

FINA BANK v. MUTEMBO

[Rwanda SUPREME COURT – RCOMA 0147/11/CS (Kayitesi, P.J., Mukandamage and Rugabirwa, J.) January 24, 2014]

Property law – The transfer of immovable property – Damages resulting from delay in delivering the title deed of a sold house. – The fact of not delivering the land title after the purchase constitutes itself the ground for damages against someone who caused its delay even though he/she might have given the property to the purchaser – Law of 30/07/1888 relating to contracts or obligations, article 258.

Contracts or obligations law – Interests resulting from not fully enjoying the purchased thing – The house purchaser against whom the land title issuance was denied cannot be granted interests computed basing on the value of the house under the pretext that the land title was not issued while he/she was in its possession.

Facts: On 27th September 2007, FINA BANK sold to Mutembo, at a public auction, a house located on plot n^o 91, Musanze District in the Northern Province. In delivering him the documents of the house, Mutembo was given the land title of the house which is in the plot n^o 25. Mutembo knew that he was given the document of the house he has not purchased in public auction when he was requesting the transfer for the new land title to be registered in his name. Mutembo notified FINA BANK which accepted the fault and assured him that it would be corrected for the land title to be registered under his name. However, the correction delayed.

After warning FINA BANK in writing, Mutembo filed a case before the Commercial High Court requesting damages for the delay in receiving the house's land title while FINA BANK states that it played no role in long time elapsed without delivering the land title of the purchased house to Mutembo. The Commercial High Court decided that his claim had merit because FINA BANK was responsible for the defendant's delay to receive the land title of the purchased house, and ordered it to pay damages.

FINA BANK appealed to the Supreme Court stating that the Commercial High Court ordered it to pay damages disregarding the explanations it provided proving that it played no role in delaying the delivery of the land title of the purchased house to Mutembo while Mutembo states that the appeal of FINA BANK has no merit because the it delayed him getting the land title while it was aware that it gave him wrong one.

In that judgment, Mutembo requested interests arising from the fact that he did not exploit the house he purchased; while FINA BANK states that it cannot pay them because the claim of interest was not submitted to the Court registrar and that he was immediately given the house. He added that his request constitutes an unjust enrichment.

Held: 1. The fact for the defendant to spend almost five years without having the land title of the purchased house, is an infringement of his right to full enjoyment on it like mortgaging or selling, etc... Therefore he must be awarded damages amounting to 5,000,000 Rwf because the appellants delayed to give him the land title thereby it deprived him from its full enjoyment.

2. The house purchaser to whom the land title was not delivered cannot be awarded interests computed basing on the value of the house pretending that it was not issued while he/she was in possession of the house.

**Appeal lacks merit.
Cross appeal without merit.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law of 30/07/1888 relating to contracts or obligations, article 258.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 27th September, 2006 Mutembo Senyana Kavos purchased a house at a public auction, located in plot n° 91, Musanze District in the Northern Province from FINA BANK. The house belonged to Zigiranyirazo Protais who had a loan of FINA BANK. While delivering the documents of the house to him, FINA BANK gave him the land title of the house in plot n° 25 [which also belongs to Zigiranyirazo Protais] instead of giving him the one of the purchased house in plot n° 91. It was known when Mutembo requested the transfer to obtain the new land title registered under his name. He was informed that the house documents were held by BRD as a mortgage given by Zigiranyirazo Protais to guarantee the loan taken by SOBOLIRWA. Mutembo notified FINA BANK which accepted the fault and assured him that it would be corrected so that the land be registered under his name. However, it delayed.

[2] After warning FINA BANK in writing, Mutembo Senyana Kavos filed a case before the Commercial High Court requesting the previously mentioned in the subject matter of the claim. FINA BANK stated there is no reason to be sued because it did not play any role in the delay to hand the documents of the purchased house to Mutembo. The Court decided that his claim has merit in part and ordered FINA BANK to pay him 5,000,000 Rwf of damages because it was responsible for delaying him to get the land title of the house he bought. Additionally the Court awarded him damages equal to 1,000,000 Rwf for procedural and advocate fees, amounting to 6,000,000 Rwf and ordered him to pay 9,700 Rwf of the Court fees.

[3] FINA BANK appealed to the Supreme Court stating that the Commercial High Court erred in finding him at fault of handing to Mutembo Senyana Kavos the land title which is not of the house in plot n° 91 he purchased, located at Musanze¹, the basis for the delayed transfer of the property and ordering it to pay 6,000,000 Rwf in damages disregarding its submissions showing that the bank was not responsible for the delay of the delivery of Mutembo purchased land title. The case was screened and the appointed judge for this purpose decided that the appeal

¹ The land title of the house which locates at Musanze, Northern Province on plot n° 25.

was admitted. The hearing was held on 24th December, 2013, FINA BANK represented by Counsel Rusanganwa Jean Bosco and Mutembo represented by Toy Nzamwita, the Counsel

II. ANALYSIS OF LEGAL ISSUES

1. Whether or not FINA BANK played a role in delaying the delivery of the land title of the house purchased at a public auction by MUTEMBO Senyana Kavos.

[4] Counsel for FINA BANK states that the first instance Court disregarded the provided arguments proving that FINA BANK was not at fault, neglected or breached the contract for MUTEMBO not to get the land title of the house he purchased on plot n° 91. He explains that FINA BANK accepts to have delivered a title deed which was not of the house he purchased and that the house was given by Zigiranyirazo to secure the loan taken by SOBOLIRWA. However, all these were discovered by Mutembo Senyana Kavos the land title of the house which he did not buy and that the house was given as gurrantee in BRD by Zigiranyirazo, while he was guarantor of debt of SOBOLIRWA, but FINA BANK discovered all these after the public auction when Mutembo revealed to it that it made mistake in delivering the land title of another house which is on plot n° 25, requesting the correct title for his house on plot n° 91. The counsel for FINA BANK argues that no fault should be imputed to it.

[5] He stated rather that the fault committed was due to Mutembo Senyana Kavos's attitude who kept silent after the material transfer of the property. He added that he waited for three years after the transaction before claiming his documents in 2010, and had he addressed the issue just after the public auction in 2006, it could have been summarily resolved with little inconvenience to either party. However, once FINA BANK was informed of the mistake, it made every effort to correct it in order to complete the transfer.

[6] He continued stating that the mistake was caused by the attitude of other institutions that played a role in the transaction, that the registrar of the land titles stated that the mistake occurred when he was first given the land documents which were listed under the following different numbers: 25, 92, and 91. Therefore, FINA BANK did not play any role and cannot be held liable for the mistakes committed because the house that was sold, was given to it as a security, and at that time the notary established the auction deed on 27th September, 2006 which contained errors, the house on plot n° 91 was mistakenly sold instead of the house on plot n° 25.

[7] The Counsel for Mutembo argues that FINA BANK's appeal has no merit because even in first instance Court, it accepted the fault of delivering the land title which does not match with the house it sold. He added that FINA BANK used to apologize in writting, which implies it recognized its own faults but the procedure to correct them become complicated. The fact for FINA BANK to disclaim its responsibility and imputes it onto other parties in charge of delivering land titles is wrong, since what happened is carelessness. In matching the houses with their land titles and FINA BANK should implement better practices of controlling the houses and corresponding land titles it plans to sell at a public auction.

[8] He refutes the argument that Mutembo is at fault because he delayed to apply for the land title of his house until three years after the transaction in 2010. He argues Mutembo applied for the land title right after the public auction on 27th September, 2006 when he was given wrong

title. Then Mutembo's wife wrote to FINA BANK in 2008 applying for the real title of the house they bought. However due to FINA BANK's bad service, it delayed six years by daily promising him it would resolve the problem. Mutembo Senyana Kavos finally received the land title in 2012 when the judgment had commenced. The aforementioned events are proven by writings and short messages (E-mails) he submitted to the Court. Counsel for Mutembo Senyana Kavos concluded by stating that FINA BANK's appeal has no merit because it is a well-recognized expectation that houses sold at public auction will be accompanied by the correct documentation and therefore it is at fault for giving the wrong title for the house.

THE VIEW OF THE COURT

[9] Article 258 of Civil Code Book III provides that any act of man that causes damage to another obliges the one by whose fault it happened to repair.

[10] The documents in the case file prove that the house FINA BANK had as security was on plot n° 91 under the name Zigiranyirazo Protais and that was given to BRD as mortgage, that possessed its title when it was being auctioned on 27th September, 2006 and bought by Mutembo Senyana Kavos. Unfortunately, Mutembo was given the wrong land title –he received the title to plot n° 25 at Musanze which also belongs to Zigiranyirazo Protais– , In addition, it is clear that on page 13, the house² was auctioned and bought by the named Mbanda Laurent and his wife Chantal Mbanda on 4th August, 2009 in the execution of judgment n° 81 rendered by Rukiri Gacaca Court on 14th February, 2008. It is also clear from the case file that the registrar of land titles was aware of the problem when Mutembo Senyana Kavos requested the transfer in order to get the new title deed.

[11] The Court finds that FINA BANK committed negligence and mismanagement of the mortgaged house which caused the confusion over the titles by distributing wrong titles to their buyers basing on the content of the Deputy Registrar of Land Titles' letter to the Managing Director of FINA BANK S.A, he requesting a rectification of an auction deed of 27th May, 2009 completed by the Public Notary and stated that if rectified, he would give him the original copy of the land title number R.XII Folio 182, all registered under the name of Zigiranyirazo Protais and the clearance deed of RDB on those plots so as to honour the wish of everyone.

[12] The Court finds also that the letters and short messages in file indicate that Mutembo Senyana Kavos did not delay requesting the land title because he started exchanging correspondence with FINA BANK in January 2008 while the public auction took place on 27th September, 2006 which means he began inquiring about the title two years later. The fact that FINA BANK argues that Mutembo should be liable for the fault of delaying to find the transfer is wrong because, in reality, FINA BANK was at fault since it gave the wrong title deed due to its own failure to verify the location and corresponding title of the house sold at the public auction.

[13] Apart from the document problem, the Court finds FINA BANK did not operate skilfully or with adequate diligence to rectify the errors so that the land title could be given to Mutembo.

² Letter N° 1882 16.03/NLC/0214 that the deputy curator of land titles wrote to the Managing Director of FINA BANK requesting the auction deed of plot n° 25 bought by Mr Mbanda Laurent.

As it is shown by the correspondence in the case file, the dialogue between Mutembo Senyana Kavos and the Registrar of Land Titles started openly in January 2008 and from that time it took four years for Mutembo Senyana Kavos to receive the land title under his name even though the judgment started after putting FINA BANK on notice more than once.

[14] Pursuant to the aforementioned statements, the Court finds that FINA BANK played a role in delaying Mutembo Senyana Kavos's receipt of his land title for the house he bought which prevented him from enjoying it without intrusion. Therefore FINA BANK must be held liable as provided by article 258 Civil Code Book III mentioned above.

2. Concerning the requested damages

[15] The Counsel for Mutembo Senyana Kavos argues that since he has been deprived of rights to his house to mortgage and benefit from the loan for more than five years, FINA BANK owes him the damages decided by the previous Court equalling 6,000,000 Rwfs. He states also that FINA BANK should be ordered to pay Mutembo Senyana Kavos advocate's fees equalling 10% of all money the bank must pay.

[16] He states that his cross appeal for the 18% of interest of the house price equalling 31,410,000 Rwf to compensate him and his wife's loss for their investment which did not generate income for five years should be granted and the damages should be calculated from the price of the house starting from 13th November, 2006, the date FINA BANK confirmed receipt of the money up to the date of the pronounced judgment calculated as follows: 31,410,000 Rwf x 18% x 65 (Months): 12 = 30,624,750 Rwf.

[17] The Counsel for FINA BANK states that the cross-appeal of Mutembo Senyana Kavos requesting the interests for loss of income from his house was not transmitted to the Court Registry office. Additionally, Mutembo Senyana Kavos did not experience any loss because the house was transmitted to him and what he requests is unjust enrichment. He finds that FINA BANK owes no damages but rather is entitled to damages equalling 1,000,000 Rwf for procedural and advocate fees.

[18] Concerning the damages of 1,000,000 Rwf requested by FINA BANK for the procedural and advocate fees, the Counsel for Mutembo Senyana Kavos states they have no merit as it is clear that it is the one at fault.

THE VIEW OF THE COURT

[19] Concerning the requested damages, the Court finds that as it was explained above, the fact that Mutembo Senyana Kavos was deprived of his land title for a substantial length of time, the deprivation resulted from the fault of FINA BANK which, due to bad service, carelessly delivered the wrong land title, and even after being aware of the mistake, had no will or courage to quickly rectify it so that Mutembo would be given the right land title.

[20] The Court finds that Mutembo Senyana Kavos immediately received his house upon payment on 13th November, 2006. The fact that he waited close to five years without receiving

his land title which prevented him from mortgaging or selling it, entitles him to damages ordered by the previous Court.

[21] Concerning the quantum of damages to which Mutembo Senyana Kavos was entitled, the Court finds the 5,000,000 Rwf he received due to FINA BANK's delay in delivering the title deed of the house for full enjoyment is reasonable and must remain.

[22] Concerning the interests of 30,624,750 Rwf Mutembo Senyana Kavos requested for loss of income from his house, the court finds he cannot be granted them because he was given the house he bought and therefore cannot calculate interests on the price he paid.

[23] Concerning advocate's fees, the Court finds the amount requested by Mutembo Senyana Kavos cannot be based on the value of subject matter of claim because it is contrary to articles³ 62, and 63 of the law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning. However, the damages of 1,000,000 Rwf for procedural and advocate's fees determined by the previous Court are reasonable in both instances.

[24] Concerning the procedural and advocate's fees requested by FINA BANK, the Court finds they cannot be granted because it did not win this case.

III. THE DECISION OF THE COURT

[25] Decides that the appeal of FINA BANK has no merit;

[26] Decides that the cross appeal of Mutembo Senyana Kavos against FINA BANK has no merit;

[27] Decides that the judgement n° R.COM 0109/11/HCC rendered by the Commercial High Court on 2nd February, 2012 is sustained

[28] Orders FINA BANK to pay 24.300 Rwf of the Court fees in eight days. In case of default of payment, the funds will be drawn from its properties by the government force.

³ Article 62: The Council of the Bar Association shall fix the scale of fees for Advocates according to the profession and with due diligence. An Advocate shall not fix fees on the basis of the decision of the court because the Advocate has to use all possible means but not to ensure result from the trial. An Advocate shall not make any exception to this principle unless he/she is authorized to do so by the President of the Bar Association. The scale of fees for Advocates shall be published in the Official Gazette of the Republic of Rwanda by the President of the Bar Association.

Article 63: The Advocate's fees shall be paid in accordance with the fees mutually agreed upon by the Advocate and his/her client taking into consideration the rate of fees for the Advocates. Disagreements concerning the payment of fees shall be referred to the President of the Bar Association for mediation.