

[Supreme Court - Ruling on Commercial Disputes - decision reaffirmed appeal dismissed - Article 365 LCP - Article 14 LEP]

The debtor NPPT "Ardita" in Gjakova appealed the decision of the District Commercial Court of Prishtina, arguing that the court had violated the provisions of the execution procedure and had erroneously and incompletely determined the factual situation.

The creditor with the motion for execution of decision requires from the debtor to pay the debt. The District Commercial Court in Prishtina, has allowed the execution decision towards the debtor for the mandatory payment of debt.

The Supreme Court of Kosovo ruled that the first instance court had correctly applied the provisions of the execution procedure, when it denied the appeal of the debtor and therefore permitted the decision on allowing the execution. The court has decided according to the debtors'- respondents revision, which has been deemed unfound, since the conditions foreseen in article 50 for the annulment of the ruling on the execution decision, where not fulfilled. Accordingly, the Supreme Court ruled that the debtor appeal was unfounded.

En.No.6/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Meleqe Bexheti, presiding judge, Shahdane Agani and Osman Tmava, members, in the execution procedure of the Creditor DOO "Goriziana" from Cazini, represented by P.P. from Gjakova, against debtor NPPT "Ardita" in Gjakova, due to the debt, in the amount of 90.948,66 €, following the appeal of the debtor against the ruling of the District Commercial Court of Prishtina, E.No.57/2005 dated 18.05.2005, in the session held on 29.7.2005, rendered the following:

RULING

The debtor's appeal is deemed unfounded therefore it is dismissed; while the decision of the District Commercial Court in Prishtina, E.No.57/2005 dated 18.05.2005 is reaffirmed.

Reasoning

With the ruling of the District Commercial Court of Prishtina, E.No.57/2005 dated 18.05.2005, the appeal of the debtor against the execution decision E.No.57/2005 dated 27.04.2005 has been deemed unfounded.

The debtor filed an appeal against this ruling within the period allowed for filing the appeal, claiming violation of the essential provision of the execution procedure, erroneous and incomplete determination of factual situation, and wrongful application of substantive law, proposing the annulment of the appealed ruling and seizure of procedural action undertaken.

The Supreme Court of Kosovo, upon review of the appealed decision, pursuant to article 365 of the LCP, and article 14 of the Law on Execution Procedure (LEP), held that the appeal is unfounded.

The case files show that, based on the proposal of the creditor, the first instance authority basing its decision on the final ruling of the District Commercial Court in Prishtina C.No.238/2002 dated 09.04.2003, has allowed the execution decision towards the debtor for the mandatory payment of debt, on behalf of the main debt, in the amount of 90.498,66 €, with interest rate of 3% per annum, starting from 04.12.2002 until final payment, and also ordered the payment of the court procedure fees in the amount of 1040 €, in that way that the debtor transfers the funds from his account in BPK Gjakova in the account of the creditor in BpB-Prishtina. Failing to do so, the payment shall be executed through the seizure of the assets of the debtor. In the contested procedure, the Supreme Court of Kosovo, deciding according to the conducted revision of the respondent against the plaintiff, filed against the judgment of the Supreme Court of Kosovo Ae.No.44/2003 dated 10.07.2003, with the judgment Rev.E.No.3/2004 dated 16.11.2004 has dismissed the revision of the respondent against the plaintiff.

The Supreme Court of Kosovo found that the first instance court had correctly applied the provisions of the execution procedure, when it denied the appeal of the debtor and therefore permitted the decision on allowing the execution.

The Supreme Court of Kosovo has found that the statements contained in the appeal, such as, that the creditor represents a foreign legal entity over which the court has no competence are unfounded because the execution decision has been already granted by the final decision of the District Commercial Court of Prishtina, on 09.04.2003. Besides this, in this disputed issue, the court has decided according to the debtors'- respondents revision, which has been deemed unfound, since the conditions foreseen in article 50 for annulment of the ruling on the execution decision, where not fulfilled.

The debtor has presented no evidence which disputes the legality of the decision.

As stated above, pursuant to Article 380 paragraph 2, and article 381 of the LCP, in the meaning of article 14 of the LEP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTNA
En.No.6/2005, on 29.07.2005

Presiding Judge
Meleqe Behxheti

[Supreme Court - Ruling on Commercial Disputes - petition dismissed unjust enrichment- conflict of competencies - absolute jurisdiction of court - Article 26 LRC - article 55 - Law on Conflict of Law- article 16 (2) LCP]

The plaintiff filed a petition against the Municipal Court of Klina and claims on the bases of unjust enrichment of the respondent, an amount of 110.000 DM. The Municipal Court in Klina announced that it does not have subject jurisdiction over the matter, finding that the competent court for deciding upon the dispute was the District Commercial Court in Prishtina which also denied the subject matter jurisdiction over the case, with the justification that, as required by article 26 of the Law on Regular Court, the competent authority to decide is the Municipal Court of Klina, referring the case to the Supreme Court of Kosovo.

The Supreme Court of Kosovo ruled that the first instance court was obligated ex officio, to verify its jurisdiction, as required by article 16 paragraph 2 of LCP and announce itself as having no jurisdiction over the subject matter and dismiss the petition. The Supreme Court ruled that the first instance court did not act in accordance to the above mentioned legal provision. Accordingly, the Supreme Court dismissed the petition of the plaintiff.

En.No.8/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani presiding judge, Meleqe Bexheti, and Vjosa Nimani-Zylfiu, members, in the legal procedure of the plaintiff B.E., from Gjurgjeviku i Vogel, Municipality of Klina, represented by Xhafer Maloku, attorney at law from Klina, against the respondent H.Burgstaller GMBH A-4680 Haag Am Hausruck Bahnhofstrasse 26, Republic of Austria, for unjust enrichment, in the case of conflict of competencies between the Municipal Court of Klina and the District Commercial Court in Prishtina, in the session held on 19.08.2005, rendered the following:

RULING

To dismiss the petition of the plaintiff.

Reasoning

With the petition filed against the Municipal Court of Klina, the plaintiff claims on the bases of unjust enrichment of the respondent, an amount of 110.000 DM.

The Municipal Court of Klina with its decision C.No.132/2002 dated 23.02.2005, announced that it does not have subject jurisdiction over the matter, finding that the competent court for deciding upon the dispute is the District Commercial Court in Prishtina.

The District Commercial Court in Prishtina, did not accept subject matter jurisdiction regarding the dispute with the justification that, pursuant to article 26 of the Law on Regular Courts, the competent authority to decide is the Municipal Court of Klina, due to which reasons the case was referred to the Supreme Court of Kosovo, that in accordance with article 22 paragraph 1 of the Law on Contested Procedure (LCP), is competent to solve the conflict of competencies between the courts.

The Supreme Court of Kosovo, after the review of the case files, found that the resolution of this dispute is not within the jurisdiction of any of the above courts.

The case files show that, the plaintiff filed a petition, claiming 110.000 DM on the basis of bases of unjust enrichment of the respondent. The Municipal Court of Klina announced that it does not have subject jurisdiction over the matter, finding that the competent court for deciding upon the dispute is the District Commercial Court in Prishtina, which also denied subject matter jurisdiction over the case, with the justification that, pursuant to article 26 of the Law on Regular Court, the competent authority to decide is the Municipal Court of Klina, referring the case to the Supreme Court of Kosovo.

Pursuant to article 55 of the Law on Conflict of Laws with Other Countries in Certain Relations (Official Gazette of SFRY No. 43/1982) it is foreseen that in the disputes against individuals and legal entities, with their headquarters being abroad, regarding to their obligations born in SFRJ, or in regards to the obligations that have to be fulfilled in the territory of SFRJ, a claim can be submitted before the

court in this territory, if this individual or legal entity has its business within the territory of RSFJ or if within the territory SFRJ is the headquarters of the Joint Labour Organization, which has been entrusted with completion of their work. In this concrete case, the plaintiff did not prove the fact that the respondent has its headquarters within the territory of Kosovo or that within Kosovo is the headquarters of the Joint Labour Organization which has been entrusted with completion of their work.

The first instance Court is obligated *ex officio*, to verify its jurisdiction in accordance to article 16 paragraph 2 of the LCP and announce itself as having no jurisdiction over the subject matter and dismiss the petition.

Because the first instance Court did not act in accordance to the above mentioned legal provision, the Supreme Court, pursuant to article 16 paragraph 2, dismisses the petition of the plaintiff.

SUPREME COURT OF KOSOVO, PRISHTINA
En.No. 8/2005, on 19.09.2005

Pesiding Judge,
Shahdane Agani

[Supreme Court - Ruling on Commercial Disputes - execution procedure appeal accepted - Article 365 LCP - article 381 LCP - Article 20 LEP]

The debtor KBI “Kosova-Export” BPPP in Fushe Kosova appealed the decision of the District Commercial Court of Prishtina, arguing that the court had erroneously and incompletely determined the factual situation.

The Commercial Court denied the request of the debtor against the decision on execution.

The Supreme Court ruled that the Writ of Execution is suitable for execution if it contains details of the Creditor and the Debtor, as well as the subject of the matter, the capacity and the time frame of fulfillment of obligation, as required by article 20 of the LEP. The Supreme Court ruled that allowing the execution toward another individual or legal entity and not toward the debtor which is mentioned in the execution title as a debtor, can only be issued if in the public documents or with the publicly verified document provide evidence that the respective liability has been transferred to another individual or legal entity. Accordingly, the Supreme Court ruled that the debtor appeal was founded.

Ae.No.60/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani presiding judge, Meleqe Bexheti, and Vjosa Nimani-Zylfiu, members, in the execution procedure of the Creditor SOE “Animal Food Factory” in Fushe Kosova, against the debtor “ferma e derrave” in Miradi te Eperme, with the joint labour and tools of BPPP of KBI “Kosova-Export” in Fushe Kosova, based on the appeal of the debtor, against the ruling of the District Commercial Court of Prishtina, E.No.192/2003 dated 26.05.2005, in the session held on 10.08.2005, rendered the following:

RULING

To accept the appeal of the debtor SOE KBI “Kosova-Export” in Fushe Kosove and annul the ruling of the District Commercial Court of Prishtina, No.192/2003 dated 26.05.2005, and remand the case for retrial.

Reasoning

With the decision of the District Commercial Court of Prishtina .No.192/2003 dated 26.05.2005, the request of the debtor “ferma e derrave” in Miradi te Eperme within BPPP of KBI “Kosova-Export” in Fushe Kosova, against the decision for execution, E.No.192/2003 dated 18.12.2003, is denied.

Against the decision in appeal, the debtor KBI “Kosova-Export” BPPP in Fushe Kosova, filed an appeal against this ruling, within the period allowed for filing the appeal, stating that even though pursuant to the normative act agreement on joint labor, 6 socially owned enterprises have agreed and signed upon their consolidation within the compound of Agro-Kombinati “Kosova-Export” in Fushe Kosova, among which is the SOE “ferma e derrave” in Miradi te Eperme and SOE “FUB” in Fushe Kosova, however this entities are independent legal entities, registered as such, and have their own separate accounts, due to which the debtor can not accept the debt in dispute.

Upon review of the appealed decision, pursuant to article 365 in the meaning of article 381 of the Law on Contested Procedure (LCP), the Supreme Court determined that the appeal is founded.

The case files show that the Creditor, based on the final ruling of the District Commercial Court of Prishtina, C.No.83/2001 dated 15.10.2001, has submitted the proposal for the decision on execution. The first instance authority, with its decision E.No.192/2003 dated 18.12.2003, granted the execution against the debtor “ferma e derrave” in Miradi te Eperme KBI “Kosova-Export” in Fushe Kosova. Against the above mentioned decision, the debtor KBI “Kosova-Export” BPPP in Fushe Kosove, has filled a petition with the justification that SOE “ferma e derrave” in Miradi te Eperme is an independent legal entity with full responsibility, therefore SOE KBI “Kosova-Export” in Fushe Kosove as a socially owned enterprise, within which is also integrated the creditor SOE “Animal Food Factory”, including the debtor SOE “ferma e derrave” in Miradi te Eperme, and due to the above stated reasons does not bear the responsibilities and the liabilities of neither party in the dispute.

Article 20 on the Law on Execution foresees that the Writ of

Execution is suitable for execution if it contains details of the Creditor and the Debtor, as well as the subject of the matter, the capacity and the time frame of fulfillment of obligation.

Based on the ruling of the District Commercial Court of Prishtina, C.No.83/2001 dated 15.10.2001, it can be seen that the respondent, now NP “ferma e derrave” in Miradi te Eperme, Municipality of Fushe Kosova, is obligated towards the plaintiff now NP Animal Food Factory, KBI “Kosova-Export” in Fushe Kosove, on behalf of the debt, in the amount of 49.830,50 DM, with legal interest starting from 20.09.1999 until final payment and also ordered the payment of the court procedure fees in the amount of 278 DM. The Creditor in the execution proposal has included SOE “ferma e derrave” in Miradi te Eperme, as a debtor, and with the consolidation of the labour and tools with BPPP KBI “Kosova-Export” in Fushe Kosova, and with the final execution decision of that court E.No.192/2003 dated 18.12.2003, the execution was affirmed, while obligating the debtor SOE “ferma e derrave” in Miradi te Eperme, KBI “Kosova-Export” in Fushe Kosove to repay the debt. With the ruling of the District Commercial Court of Prishtina E.No.192/2003 dated 25.05.2005, Banka e Re e Kosoves in Prishtina is ordered, that in behalf of the determined debt, in the decision affirming the execution E.No.192/2003 dated 18.12.2003, from the account of debtor “ferma e derrave” in Miradi te Eperme, within BPPP KBI “Kosova-Export” in Fushe Kosova, to transfer the sum of 25.477,93 € to the Creditor as payment towards the main debt, with a legal interest rate from 20.09.1999 and the amount of 189 € towards procedural expenses. The first instance Court, with its decision E.No.192/2003 dated 26.05.2005, has denied the appeal of the debtor as unfounded, with the justification that: “With the decision No.21/2, dated 21.02.2000, on the agreement of integration with SOE KBI “Kosova-Export” from Fushe Kosova” and SOE “ferma e derrave” in Miradi te Eperme is under direct management and control of the Directorate of SOE KBI “Kosova-Export” in that way presuming all the liabilities of the SOE “ferma e derrave” in Miradi te Eperme in this concrete case, the liabilities of the debtor.

However, allowing the execution toward another individual or legal entity and not toward the debtor which is mentioned in the execution title as a debtor, can only be issued if in the public documents or with the publicly verified document provide evidence that the

respective liability has been transferred to another individual or legal entity.

Unless it is expressly permitted vis a vis a person, execution against his personal assets can not be carried out, even if in a public document, or publicly verified document it is proved that assets which were the subject of executive title, have been transferred to this other person.

In the retrial, the first instance Court is obligated to redress the errors referred to, to determine whether SOE “ferma e derrave” in Miradi te Eperme, is registered as a legal entity, whether it has its own account, and through administering the evidence, prove its decision based on facts, which are important for a just decision of this legal matter, taking into consideration the claims in the appeal, and only after just evaluation of the administered evidence, render a decision upon the matter.

In accordance to the above said, pursuant to article 380 paragraph 3 of the LCP, the Court decided as in the enacting clause of this judgment

SUPREME COURT OF KOSOVO, PRISHTINA
Ae.No.60/2005, on 10.08.2005

Presiding Judge
Shahdane Agani