

MUKAMANZI v. KWITUNGA ET AL

[Rwanda SUPREME COURT – RCAA0019/14/CS (Nyirinkwaya, P.J., Kayitesi R. and Mukandamage, J.) February 12, 2016]

Law determining jurisdiction of courts – Appellate jurisdiction of the Supreme Court – Objection of lack of jurisdiction – Loss of the case on first and second instance for similar reasons – In case the Supreme Court finds that the appellant lost the case on first and second instance on similar reasons, his appeal claim becomes inadmissible because it does not fall within its jurisdiction – Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28(2&5).

Facts: This case originated from the claim initiated by Mukamanzi to the Intermediate Court of Rubavu against his husband Kanyarwanda Cléophas and Kwitunga Tonny whereby she requested the resolution of the provisional contract of sale of the house located on the plot N°48, Vol RT XXVII Folio 132 in Gisenyi town, Rubavu district between Kanyarwanda Cléophas and Kwitunga Tonny without her consent.

On 3rd August 2012, this Court rendered the judgment RC0369/011TGI/RBV and held that the said sale contract concluded by Nsanzumuhire Kayitare François under the power of attorney he was assigned by Kanyarwanda could not be resolved, therefore it should be complied with by the principal as well as Mukamanzi.

Mukamanzi lodged an appeal to the High Court, Chamber of Musanze alleging that the Intermediate Court of Rubavu disregarded the provision of the law which states that in order for the acquisition of land to be valid, it should be endorsed by the spouse and children in written form.

This court rendered the judgment RCA0154/12/HC/MUS on 6 December 2012 and found the appeal lodged by Mukamanzi without merit; therefore it upheld the appealed judgment and specified that she is also among the parties who have the obligation to execute the clauses of the contract, given that Mukakamanzi failed to provide contradictory evidence to evidence submitted by Kwitunga Tonny constituted by the letter of 29/9/2011 that Mukamanzi addressed to Nsanzimfura Kayitare François in which she mentions that she conveys to him the document; mentions which refer to the termination of the proxy relating to the management of the assets as well as the sale of the house registered to Kanyarwanda. This indicates that she could not terminate the proxy she did not participate in because she explained that its termination was due to the fact that they were not given the report on their assets management which implies that had she not assigned the duty, she could not have requested it.

Mukamanzi appealed to the Supreme Court alleging that the court disregarded his grounds which indicates that she has never endorsed the sale directly neither in the proxy assigned by Kanyarwanda to Nsanzimfura nor in sale contract. She states also that the court disregarded without any ground the case law she relied on which was rendered by the Supreme Court on the similar issue. She alleges that another ground is that the court misinterpreted the provision of article 37 of the Organic Law N°08/2005 of 14/07/2005 governing land in Rwanda.

Before the examination of the merit, Counsel Serugo Jean Baptiste and counsel Rukarishya Philémon for the respondent raised an objection of lack of jurisdiction by the Supreme Court, whereby they explain that given that Mukamanzi lost her claim at the Intermediate Court of Rubavu and her appeal at High Court, Chamber of Musanze; her appeal claim does not fall

into the jurisdiction of Supreme Court because she lost the case at both instances on similar grounds, therefore in accordance to the provision of the last paragraph of article 28 of the Organic Law determining the organisation, functioning and jurisdiction of the Supreme Court, her appeal claim should not be admitted.

The counsel for Mukamanzi presents her client's defence grounds whereby he states that the reasons relied on by the first instance court are different from grounds relied on by the appellate Court since in the judgment RC0369/011/TGI/RBV, the Court decided that she participated in the assignment of power of attorney without evidence indicating his consent to the sale of the property whereas in the judgment RCA0154/12/HC/MUS, the appellate Court did not address the provision of articles 21 and 22 of the Law relating to matrimonial regimes, rather, it addressed article 37 of the Law governing land of the year 2005.

Held: Given that previous courts held that the content of the document dated on 29 September 2011 which was written by Mukakamanzi to Nsanzimfura, whereby she states that she would like to address to him a document involving the termination of the proxy relating to the management of the assets and that of sale of the house located in Gisenyi town and that, as a spouse to Kanyarwanda of whom they co-own all property, she supports this termination and therefore he should submit to her the property management report; it is clear that Mukamanzi participated in the proxy relating to the sale of their house assigned by her husband Kanyarwanda, therefore the Supreme Court finds that Mukamanzi lost the case at first and second instance for similar grounds, and consequently her appeal should not be admitted and examined because it does not fall into the jurisdiction of the Supreme Court.

**Objection with merit.
Appeal dismissed.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28(2&5).

No case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Mukamanzi Laurence sued her husband named Kanyarwanda Cléophas and Kwitunga Tonny before Intermediate Court of Rubavu, requesting the termination of the provisional sale contract of the house at plot N°48, Vol RT XXVII Folio 132 located in Gisenyi town, Rubavu district which she co-own with her husband because it was concluded without her consent and she requested the counsel fees amounting to 3,000,000Frw.

[2] The court rendered the judgment RC0369/011TGI/RBV on 03/08/2012, and held that the contract of sale which was concluded by Nsanzumuhire Kayitare François, under the proxy assigned by Kanyarwanda is valid and should be executed by the principals, therefore the plot N°48 Vol. RT XXVII, Folio 132 in Gisenyi town mentioned in it belongs to the purchaser named Kwitunga Tonny, and the execution of this contract should be done by

Kanyarwanda or another person he may delegate. It ordered the plot to be registered to the purchaser Kwitonda Tonny. It ordered also Mukamanzi to pay court fees and counsel fees amounting to 400,000Frw.

[3] Mukamanzi appealed to the High Court, Chamber of Musanze, alleging that the Intermediate Court of Rubavu disregarded the fact that the law provides that in order for the land to be sold, the spouse and children should endorse it in writing, and that it made a contradiction whereby it held that the provisional sale contract is valid and that it should be performed by all agents including Kanyarwanda and his agent.

[4] That Court rendered the judgment RCA0154/12/HC/MUS on 6 December 2012, and found the appeal lodged by Mukamanzi without merit therefore that the appealed judgment is upheld and that he is among those who are required to execute the clauses of the contract and should pay 300,000Frw of counsel fees and 50,000Frw of procedural expenses and court fees.

[5] As grounds for the decision, the court explained that Mukamanzi failed to contradict the evidence submitted by kwitonda Tonny which is constituted by the letter written on 29 September 2011 containing the message addressed to Nsanzimfura Kayitare François whereby it is stated that she handed him the message written by Kanyarwanda which relates to the termination of the proxy for management of assets and sale of the house located in Gisenyi.

[6] The court found in addition that Mukamanzi assisted his husband to assign the proxy relating to the sale of the house to Nsanzimfura because according to the documents dated on 29 September 2011, one of which was written by Kanyarwanda while another was written by Mukamanzi, it is indicated that they jointly participated in termination of that proxy because they were not given a report on the management of their property; therefore Mukamanzi would not have terminated the proxy he did not participate in because she explained that its termination was due to the lack of the report, which she would not require had she never assigned it.

[7] The Court found that the holdings of the Intermediate Court of Rubavu that Mukamanzi was aware and indorsed the proxy relating to the sale of the plot N°48 Vol RT XX VII Folio located in Gisenyi town has merit, and that the documents of 29 September 2011 are substantial evidence likely to be relied on to confirm that the sale of the house was known and endorsed by Mukamanzi.

[8] Concerning the fact that the court which rendered the judgment at first instance contradicted itself, the court found that the ruling judge contradicted himself whereby he indicated that there are some elements of evidence indicating that Mukamanzi was involved in the proxy assigned to Nsanzimfura while in the decision, he indicated that the proxy was concluded by Kanyarwanda to Nsanzimfura and in addition he stated that Nsanzimfura was appointed by several persons. He also ordered that it is Kanyarwanda who is assigned the obligation to execute the contract or another person he may appoint without mentioning Mukamanzi as far as the execution of the contract is concerned while she is also concerned, but in turn, the court mentioned Mukamanzi among those with the obligation to execute the contract.

[9] Mukamanzi lodged an appeal to the Supreme Court alleging that the court disregarded her submissions in which she indicates that he did not indorse her consent in writing directly, whether in the proxy that Kanyarwanda assigned to Nsanzimfura or in sale contract. She

states in addition that the court disregarded the case law she submitted which was rendered by the Supreme Court on the similar issue. She alleges again that the court misinterpreted the provision of the article 37 of the Organic Law N°08/2005 of 14/07/2005 governing land in Rwanda.

[10] The hearing was conducted in public on 05 January 2016, whereby Mukamanzi Laurence was represented by Counsel Nkurunziza François Xavier, Kanyarwanda Cléophas being represented by Counsel Nizeyimana Boniface while Kwitunga Tonny was represented by Counsel Serugo Jean Baptiste and Counsel Rukarishya Philémon.

II. ANALYSIS OF LEGAL ISSUE

Whether the appeal lodged by Mukamanzi Laurence falls within the jurisdiction of the Supreme Court.

[11] Before the examination of the merit of the case, Counsel Serugo Jean Baptiste and Counsel Rukarishya Philémon raised an objection of lack of jurisdiction of the Supreme Court stating that it relies on the provision of the last paragraph of article 28 of the Organic Law determining the organisation, functioning and jurisdiction of the Supreme Court. They allege that Mukamanzi initiated a claim to the Intermediate Court of Rubavu which she lost, and appealed to the High Court, Chamber of Musanze and lost again, therefore they find that her appeal does not fall into the jurisdiction of this court because she lost at both instances on similar grounds.

[12] They go on stating that in the judgment RC0369/011/TGI/RBV rendered by the Intermediate Court of Rubavu on 3 August 2012, it was relied on two documents which indicate clearly that Mukamanzi knew the proxy assigned by her husband (page 4-6, paragraph 10) and that she indorsed it, especially that in the judgment RCA0154/12/HC/MUS rendered by the High Court, Chamber of Musanze on 6 December 2012, Mukamanzi Laurence lost also the case due to the fact that it was relied on the same document, except that there has been a mistake on the date of drafting of one of them. This court upheld the ruling of the first judge which implies that the grounds relied on are similar.

[13] Counsel Nkurunziza François Xavier who represents Mukamanzi Laurence states that the reasons relied on by the previous judge differ from the reasons relied on by the second judge. He explains that Mukamanzi initiated a claim basing on article 21 and 22 of the Law regarding matrimonial regimes as well as articles 35 and 37 of the Law of 2005 governing land. He relied also on the case RCOM0001/07/CS rendered by the Supreme Court on 24 July 2008, in which parties were Rwigema Joséphine against ECOBANK Rwanda, and he states that on the page 4, paragraph 10 of the judgment RC0369/011TGI/RBV, the previous judge held that Mukamanzi assigned the proxy but nothing indicates that she approved the sale of the property.

[14] He goes on arguing that in the judgment RCA0154/12/HC/MUS, the second judge was silent about the provision of articles 21 and 22 of the Law regarding matrimonial regimes, but provided some arguments on article 37 of the law of 2005 governing land, whereby he stated it is not prohibited to the judge to rely on other evidence, which implies that Kanyarwanda accepted the sale of his whole property for which the proxy to be managed was issued, even if Mukamanzi Laurence has never indorsed the sale of their household property.

REASONS FOR COURT DECISION

[15] Concerning the jurisdiction of the Supreme Court, article 28, paragraphs 2 and 5 of the Organic Law N°03/2012/OL of 13 June 2012 determining the organisation, functioning and jurisdiction of the Supreme Court, provides that the Supreme Court has appellate jurisdiction over cases heard and decided in the second instance by the High Court if they fall within the instances mentioned in this provision. However, a case lost by a party to proceedings in the first and second instances basing on similar grounds shall not be appealed for to the Supreme.

[16] As indicated above, the state of this judgment indicates that it was initiated to the Intermediate Court of Rubavu, and was appealed for to the High Court, Chamber of Musanze, whereby Kwitunga Tonny won the case for the validity of the provisional sale contract of the house N°48, Vol RT XX VII Forio 132 located in Gisenyi town, Rubavu district which was concluded between Nsanzimfura Kayitare François and Kwitunga Tonny which should be registered to him. It is in regard to this contract that resolution was requested for through the claim submitted by Mukamanzi Laurence who stated that she was civilly married to Kanyarwanda under community of assets, but that her husband assigned the proxy to Nsanzimfura for the sale of the said house without her endorsement, and this is in contradiction to the provisions of law, especially article 35 of the law governing land of 2005 and article 21 of the law regarding matrimonial regimes.

[17] In the judgment RC0369/011/TGI/RBV rendered by Intermediate Court of Rubavu on 3 August 2012, the Court found that the sale contract which was concluded between Nsanzimfura Kayitare Francois and Kwitunga should not be considered as if Mukamanzi Laurence was not aware of it because her counsel relies only on the provisions of the law to indicate that there was no agreement between her and her husband as Mukamanzi did not sign the proxy issued to Nsanzimfura, which is not true because even if the law provide for the consent between spouses for the management of their property, it is not necessary for this consent to be indicated by the signature on the proxy, rather, the agreement is evidenced by other written or lawful evidence.

[18] Among those evidences, the court relied on the document of 29 September 2011 which was written by Mukamanzi to Nsanzimfura which includes the message indicating that the proxy issued was concerted between both of them therefore she knew about it as she knew the implication because in its first paragraph, she stated that she intended to address him a letter concerning the resolution of the proxy relating to the management of the property as well as the sale of the house located in Gisenyi, while in its paragraph 2, she requested him to hand to her a property management report because in the capacity of the spouse to Kanyarwanda, whom they own jointly their property, she supports the resolution of the proxy.

[19] Another evidence relied on which indicates that Mukamanzi was aware of this proxy, is the letter written by Kanyarwanda on same date of 29 September 2011, whereby he states that he and his wife issued a proxy for the management of their property to Nsanzimfura.

[20] The Court found that those two letters indicate that there is something that Mukamanzi and Kanyarwanda would like to do but which is not lawful and that is the resolution of the proxy contract which was not due to the fact that Mukamanzi and her husband did not agree on that, rather it was due to the fact that the agent did not respect the proxy, and the consequence being the withdraw of the proxy and the wish for annulment of

his acts performed before the withdrawal. However, in compliance with the provision of article 531 and 532 of the civil code, book III, Kwitunga should not be held liable for this.

[21] The Court found that the fact that Mukamanzi does not deny that the proceeds of the sale of the house was used to pay back the credit she and her husband owed to the BCR, which indicates she was aware of the proxy concluded by her husband too.

[22] The court relied also on circumstantial evidence indicating that the claim of Mukamanzi is groundless since Kanyarwanda who concluded the proxy is the one who advised his wife to seize the court against him, the fact that they are represented by same counsels, and Kanyarwanda assists her wife to get evidence (judgment RCA0247/11/TGI/MHG which was pending and about the existence of civil marriage between them), and the fact that their allegation grounds are similar, implies that they share same interests.

[23] In the judgment RCA0154/12/HC/MUS rendered by the High Court, Chamber of Musanze, on 6 December 2012, it is indicated that it was found that Mukamanzi endorsed the proxy concluded by her husband Kanyarwanda to Nsanzimfura Kayitare François concerning the sale of the house because the letters of 29 September 2011, of which one was written by Kanyarwanda and another one written by Mukamanzi demonstrate that they participated together for the termination of the said proxy due to the fact that they were not given the report, therefore it finds that Mukamanzi would not terminate the proxy that she did not participate in, especially that she explained that its termination was due to the fact that they were not given report. Hence, Mukamanzi should not have requested the termination of the proxy she never concluded.

[24] The court found in addition that, the provision of article 37 of the Organic Law N°08/2005 of 14/07/2005 governing land in Rwanda which was disregarded provides that the approval mentioned in article 35 of the organic law is indicated by the document which is signed by the individuals involved before the registrar of civil status or the land officer who records it in the related registry. However, this is not likely to prevent the judge from referring to other evidence which is likely to demonstrate that the family members endorsed the sale of the land; the reason why the documents dated on 29 September 2011 constitutes the tangible and reliable evidence to prove that the house was sold to the knowledge and approval by Mukamanzi.

[25] The Court rectified also the issue of contradiction relating to the parties that are liable to execute the contract which was apparent in the first instance judgment, whereby it stated that Mukamanzi should comply with it and upheld the ruling of the Intermediate Court of Rubavu.

[26] The Court finds therefore that both previous courts found that there exist lawful elements of evidence on which they relied to indicate that Mukamanzi participated in the conclusion of the proxy contract done by her husband Kanyarwanda to sale the house, therefore the provisional sale contract concluded between Nsanzimfura Kayitare François in favour of Kwitunga Tonny for which she seized the court, should not be terminated, rather she should perform it as well.

[27] In accordance to second and fifth paragraphs of article 28 of the Organic Law N°03/2012/OL of 13/06/2012 as mentioned above, the Court finds that Mukamanzi Laurence

lost the case on first and second instances for similar grounds, therefore her appeal claim should not be admissible because it does not fall into the jurisdiction of the Supreme court.

III. DECISION OF THE COURT

[28] It finds the objection of lack of jurisdiction by the Supreme Court with merit.

[29] Decides that the appeal claim lodged by Mukamanzi Laurence does not fall into the jurisdiction of the Supreme Court.

[30] Orders Mukamanzi Laurence to pay 100,000Frw of court fees.