

HARERIMANA ET AL v. SEBUKAYIRE

[Rwanda SUPREME COURT – RCAA 0018/13/CS (Kayitesi Z., P.J., Mugenzi and Munyangeri, J.) December 24, 2014]

Civil Procedure – Forced Intervention – New claims at the appeal level – Forced intervention of a party for the first time in appeal that could result in a sentencing judgment is inadmissible – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure , article 118.

Laws governing land – Modalities of land acquisition and registration – Conclusiveness of registered title – The ownership over land relies on the fact that the owner acquired it either in accordance with custom, or granted by a competent authority, or by purchase – The certificates of registration can be challenged and invalidated – The occupant with good faith of third-party's land shall hand it back but is entitled to compensation for the value of the works she/he erected on it – Organic law N° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5 – Presidential Order N° 97/01 of 18/06/2014 determining the functioning and the competences of the Registrar of Land Titles, articles 6(1°)and10(5°) – Law N° 43/2013 of 16/06/2013 governing land in Rwanda, articles 5, 20 and 73.

Contracts or obligation Law – Damages – Being dragged into lawsuits – The appellants should be awarded damages for being dragged into lawsuits and compensation for counsel fees due to the fact that they incurred some expenses in courts – The appellants do not deserve to be awarded moral damages they requested because the responded occupied and built on the disputed plot of land with good faith – Damages and counsel fees prayed by the respondent should not be awarded to him because he did not indicate the loss incurred and indeed, he is the instigator of all these lawsuits.

Facts: This case commenced in the Intermediate Court of Gasabo, in which the family members of Harerimana Gaspard and Mukangwije Thérèse represented by Harerimana Emmanuel filled a case against Sebukayire for illegal occupation of the plot of land which he registered in his names. The said family acquired the disputed plot of land in 1988 from Karyango Sévérien. This happened after the exile and disappearance of Harerimana Gaspard and his spouse, leaving behind their minor children. The Intermediate Court ruled that the plot belongs to Harerimana Gaspard and ordered Sebukayire to hand it back to his children and pay various damages.

Sebukayire appealed before the High Court arguing that he holds land titles delivered by the government and that damages he was ordered to pay should have been imposed to the government as the issuer of those titles.

The High Court ruled that the case should have commenced before the Primary Court because disputes related to land, livestock and their succession are referred to Primary Courts. It therefore quashed the ruling of the Intermediate Court and ordered the status quo.

Harerimana Emmanuel appealed to the Supreme Court alleging that the High Court ruled beyond the scope of the request because none of the parties had, in the course of hearing, objected against the jurisdiction of the Intermediate Court, and that the issue relating to lack of jurisdiction was not the subject matter of appeal. He states in addition that, the subject matter in appellate level which was indeed the subject matter of the claim at first instance level before the Intermediate Court consists of a plot of land and not a land for agriculture,

therefore he requests the Supreme Court to correct the errors in the decision of the High Court.

In the course of the hearing, Sebukayire raised objections of inadmissibility of appeal with regards to decision on lack of jurisdiction because it was submitted beyond the time limit of 5 days prescribed by article 90 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure as well as that of lack of jurisdiction of the Supreme Court based on the value of subject matter which is less than 50,000,000Frw provided for by article 28, 7° of the Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.

He raised another objection relating to the fact that Harerimana lacks legal status to represent his parents since he holds no certificate confirming that they disappeared or died, and that even the judgment relied upon by Harerimana which confirms his status should not be considered. He reminded the court that this objection was raised in the High Court but was not examined. Counsel for Sebukayire prayed to court to order the forced intervention of the government.

Held: 1. Forced intervention of a party for the first time at appellate level, that could result in a sentencing judgment contravenes the provision of article 118 of the Law N° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure. Therefore, the hearing should proceed with regards to the existing parties to the case.

2. The fact that Sebukayire was issued with the land title without indicating to the issuers the origin of the land he claimed to be his own, implies that he fraudulently received it since the formalities provided for by article 5 of the Organic Law N° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda which was in force at the time Sebukayire acquired the land title; and article 5 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda which states that the ownership of land relies on the fact that “the owner acquired it either in accordance with custom, or granted by a competent authority, or by purchase”, were not respected. However, apparently he occupied the land in good faith for a period of 10 years with no one claiming its ownership.

3. Article 23 of the Ministerial Order N° 002/2008 of 01/04/2008 determining modalities of land registration which provides for unchallengeable character of the right recorded on the land title should not be applied because it contravenes both chapter 10 and article 20 of Law N° 43/2013 of 16/06/2013 governing land in Rwanda, which provides that land titles can be challenged and this position is supported by the provisions of articles 6(1°) and 10(5°) of the Presidential Order N° 97/01 of 18/06/2014 determining the functioning and the competence of the Registrar of Land Titles and indeed, even the provision of article 73 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda states that all laws, orders and instructions implementing the aforementioned Organic Law N°08/2005 of 15/07/2005 shall remain applicable as long as their provisions are consistent with this Law.

4. The plot of land in dispute belongs to Harerimana Gaspard and Mukangwije Thérèse, therefore the emphyteutic lease title N° 0672/GAS/KAC registered in the names of Sebukayire Tharcisse and Umutoni Sarah should be invalidated and the Registrar of Land titles have to register the aforementioned land in the names of Harerimana Gaspard and Mukangwije Thérèse.

5. Sebukayire should not destroy his houses built on the land N° 0672/GAS/KAC in dispute because he occupied it with good faith. They should be owned by Harerimana Gaspard and Mukangwije Thérèse provided that their property managers pay a correlative

compensation amounting to 33,589,068Frw as approved by valuation report requested by Harerimana Emmanuel which was not contested by Sebukayire.

6. Harerimana Emmanuel and his siblings should be awarded damages amounting to 1,500,000Frw encompassing those of being dragged into lawsuits and counsel's fees incurred by Harerimana Emmanuel because Sebukayire denied to appear before local authorities for conciliation. However, they should not be awarded moral damages because Sebukayire occupied and exploited the land in good faith.

7. Relating to the destroyed woodland, the fish pond and store house alleged to have been destroyed, should not be examined in this case because they were not part of the claim and their values were not determined.

8. Damages and counsel's fees requested by Sebukayire should not be awarded to him because he did not indicate the loss he incurred and indeed, he is the instigator of all these lawsuits.

**Appeal granted.
Appealed judgment overruled.
Court fees to the respondent.**

Statutes and statutory instruments referred to:

Law N° 43/2013 of 16/06/2013 governing land in Rwanda, articles 5, 20 and 73

Law N° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 118.

Presidential Order N° 97/01 of 18/06/2014 determining the functioning and the competences of the Registrar of Land Titles, articles 6(1°) and 10(5°).

Organic law N° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced in the Intermediate Court of Gasabo, where Harerimana Emmanuel filed a case against Sebukayire alleging that, he illegally occupied a plot of land which his father acquired from Karyango Sévérien in 1988 and after 1994, Sebukayire had it registered in his own names. This happened after the exile and disappearance of Harerimana Gaspard and his spouse in 1994 – to-date nobody knows the whereabouts of the couple, whether the couple is alive or not, nobody knows. They left children who were still minor. The Intermediate Court found that the plot belonged to Harerimana Gaspard and ordered Sebukayire to give it back to his children and pay them also diverse damages.

[2] Sebukayire appealed to the High Court alleging that lower court ruled that he fraudulently occupied the plot of land, disregarding the fact that he holds land titles delivered by the Government, and that he was made to pay damages, to the contrary, they should have been charged against the government which delivered the land title to him.

[3] The High Court finding that Harerimana filed a suit against Sebukayire to the Intermediate Court in a dispute related to a plot of land (Cote 11); given also that Harerimana and his counsel Mulinzi failed to establish a difference between the plot of land and a land for agriculture located in the city; the High Court ruled that in accordance with article 67(2) of the Organic Law N° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts which stipulates that “disputes related to land and livestock and their succession shall be tried by Primary Courts on first instance level; the case should have commenced in the Primary Court. The High Court quashed the ruling of the Intermediate Court and ordered the pristine state as before the existence of the case.

[4] Harerimana Emmanuel appealed to the Supreme Court alleging that the High Court ruled beyond the scope of the request because none of the parties raised an objection concerning the jurisdiction of the Intermediate Court in the course of the hearing, and that the issue of lack of jurisdiction was not the subject of appeal. In addition, He based his appeal on the fact that the High Court judge changed the claim in disregard of the fact that, the subject matter on appellate level which was indeed the subject matter of the claim at first instance level before the Intermediate Court consists of a plot of land and not a land for agriculture. He therefore requests the Supreme Court to correct the errors in the decision of the High Court.

[5] The hearing was conducted in public on 7 January 2014, on 11 February 2014 and 20 May 2014. Sebukayire Tharcisse was represented by Counsel Butare Emmanuel while Harerimana Emmanuel was assisted by Counsel Mulinzi Jean de Dieu.

[6] In the course of the hearing, Butare Emmanuel, the counsel for Sebukayire raised various objections. The first relates to inadmissibility of the appeal due to the fact that it was lodged beyond the prescribed time limit of 5 days provided by article 90 of the Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure in relation to the decision concerning lack of jurisdiction. Another objection relates to the lack of jurisdiction by the Supreme Court because the value of the subject matter of the claim is less than 50,000,000Frw provided by the provision of article 28(7°) of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court. In the interlocutory judgment N° RCAA 0018/13/CS, rendered by the Supreme Court on 21/03/2014, the Supreme Court decided on those objections and found them with no merit.

[7] Another objection raised by the counsel for Sebukayire concerns the lack of legal status by Harerimana Emmanuel to represent his parents as he does not hold any certificate confirming their disappearance or death. He further argues that even the judgment alleged to have accorded such status by Harerimana Emmanuel should not be considered; and reminded court that this objection was raised in the High Court but was not examined.

[8] In the interlocutory judgment N° RCAA 0018/13/CS rendered on 20 June 2014, the Court decided that, pursuant to the judgment RC 0252/14/TB/KCY rendered by the Primary Court of Kacyiru on 6 March 2014 which vested Harerimana Emmanuel with the power to administer the assets of his parents named Harerimana Gaspard and Mukangwije Thérèse who disappeared since 1994; the lack of legal status which obstructed Harerimana to be a party since the beginning of the pleadings, was overruled by that Primary Court of Kacyiru. It also decided on the pursuance of the hearing on 15 July 2014.

[9] The counsel for Sebukayire further claimed for forced intervention of the Government but the Court found this forced intervention for the first time at appellate level whereas such could result in a sentencing judgment contravenes the provision of article 118 of the Law N° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure. Therefore, it ordered the pursuit of the hearing with regards to the existing parties to the case.

[10] Prior the deliberation of the case, the Court considered it appropriate to conduct an investigation in Kamutwa Cell where the plot is located and from the Rwanda Natural Resources Authority and to visit the plot itself in a bid to collect sufficient and useful information to the case. Indeed, it decided the investigation to be conducted in absence of the parties, pursuant to article 100 of the N° 15/2004 of 12/06/2004 relating to evidence and its production. The investigation took place on 1st October 2014 and the outcome was presented to the parties for comments and be debated on in the reopening of the hearing of 6 October 2014.

II. ISSUES IN THE CASE AND THEIR ANALYSIS

II.1. Concerning the ownership of the disputed plot of land.

[11] Counsel Mulinzi Jean de Dieu for Harerimana Emmanuel states that the plot of land that Sebukayire pretends to own belongs to Harerimana Gaspard who is the father of his client. The basis of his statements relies on the sale contract concluded in 1988 between Harerimana Gaspard and Karyango (Cote 50), to the testimonies of Gisagara's wife. GISAGARA is Karyango's brother, Mukakimenyi who is Karyango's spouse which was obtained from Kamutwa Cell administration report affirming that the plot of land was purchased by Harerimana Gaspard. He further argues that even if the sale contract is a copy of the original, but should be, considered as "a written prima facie evidence" and deemed with a probative force since it is the only available document.

[12] The Counsel for Harerimana alleges in addition that, they continuously requested Sebukayire to justify the origin of the plot of land he claims to own but he could not, and that its emphyteutic lease of 11 June 1996 of which empowers him with the right over it was supposed to last for 3 years only, and indeed it is not registered in his names, rather it is registered in the names of Rwigamba; which created confusion as to how it was later registered in the names of Sebukayire. He further argues that, according to the provision of article 29 of the Constitution, the private property is inviolable such a way that even the government could not transfer it to anybody out of expropriation procedure and without a prior and fair compensation.

[13] Concerning the investigation report, the counsel for Harerimana Emmanuel states that it indicates in addition that the plot of land belongs to his client's father therefore it should be given back to him. Concerning the building located on the plot, he prayed that they should destroy them because he fraudulently occupied the plot of land. He further requests that Sebukayire should pay damages for the loss he caused. He finally prays for his client to be given back the plot of land and the court to uphold the Gasabo Intermediate Court's ruling.

[14] Counsel Butare for Sebukayire claims that Sebukayire did not occupy the plot of land fraudulently since he was legally awarded it by the Government through former MINITRAPE, in the lease contract N° L 23134 of 11 of September 1995 concluded in favour of Rwigamba François who was represented by his father Sebukayire and later during the

systematic land registration, this was registered in his names and now, he holds the land certificate delivered by Rwanda Natural Resources Authority.

[15] He indicated that the report issued by Kamutwa Cell administration relating to the said plot was drawn in 2011 while Sebukayire was issued with the plot on 5 June 2012, one year after the dispute was known and the fact that nobody has raised it implies that they acknowledged his tenure as lawful since he possessed it based on the emphyteutic lease agreement written in the names of his son Rwigamba, and it is this contract which was based on for being issued with this emphyteutic lease. Concerning the statements of the investigation report, indicating that the column reserved for the information relating to the origin of the land in land registers, being blank; he said that issues related to such would be best explained by the office in charge of land, and that it is not Sebukayire's mistake.

[16] The counsel for Sebukayire states in addition that the land title in possession of Sebukayire is an authentic deed delivered by the government as the owner of the land and should not be challenged. He concludes by praying to the Court to set aside the Kamutwa cell's report and Harerimana's purchase contract because those documents are more or less similar to Authentic Deed.

THE VIEW OF THE COURT

[17] The Court finds that there is a sale and purchase contract of woodland concluded on 1st August 1988 between Harerimana Gaspard and Karyango witnessed by Kamuhanda Sylvestre, Kajyibwami, Mathias and Gisagara Materne in the case file (cote 50).

[18] There is also in the case file, the document obtained from the administration of Urwibutso village concerning the plot of land in dispute, whereby Gisagara Materne brother in law to Karyango admitted before court that he drafted that purchase contract of the said plot of land. He states that Harerimana purchased that plot of land in 1988, adding that he did not know how Sebukayire came to put structures in that land. This statement was affirmed by Mukanyirimpuhwe Emeritha who testifies that after the piece of land was bought by Harerimana from Karyango, he gave it to her for a while to use it for agricultural reasons but after 1994, she harvested once since the second time her crops were damaged by machines and she did not mind who owned them. Musonera Callixte who was the employee of Harerimana Gaspard before 1994 states that when he fled, there was still Harerimana Gaspard's woodland, but when he returned in 1998 he found that there were buildings on that land whose owner he did not know. Ngezahayo Narcisse named owners of neighbouring plots of land to Harerimana Gaspard's; who are: Pastor Ruzima Narcisse and Bizimungu Athanase. He states that he does not know how Sebukayire erected buildings on it (cotes 67-69).

[19] The Court finds that Sebukayire was summoned by Administration of Urwibutso village and that of Kamutwa Cell to appear in order to explain on the Harerimana's claim that land belongs to his father, but he did not appear (cote 70). However, during investigation, the Court found from the office of Kamutwa Cell the emphyteutic lease title N° 672/GAS/KAC registered in the names of Sebukayire Tharcisse and Umutoni Sarah, and the Executive Secretary of the Cell indicated that the request for the said papers was made through other organs, and not the cell administration that received the claim.

[20] The court finds that in the land register held by the registrar of land titles found during investigation, the column reserved for the origin of land remains blank and Sebukayire failed

to indicate how that land was transferred from Rwigamba to him and his wife Umutohi Sarah. This implies that he was given the land title without indicating to the competent authority the origin of the plot of land he claims to own from the government and this is in contradiction with the provision of article 5 of the Organic Law N° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda¹ and article 5 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda² stating that: “the ownership over land shall rely on the fact that the owner acquired it either in accordance with custom, or granted by a competent authority, or by purchase”; and this indicates that Sebukayire acquired the land title, contrary to the possible ways mentioned above,. He acquired it fraudulently, though he occupied the land in good faith and spent 10 years with it during which nobody claimed its ownership.

[21] The Court further finds that the statements of Sebukayire and his counsel suggesting that the holder of the emphyteutic lease title is the legitimate owner of the land as such instrument remains unchallengeable according to article 44 of the civil code Book II, in compliance with order of 06/02/1920 and article 23 of the Ministerial Order N° 002/2008 of 01/04/2008 determining modalities of land registration³, should not be considered because the legislator modified all provisions of the order of 06/02/1920 as evidenced by the Title of Law N° 43/2013 of 16/06/2013 and article 20 of the same Law which provides that “an Order of the Minister in charge of land shall specify modalities and procedures for cancellation of land registration”.

[22] Court also finds that article 73 of the aforementioned Law N° 43/2013 of 16/06/2013 stipulates that all laws, orders and instructions implementing the aforementioned Organic Law N°08/2005 of 15/07/2005 shall remain applicable as long as their provisions are consistent with this Law, implying that article 23 of the Ministerial Order N° 002/2008 of 01/04/2008 as mentioned above, which provides for the unchallengeable character cannot be followed because it is inconsistent with Title 10 and article 20 of the Law N° 43/2013 of 16/06/2013 which provides that the land titles can be invalidated and this position is supported by article 6(1^o) and 10(5^o) of the presidential order N° 97/01 of 18/06/2014 determining the functioning and competences of the Registrar of Land Titles⁴.

[23] In accordance with the explanations and motivations and the legal provisions submitted, Court considers that the land in dispute belongs to Harerimana Gaspard and

¹Article 5 of the Organic Law N° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda states that: “Any person or association with legal personality that owns land either through custom, or who acquired it from competent authorities or who purchased it are allowed to own it on long term lease in conformity with provisions of this organic law”. ²Article 5 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda provides that: “Every person who is in possession of land, acquired either in accordance with custom, or granted by a competent authority, or by purchase, is the recognized proprietor under an emphyteutic lease in accordance with the provisions of this law”.

²Article 5 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda provides that: “Every person who is in possession of land, acquired either in accordance with custom, or granted by a competent authority, or by purchase, is the recognized proprietor under an emphyteutic lease in accordance with the provisions of this law”.

³ “Article 23 of the Ministerial Order N° 002/2008 of 01/04/2008 determining modalities of land registration” stipulates:

The Certificate of Registration on the Register of Titles is full evidence for the right of ownership, emphyteutic lease or real rights or encumbrances (real charges) that are specified on it.

The right of ownership which is recorded thereon cannot be challenged, even though the Certificate was drawn on basis of a cancellable or invalid contract of alienation, or a court order obtained by surprise.

⁴Article 6(1^o) of the Presidential Order N° 97/01 of 18/06/2014 determining the functioning and competences of the Registrar of Land Titles provides that: “Especially, the Council shall have the responsibility to: decide on the cancellation of land title;” while its article 10(5^o) states that: the Registrar of Land Titles shall have following responsibility: ...5^o to cancel certificate of land registration in accordance with the law”.

Mukangwije Thérèse, and therefore the emphyteutic lease title N° 0672/GAS/KAC of the plot of land located in Urwibutso Village, Kamutwa Cell, Kacyiru Sector, Gasabo District in Kigali City registered in the names of Sebukayire Tharcisse and Umutohi Sarah should be invalidated, and the Registrar of land titles should register it from the names of Sebukayire Tharcisse and to those of Harerimana Gaspard and Mukagwije Thérèse.

II.2. Concerning the houses built on the plot in dispute.

[24] Counsel Mulenzi Jean de Dieu for Harerimana states that at the time they filed the case to the Intermediate Court, the subject matter concerned the land and the house at it worth 33,589,068Frw as shown by the established valuation for that purpose of establishing the value and that the fact that there exists a storeyed house, implies the existence of its annexes. He added that if the court finds that they were constructed by Sebukayire, he prayed for its removal because he will have erected them in bad faith.

[25] Counsel Butare for Sebukayire states that his client found that plot empty and erected on it the buildings which are still standing, and therefore he does not perceive how the counsel for Harerimana alleges that they belong to his client.

THE OPINION OF THE COURT

[26] The court finds that the statements of the counsel for Harerimana that the existence of a storeyed house constructed by Harerimana implies the existence of its annexes in the plot of land in contestation, should not be considered because the Chief of Urwibutso Village and the executive Secretary of Kamutwa Cell informed the Court during the investigation that the buildings at the plot of land were constructed by Sebukayire, and this is supported by the statements of Harerimana Emmanuel who personally testified that he does not remember whether the plot contained a house; that of Musonera Callixte, a former Harerimana Gaspard's worker who mentioned that he fled in 1994 when the land was only accommodating woodland which belonged to Harerimana Gaspard, and the testimony of Mukanyirimpuhwe Emeritha who testified that she used to cultivate on that land but that after 1994, machines came and levelled the ground. Therefore, pursuant to article 3 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production which provides that "every plaintiff must prove his claim" while Harerimana and his counsel failed to prove it; the houses at the plot in contestation belong to Sebukayire.

[27] The Court finds in addition that by the time Sebukayire Tharcisse constructed houses in the plot belonging to Harerimana Gaspard and his wife, were in exile and their children including Harerimana Emmanuel were still minors, and until 2011, they had not yet submitted their claim to local administration. This implies that Sebukayire believed he owned the land and put up buildings in good faith.

[28] Court finds therefore that even if article 35 paragraph 3 of the aforementioned Law N° 43/2013 of 16/06/2013 provides that constructions erected by a person on a piece of land, that is not his/hers, without authorization shall be requested to remove such constructions without prejudice to claim indemnities for any damages⁵, the prayer of the counsel for

⁵Article 35 paragraph 3 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda stipulates that: "When buildings or crops have been developed by a person on the land that is not his/hers through procedures that are contrary to laws or agreement with land owner, the later has the right to request the person who performed them to remove such development without prejudice to the land owner to claim indemnities for any damages".

Harerimana requesting Sebukayire to remove his buildings from the land plot cannot be considered because he occupied it with good faith as explained in paragraph 20. Therefore the buildings in plot N° 0672/GAS/KAC should be owned by Harerimana Gaspard and Mukangwije Thérèse, provided that the administrators of their assets pay related compensation amounting to 33,589,068Frw based on the value asserted by the valuation report done under request of Harerimana Emmanuel since it was not contested by Sebukayire.

II.3. Concerning damages and other requests in the case.

[29] Counsel Mulinzi for Harerimana prays to the court to award his client 3,000,000Frw of moral damages; 1,000,000Frw for being dragged into lawsuits and 500,000Frw for counsel fees. He prays in addition that Sebukayire should be held liable to pay compensation for the cost of the materials of storeyed house in plot N° 671 he destroyed; the woodland he cut down and fish pond he scratched out.

[30] Counsel Butare for Sebukayire argued that concerning damages prayed by Harerimana due to fish pond, woodland and destroyed house are groundless because they constitute a new claim which was not subject to debate. To the contrary, he prayed to court to award 3,000,000Frw as general damages for being dragged into lawsuits and 1,000,000Frw for counsel's fees.

THE OPINION OF THE COURT

[31] Concerning damages prayed by the Counsel Mulinzi for Harerimana Emmanuel and his siblings, the court finds that he deserves 1,000,000Frw for being dragged into lawsuits because Sebukayire denied appearing before local administration which summoned him for conciliation as confirmed by local authorities, which led Harerimana to resort to the court and incur losses. He should also be awarded 500,000Frw as counsel's fees because he appeared in court with a lawyer, all damages amounting to 1,500,000Frw.

[32] However, the Court finds that he should not be awarded the requested moral damages, because as explained above, Sebukayire occupied and built on the plot in good faith. Concerning the destroyed woodland, fish pond and building materials which is said to have been destroyed, the court finds that they have not been referred to it and their value established; therefore they cannot be examined in this case.

[33] Regarding damages requested by Sebukayire and his counsel, they should not be awarded to him because he did not indicate the loss incurred and indeed, he is the instigator of all these lawsuits.

III. DECISION OF THE COURT

[34] Court decides that the appeal lodged by Harerimana Emmanuel who represents his siblings has merit.

[35] Court decides that the plot of land N° 0672/GAS/KAC located in Urwibutso village, Kamutwa Cell, Kacyiru Sector, Gasabo District belongs to Harerimana Gaspard and his spouse Mukangwije Thérèse.

[36] Court quashes the emphyteutic lease title N° 672/GAS/KAC registered in the names of Sebukayire Tharcisse and Umutoni Sarah, and orders the Registrar of Land Titles to register it in the names of Harerimana Gaspard and Mukangwije Thérèse.

[37] Court orders Harerimana Emmanuel and his siblings he represents who manage their parents' assets to pay the compensation amounting to 33,589.068Frw for the buildings at plot N° 672/GAS/KAC to Sebukayire.

[38] Court orders Sebukayire Tharcisse to pay Harerimana Emmanuel and his siblings 1,500,000Frw for compensation of counsel and procedural costs.

[39] Court overrules the ruling of the judgment RCA 0579/12/HC/KIG.

[40] Court orders Sebukayire Tharcisse to pay 100,000Frw of court fees.