

**BASIC COURT OF PEJË/PEĆ  
BRANCH ISTOG/ISTOK**

**C. nr. 321/09**

**THE BASIC COURT OF PEJË/PEĆ BRANCH ISTOG/ISTOK**, through EULEX Judge Franciska Fiser, acting upon decision of EULEX Judge delegated by the President of the Assembly of EULEX Judges, dated 14 July 2011, in the civil case of the claimant T.G. from Belgrade represented by lawyer Miro Delevic from Mitrovica against the respondent F.Z. from village Mojstir, Municipality of Istog/Istok, represented by lawyer Orhan Basha from Pejë/Peć, on annulment of contract, value of subject matter 62.000 euros, following main trial session held on 5 July 2013, renders the following

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

**I.**

It is **CONFIRMED** that the sales contract dated 29 June 1999 concluded between F.Z. as the buyer and Sh.Sh. as the seller for the real estate cadastral parcel no. 652/9, registered in the possession list no. 617 Cadastral Zone Istog/Istok of a total surface area from 10 are is **null and void**.

The Municipality of Istog/Istok, the Cadastre 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 previous state to the name of Sh.Sh..

## II.

The respondent is ordered to pay the claimant the amount of 1.274,40 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 Istog/Istok on 1 November 2006 against the respondent for the establishment of the nullity of the sales contract.

The claimant stated that she enters this civil case in the capacity of the legal inheritor of her father late Sh.Sh. from Istog, who died on 7 April 2001. Sh.Sh. was the owner of real estate – family habitable building constructed in the cadastral parcel no. 652/9, registered in possession list no. 617, Cadastral Zone of Istog. Regarding this real estate a judgment was issued in civil case C 82/03 (new number C 331/09) on 27 July 2004 on which the claimant learned on 25 September 2006. By this decision it was established that the respondent is the owner of aforementioned real estate bases on the alleged sale by Sh.Sh. and the respondent has executed the registration of the change in the Cadaster Office in Istog under his name.

By the inspection at the court the claimant has established that the respondent has drafted false sales contract, unverified at the court, signed by the lawyer Sh.M. with falsified Power of Attorney, without the date and court verification, allegedly signed by Sh.Sh..

The claimant stated that such contract was never concluded and signed by Sh.Sh. who had authorized B.D.Z. to use and take care of the described real estate, with whole furniture, and made a list of the items, on 1 July 1999. Until his death Sh.Sh. was convinced that everything was all right and that B.Z. was taking care of the entrusted property.

The claimant also filed a request with Housing and Property Directorate (hereinafter: HPD) and Housing and Property Claims Commission (hereinafter HPCC). Her claim was registered under case no. DS303317 and approved with decision dated 27 June 2003.

The respondent filed replies to the claim on 6 May 2009 and 10 October 2011. He stated he opposed to the claim since a legalized sale contract never existed. There is only a private contract which is not confirmed by the court.

With the ruling dated 14 July 2011, issued by the EULEX Judge Malcolm Simmons delegated by the President of the Assembly of EULEX Judges, the case has been taken over in EULEX Judges jurisdiction 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:

- Possession list no. 617 of the Municipality of Istog Cadastry and Geodesy Office on the name of F.Z.;
- Death certificate for Sh.Sh.dated 13 August 2001;
- Birth certificate for the claimant T.G. dated 12 July 2004;
- HPD decisions no DS3033107 dated 27 June 2003 and 15 July 2006;
- Statement dated 1 July 1999, compiled in Serbian and Albanian language and signed by B.Z.;
- Statement dated 1 July 1999, compiled in Albanian language and signed by Sh.Sh.;
- List of items compiled in Serbian language;
- Sales contract on the house and parcel dated 29 June 1999;
- Authorization – Power of Attorney compiled from the lawyer Sh.M. and signed by respondent, Sh.Sh. and witnesses A.B. and Sh.A.;
- Graphology Expertise Report of the signature on the contract and authorization dated 19 November 2012;
- Supplementation of graphology expertise report dated 18 March 2013;
- Document called KARTON of ID card;

- Statement written by B.D.Z.dated 6 October 2011;
- Hearing of the graphology expert Nadire Ibrahimi;
- Hearing of the witnesses A.B.and Sh.A.; and
- Hearing of the claimant and respondent.

On the main hearing held on 18 January 2013 the respondent through his lawyer proposed to hear S.M. and A.M. as witnesses. The court rejected his proposal as belated pursuant to the Article 428 paragraph 2 of the Law on Contested Procedure (hereinafter: LCP), since he did not give justifiable reason that he couldn't propose that evidence at the preliminary hearing.

On the same hearing the respondent through his lawyer also submitted an expertise report dated 14 January 2013 and proposed it as evidence. The report was produced by a graphology expert who was not engaged by the court pursuant to the Article 356 of the LCP and since the claimant did not agree with the proposed expertise report this evidence has not been administrated and taken into consideration.

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

Before establishing the factual situation and legal assessment of the dispute the following background has to be presented.

The following three civil cases have been taken over in EULEX Judges jurisdiction:

- C 321/09 of the claimant T.G. against the respondent F.Z.because of annulment of sales contract;
- C 331/09 of the claimant F.Z.against respondent Sh.Sh.because of confirmation of ownership; and
- C 107/07 of the claimant T.G. against the respondent F.Z.because of compensation of the damage.

Initially all three cases have been merged. On the hearing held on 4 September 2012 the claimant F.Z.withdrew the claim registered under C 331/09 and according to this the court issued a ruling on 10 January 2013.

The court continued with the proceeding in present case with case number C 321/09.

Based on the ruling dated 5 July 2013 the procedure in case with case number C 107/07 is suspended until the final decision issued in case C 321/09.

Since the respondent in his reply to the claim and also during the preceding disputed the claims of the claimant due to its vagueness and inconsistencies and alleged that several claims were filed which got different numbers by the court during certain phases of the procedure the court gives regarding this the following explanation.

With reference to the case C 331/09:

- The claim was filed by F.Z.against S.Sh.or with the court on 1 July 2003. The claim was registered under case number C 82/03. The claim was approved and the judgment became final on 11 November 2009;
- On 6 October 2006 T.G. as successor of respondent Sh.Sh.filed a request for renewing the procedure. The request was registered under case number C 280/06. The request was rejected. The District Court with its decision AC 226/07 annulled the decision and the case was returned for retrial;
- The case was registered with new case number C 6/09; the request was dismissed as belated. The District Court with its decision AC 302/09 annulled the decision again and the case was returned for retrial;
- The case was registered with the new case number C 331/09. The first instance court sent the request to District Court as competent to make a decision. The District Court with its decision AC 444/09 sent back the case file to first instance court. The first instance court initiated the proceeding for resolving the dispute over jurisdiction;
- The Supreme Court with its decision Cn 3/2010 determined the District Court as competent court to decide upon request for renewing the procedure C 82/03;

- The District Court with its decision AC 2280/10 decided that the repeating the procedure C 82/03 is permitted;
- The case was returned to the first instance and has kept the case number C 331/09.

Regarding the case C 321/09:

- The claim was filed by T.G. against F.Z.with the court on 1 November 2011. The claim was registered under case number C 278/06. The claim was rejected. The District Court with its decision AC 90/08 annulled the decision and the case was returned for retrial;
- The case was registered with new case number C 321/09.

During the evidentiary procedure the following factual situation was established.

The claimant's father Sh.Sh.was the owner of immovable property with cadastral parcel 652/9 registered in possession list 617 Cadastral Zone Istog/Istok. He lived here with his family; initially with wife and daughter; later only with wife; until 1999 when they left Kosovo. In 2001 Sh.Sh.died and in 2004 the claimant was declared to be his heir by decision issued in Municipal Court in Kraljevo, Serbia on 14 July 2004.

The respondent F.Z.has presented a sales contract dated 29 June 1999 according to which Sh.Sh.sold him afore-mentioned immovable property. As this contract was not verified in the court, the respondent filed a claim against Sh.Sh.for verification of ownership in 2003. The claim was registered under case number C 82/03. The claim was approved and the respondent was declared as the owner of the property. Based on this judgment the changes regarding the ownership were made in Cadaster Office.

In 2006 the claimant understood that her father's property was used by respondent F.Z.and registered under his name based on the judgment issued in the civil case C 82/03.

She filed a request with the court asking the court to renew the procedure C 82/03 and she also filed a claim against the respondent for annulment of the transaction contract dated 29 June 1999 alleging that the signature was falsified. The claim was registered under case number C 278/06; now C 321/09.

When the claimant gave her evidence she stated she was living in Istog until 12 or 13 June 1999, in the family house of her husband which was just a few houses further from her father's house. Her father lived with his wife, claimant's mother, no else lived in father's house. Her mother left the house one week after she did.

The claimant accommodated in a house in Kraljevo Serbia; with her family and husband's parents. One week later claimant's mother joined them and one month later also her father Sh.Sh.arrived. When Sh.Sh.left Kosovo he went to Kragujevac first since the family had relatives there and when he heard that the family was staying in Kraljevo he joined them.

The claimant stated that her father came only with two suitcases, the self-made backpack and had 100 to 150 DM.

He told to the claimant that he and several neighbors had stayed longer in Istog and during that time people were coming offering him money to sell the house. He did not want to sell the property because he thought they would return shortly, the same way as Albanians were returned after they were expelled from Kosovo. He told to the claimant that he left the house to B.D.Z.to guard it and he also made a list of items to guard. He and B.Z. made two lists, one in Albanian which was written by Sh.Sh., and one in Serbian, written by B.D.Z.

The claimant stated that his father gave her a list of items and he never mentioned any sales contracts or authorizations. He brought the possession list and all documents that belonged to the immovable property.

In Serbia Sh.Sh.and his wife, the claimant's mother, stayed with the relatives in Kragujevac and they did not pay any rent. Later, when they come to Bogutovacka Banja they rented a house but they did not pay rent too; they were doing some gardening and farming jobs for the owner. After Sh.Sh.died his wife lived for four or five years in a collective center accommodation in Gamzigranska Banja and she did not pay anything since it was for displaced persons. Sh.Sh.did not have any income, his wife had retirement money, and he did not buy any property in Serbia. The claimant's husband was employed and the family rented their own house and paid the rent with their own income.

Sh.Sh.died in 2001 and the claimant went with documentation relating to the property to the property agency that was opened by HPD with intention to register all property into her name. From 2002 until 2006 she was in touch with that office through its branches in Belgrade and Prishtina and with e-mail.

HPD issued a decision that the property belonged to the claimant. The respondent and his sister, who stayed in the house, were evicted twice. But when the respondent returned again in the house the agency was not competent anymore and the claimant did not have anyone to address to deal with the issue.

The claimant stated that some people returned to their houses and from them she heard their house was demolished by respondent. When she learned of the civil case C 82/03, the sales contract and authorization she filed a request for renewing the procedure in case C 82/03 and she also filed a claim for annulment the sales contract.

The respondent stated that when he moved to Istog in 1999 he was staying in the house of an ethnic Serb called Momo. The respondent explained that Sh.Sh.did not approach directly to him; he had approached two or three other ethnic Albanians who were their neighbors. They knew that the respondent was interested to buy property in Istog and those neighbors sent Sh.Sh.to him.

After they met and Sh.Sh.offered the respondent to buy the property, the respondent at Sh.Sh.'s request moved with his wife, children and sister to his house. Sh.Sh.lived in house together with his wife who stayed in house together with respondent only one night then she left and went to her relatives in Dragujevac.

The respondent stayed for four or five days together with Sh.Sh.and in meantime they agreed on price of 85.000 DM.

Sh.Sh. asked A.B.to be a witness and upon his request they went to lawyer Sh.M. office and explained the situation. Since the lawyer was in rush that day he fixed an appointment for next day at 10 o'clock together with witness A. B..

The next day they went to see the lawyer and he instructed the respondent to find the second witness. So the respondent went out of the office and he found Sh.A. and asked him to be a witness.

The lawyer drafted a contract and the authorization in front of them in three copies and since they were done with copy-paper, there must be six or seven copies in total. The respondent was given two copies and to Sh.Sh.also two or even more; remain stayed with the lawyer.

The authorization was drafted upon lawyer's advice since ethnic Albanians were not allowed to buy property from Serbs in the post war era.



The respondent stated that the purchase price had been paid one or two days prior the contract was signed.

Regarding the statement by which Sh.Sh.left the property to B.Z. to look after it the respondent explained that he invited B.Z. to come over when Sh.Sh. asked to leave the Kosovo. The statement in Serbian was written by Sh.Sh.himself and in Albanian by B.Z.. The respondent stated that the statement was written for the purpose of his safety because he did not dare to tell that he had purchased property from Serbs.

The respondent stated that Sh.Sh.'s wife was aware that there was a deal about to be broken. After year 2000 Sh.Sh. contacted him once and told him that he had reunited with his family and proposed to sell him also a property in Kragujevac which the respondent refused.

The respondent also stated that the house initially owned by Sh.Sh. was destroyed and that he later built a new one based on obtained planning permission.

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

The witness A.B. stated he knew Sh.Sh. that time very well. He did not know F.Z. but he saw him for the first time when he met Sh.Sh. one day on the street who offered him to buy his house and parcel. F.Z. heard this and he expressed his willingness to buy Sh.Sh.'s house. According to the witness's statement they all went to the lawyer Sh.M. They met him locking his office and he instructed him to come next day.

The witness stated he had gone home; he had not come to the lawyer's office the next day and that he had never signed any documents in lawyer's office.

When the sales contract and the authorization were handed to the witness he stated he had never seen them before but he confirmed that the signature on both documents belongs to him and that he had signed them at judge Ramadan Shatri's office when he was heard as a witness in case C 82/03, nowhere else.

The witness Sh.A. stated he did not know Sh.Sh. and F.Z. from before and that F.Z. stopped him when he was in Istog and asked him to go to the lawyer's office.

He stated that everything was prepared in lawyer's office; they were just asked to sign and they did so. He did not read the documents but he was aware it was a sales purchase contract for the

house and that were three or four copies. Before they signed the documents the lawyer briefly summarized them and told what they were about.

The witness stated he did not see the man, who bought the property, that he gave money to the seller; he did not see any money.

The graphology expert Nadire Ibrahimini prepared expertise report on 19 November 2012 and amendment of this expertise report on 18 March 2013.

She was also heard twice, on 25 February 2013 and 5 July 2013.

In her expertise report dated 19 November 2012 the expert gave the following results upon comparing the signatures of Sh.Sh.on the Sales contract dated 29 June 1999, Power of Attorney (no date) and List of items dated 1 July 1999 with his signature on 9 free samples:

- When the expert compared disputed written text placed in the part “Seller” of the Sales contract dated 29 June 1999 with signature from the free sample – evidence no. 4, KARTON for ID card, her result was that this signature is not sufficient for comparison; and that the other free samples are not appropriate for comparison since all free samples are written in small handwritings letter whilst the disputed written text is written in big capital printing letters. According to this the expert couldn't give final opinion;
- Also the comparison of written text placed in the Power of Attorney with signatures from the free samples shows that free samples are not appropriate for the comparison and according to this the expert couldn't give final opinion;
- Regarding the signature placed in the List of items dated 1 July 1999 and its comparison with free samples the experts finds that were not signed by the same person.

On the hearing held on 25 February 2013 the expert confirmed her findings in expertise report.

With the ruling dated 27 February 2013 she was instructed to complete her report and to compare the signatures and handwriting placed in Sales contract dated 29 June 1999 and Power of Attorney with signature and handwriting placed in two evidence marked as “D” and “H”. The evidence marked with “D” presents a document called KARTON for ID card and the evidence marked with “H” present free sample addressed as “DEKLARATE-IZJAVA”.

The expert submitted the expertise on 18 March 2013 with final conclusion that the signatures/handwriting on the Sales Contract and Power of Attorney may be written by the same person as the one with signatures/handwriting on the evidence marked with “D” and “H”.

On the hearing held on 5 July the expert was heard again and she stated that when comparing the sales contract and Power of Attorney with two samples marked with “D” and “H” the sales contract and Power of Attorney may have been written by the same person but she was not in the position to give her final opinion.

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

The possession list no. 617 of the Municipality of Istog Cadastry and Geodesy Office issued on 19 June 2006 confirms that the immovable property with cadastral parcel 652/9 is registered on the name of F.O Z. from Istog.

From the Death certificate dated 13 August 2001 it is evident that Sh.Sh.died on 7 April 2001. And by the Birth certificate dated 12 July 2004 it is confirmed that Sh.Sh.was claimant’s father.

As evidence also the Sales contract dated 29 June 1999 has been administrated. The contract was signed by Sh.Sh.as seller and F.Z.as buyer. A.B.and Sh.A. signed the contract as witnesses and also lawyer Sh.M. signed it. In the point 1. the seller stated he was selling his property – real estate to F.Z.for the price of 85.000 DM. In point 2. of the contract Sh.Sh.stated that had been compensated in full and that he would cover the translation costs.

The same persons signed also Power of Attorney with no date. With this document Sh.Sh.granted his power of attorney to F.O.Z. so he could freely dispose of his immovable property. In the point 1. Sh.Sh.authorized F.Z.that he could completely dispose of his house and the parcel, because he had purchased it from him in June 1999 and he had paid the whole amount in full although Sh.Sh.was still registered as the owner.

As evidence were administrated two statements both dated 1 July 1999 and list of items.

The first statement was compiled in Serbian and Albanian language and signed by B.Z.. B.Z. signed the statement that he had accepted to look after the complete property of Sh.Sh., which was written down on another sheet of paper as list of items, until he returns.

The other statement was written in Albanian language and signed by Sh.Sh.. With this statement Sh.Sh.left the house with a loft and with all moveable things to B.Z. to use them and to look after them. In the statement the following items were listed: 1 freezer, 2 refrigerators, a sleeping room, a complete guest room, 2 quite new sofas, a cupboard, a work desk, a table with 6 chairs, complete kitchen with some small things, 2 guest tables, 5 benches, a bathroom, a washing machine, house yard and garden of 10 are.

Regarding the immovable property which is subject matter of this dispute the claimant also filed a claim with Housing and Property Claims Commission (hereinafter: HPCC) and on her proposal two decisions issued by HPCC were administrated as evidence.

With decision dated 27 June 2003 regarding the claim no. DS303317 the HPCC approved the claimant's claim and the claimant has been given possession of the claimed property. The respondent F.Z.and any other person occupying the property were ordered to vacate the property. Against such decision the respondent filed a request for reconsideration. His reconsideration request has been rejected upon decision issued by HPCC on 1 September 2006.

When the court requested a copy of HPD and HPCC file for the claim S303317 it has been found out that the respondent based his reconsideration request on fact he was the owner of claimed property and he attached as evidence sales contract dated 29 June 1999 and power of attorney. HPCC, when rejected the reconsideration request, took into consideration these new evidence and concluded that the new evidence did not change the outcome of Commission's decision, nor its reasoning, nor been there any material error in the application of UNMIK Regulation 2000/60.

And finally, as material evidence a statement written by B.D.Z.dated 6 October 2011 has been administrated.

Initially B.D.Z.was proposed to be heard as a witness. Since he lives in Germany and was summoned many times as a witness to the hearings but he did not appear the claimant withdrew

the proposal to hear him and agreed with the respondent's proposal to read his statement dated 6 October 2011.

By this Statement B.D.Z. declared that he had compiled a letter for protecting the property of Sh.Sh. on 1 July 1999. He also stated that he had taken the said property to protect it through the consent of the owner Sh.Sh. and the purchaser F.Z.. F.Z. was residing in Switzerland and he had to go back to his family so F.Z.'s sister with the children had been settled in the said property.

First of all the court has to deal with a question does the claimant have a legitimacy of a party in this civil proceeding.

Pursuant to the Article 109 of the Law on Contracts and Torts (hereinafter: LCT) the annulment of the contract may be claimed by every person interested.

The court finds the claimant as "interested person" pursuant to afore-mentioned provision since she proved that; in case of her success for a declaration of invalidity of the sales contract; she can assert a right or benefit as provides by law.

The sales contract dated 29 June 1999 was allegedly concluded by claimant's father Sh.Sh. as the owner of immovable property registered in possession list no. 617 Cadastral Zone Istog. The death certificate for Sh.Sh. dated 13 August 2001 attests that Sh.Sh. died on 7 April 2001. The birth certificate for the claimant T.G. dated 12 July 2004 attests that T.G. was his daughter.

Upon these facts the claimant asserted a right to inherit the immovable property owned by Sh.Sh.; alone or with other legal heirs and according to this the court considers the claimant may be a party in this civil proceeding pursuant to the Article 76 of the LCP.

Regarding the objection raised by respondent that the claim is belated the court finds that pursuant to the Article 110 of the LCT the right to claim nullity shall not expire.

As the following issue is objection raised by respondent that the sales contract dated 29 June 1999 presents only a private contract which is not confirmed by the court and based on this the claimant cannot request its nullity.

The court consents that the sales contract dated 29 June 1999 presents private contract. The consequence of that such private contract is not confirmed by the court, could be that the contract is not proper for registration in the registry for immovable property. But the contract still has all

elements pursuant to the Article 454 of the LCT and according to this it may be claimed its annulment. Nevertheless, also the respondent deems the contract as valid otherwise he would not claim the verification of ownership obtained on the same contract in new civil proceeding C 66/13.

The court determines that the LCT and UNMIK Regulation No. 1999/23 (hereinafter: UNMIK/REG/1999/23) and UNMIK Regulation No. 2000/60 (hereinafter: UNMIK/REG/2000/60) shall be applied in the present civil dispute.

At first the court emphasizes that according to the UNMIK/REG/1999/23 and UNMIK/REG/2000/60 the HPD and HPCC were mandated to process and adjudicate all housing and property claims related to property rights.

Pursuant to Section 2.1 of UNMIK/REG/1999/23 the HPCC (the “Commission”) is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.

Furthermore pursuant to Section 2.7 of the UNMIK/REG/1999/23 final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

As the court has already ascertained the claimant filed a claim with HPCC as a member of family household of Sh.Sh.pursuant to the Section 7.2 of the UNMIK/REG/2000/60. Her claim has been registered under no. DS303317.

With decision dated 27 June 2003 the HPCC approved the claimant’s claim and the claimant has been given possession of the claimed property. The respondent F.Z.and any other person occupying the property were ordered to vacate the property.

Against said decision the respondent filed a request for reconsideration alleging he was the owner of claimed property based on sales contract dated 29 June 1999 and power of attorney.

His reconsideration request has been rejected upon decision issued by HPCC on 1 September 2006. However the court has to emphasize again that these new evidence, sales contract dated 29 June 1999 and Power of Attorney have already been assessed by HPCC. They were presented as new evidence in the proceeding at HPCC, the HPCC took them into consideration but they were not accepted and the Commission rejected the reconsideration request. This entailed that HPCC approved claimant's claim and the claimant has been given possession of the claimed property.

And as it has been emphasized before the decisions made by the HPCC are binding and cannot be reviewed by court.

The last issue that court has to deal with is the question if the claimant has a legal interest in the court deciding on annulment of sales contract dated 29 June 1999.

The court finds that the claimant has a legal interest since in the proceeding with the HPCC it has been given to her possession of the claimed property.

Furthermore, there was a civil proceeding C 331/09 in which the respondent claimed, based on the sales contract dated 29 June 1999, verification of ownership. Since the claimant withdrew the claim the proceeding has been terminated. But the respondent filed a new claim with the same claim request on verification of the ownership based on said contract which is registered under case no. C 66/13.

And finally, the respondent is still registered in the Cadaster Office as the owner.

Based on these reasons the court decided to administrate the evidence for considering if the conditions to declare the annulment of sales contract dated 29 June 1999 are met.

Pursuant to the Article 103 paragraph 1 of the LCP a contract contrary to the compulsory regulations, public policy or fair usage shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides of something else in the specific case.

Based on the following evidence administrated in evidentiary proceeding the court finds that the signatures on the sales contract dated 29 June 1999 and the Power of Attorney were not written by Sh.Sh..

The graphology expert appointed by the court in her expertise report dated 19 November 2012; amended on 18 March 2013 and with her statements given on the hearings held on 25 February 2013 and 5 July 2013 could not confirm that both documents were signed by Sh.Sh..

The witness A.B. even 14 years after the event gave very convincing and detailed statement on which the court did not have any doubts. His evidence was that he had never signed any documents in lawyer Sh.M. office. When the sales contract and the authorization were handed to the witness he stated he had never seen them before but he confirmed that the signature on both documents belongs to him and that he had signed them at judge Ramadan Shatri's office when he was heard as a witness in case C 82/03 (new case number C 331/09), nowhere else.

As crucial fact the court considers the fact that he knew Sh.Sh. very well and that on day when he met Sh.Sh. who offered him to buy his house and parcel, F.Z. heard this and he expressed his willingness to buy Sh.Sh.'s house. According to the witness statement they all went to the lawyer Sh.M. but he did not sign any document in lawyer's office.

In this part the witness's statement does not confirm the evidence given by respondent when the respondent explained that Sh.Sh. approached him offering to buy his house.

The court finds that the witness's statement given on the hearing held on 18 January 2013 is in contradiction with the statement that the witness gave on the hearing held on 27 July 2004 in the case C 331/09 (C 82/03). But when reading the minutes of the hearing held on 27 July 2004 and comparing with the statement which was given in front of the court on 18 January 2013 the court has reasonable doubt that the first statement was properly and entirely written down in the minutes.

According to the witness Sh.A. everything was prepared in lawyer's office; they were just asked to sign and they did so. The witness stated he did not read the documents but he was aware it was a sales purchase contract for the house and that were three or four copies.



The court has doubts about the witness's statement since the witness that time did not know any of present people, including Sh.Sh., the respondent and the other witness A.B. and since his statement was not consistent when comparing with the statement given on 27 July 2004.

When heard as a witness he stated he did not see the man who bought the property that he gave money to the seller; he did not see any money. But in the minutes dated 27 July 2004 it is written he was present when F.Z. has counted the money to Sh.Sh..

The claimant convincingly stated how his father Sh.Sh. joined the family in Kraljevo, how he looked like and what he told about the property in Istog. He brought the possession list and all documents that belonged to the immovable property. He also brought two statements and lists of items, one in Albanian which was written by him, and the other in Serbian, written by Bujar Demë Zekaj. He explained to the family he had left the house to B.D.Z. to guard it until they would return to Kosovo. He did not bring any contract or authorization and as the claimant stated that there were no secrets in their family and for that reason if her father had ever sold the house he would have told the family, even if lost the money in that transaction.

On the other hand the respondent's statement was not consistent with statements given by witnesses and other material evidence. Witness A.B. stated he was only once in the lawyer's office; according to respondent they were twice. Witness Sh.A. stated he did not see any money but on the hearing on 27 July 2004 he stated he was present when F.Z. has counted the money to Sh.Sh..

When comparing the contents of the sales contract, power of attorney and statement signed by Sh.Sh. and B.D.Z. the court finds there is no reasonable explanation why Sh.Sh. would sell the property to the respondent and three days later asked another person to look after it and even made a list of all items in the house.

The respondent gave the explanation that this was done because the ethnic Albanian were not allowed to buy property from Serbs but still would be more reasonable if Sh.Sh. asked him to guard the property, however he bought the property and B.D.Z. was also Albanian ethnicity.

A fact that must not be overlooked is also that HPCC had checked the validity of the sales contract and Power of Attorney when the respondent filed reconsideration request. If HPCC

deemed the contract and Power of Attorney to be valid the respondent's request would be approved.

According to the Article 26 of the LCT a contract shall be concluded after the contracting parties have come to an agreement as to the essential constitutive terms of the contract and according to the Article 28 paragraph 2 of the same law the expression of will to enter into the contract shall be made freely and seriously.

Based on evidence administrated in the evidentiary proceeding and based on final decision issued by HPCC the court finds the sales contract was not signed by Sh.Sh.and in fact no agreement exists between him and the respondent according to Articles 26 and 28 paragraphs 1 and 2 of the LCT.

Therefore the sales contract dated 29 June 1999 is contrary to compulsory regulations and has to be declared void according to the Article 103 of the same law.

From all above determined factual situation and legal grounds the court decides granting the claim and confirming that that the sales contract dated 29 June 1999 concluded between F.Z.as the buyer and Sh.Sh.as the seller for the real estate cadastral parcel no. 652/9, registered in the possession list no. 617 Cadastral Zone Istog/Istok of a total surface area from 10 are is null and void.

The court also ordered the Municipality of Istog/Istok, the Cadastry and Geodesy Office to alter its cadastral books in accordance with this judgment and to reverse the changes made in the cadastral books to the previous state to the name of Sh.Sh..

In this part the different claim request; to order the registration of ownership in the name of the claimant; was rejected. Pursuant to the Article 104 paragraph 1 of the LCT in case of nullity of the contract each contracting party shall restitute to the other that what is received on the ground of such a contract. Since the contracting party was allegedly Sh.Sh.and he had been registered as the owner of property the Geodesy office has to reverse the changes to the previous state, which means to register Sh.Sh.as the owner. After this registration the heirs will have a chance to register the ownership.

Based on determined factual situation and legal grounds the court rejects the claimant's request to obliged the respondent to free the family inhabitable building constructed on the cadaster parcel 652/9 described in possession list 617 Cadastre Municipality of Istog of all persons and items in his possession and to hand over to the ownership and free use to the claimant within 15 days from the receipt of this decision.

The house owned by Sh.Sh.does not exist anymore; it was destroyed and the respondent built a new one. In this case it is not important who destroyed the house; the fact that the previous house does not exist is not disputable between the parties. Also the claimant stated in her claim which is registered under C 107/07 that Sh.Sh.'s house was destroyed down and that the respondent constructed a new one.

Additionally it has to be emphasized that upon the decision issued by HPCC the claimant has been given the possession of the claimed property; the respondent F.Z.and any other person occupying the property were ordered to vacate the property.

According to this the claimant already has a final decision which represents executive title.

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.

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 1.274,40 EUR is founded.

Pursuant to the Tariff of Advocates Chamber of Kosovo this amount consists of 93,60 EUR per each of 4 hearings before 1 January 2013 and of 120,00 EUR per each of 5 hearings after 1 January 2013.

**Legal remedy:**

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

**Basic Court of Pejë/Peć**

**Branch Istog/Istok**

**C. no. 321/09**

**5 July 2013**

Drafted in English,  
an authorized language

Presiding Judge  
Franciska Fiser