

## **RUTAZIBWA ET AL v. MUKANDUTIYE ET AL**

[Rwanda SUPREME COURT – 2014SC – RADA 0030/13/CS (Kanyange, P.J., Mukandamage and Rugabirwa, J.) February 21, 2014]

*Law governing land – Emphyteutic lease on land which is pending succession – Before the determination of the successor of the estate of the deceased, it should not be registered to any person in the context of emphyteutic lease – If such emphyteutic lease is concluded, it should be nullified – Law n° 43/2013 of 16/06/2013 governing land in Rwanda, Articles 5 and 17.*

**Facts:** The appellants in the Supreme Court appealed against the judgment delivered by the High Court on the case they initiated requesting that emphyteutic lease on land between the respondents be resolved so that land gets back to estate. However, this High Court ruled that emphyteutic lease stays but as the concerned land is part of the property of the deceased, therefore, Mukandutiye is prohibited from selling, donating, leasing or mortgaging it without the consent of all successors of the deceased who are his children.

In their appeal, they demonstrate that the High Court decided beyond the scope of the claim for it had indicated how the property of the deceased would be inherited, determined the heirs and the portion to be inherited while the petition aimed only at taking back into the estate the portion of land, which had been registered in the name of Mukandutiye. In the course of hearing, the counsel representing the Government of Rwanda raised a motion through which he explained that it is not the Government of Rwanda that ought to have been sued, rather the Rwanda Natural Resources Authority since it is vested with legal personality.

**Held:** 1. Before the determination of the successor of the estate of the deceased, it should not be registered in any person's names in the context of emphyteutic lease, for the reason that an individual who has the right to such a lease is the one who acquired land either in accordance with custom, granted by a competent authority or by purchase as specified by article 5 of the Law n° 43/2013 of 16/06/2013 governing land in Rwanda. Therefore, that lease should be invalidated and the land taken back into the property of the deceased.

2. The fact that the appellants sued the government of Rwanda represented by the Registrar General of land titles means that it is the Registrar General who is sued representing the Government of Rwanda through the legal personality the institution is vested with.

**Appeal granted.  
Emphyteutic lease on land invalidated.  
The land is taken back into estate.  
Court fees are charged to the respondents.**

### **Statutes and statutory instruments referred to:**

Law n° 43/2013 of 16/06/2013 governing land in Rwanda, Articles 5 and 17.

Law n°53/2010 of 25/01/2011 establishing Rwanda Natural Resources Authority (RNRA) and determining its mission, organisation and functioning, article 3.



No case law is referred to.

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

[1] Rutazibwa Alexandre filed a case in the Intermediate Court of Karongi against his relatives; the subject matter being the exhibition of the inventory of the estate of the deceased, left by their parent late Fundi, to be awarded his share so that he withdraws from the joint ownership and be compensated for the cost he paid for search and collection of that estate of the deceased.

[2] Before the trial of this case, Rutazibwa and his brother Katararwa filed a petition explained above before the High Court, requesting that emphyteutic lease on the land which is part of estate signed between the Government of Rwanda and Mukandutiye Bellancilla be terminated and maintain status quo, because that property could not belong to one person as his share was not determined yet by the Court before which the matter was addressed.

[3] In that same case, Mukandutiye requested that it be joined with the aforementioned case that Rutazibwa filed in the Intermediate Court of Karongi since they are linked.

[4] Regarding the issue of joinder of cases, the Court decided that both cases should not be joined and concerning the cancellation of emphyteutic lease, it ruled that it remains valid but as the property is in the estate assets of the deceased, Mukandutiye is not allowed to sell it, donate it, give it in lease or mortgage it without the consent of the heirs of late Fundi who are his children.

[5] Rutazibwa and Katararwa appealed against that judgment to the Supreme Court arguing that, concerning the joinder of claims, there has been erroneous grounds. They state in addition that, the Court erred on the arguments of the litigant in the Court, that it tried the case ultra petita, and indicated how the estate assets of late Fundi should be shared, the heirs and the portion which shall be succeeded; whereas the subject matter of the claim was only about the part of the estate of the deceased which is registered on Mukandutiye which should be provisionally taken back into the estate pending the decision of the Court filed with the case.

[6] The hearing of the case was conducted in public on 10/09/2013 and on 14/01/2014, counsel Mutembe Protais assisting Rutazibwa and representing Katararwa, Mukandutiye being represented by counsel Buzayire Angèle, the government of Rwanda represented by counsel Malala Aimable who was replaced in the last hearing by counsel Sebazungu Alphonse, who then raised an objection relating to the fact that it is not the government of Rwanda which should have been sued, rather the Rwanda Natural Resources Authority since it is a legal entity.

### II. ANALYSIS OF THE LEGAL ISSUES

[7] The issue to be analysed in this case is to determine whether the emphyteutic lease that Mukankundiye concluded with the Government of Rwanda should be revoked and whether it is



the Government of Rwanda which should have been sued. Therefore, it is not necessary to examine the appeal grounds seen in the submission document of appeal which are not related to that issue, because it is clear that there are grounds relating to the issue of joinder of claims which has not been appealed against in this Court since even the appellants were satisfied; the analysis of it would not therefore be of any importance towards the subject matter of the claim. Others are in relation to the issue of succession which should not have been examined for it is an issue in the case dealing with the sharing of the assets left by late Fundi.

**Determination of whether the emphyteutic lease on land n° 5638/KAR/GI should be resolved and whether the Government of Rwanda should not have been sued.**

[8] Counsel Mutembe argues that his clients requested that emphyteutic lease concluded between the Government of Rwanda and Mukandutiye be revoked because the estate property had been recorded in her name, but the Court decided that property does not belong to her while it was awarded to her through the said emphyteutic lease; that decision of the Court is in contradiction with article 5 of the Organic Law n° 08/2005 of 14/07/2005 governing land in Rwanda which provides that s/he that has the right to the emphyteutic lease on land is the legitimate owner.

[9] Furthermore, instead of examining the subject matter of the claim which related only about the part of the estate registered on Mukandutiye which should be provisionally taken back into the estate pending the decision of the Court filed with the case, the Court tried beyond the scope of the claim and ruled that 50% of late Fundi's estate is Mukandutiye's own property while that was in litigation in another case, therefore the judge ruled in contravention of article 7 of CCLAP which provides that the judge shall only rule on the scope of the claim.

[10] Concerning the issue of whether the Government of Rwanda should have not been sued, counsel Mutembe states that it should be sued for the reason that emphyteutic lease that should be revoked had been concluded between the Government represented by the Registrar of land titles and Mukandutiye.

[11] Counsel for Mukandutiye states that emphyteutic lease which is sought to be revoked had been awarded to Mukandutiye as a legitimate spouse of late Fundi, and that either in the law on succession or the law governing land, no where is the widow deprived of the right she jointly enjoyed with the deceased; that property which was recorded to her belongs to estate till her share will be indicated at the end of the succession process.

[12] He further states that the judge did not decide beyond the scope of the claim, rather it was a method he used to show to the plaintiffs that he could not resolve the emphyteutic lease before indicating the share of Mukandutiye on the deceased estate; and that Court considered their request because it deprived Mukandutiye the right to transfer, donate....., then there was no other ground he could rely on and resolve the emphyteutic lease. He finds therefore that resolving it would be in contradiction with the law for it seems like depriving Mukandutiye of her right and the appellants do not indicate how the property is to be managed and what shall be the livelihood of Mukandutiye pending the occurrence of succession.

[13] He adds that if the emphyteutic lease is revoked, there would be contradiction with what has been decided in the judgment whose litigation is the partition of property for the reason that,



in that case, the property in litigation had been awarded to Mukandutiye and still belongs to estate to be shared.

[14] The State Attorney for the government of Rwanda states that he does not find any reason it should be sued, as they should have sued Rwanda Natural Resources Authority because it is vested with legal personality and its Registrar General should be held responsible of its actions.

[15] Concerning the revocation of the emphyteutic lease, he declares that up to now, Mukandutiye has the right to manage the property as long as the succession has not yet occurred, and the fact that the appellants are not the children of the legitimate spouse of late Fundi, they should not be granted that right because there are more other children to the deceased.

## **OPINION OF THE COURT**

[16] Article 17 of the Law n° 43/2013 of 16/06/2013 governing land in Rwanda, provides that “without prejudice to the provisions of Articles 6 and 7 of this Law, the right to land is granted by the State in the form of emphyteutic lease”, while the first paragraph of article 18, stipulates that “certifying the land which has been allocated or leased shall be evidenced by a certificate of land registration issued by the registrar of land titles”.

[17] Among the attributions conferred to the Rwandan Natural Resources Authority, article 3 of the Law n°53/2010 of 25/01/2011 establishing Rwanda natural resources authority (RNRA) and determining its mission, organisation and functioning includes that of land registration, issuing and keeping custody of authentic deeds and any other information relating to land in Rwanda.

[18] The fact that Rutazibwa and Katararwa sued the government of Rwanda represented by the Registrar of land titles, it implies that it is the Registrar of land titles who is sued and stands for the Government of Rwanda through the legal personality of the institution he manages.

[19] Concerning the emphyteutic lease sought to be revoked, the court considers that in holding that property at stake be transferred to Mukandutiye, Court had relied on the fact that she was a legitimate spouse to late Fundi as mentioned in the correspondence that the head of the land committee in Karongi district wrote on 24/07/2012. Furthermore, in ruling that the property remains in her name, the High Court relied on the fact that she is the widow of late Fundi who owns 50% of the whole estate, and another 50% being for his heirs. But this was not part of the claim submitted to this court for the reason that, the claim relating to the sharing of the estate of late Fundi was submitted in a different suit.

[20] Furtherstill, regarding the property that has been recorded on Mukandutiye, She does not deny that it belongs to the estate of the deceased as explained by her counsel, and it is confirmed by the High Court in the appealed judgment. Therefore, this Court considers that before it designates the owner of that property, it should not have been recorded to anyone in the context of emphyteutic lease because an individual who has the right to such a lease is the one who acquired land either in accordance with custom, granted by a competent authority, or by purchase as specified by article 5 of the Law n° 43/2013 of 16/06/2013 governing land in Rwanda.



[21] Hence, the fact that land committee of Karongi district had disregarded the provision of this article and allowed that part of the land, which is still in indivisible among all the heirs of late Fundi as she herself admits, be recorded on her, and was awarded the emphyteutic lease on that land. The Court considers that the lease should be resolved and the land be returned to the joint property left behind by late Fundi.

### **III. DECISION OF THE COURT**

[22] The court decides that appeal of Rutazibwa Alexandre and Katarwa J. Baptiste has merit.

[23] The court rules that emphyteutic lease on land n° 5638/KAR/GIS is revoked and the land is taken back in the estate of late Fundi.

[24] The court orders Mukandutiye to pay  $\frac{1}{2}$  of court fees amounting to 35,900Frw, meaning 17,950Frw, and another  $\frac{1}{2}$  is payable by the State.

