

NGANGARE v. MUKANKURANGA

[Rwanda SUPREME COURT – RCAA 0022/13/CS (Mutashya, P.J., Mukamulisa and Gatete, J.)
July 25, 2014]

Family law – Concubinage – Separation of partners – Assets sharing – Application of the law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence on sharing of concubines' assets – Disputes between concubines do not imply a separation in case they live in the same house, share the responsibility to raise the children and take care of their family – The concubines who remained in cohabitation after the publication of the Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence share their property in accordance with that Law once they decide to break the concubinage – The sharing of the property for the concubines is meant to protect everyone's right on the property and that right relies on the existence of their co-owned property – Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence, article 39.

Civil procedure – Damages – Dragging into lawsuits – The existence of procedural expenses by the respondent must be repaired and damages awarded in accordance with Court's discretion.

Fact: Ngangare and Mukankuranga lived in concubinage but under Ugandan custom where they lived before they moved to Rwanda. Later, some conflicts arose from their relationship which led Mukankuranga to file a claim in Intermediate Court of Gasabo requesting the sharing of the assets they jointly acquired. The court decided that they share the assets and apportioned a half of those assets to each one. It also decided that everyone shall retain the movable assets in his or her possession and ordered Ngangare to pay the counsel fees and procedural cost to Mukankuranga.

Ngangare appealed to the High Court which decided his appeal to be without merit. He appealed again to the Supreme Court stating that the court relied on the Law n°59/2008 of 10/09/2008 on prevention and punishment of gender - based violence while it entered into force after he separated with Mukankuranga, therefore assets he acquired after the year 2000 should not be shared since they no longer lived together. He further argue that even if that law was to be applied, its article 39 would not be relied on since it relates to the sharing of assets of concubines of whom one of them intends to get married.

Mukankuranga states that they have never separated because they continued living in a shared house, jointly raise their children and manage their household, the reason why the provision of article 39 of the Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence should be applicable.

Held: 1. Disputes between concubines do not imply a separation in case they continued living in a shared house, shared the responsibility to raise their children and manage their household.

2. Concubines who remained in cohabitation after the publication of the Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence share their jointly acquired property in accordance with that Law once they decide to break the concubinage.

3. The sharing of the property for the concubines is meant to protect everyone's right on the property and that right relies on the existence of their co-owned property.
4. Procedural expenses suffered by the respondent are repaired and compensations are awarded in accordance with Court's discretion.

**Appeal without merit.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence, articles 39 and 41.

Cases referred to:

Mutebi v. Mukagasaza, RCAA0143/11/CS rendered by the Supreme Court on 15 March 2013.
Gatera v. Kabalisa, RS/Inconst/Pen.0003/10/CS rendered by the Supreme Court on 07 January 2011.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Since 1984, Ngangare John and Mukankuranga Grace cohabited out of civil marriage in Uganda and bore four children. Later, conflicts arose in their relationship and this led Mukankuranga Grace to file a claim in Intermediate Court of Gasabo requesting the sharing of all properties they jointly acquired on the ground that even though they did not celebrate a civil marriage, but they cohabited under Ugandan custom because Ngangare introduced and paid the dowry.

[2] The Court decided that they share equitably the assets comprising of three houses on plot n° 41 (five roomed house, the house which is not yet roofed and another one which is complete but pending finishing) located at their residence area, a plot of land which is located in Kagarama Village, Musave Cell, Bumbogo Sector, Gasabo District and another house they left in Uganda, and everyone retains the movable assets in his or her possession. The Court ordered Ngangare to pay 300,000Rwf of procedural and counsel fees to Mukankuranga.

[3] Ngangare John appealed to the High Court which decided that his appeal has no merit and sustained the judgment.

[4] Again, Ngangare John was not satisfied with the ruling and appealed to the Supreme Court demonstrating the grounds of appeal against the rendered judgment, and Mukankuranga rebutted on them.

[5] The hearing was held in public on 17 June 2014, Ngangare John represented by Counsel Ntigurirwa François and Counsel Umupfasoni Blandine whereas Mukankuranga Grace was assisted by Counsel Mukamana Elisabeth.

II. ANALYSIS OF THE LEGAL ISSUES

a) Whether Ngangare and Mukankuranga dissolved their concubinage before the coming into force of the Law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence, in order to know whether or not it could be applied to this case.

[6] Umupfasoni Blandine, the Counsel for Ngangare John states that the judge interpreted erroneously the statement of Mukankuranga Grace by confirming that since 2000, they continued to cohabit even though they had conflicts while Mukankuranga admitted that, since the year 2000 they no longer cohabited as a wife and husband.

[7] Furthermore, she argues that article 41 of the Law n°59/2008 of 10/09/2008 previously mentioned, provides that it shall come into force on the date of its publication, therefore it should not be applicable to this case since it was published in 2008 when Ngangare and Mukankuranga were not living together. She argues in addition that the assets which Ngangare acquired after the year 2000 should not be apportioned between them basing on that law because he acquired them when they were no longer in cohabitation.

[8] She argues in addition that the employment contract which Mukankuranga entered into with SWA Rwanda in 2010, intending to demonstrate that she was employed was concluded when they were no longer in cohabitation because she started saving money on her account in the year 2000 in the course of which they broke the concubinage.

[9] Mukankuranga states that she cohabited with Ngangare in Uganda since 1984 at the end of their studies. In 1994, they returned in Rwanda from exile, and jointly acquired the assets. Mukankuranga further states that she requested him to get married in accordance with the law but he refused and recognized only the children they bore.

[10] She states in addition that they have never broken because they still live in the same home, except they no longer cohabit. She adds that even on the day of the hearing they came from that home in which they live. Indeed, their neighbors know that they cohabit and bore four children, perform the community work in the same area, share the same kitchen, house maid, watchman, and that if the Court would like to verify the reliability of her statements, it can ask those neighbors.

[11] She continued arguing that in 2008 she paid the electricity bill of 1,000,000Rwf which they both consumed, and wonders if Ngangare perceives it as a loan. She states that she was employed during the whole period of concubinage with Ngangare up to now and that all assets they own were jointly acquired and they perform all activities together.

[12] Her counsel Mukamana Elisabeth states that the judge did not override the statement of Mukankuranga because she declared that the fact that their conflicts have arisen in 2000 does not imply that they did not continue to cohabit as husband and wife, the reason why the law n° 59/2008 of 10/09/2008 is applicable to them.

THE VIEW OF THE COURT

[13] The law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence was published in official gazette n° 14 of 06/07/2009 and come into force from the date of its publication as stipulated by its article 41.

[14] The Court finds that during the hearing, Mukankuranga explained that she cohabited with Ngangare as a husband and a wife without any problem between them until the year 2000, when some conflicts emerged and continued up to now but even though they were not in a good relationship, they continued living in the same house as wife and husband, with their children whom they jointly continued to raise and manage their household. All these statement of Mukankuranga were not contradicted by Ngangare.

[15] In the Judgment RCAA0143/11/CS, Mutebi Hamisi alias Fungamani versus Mukagasaza Aminarendered by this Court on 15 March 2013, rejected the arguments of Mutebi Hamisi according to which the Law n°59/2008 of 10/09/2008 mentioned above was published after their break up was rejected, because the documents in the file indicate that Mutebi and Mukagasaza cohabited up to 2010 even if they were in bad relationship.

[16] Concerning this case, the Court is of the view that the existence of conflicts between Ngangare and Mukankuranga since the year 2000 does not imply they did not continue their cohabitation as wife and husband as explained in the aforementioned judgment, since Ngangare was not able to prove that he stopped cohabiting with Mukankuranga in the year 2000, such that the mentioned Law n° 59/2008 of 10/09/2008 would not be applicable to him, therefore his ground of appeal is without merit.

b) Whether the Court misapplied article 39 of the law n°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence.

[17] Umupfasoni Blandine, the Counsel for Ngangare states that even if the Court finds that Mukankuranga and Ngangare still cohabit as wife and husband, article 39 of the law mentioned above should not be relied on for the sharing of the assets because that article provides that the person who is required to share the assets at first, is the one who is going to get married so that his/her partner or partners in concubine relationship get their share before that person gets married.

[18] She continues arguing that Mukankuranga Grace did not demonstrate to the Court that Ngangare is going to get married to another wife, and in addition, if it was Ngangare who intended to get married, he should be the one to file a claim requesting that they first share the assets.

[19] Mukamana Elisabeth, the Counsel for Mukankuranga argues that article 39 of the mentioned law was adopted with the purpose of preventing injustice, such that no one could withhold the property acquired by both concubines. She states in addition that Ngangare and Mukankuranga spent thirty years in concubinage until now even if there are some obligations they are not fulfilling as a married couple and this resulted from the conflicts between them, but it does not imply they discontinued living as husband and wife.

[20] She continues adducing that she does not perceive how after all those years during which Ngangare lived with Mukankuranga, he could request for the certificate of celibacy; rather, its request implies that he intended to withhold the property.

[21] She explained that the judgment in the case of Gatera John versus Kabalisa Teddy rendered by this Court on 07 January 2011 addressed all the issues raised by the Counsels for Ngangare in relation to article 39 of the law n°59/2008 of 10/09/2008 mentioned above.

THE VIEW OF THE COURT

[22] Article 39 law n°59/2008 of 10/09/2008 mentioned above provides that “those people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally”.

[23] As far as the Judgment RS/Inconst/Pen.0003/10/CS rendered on 07 January 2011 on the petition filed by Gatera Johnson and Kabalisa Teddy requesting the repeal of article 39 of the Law n°59/2008 of 10/09/2008 mentioned above for inconsistency with the Constitution, this Court held that in order to share the assets when spouses who entertain unlawful marriages break, the assets must be jointly owned or acquired. The Court held in addition that, having the right to a property does not rely only on the cohabitation of concubines but it must be evident that there exists a property they jointly own or acquired.

[24] Therefore the Court finds that as explained in the judgment mentioned above, the purpose of the aforementioned article 39 of Law n°59/2008 of 10/09/2008 which was relied on by the High Court, is to protect the right on the property for each one of those partners in concubinage because of the contribution he or she made to promote their common household, the reason why in case one of them wishes to get married to a different partner, the property they jointly acquired should be shared first, since if not so, one of them especially the partner who is going to get married with a different person, could benefit from the assets he/she jointly acquired with the other partner.

[25] Basing on the aforementioned reasons, the Court finds that the High Court did not error in law by relying on article 39 of Law n°59/2008 of 10/09/2008 and upholding the position of the Intermediate Court of Gasabo according to which Ngangare John and Mukankuranga Grace must share their assets as mentioned above.

c) Whether Mukankuranga Grace should be awarded the requested damages.

[26] Mukamana Elisabeth, the Counsel for Mukankuranga Grace rose a cross appeal requesting that the amount of 500,000Rwf which her client was awarded in the appealed judgment for procedural costs and counsel fees, be increased to the amount of 1,000,000Rwf which she requested in the previous instance especially because Ngangare has continued dragging her into unnecessary lawsuits.

[27] Ntigurirwa François, the Counsel for Ngangare John states that they initiated a claim requesting the Court to admit their appeal and quash the appealed judgment, therefore if the judgment is quashed, the cross appeal filed by Mukankuranga will have no basis. He adds that if the Court finds the appeal of Ngangare without merit, it could award damages at its discretion.

[28] The Court finds that in the appealed judgment Mukankuranga Grace was awarded 500,000Rwf for the procedural costs and counsel fees, and that amount should be increased of 500,000Rwf on this level, awarded at court's discretion because it is obvious that Ngangare John dragged Mukankuranga into lawsuits which increased expenses she incurred on this case. .,

III.THE DECISION OF THE COURT

[29] Decides that the appeal of Ngangare John is without merit;

[30] Decides that the ruling of the Judgment RCA 0163/12/HC/KIG rendered by the High Court on 19 July 2013 is sustained except in regards to the amount of procedural costs and counsel fees granted to Mukankuranga Grace at this level;

[31] Orders Ngangare John to pay 500,000Rwf to Mukankuranga Grace of the procedural cost and counsel fees in addition to 500,000Rwf she was awarded by the appealed judgment;

[32] Orders Ngangare John to pay the Court fees amounting to 29,800Rwf.

