

NTEZIRYAYO v. RUTABAYIRO

[Rwanda SUPREME COURT – RCAA 0003/13/CS (Mutashya P.J., Rugabirwa and Hitiyiramy, J.) January 31, 2014]

Civil procedure – Cross appeal – The cross appeal is admissible even if the respondent was informed of the judgment and does not contest it – Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labor and administrative procedure, article 167.

Contracts or obligations Law – The validity of sale contract of immovable before the transfer of its title – Breach of contract – Damages on the loss incurred by the buyer due to the seller's failure to deliver the documents of the purchased thing at the convened time – The sale contract is valid when the parties have agreed to the thing and its price, although the sold thing has not yet been delivered or its price paid – The seller must be ordered to pay damages when the buyer incurred loss resulting from failure to deliver the acquired thing to him/her at the convened time – Law of 30/07/1888 relating to contracts or obligations, article 33, 264 and 288.

Civil procedure – Unnecessary lawsuits – Damages are not awarded in case some of the appellant's claims had merit.

Facts: Nteziryayo concluded a sale contract of a plot of land accommodating five houses and annexes with Rutabayiro. The seller paid the advance and they agreed that the remaining balance will be paid at the delivery of the documents comprising of cadastral plan, emphyteutic lease title and construction permit, of which he would have sought within one month period and that if it exceeds without getting them, both parties will meet in order to find a solution on the time they will be issued.

Nteziryayo applied for those documents at the administration of the district but were not issued to him because the location of the houses was not yet included on master plan. Meanwhile, Nteziryayo began rehabilitating those houses pretending they were being damaged. After Rutabayiro realised that Nteziryayo has begun the rehabilitation, he sued him in the Intermediate Court of Gasabo requesting for the transfer of the title of houses so that they should be registered in his name and requested in addition for various damages. The Court decided that Nteziryayo should hand over the houses to Rutabayiro and the later pays him the remaining amount he owes him increased with their added value and also Nteziryayo should pay him the procedural costs and counsel fees.

Rutabayiro appealed to the High Court and Nteziryayo also filed a cross appeal requesting for the resolution of the contract. The court decided that the transfer of title be operated between him and Nteziryayo, and the cross appeal of Nteziryayo which requests for the resolution of the contract is dismissed, because the resolution of the contract he requests is not incidental to the principal claim.

As a consequence, Nteziryayo appealed to the Supreme Court stating that the sale contract he entered into with Rutabayiro be resolved, if not possible, he should pay the rehabilitation added value, the remaining balance and various damages. Rutabayiro states that the cross appeal lodged by Nteziryayo should not be admitted and examined because it does not intend to present the defence on the main claim and that there should be transfer of title between him and Nteziryayo who should also pay damages to him.

Held: 1. Cross appeal must be admitted and its merit examined because the respondent may file a cross appeal in any event, before or during the hearing, even though the judgment was served on without protest.

2. The sale contract is valid when the parties agreed to the thing and its price, although the sold thing has not yet been delivered or its price paid, and it must be performed in good faith, thus there must be a transfer of title between Nteziryayo and Rutabayiro, and the later pays him the balance of the price and a half of the houses rehabilitation costs.

3. The seller should be ordered to pay damages, if failure to deliver the sold thing at the agreed time is detriment to the purchaser.

4. In case some of the appellant's claims were found with merits, the respondent should not be awarded the requested damages for being dragged into unnecessary lawsuits.

**Appeal without merit.
The cross appeal has merit in part.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 167.

Law of 30/07/1888 relating to contracts or obligations, article 33, 264 and 288.

No case referred to.

Authors Cited:

Laurent C., Vente d'immeuble: un contrat parfait par le seul accord sur la chose et le prix, article publié le 25/10/2011.

Judgment

I. BACKGROUND OF THE CASE

[1] On 15 March 2010, Nteziryayo Eric entered into a sale contract with Rutabayiro Eric of the plot accommodating five houses and annex, situated in Rusenyi Village, Murama Cell, Kinyinya Sector, Gasabo District for the price amounting to 30,000,000 Rwf. Rutabayiro Eric paid immediately 7,000,000 Rwf to Nteziryayo Eric and they agreed that the remaining balance of 23,000,000 Rwf will be paid by Rutabayiro Eric at the time Nteziryayo Eric hands him the cadastral plan, emphyteutic lease title and construction permit documents to be applied for within one month, and if it exceeds without getting them, both parties will meet and discuss on a new period they can be obtained.

[2] After Rutabayiro Eric realised that Nteziryayo Eric did not hand him the documents stated above, and has began rehabilitating the houses he sold to him, he sued him to the Intermediate Court of Gasabo requesting for the transfer of the title so that those houses be registered on his name, and pay him various damages. Nteziryayo also filed a counterclaim requesting for resolution of the contract.

[3] That Court decided that Nteziryayo Eric should hand over to Rutabayiro Eric the house he bought in return of the payment of the remaining amount of 23,000,000 Rwf. It decided in addition that the counterclaim filed by Nteziryayo requesting for the resolution of the contract is without merit since it does not constitute a defence to the principal claim and ordered Rutabayiro to pay Nteziryayo 95,126,105 Rwf equivalent to the value added, and ordered Nteziryayo Eric to pay 500,000 Rwf for procedural costs and counsel fees.

[4] Rutabayiro Eric appealed to the High Court which decided that the transfer of the title be operated between him and Nteziryayo Eric, that the cross appeal of Nteziryayo in which he requests for the resolution of the contract is not admissible because the resolution of the contract he requests for does not constitute a defence to the principal claim concerning how the transfer of the title should be done between him and Rutabayiro Eric. It decided also that the appealed judgment is overturned in all its aspects, save the 500,000 Rwf of procedural costs and counsel fees that Rutabayiro Eric was awarded on the first instance.

[5] Nteziryayo Eric appealed to the Supreme Court arguing that the sale contract entered into with Rutabayiro Eric be resolved because he failed to get the documents stated above, and if not resolved, Rutabayiro Eric should reimburse him 95,126,105 Rwf he spent for rehabilitating the houses and pays him the remaining 23,000,000 Rwf in addition to the various damages. Rutabayiro Eric state also that there deserves to be a transfer of the title between him and Nteziryayo Eric, and that he should pay him various damages.

[6] The hearing was conducted in public on 17 December 2013, Nteziryayo Eric represented by the council, Mutabazi Abayo Claude, whereas Rutabayiro Eric was represented by the counsel Nzirabatinyi Fidèle.

II. ANALYSIS OF LEGAL ISSUES

Whether the cross appeal filed by Nteziryayo Eric should be admitted.

[7] The Counsel for Nteziryayo Eric states that the Supreme Court should admit his cross appeal so that it decides void the sell contract mentioned above because the High Court refused to admit it on the ground that the counterclaim he raised in Intermediate Court of Gasabo should not have been admitted because the resolution of the contract he requested for does not relate to the defence submissions on transfer of title in litigation in the main claim, while it disregarded that it had to be admitted since it was regularly filed.

[8] The Counsel for Rutabayiro Eric argues that the cross appeal filed by Nteziryayo should have not been admitted because the resolution of the sale contract he requested in counterclaim filed in the previous Court does not constitute a defence to the principal claim which intended to request for transfer of title between him and Nteziryayo Eric.

THE VIEW OF THE COURT

[9] Concerning the cross appeal, article 167 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at the time of conclusion of the sale contract, provides that “the respondent may file cross appeal in any event, before or during the hearing, even though the judgment was served on without protest”.

[10] The submission Nteziryayo Eric submitted to the High Court which is on page 46 and his arguments in that Court, demonstrate that he filed a cross appeal requesting that the sale contract mentioned above should be resolved because the Gasabo district informed him that it would not issue to him the document he requested for because there was not yet established a master plan of the location of the houses.

[11] Pursuant to the provision of article 167 of the Law stated above, the Court finds that the High Court should have admitted the cross appeal filed by Nteziryayo Eric because it was filed in accordance with the law, therefore it must be admitted in this Court in order to examine its merit.

2. Whether the sale contract entered into between Nteziryayo Eric and Rutabayiro Eric on 15/03/2010 is valid and its effects

[12] The Counsel for Nteziryayo Eric states that the High Court held that a transfer of title between him and Rutabayiro Eric be operated, disregarding the fact that the sale contract concluded between them on 15 March 2010 had a resolutive condition, that Rutabayiro Eric had to pay him 23,000,000 Rwf after he has given him the cadastral plan, emphyteutic lease title and construction permit of which he did not get, because in the letter dated 26 October 2011 Gasabo district informed him that he would not be able to get those documents he requested for in case the master plan has not been established .

[13] He explains that he did not act in bad faith, because eight days (8) after the sale contract was concluded, on 23 March 2010 Nteziryayo Eric wrote to Gasabo district requesting to be issued with those documents, and it replied him that it cannot issue them to him, because the master plan has not yet been established, consequently he requested Rutabayiro to reimburse him the 7,000,000 Rwf he paid, so that they resolve the sale contract, because in his opinion the sale was impossible, which Rutabayiro refused and that also Nteziryayo requested Rutabayiro to pay him the remaining balance of 23,000,000 Rwf and looks for those documents himself, of which he also rejected. Consequently Nteziryayo requested for a rehabilitation permit because he realized that the houses were damaged By leaking, therefore, the contract should be resolved because it cannot be performed as provided by article 70 CCBIII¹ because he failed to obtain those documents.

[14] The Counsel for Rutabayiro Eric states that the sale contract mentioned above should not be resolved, instead the Court should order for the transfer of title between him and Nteziryayo Eric so that the houses he purchased be registered on his name, and also that Nteziryayo Eric acted in bad faith because he rehabilitated those houses aware that he brought them from him.

THE VIEW OF THE COURT

[15] Concerning the validity of the contract, article 33 of Book of Civil Code relating to contracts or obligations which was into force at the time the sale contract was concluded, stipulates that “Contracts made in accordance with the law shall be binding between parties.

¹ That article stipulates that “any condition based on impossible event, or contrary to good morals, or prohibited by the law is void and invalidate the agreement deriving from it”.

They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith²”.

[16] Article 264 of the Book stated above, stipulates that “the sale is completed between the parties, and the property is acquired as of right by the buyer vis-a-vis the seller, once they agreed on the thing and the price, although the thing has not yet been delivered or the price paid”.

[17] The Law scholars including Laurent Collon explain that since long time ago the Courts went on ruling that the sale of immovable properties is valid when the parties to the sale contract have agreed to the object and the price, except that they can stipulate for other obligations³.

[18] Concerning this case, the sale contract of 15 March 2010 demonstrates that Nteziryayo Eric sold to Rutabayiro Eric his plot with five houses and annexes located at Rusenyi village, Murama cell, Kinyinya sector, Gasabo district, for the price amounting to 30,000,000 Rwf. Rutabayiro Eric paid him 7,000,000 Rwf immediately, and they agreed that the remaining 23,000,000 Rwf will be paid on condition that he hands to him cadastral plan, emphyteutic lease and construction permit not later than a month, and this period elapses while Nteziryayo Eric did not get them, both parties will meet and find a solution on the time they will be obtained.

[19] Pursuant to the provisions of the law and the opinions of the law scholars which have already been stated above, the Court finds that the above mentioned sale contract between Nteziryayo Eric and Rutabayiro Eric is valid because they agreed on the houses for sale and their price, therefore should be performed in good faith as it is provided for by article 33 of civil code relating to contracts or obligations, which was into force at the time of the conclusion of that contract.

[20] Concerning the performance of that contract, the letter of 23 March 2010, indicates that Nteziryayo Eric wrote to Gasabo district requesting it to give him cadastral plan, emphyteutic lease and construction permit of the plot located in the place mentioned above. The district replied on 26 October 2011 that he should wait because, the master plan of the plot's area he requests the documents for, has not yet been established.

[21] After the conclusion of that contract, Nteziryayo Eric did not abstain, instead he rushed to request for the documents stated above as revealed by his letter of 23 March 2010. The fact that he did not find them was the result of an administrative decision which he could not change, especially that he did not know the time he would spend waiting for them. It led him to a wrong decision of requesting for the rehabilitation permit, because in his understanding he assumed that he remained the owner of that asset for it was still registered on his name, and was rehabilitated to the extent that its value increased from 30,000,000 Rwf

² That article concurs with the provision of article 64 of the Law n° 25/2011 of 25/11/2011 governing contracts, which stipulates that “Contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith”

³ For many years, the courts have held that, even when it relates to real estate, the sale is completed as soon as we prove that the consent was on the thing (the property sold / purchased) and prices, all other terms of the sale were deemed accessories, unless one and / or the other party has erected one or more item (s) to the rank of condition (s) essential, as the thing and the price. Par Laurent Collon, *Vente d'immeuble : un contrat parfait par le seul accord sur la chose et le prix*, article publié le 25/10/2011.

to 125,126,105 Rwf as illustrated by real estate valuation of 02 September 2011 carried out by a construction Engineer known as Alain Bayavuge.

[22] The fact that Nteziryayo Eric made a wrong decision of rehabilitating the houses without approaching Rutabayiro Eric so that they find a solution as agreed in the contract they concluded, until Rutabayiro notified him as demonstrated in his letter of 18 May 2012, and opposed against potential mortgages in different banks as substantiated by his letter of 30 June 2012 because he perceived that Nteziryayo could mortgage them in banks on the pretext that they were still registered in his name; the court finds that Nteziryayo Eric is the one who breached the sale contract, therefore he should abide with it.

[23] The Court finds however that, the value of the houses, at the time of the conclusion of the contract, increased as indicated in paragraph 21. Consequently, concerning the performance of the contract, Rutabayiro Eric should pay Nteziryayo Eric a half of the money he used for rehabilitation of those houses equivalent to $\frac{95,126,105 \text{ Rwf}}{2} = 47,563,052 \text{ Rwf}$, awarded in accordance with the discretion of the Court, because, if the houses are transferred to him in the current state without paying anything whereas their value increased, it would be considered as unjust enrichment. The Court finds also that this money should be increased with the remaining 23,000,000 Rwf which Rutabayiro Eric owed Nteziryayo Eric since the conclusion of the contract, all amounting to $47,563,052 \text{ Rwf} + 23,000,000 \text{ Rwf} = 70,563,052 \text{ Rwf}$.

3. Concerning the requested damages in this case

[24] The Counsel for Nteziryayo Eric argues that in case the Court orders that the sale contract to be resolved, it should order that Nteziryayo Eric reimburses Rutabayiro Eric 7,000,000 Rwf of advance payment, orders that Rutabayiro pays him 10,000,000 Rwf for moral damages since he dragged him in lawsuits unnecessarily, 5,000,000 Rwf for counsel fees for two counsels who pleaded on his behalf and 300,000 Rwf of procedural costs.

[25] He adduces in addition that if the Court decides the sale contract to remain valid, it should order Rutabayiro Eric to pay him 95,126,105 Rwf he spent for rehabilitation of the houses as indicated by the valuation in the file, and pays him 23,000,000 Rwf of the remaining amount he owes him, while Nteziryayo Eric should reimburse 7,000,000 Rwf of advance he paid him.

[26] The Counsel for Rutabayiro Eric states that he files a cross appeal requesting that Nteziryayo Eric should pay him 150,000,000 Rwf of damages for stalling to transfer to him the houses he bought, relying on articles 287 and 288 of the Book of Civil Code relating to contracts or obligations which was in force at the time the sale contract was concluded, and 5,000,000 Rwf of moral damages because he dragged him in unnecessary lawsuits, counsel fees and the procedural costs.

THE VIEW OF THE COURT

[27] Regarding moral damages for failure to transfer the houses, article 288 of the Book stated above, stipulates that “the seller should be ordered to pay damages, if failure to deliver the sold thing at the agreed time is detriment to the purchaser”.

[28] Within the context of this case, it is clear that Rutabayiro Eric owned immediately the houses he bought from Nteziryayo Eric since 15 March 2010, but the fact that this one did not deliver them to him, instead, retained them for a period exceeding three years and ten months, meaning from 15 March 2010 up on 31 January 2010, the day of judgment delivery, it is clear that it resulted the suffered loss by Rutabayiro Eric because he did not get them at time in order to peacefully enjoy or exploit them; therefore the Court finds that Nteziryayo Eric should pay him related moral damages awarded in its discretion, amounting to 5,000,000 Rwf because 150,000,000 Rwf requested by Rutabayiro Eric are excessive and, he did not produce any evidence thereto or indicates how they were calculated.

[29] Concerning the moral damages for being dragged into unnecessary lawsuits, the fact for Nteziryayo Eric to have the right to appeal against a ruling of the court he is not satisfied with, conferred to him by the law for justice to be done, it implies that he did not drag Rutabayiro Eric into unnecessary lawsuits, therefore the Court find that Rutabayiro Eric should not be awarded 5,000,000 Rwf of the moral damage he requests for being dragged into unnecessary lawsuits. Nteziryayo Eric should not be awarded them as well, because Rutabayiro Eric did not drag him into unnecessary lawsuits due to the fact that some of his claims were found with merit.

[30] Concerning the procedural costs and the counsel fees, the Court finds that the fact for Rutabayiro Eric to be represented in this Court and some of his claims being found with merit, show that Nteziryayo Eric must pay him 200,000 Rwf for procedural costs and 300,000 Rwf for counsel fees at this level awarded in accordance with its discretion in addition to 500,000 Rwf for procedural costs and counsel fees which was awarded by the High Court, all amounting to 1,000,000 Rwf.

[31] In accordance to compensation of loans provided for by article 181 of the Civil Code Book III stated above⁴, the Court finds that Rutabayiro Eric should pay Nteziryayo Eric 70,563,052 Rwf, and at turn Nteziryayo Eric pays him 5,000,000 Rwf + 1,000,000 Rwf, which means that Rutabayiro Eric should pay Nteziryayo Eric 64,563,052 Rwf (= 70,563,052 Rwf – 5,000,000Rwf – 1,000,000 Rwf), at turn, Nteziryayo Eric should deliver to him the plot with five houses and annexes he bought as stated above, and to operate of the title transfer between them.

III. DECISION OF THE COURT

[32] Decides that the appeal of Nteziryayo Eric lacks merit in part;

[33] Decides that the cross appeal of Rutabayiro Eric has merit;

[34] Orders Nteziryayo Eric hand over to Rutabayiro Eric the plot with five houses and annexes he sold to him located in Rusenyi Village, Murama Cell, Kinyinya Sector, Gasabo District in Kigali City and operate the transfer of the title from Nteziryayo Eric to the names of Rutabayiro Eric;

[35] Orders that Rutabayiro Eric should pay 64,563,052 Rwf to Nteziryayo Eric;

⁴ This stipulates that “ the compensation is operated without recourse to court proceedings as of the law even when the debtors are not aware, both debts are respectively extinguished from their existence to the extent of their equivalent proportions”

[36] Declares that the ruling of the case RCA 0047/12/HC/KIG rendered by the High Court on 11 January 2013 is overturned;

[37] Orders Nteziryayo Eric to pay the Court fees amounting to 36,650 Rwf, failure of which within eight days, that amount will be deducted from his assets through Government coercion.