

DHOMA E POSAÇME E GJYKATËS SUPREME TË KOSOVËS PËR ÇËSHTJE QË LIDHEN ME AGJENSINË KOSOVARE TË PRIVATIZIMIT	SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS	POSEBNA KOMORA VRHOVNOG SUDA KOSOVA ZA PITANJA KOJA SE ODNOSE NA KOSOVSKU AGENCIJU ZA PRIVATIZACIJU
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Decision of 27 February 2014 – AC-II.-12-0169

Factual and Procedural Background: [1] On 19 July 2006, the Claimant filed a claim with the SCSC seeking ownership rights over cadastral parcel, number ... in surface of ... ha “A. e B.”, cadastral parcel number ...at “F.” with a surface area of ... ha, cadastral parcel number ...at “S.” with a surface of ...ha, cadastral parcel number ... at “S.” with a surface of ... ha and cadastral parcel number ...at “S.” with a surface of ... ha, each of the said cadastral parcels registered according to possession list number

[2] The SCSC, by the Decision, SCC-06-0334 dated 10 October 2006, referred the claim to the Municipal Court of M./ M. with right to appeal to the SCSC.

[3] On 29 March 2007, before the Municipal Court, the first group of *Intervenors, J M, H M, N M, Z M* and *S M*, each represented by attorney *A M* applied to join the case as they had a [commonly shared] property and legal interest over the subject claim of the claimant.

[4] On 7 November 2009, the Claimant submitted an addition to the claim and sought to add as Respondents to the claim *M R M, Z O M, V M, Sa M, H M* and *N M*.

[5] On 21 May 2012, the Municipal Court of M./M. in Judgment C. nr. ..., recognized the Claimant’s ownership right over the cadastral parcels no. ...in total surface of ... ha and cadastral parcel no. ...in total surface of ..., according to possession list number ..., cadastral zone M./M.

[6] Appeals were submitted by PAK on 11 July 2012 supplemented on 31 December 2013, by Intervenors *J M, H M, N M, Z M* and *Sh M* on 19 July 2012 and finally by the Intervenors *Z M* and *M M* on 20 July 2012.

[7] The appellants by their appeals, contested the jurisdiction of the Municipal Court, over the dispute claimant challenged the factual background based on which the challenged Judgment was based. The appellants sought the quashing of the judgment of Municipal Court and a retrial before the SCSC.

[8] The appeal of the first appellant before the SCSC was registered, with number AC-II.-12-0184. By Decision of the Appellate Panel, dated 23 November 2012, the Appeal case is re-joined with subject appeal case – AC-II.-12-0169.

[9] By the Orders of the appellate panel, dated 13 September 2012, all appellants were requested to comply with the usual appeal procedures and each appellant duly complied with the formalities.

Legal Reasoning: [10] The Appeals are admissible, and grounded.

[11] Based on Art 64.1 of the Annex, the Appellate Panel decided to dispense with the oral part of the proceedings and omit service of the appeal on the Respondent under Art 10.9 of the LSC and Art 60.2 of the Annex.

[12] The judgment of the Municipal Court of M./M., has to be quashed.

The merits of the appeal and assessment of the Appellate Panel

[13] The appealed judgment cannot stand, because it appears from the case files that the Municipal Court did not have jurisdiction over the claim at the time it purported to determine the claim. Those proceedings are a nullity.

[14] By the decision of the SCSC 10 October 2006 the claim was referred to the Municipal Court of M./ M. with a right to appeal before the SCSC. The Municipal Court failed to try the cases until May 2012, five months after the LSCentered-into-force on 1 January 2012.

[15] Article 4.4(i) of the LSCmakes it clear that in relation to any claim, matter, case or proceeding ...

referred prior to the effective date of the present law: (i) if the court to which the matter has been referred has, as of the effective date of this law, not taken any substantive Decision with respect to the matter, such court shall no longer have any jurisdiction over the matter and shall return all concerned documents and case files to the Special Chamber.

[16] The Municipal Court of M./M. substantially decided by Judgment on 25 May 2012, more than 5 (five) months after the LSC entered in the force. The Municipal court should not have adjudicated the claim and should have returned the case to the SCSC for adjudication.

[17] For these reasons and pursuant to Art 4 of the LSC and Art 5 of the LSC, the SCSC in May 2012 and thereafter has exclusive jurisdiction over the claim. The Municipal Court proceedings are a nullity and are quashed [correct: Judgment is quashed].

[18] On that finding and pursuant to Art 10.10 of the LSC it is decided as in the enacting clause of this Decision.