

RUTABAYIRU v. BATAMURIZA

[Rwanda SUPREME COURT – RCAA0013/13/CS (Mugenzi, P.J., Gakwaya and Munyangeri, J.) June 03, 2016]

Family law – Cohabitation – Sharing of property – The role of each cohabiting partner in acquiring the property cannot only be determined by having an income earning job as long as they jointly contributed towards the welfare of the household in different ways.

Land law – Immovable properties – Requirements for ownership – The emphyteutic lease registered on the names of a person is not enough to prove the ownership in case of failure to prove its origin – Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5.

Civil procedure – Appeal – The scope of appeal – The subject matter to be decided by the appeal court is limited to the scope of appeal – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 170.

Facts: Batamuriza sued Rutabayiru to the Intermediate Court of Nyarugenge, requesting to share the property comprised of two houses, farm land, two vehicles and home furniture which she states that they jointly acquired in the course of their cohabitation from 1991 to 2003.

That Court held that Batamuriza loses the case because she failed to produce the evidence indicating her contribution in acquiring those properties especially that they were registered on Rutabayiru. It further explained that article 39 of the Law N°59/2008 of 10/09/2008 should not be relied on because parties ceased to cohabit since 2003 before the enactment of that law.

Batamuriza appealed to the High Court alleging that the Intermediate Court should have considered her as legally married basing on the custom of Uganda where they got married. It disregarded witness declarations she presented rather, it confused the judgment for sharing properties with that relating to paternity petition against Rutabayiru.

The High Court held that the appeal has merit then ordered that the property on plot N°6173 and N°6174 should be apportioned equally. Indeed, it motivated that there is no evidence which should be based on in considering Rutabayiru and Batamuriza as legally married in Rwanda, and consequently they should not be apportioned the property on the basis of article 39 of the law N°59/2008 of 10/09/2008 mentioned above because it was not into force when they ceased to cohabit especially that it did not provide for retroactivity, therefore they should share the property in accordance to the rule the judge would have enacted, had they to do so.

Rutabayiru appealed to the Supreme Court requesting for the quashing of the High Court decision which ordered the sharing of the property between him and Batamuriza because it contradicts the Constitution. He further adduces that the hierarchy of evidence was disregarded since the Court considered witness declarations in disregard of his emphyteutic lease which is considered as an authentic deed and was not invalidated by the Court. He further alleges that the Court ruled beyond the scope of appeal given that Batamuriza alleged that she was aggrieved basing on article 39 of the aforementioned Law N°59/2008 of 10/09/2008 while the judge examined the sharing of the property basing on the judicial precedents and scholar's opinions.

Batamuriza rebuts that she jointly acquired those properties with Rutabayiru because she also used to earn income.

Held: 1. The role of each cohabiting partner in acquiring the property cannot only be determined by having an income earning job as long as they jointly contributed towards the welfare of the household in different ways.

2. The emphyteutic lease registered on the names of a person is not enough to prove the ownership in case of failure to prove its origin.

3. The subject matter to be decided by the appeal court is limited to the scope of appeal; therefore the other property consisting of the farm land which was not appealed against cannot be examined.

4. Damages are awarded in accordance to Court discretion in case the aggrieved party does not indicate its amount.

**Appeal has no merit;
With court fees to the appellant.**

Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 04/06/2003, as amended to date, article 29.

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

Organic Law N°59/2008 of 10/09/2008 on prevention and punishment of gender-based violence, article 39.

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 170.

Decree Law of 30/07/1888 relating to contracts or obligations, article 258.

Cases referred to:

Harerimana v. Sebukayire, RCAA0018/13/CS rendered on 24/12/2014 by the Supreme Court.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Batamuriza sued Rutabayiru at Intermediate Court of Nyarugenge, requesting to share the property which they acquired together at the time they have been cohabiting from 1991 to 2003. Those properties comprise of two houses located at Muhima, Amahoro cell, Kabirizi village, farm land, two vehicles and home furniture.

[2] The judgment RC0790/09/TGI/NYGE rendered on 04 February 2011, the Intermediate Court of Nyarugenge decided that Batamuriza lost the case because she does not prove her contribution to those properties especially that they are registered in the name of Rutabayiru. It based also on the rulings on the paternity petition which held that Rutabayiru is the father of the children, the Court ordered that Batamuriza gets custody of the children in the House of Rutabayiru located at Muhima, while Batamuriza did not demonstrate that she has a share on the house, furthermore the Court motivated that article 39 of the law

N°59/2008 of 10/09/2008¹ should not be relied on because the parties are ceased to cohabited in 2003 before that law came into force.

[3] Batamuriza appealed to the High Court stating that the Intermediate Court should have considered her as married basing on the custom of Uganda where they got married, it disregarded the witnesses she presented rather, mistook the judgment for sharing the properties with that of paternity petition.

[4] The High Court held that the appeal lodged by Batamuriza has merit; overturned the judgment rendered by the Intermediate Court; ordered that the property on plot N°6173 and N°6174 should be equally apportioned, for each to get 57,093,153Frw. Furthermore, the Court declared that Batamuriza keeps the property in her possession located on plot 6174, Rutabayiru keeps the property located on plot N°6173 and gives 24,837,481Frw to Batamuriza in order to equalize and otherwise, the properties will be auctioned for them to share proceeds.

[5] The High Court motivated that there is no evidence proving that Rutabayiru and Batamuriza were married in accordance with Rwandan laws and that they cannot be apportioned the property on the basis of article 39 of the law N°59/2008 of 10/09/2008 mentioned above because it was not into force at the time they ceased to cohabit because it does not provide for retroactivity².

[6] However it motivated that they should share the property by basing on equity, because even though there was no law governing the administration and sharing of the property for those who cohabit in course of their separation, but in every relationship exist codified or customary laws which regulate it. Therefore Rutabayiru should not be unjustly enriched on Batamuriza's, so that the later be deprived the rights.

[7] Rutabayiru appealed to the Supreme Court stating that the decision rendered by the High Court violated his property in apportioning it with Batamuriza while it is prohibited by article 29 of the Constitution³, thus it must be overturned, as it is provided for by article 200 that “the Constitution is the supreme law of the State. Any law which is contrary to this Constitution is null and void”.

[8] Furthermore, he states that the hierarchy of evidences was disregarded because the High Court gave merit the declarations of the witnesses instead of the title deed registered on his name while the latter is an authentic deed and was not invalidated by the Court; which proves the ownership of the property as provided for by article 2 of the Law Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda and it was emphasized by article 26 of that law.

[9] He keeps on stating that the Court ruled *ultra petita* because Batamuriza alleged that she was prejudiced basing on article 39 of the law N°59/2008 of 10/09/2008 mentioned above, instead the judge examined the sharing of the property basing on the jurisprudence and the doctrines.

¹Law on prevention and punishment of gender-based violence.

² Article 2 of the law his Law N°42/88 of 27/10/1988 governing the Preliminary Title and Civil Code Book One provides only for the future; it does not have retrospective effect unless otherwise provided.

³Constitution of the republic of Rwanda of 04/06/2003, as amended to date.

[10] The hearing was conducted in public on 03 May 2016, Rutabayiru represented by Counsel Mutunzi Donat whereas Batamuriza represented by Counsel Ntwali Justin

II. ANALYSIS OF THE LEGAL ISSUE

A. Whether Batamuriza has contributed to the properties for which she contests with Rutabayiru.

[11] Rutabayiru states that the Court violated his property, deciding that he apportions with Batamuriza two houses he owns because he built them after 2003 while he had ceased to cohabit with Batamuriza, moreover, the houses located on plots N^o6173 and N^o6174 are registered on his name and possesses their title deeds, which demonstrate his ownership.

[12] He states that the High Court disregarded the hierarchy of evidence because it based on the statement of the witnesses who provided the information during the investigation which was not requested by the parties, and it was based on jurisprudences from foreign countries whose customs are different from ours in disregard that the properties in litigation are registered on the name of Rutabayiru who also possesses their documents which had never been invalidated by the Court as it is provided by the law governing land management.

[13] Furthermore, he states that the Court ruled *ultra petita* because Batamuriza alleged that she was prejudiced basing on article 39 of the law N^o59/2008 of 10/09/2008 prevention and punishment of gender- based violence, instead the judge examined the sharing of the property basing on the jurisprudence and the doctrines, thus he prays that the decision be overturned.

[14] Mutunzi the counsel for Rutabayiru states that there was violation of the law because the Court considered oral testimony while there were written evidences which were not produced as an authentic deed. He further states that was violation of Rutabayiru's properties because he acquired them in 2004, when he had already separated with Batamuriza since 2003.

[15] In addition, he adduces that there is no reliable evidence to prove that they jointly acquired those properties because the photos on which Batamuriza relies were not shot by an expert, especially that the status of the image may not correspond to the place where it was shot. In addition the fact for the children of Rutabayiru to have studied at APACOPE Muhima does not constitute evidence of co-ownership of property.

[16] However, he states that if the Court opines it otherwise, it should consider that the properties in litigation was mortgaged in Bank to secure the payment of the loan Rutabayiru was given but which he defaulted, and consequently that property is under auction process for in the execution of the judgment RCOMA0054/10/CS rendered by the Supreme Court. This should be put under consideration so that the remainder of the auction proceeds should be the ones apportioned among them.

[17] Batamuriza states that she began to cohabit with Rutabayiru in 1991 in Uganda and they jointly acquired those properties which include the house located on plot N^o 6173 which was built in 1997 while they were still residing in Gikondo. In 1999 they moved into that house, from where they bore their child called Prince on 10/07/2001, other children were studying at APACOPE, when they were residing at Muhima. and they separated in 2003

[18] She argues that she also used to earn income because she was an employee of CICR (*Comité International de la Croix Rouge*) where she resigned due to the sickness of her child, later she carried out commercial activities in shop N^o12 at a place commonly known as “Mashyirahamwe” in Nyabugogo. She adds that she is the one who used to pay the the builder and also for the materials because Rutabayiru worked far from home. She argues that as they resided in Muhima their children studied at APACOPE She adds that her role was also demonstrated by the witness who built the first house, called Sakindi who was interrogated by the High Court and who is available at any time when necessary and also Mukakamanzi Agnès, from whom they brought the plot on the price of 35,000Frw.

[19] Furthermore, she states that the documents are dated after her separation with Rutabayiru because the regularization was made afterwards, and the fact that he mortgaged those properties should not deprive her of her rights. She keeps on arguing that they also had a farm land at Bungwe and she was informed that it was sold to Kabera Etienne for 14,000,000Frw in February 2016.

[20] Counsel Ntwali states that no legal provisions were disregarded in the appealed judgment, because the issue was to determine whether Rutabayiru and Batamuriza cohabited and jointly acquired the property in litigation, for them to share it. He explains that to carry out the investigation on the judge initiative is not unlawful, because he has the burden to determine whether Batamuriza contributed to the property in litigation.

[21] He states that the property in litigation was not acquired after their separation, because as it is clear in the judgment rendered on 29 April 2004 concerning the paternity of the children against Rutabayiru, those properties were mentioned and the way the title deeds were obtained is unclear since it is obvious that he was issued the title deed of the plot N^o6173 on 11 April 2005, whereas he received the building permit on 01 April 2005. He further alleges that there was no violation of the property of Rutabayiru reference made of article 29 of Constitution, because as long as he co-owned it with Batamuriza, the infringement should be determined on both sides.

[22] On the issue that Rutabayiru is the one registered on the documents of the property which should be considered as the authentic deed, Counsel Ntwali states that even Batamuriza does not allege those documents to be forged, rather what she confirms is that they jointly acquired that property, thus her right should be recognized.

OPINION OF THE COURT

[23] The Court finds that the pleadings of Rutabayiru that the property in litigation was obtained in 2004 while they were separated, should not be considered because as the High Court demonstrated, the witnesses including Nyinawabera Euphrate and Uwitonze Innocent who were interrogated by the Court, clearly explained that they were neighbours to Rutabayiru and Batamuriza at Muhima, where they lived as husband and wife, it was during that time they built the houses in litigation, they further state that the place in litigation was bought and built in 1997 and 1998 when Rutabayiru was cohabiting with Batamuriza, therefore that testimony should be considered, especially that before the High Court Rutabayiru stated that they bought the plot N^o6174 in 1998 when he was still cohabiting with Batamuriza.

[24] The Court finds in addition that, in evaluation report requested by the High Court in the decision of 08 August 2012, it is clear that the main house on the plot N^o6173 was built in 1997 whereas the house on the plot N^o6174 was built in 2000, and apart from that, in the judgment RC4106/04 of 29 April 2004 regarding the paternity it was decided that those children will be raised in his little house which is rented 50,000Frw located at Muhima, Kigali city, and this would be implemented after the academic year of 2003-2004, this implies that there is a big and small house both built before 2004.

[25] As both parties admit, Rutabayiru and Batamuriza cohabited from 1991 to 2003. After their return in Rwanda; Rutabayiru used to work upcountry while Batamuriza worked at CICR as it is indicated in work certificate of 09 October 1997, whereby she earned 47,600Frw of salary as indicated by the payment slip of 21 October 2010 delivered by CICR. In addition, the opponent failed to contradict that she carried out the business.

[26] The Court finds in addition that even if Rutabayiru states that the photos produced by Batamuriza which show the children playing in front of the houses in litigation must not be given merit, nothing is likely to prevent that evidence to be considered because be it constituted by photos does not consist of a defect, as long as the one who challenges it failed to prove it is a forged document. Therefore, the Court notices that such evidence supports others which were demonstrated; indicating that Rutabayiru did not build the houses in litigation after his separation with Batamuriza.

[27] The Court finds further that even though Batamuriza did not have income earning job in the course of 12 years she cohabited with Rutabayiru and jointly built and developed their home, it would not imply that she did not contribute, while they were jointly involved in its welfare in different ways.

[28] With regards to the fact the assets in litigation are registered on Rutabayiru, the Court finds that even if he possesses the title deed of the property, it is not enough to confirm that it belongs to him, rather he must demonstrate its origin, as provided for by article 5⁴ of Organic Law N^o08/2005 of 14/07/2005 determining the use and management of land in Rwanda, providing that a person owns land either through custom, or purchase⁵, thus he must demonstrate that Batamuriza did not contribute on its origin, whereas to be registered on the documents, it may be due to the false information submitted during the registration.

[29] Concerning the legal basis of sharing the property between Rutabayiru and Batamuriza, the Court finds that the sharing should not rely on article 39 of the Organic Law N^o59/2008 of 10/09/2008 because the parties separated before its promulgation, rather, it should be based on article 29 of the Constitution of the Republic of Rwanda of 04/06/2003, as amended to date, which Rutabayiru also bases on in his pleadings, as provides that “every person has a right to private property, whether personal or owned in association with others and also that it is inviolable”. Therefore as Batamuriza and Rutabayiru jointly contributed towards the acquisition of the houses in litigation as motivated above, none should exclude another since it is inviolable and both are entitled to it.

⁴That article provides for 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”

⁵The motive for the fact that a part who possesses the title deed does not enough in order the Court held that the property without demonstrating its origin, it was decided in the judgment RCAA0018/13/CS of 24/12/2014, Harerimana Emmanuel V. Sebukayire Tharcisse.

[30] The Court finds that in case Rutabayiru holds the whole property while his partner contributed towards its acquisition, it would be contrary to a major principle of law which prohibits unjust enrichment as it was motivated in the appealed judgment.

[31] Concerning the farm land, which Batamuriza states that it is located at Gicumbi district, the Court finds that Batamuriza lost the case concerning it in the High Court and she did not appeal against it and in her submission of appeal he requested that judgment to be sustained therefore the Court cannot examine the issues relating to that farm land, because it was not appealed for, especially that article 170 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that appeal shall be limited to the appealed matter.

B. Concerning the damages claimed by Batamuriza

[32] Counsel Ntwali requests that Batamuriza be awarded 500,000Frw of the counsel fees and 700,000Frw of the procedure fees, whereas Mutunzi, the Counsel for Rutabayiru states that the damages should not be awarded because it lacks merit.

[33] Pursuant to article 258 of the civil code book III which provides that any act of man, which causes damage to another obliges the person by whose fault it occurred to repair it, the Court finds that Batamuriza had to resort to courts of law in order to have ownership on the property, it is clear that she incurred procedural expenses and counsel fees, but because she doesn't produce correspondent evidence, the Court in its discretion awards her 300,000Frw for the procedural fees and 500,000Frw for the counsel fees.

III. DECISION OF THE COURT

[34] Holds that the appeal of Rutabayiru Charles lacks merit;

[35] Holds that judgment RCA0076/11/HC rendered by the High Court on 15/03/2013 is hereby overturned only in regards to damages;

[36] Orders Rutabayiru Charles to pay to Batamuriza Immaculée a total of 800,000Frw in damages;

[37] Orders Rutabayiru Charles to deposit 100,000Frw for the Court fees.