proposal of the litigants and in order to establish the factual situation, the court produced and read the following evidence:

- Birth certificates for MCL, ML, FL, FL and BL;
- Historical background (original: "Historiat") issued by the Directorate for Geodesy and Cadastre dated 5 April 2012;
- Certificate issued by Kosovo Cadastral Agency dated 27th May 2011 for parcels no. 295-00 and 1161-0 both Cadastral Zone Decan;
- Certificate issued by Kosovo Cadastral Agency dated 27th May 2011 for parcels no. 00001-00 and 00002-0 both Cadastral Zone Prilep;
- the judgment of Municipal Court of Pejë no. 645/96 dated 14 August 1996;
- the gift contract dated 14 April 2004 concluded between HL on one side and RAL, SAQ, DUS on the other side;
- the Contract on termination of family household drafted on 30th August 2004 in Decan between contracted parties HBL and NBL both from Decan who are son and mother;
- the Contract on division of family household dated 27th July 2006 concluded between NL and HL;
- historical background (original: "Historiat") regarding the parcels 295 and 1161 Cadastral Zone Deçan, the parcels 1 and 2 Cadastral Zone Prilep and parcels 1701, 1702 and 1703 Cadastral Zone Deçan dated 3 April 2013;
- hearing of the witnesses BHL, EAJ, DAJ, MAH, SML, RAL, BSK and IShM; and
- hearing of the claimant and respondent.

Having assessed each and every piece of evidence separately and as a whole conscientiously and carefully pursuant to Article 8 of the Law on Contested Procedure (hereinafter: LCP), the court comes to its conclusion that the claim request shall be partially approved.

During the evidentiary procedure the following factual situation was established.

The claimant and the respondent concluded a marriage on 12 May 1972. During the marriage four children were born: ML on 28 June 1974, FL on 15 January 1976, FL on 15 February 1978, and BL on 10 September 1979.

The marriage lasted until 14 August 1996 when it was dissolved by judgment of Municipal Court in Pejë/Peć no. P 645/96.

The claimant stated in his statement that when they got married she moved to respondent's house in Prilep. The family lived in house together with respondent's mother and four sisters. Before the war they started to build a new house in Deçan and the old one was burned down during the war.

The claimant was looking after the daily housework, raising the children, helping the sisters in law and mother in law and doing all other duties she had; she stated she was treated as a slave. She also worked together with mother in law and children in the garden and fields. Sometimes they hired people to work.

The claimant stated that the respondent had two-floor house with a tiny garden when they got married. Later, during the marriage the respondent purchased from a person IS three parcels which were attached to their own garden. The respondent also purchased a land in Prilep, a parcel, which is called "Bonita", and located next to the Serbian cemetery, it was a garden. And he also bought a house in which they used to live.

The claimant confirmed she was never employed; she was staying at home while the respondent was employed in Germany, Switzerland, and USA. The respondent used to save his income in order to buy the properties whereas the family survived from selling beans and other different agricultural products. In order to keep her family, the claimant weaved in the loom the carpets

which she sold together with different handworks. The claimant stated that the respondent did not give her extra money for survival of the family.

The respondent confirmed in his statement that the claimant moved to his house in Prilep when they got married and they lived here until 1999.

Regarding the immovable property the respondent confirmed he inherited some properties before the marriage from his father who died on 17 March 1968. During the marriage he bought the immovable property near Monastery with parcel no. 295 from MK in 1982. He also bought a property where his house is, with parcel no. 1161, from ShM. This purchase has been concluded in 1978 or 1979. Furthermore, also the parcels with no. 1 and 2 in Prilep were purchased during the marriage; he bought them from SL.

Regarding the property located in Dečan with parcel numbers 1701, 1702 and 1703 the respondent stated those parcels were registered in the name of his mother NL. His mother bestowed the parcels to him in 2004. The respondent explained that the property was owned by his mother and when he needed the money in 2004 his mother let him to sell the property on her behalf. He used the money for refurbishing the house and this was meant as a gift to him.

The respondent also stated that he left and went to Germany to work on 14 September 1968 and returned back on 27 December 1979. He stayed then several years at home; in 1987 he went for 5 or 6 months to USA.

When he stayed in Germany he was running a construction company and he earned 3000 or 4000 DM a month.

He stated he spent the money on the purchase of the immovable property; whenever he had a chance to buy something, he did so.

According to him he gave the money to his wife – to the claimant whenever it was necessary. Since they lived together with his mother and sisters the money was given for the whole family. He did not give money to the claimant every month but his opinion is she did not need it in the monthly basis.

He stated that during his stay in Germany; which lasted 11 years, he had visited the family in Kosovo about 60 times. He drove from Germany to Kosovo; usually stayed for 3 or 4 days and he never paid a longer visit.

The court also heard evidence from witnesses and found the following.

The witness IShM stated that his father ShM sold a parcel, where the respondent's house is, to the respondent about 30 years ago. The witness was at that time 10 years old so he could not remember any other details of this purchase.

The witness BMK stated that his father MK sold to the respondent a property below the Monastery in 1981.

The witness SL stated he sold to the respondent the property with parcels 1 and 2 possession list 136 Cadastral Zone Prilep, located in Gurina Gerdaja, in 1977.

The witness RL gave evidence that his paternal uncle ISL sold to the respondent the land in Prilep in 1978.

The witness BL, the son of the parties, stated that two plots were bought from RL and SL in Prizren. He also stated he heard that the plot was bought in Deçan from IM's father. Another plot was bought from his uncle HL; it is located 350 or 400 meters from the center of Deçan towards Gjakovë. And also from MSL a piece of land, in the certificate it's called Seishta, was bought. The witness stated he was 6 or 7 years old at that time and he heard about these purchases from people who were present there.

The witnesses DAJ, EAJ and MH confirmed that initially MH bought immovable property from the respondent in 1990's. There was a property registered in the possession list 604 Cadastral Zone Deçan with parcel no. 1701, 1702 and 1703. The purchase price was 280.000 DM. Later, in 2011 when the communion family split up EJ, DJ and MH were registered as the owners. The witness MH stated he gave the money to the respondent.

Amongst material evidence which were administrated during the main hearing the court finds the following.

From birth certificates the court established that four children were born during the marriage; and this fact was not disputed between the parties; ML, born on 28 June 1974, FL, born on 15 January 1976, FL, born on 15 February 1978, and BL, born on 10 September 1979.

With judgment of the Municipal Court of Pejë/Peć C 645/96 dated 14 August 1996 the marriage between the parties was dissolved and this fact was not disputable between the parties.

Based on Historical Background (original: "Historiat") dated 3 April 2013 and issued by Directorate for Geodesy and Cadaster of Deçan Municipality it has been confirmed that the parcels 295 and 1161 Cadastral Zone Deçan were registered after the aerial recordings in 1983 in certificate no. UL 70505021-00246; this means possession list no. 246; in the name of HL.

The parcels no. 1701, 1702 and 1703 were registered in the certificate no. UL 70505021-00604; this means possession list no. 604; in the name of NL and later these parcels were transferred in the name of MAH.

The parcels no. 1 and 2 from possession list no. 136 Cadastral Zone of Prilep; according to the aero-recordings in 1983, were registered, and they still are, in the name of HL.

The court determines that the Law Nr. 2004/32 Family Law of Kosovo (hereinafter: Family Law) shall be applied in the present civil dispute since the claim was filed on 20 July 2011.

Pursuant to the Article 45 of the Family Law the property of spouses may be separate property or joint property. Pursuant to the Article 46 paragraph 2 of the same law separate property is also a property acquired during marriage through inheritance, donation, or other forms of legal acquisition.

According to the Article 47 paragraph 1 of the Family Law joint property of the spouses is the property acquired through work during the course of the marriage as well as income deriving

from such property. According to paragraph 4 the spouses are joint owners in equal shares of the joint property unless otherwise agreed on.

Furthermore, pursuant to the Article 50 paragraph 2 of the Family Law when only one of the spouses is registered as property right holder of the joint property in the immovable property rights register, it shall be considered as if registration was carried out on behalf of both spouses. The property cannot be alienated or administrated without the consent of both spouses as defined by the applicable law.

Apportionment of spouses' joint property may be made at any time by agreement. When the agreement is not reached, it shall be decided upon by the court as it is foreseen in Article 54 paragraph 1 of the Family Law.

Pursuant to the Article 56 paragraph 1 of the same law apportionment of the spouses' joint property may be requested during marriage and upon its determination.

It has to be emphasized that also the previous Law of Marriage and the Family of Autonomous Socialist Province of Kosovo (hereinafter: the previous Law) which was applied from 1 September 1984 determined in Article 307 that the wealth gained by the spouses as a result of their joint efforts during their united life, and the incomes from that wealth is considered as joint wealth.

In Article 310 paragraph 2 of the previous Law it is the same regulation as in Family Law when in the public registers of immovable wealth only one of the spouses is registered as the owner of joint wealth; in that case it is considered as the registration is made in the name of both spouses, if the registration was not carried out on a written contract signed by both spouses.

In case there is a disagreement as to what is the share of each spouse to the joint wealth, pursuant to the Article 310 paragraph 1 of the previous Law the shares are determined according to their contribution, taking into consideration all the applicable circumstances; not only the incomes of each spouse but also help given by one spouse to the other, caring for children, managing household obligations, care and protection of the wealth and all other forms of work and cooperation in administration, protection and accumulation of the joint wealth.

It has been determined in evidentiary procedure, and this fact is not disputable between the parties, that the marriage was concluded on 12 May 1972 and lasted until 14 August 1996. During the marriage four children were born; ML, FL, FL and BL.

After they had got married the claimant has moved to respondent's house where she lived together with his mother and four sisters.

The respondent has been working in Germany when they got married and he returned back on 27 December 1979.

So when the children were born; ML on 28 June 1974, FL on 15 January 1976, FL on 15 February 1978, and BL on 10 September 1979, the respondent was in Germany.

The claimant was alone with children, respondent's mother and sisters. She convincingly explained in her statement that she was looking after the daily household work, raising the children, helping the sisters in law and mother in law, doing all the duties she had. Together with mother in law, with the children and sometimes with hired people she worked in the garden and fields. She got the money for surviving the family from selling beans and other agricultural products; she weaved in the loom by her hands the carpets which she sold together with different handworks.

The claimant's statement is confirmed also by the respondent. When he was questioned, for what he spent the money he earned in Germany, he replied that it was spent on real estates, when he had the chance to buy some, he did so.

In his statement the respondent confirmed he gave money to everybody in the family who had need for that; including his mother and sisters. He also gave money to the claimant but not in the monthly basis because according to him she did not need it in that terms since the family had food and everything what needed.

Based on all these facts and circumstances the court determines that the contribution of both parties shall be considered as equal. The respondent had incomes which are equal to claimant's contribution while she was carrying for the children, respondent's mother and sisters, doing daily

household work. From selling the beans and other different agricultural products she had income which she had to spend for surviving the family. She made money for surviving the family also by selling the carpets; which she weaved in the loom by her hands; and different handworks.

A fact that must not be overlooked is also that the respondent was; while he was in Germany for 11 years; at home only about 60 times, this means he visited the family every 2 and a half month and each visit lasted only 3 or 4 days including also the travelling.

Based on these facts, caring the children, managing the house obligations, care and protection of the joint wealth, was claimant's task and burden.

Regarding the immovable property which is the subject matter of this dispute the court considers that the following ones were purchased during the marriage:

- parcels no. 01161 and 00295, possession list no. 00246 Cadastral Zone Deçan;
- parcels no. 00001 and 00002, possession list no. 00136 Cadastral Zone Prilep.

The property with parcel no. 00295, possession list no. 00246 Cadastral Zone Deçan the respondent bought from MK.

This fact was confirmed by respondent who stated that he bought the immovable property located near Monastery, with parcel number 295 from MK in 1982 and by the witness BMK who stated his father MK sold a property to respondent located below the Monastery in 1981.

The court considers the year 1982 as correct one since the respondent took an active part as a buyer.

The property with parcel no. 01161, possession list no. 00246 Cadastral Zone Deçan the respondent bought from ShM.

This fact was confirmed by respondent who stated that he bought the immovable property, where his house is, with parcel number 1161 from ShM in 1978 or 1979 and by the witness IShM who stated that his father ShM sold a parcel where the respondent's house is about 30 years ago.

The property with parcel no. 00001 and no. 00002, both registered in possession list no. 00136 Cadastral Zone Prilep, the respondent bought from SL.

This fact was confirmed by respondent who stated that he bought during the marriage also the parcels with no. 1 and 2 in Prilep from SL. As a witness gave evidence also SL who stated he sold to the respondent the parcels 1 and 2 possession list 136 Cadastral Zone Prilep, located at Gurina Gerdaja, in 1977.

All above-mentioned transactions were made before aerial recordings in 1983 and therefore were registered after 1983 in the name of respondent.

According to the Article 47 paragraph 1 of the Family Law the parcels no. 01161 and 00295, possession list no. 00246 Cadastral Zone Deçan and the parcels no. 00001 and 00002, possession list no. 00136 Cadastral Zone Prilep shall be considered as joint property of both parties since they were acquired through work of both parties during the course of the marriage. And according to paragraph 4 of the same article the parties are joint owners in equal shares of the joint property.

From all above determined factual situation and legal grounds the court decides granting the claim and confirming that the claimant is owner of the ideal part from  $\frac{1}{2}$  of an immovable property with parcels no. 01161 and 00295, possession list no. 00246 Cadastral Zone Deçan and parcels no. 00001 and 00002, possession list no. 00136 Cadastral Zone Prilep.

Regarding the immovable property with parcel numbers 1701, 1702 and 1703, possession list 00604 Cadastral Zone Deçan the court determines that the owner of this property was respondent's mother NL and not the respondent.

This fact was confirmed also in Historical Background (original: "Historiat") issued by Directorate for Geodesy and Cadaster Deçan Municipality on 3 April 2013.

The respondent convincingly stated that his mother bestowed the parcels to him in 2004 when he needed the money and she let him to sell the property on her behalf. The court had no doubts when he stated the money received from sale was meant as a gift to him.

Pursuant to the Article 46 paragraph 2 of the Family Law the property acquired during the marriage through inheritance, donation, or other forms of legal acquisition shall be considered as separate property.

Similar provision is also the Article 306 paragraph 2 of the previous Law which considered as distinguished wealth (separate property) the property gained during marriage by means of inheritance, bestowments or other duty free gains.

Based on above determined factual situation and legal grounds the court rejects the claimant's request to oblige the respondent paying to the claimant amount of 100.000 euros as material compensation for the property sold to co-owners R(A)J and S(A)J.

Actually this property was sold to MH but this fact was not crucial when considering which facts are substantial.

The crucial fact is that this property was never owned by respondent and that the money received from sale was bestowal from his mother and it shall be considered as separate property.

The court rejects also the claim in part where the claimant requested to oblige the respondent, through physical division, to handover ideal parts of parcels 01161 and 00295, possession list no. 00246 Cadastral Zone Dečan and the parcels no. 00001 and 00002, possession list no. 00136 Cadastral Zone Prilep into practical possession of the claimant.

Physical division (the partition) of the real estate in the joint ownership is regulated by Law no. 03/L-007 on Out Contentious Procedure.

Such a claim for physical division shall be filed according to the provisions of Article 197 of afore-mentioned law and cannot be subject matter of this contested procedure.

From all the above the court decides as in enacting clause of this judgment.

Pursuant to the Article 452 paragraph 3 of the LCP the court decides that the respondent shall reimburse the costs incurred to the claimant. The claimant lost a part of the claim but the court

irrespective of this finds that for this part no additional costs accrued. In case the claimant filed the claim only in part which was approved, the same amount of costs would be incurred.

On the main hearing held on 20 May 2013 the respondent through his lawyer requested reimbursement of his costs. Pursuant to the Article 463 paragraph 2 of the LCP the court instructed him to specify the costs within 3 days. Since the court did not receive the specification until now it shall be considered that the respondent did not request the reimbursement of costs.

When appraising the expenses pursuant to Article 453 paragraphs 1 and 2 of the LCP the court considered all circumstances and decided that the request filed by representative of claimant in amount of 970,32 EUR is founded.

This amount consists of 78 euro for drafting the claim, 486,72 euro for 4 hearing (121,68 euro per each) and 405,60 euros for 2 preliminary and 2 main hearings (101,40 euro per each).

**Legal remedy:**

The parties may file an appeal against this judgment in the Court of Appeals through the Basic Court of Pejë/Peć Branch Deçan/Dečani within fifteen (15) days of the day the copy of the judgment has been served to the parties.

**Basic Court of Pejë/Peć**

**Branch Deçan/Dečani**

**C. no. 250/11**

**20 May 2013**

Drafted in English,  
an authorized language

Presiding Judge  
Franciska Fiser

