

## KAPERE v. IYAMUREMYE

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV0005/14/CS (Nyirinkwaya, P.J., Mukandamage and Nyirandabaruta, J.) February 5, 2016]

*Jurisdiction of courts – Case review due to injustice – Judgment rendered under review – The application for review due to injustice consists of an extraordinary remedy meant to rectify the errors made in the final judgment, therefore even the judgment rendered under review is likely to be subject to this extraordinary remedy – Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, articles 79 and 81 – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 186 and 193.*

*Law governing land – Land disputes – The masterplan of plots allocation in custody of competent authority can constitute a reliable evidence of ownership of disputed plot of land – Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3.*

*Damages – Procedural fees – Counsel fees – No procedural or counsel fees are awarded to the litigant who lost the case, rather it is down to him to be charged them in the benefit of his opponent – Decree of 30 July 1888 relating to contracts or obligations, article 258.*

**Facts:** This case started in the Primary Court of Gisenyi, whereby Iyamuremye sued Kapere for the dispute over the plot N°2129 located in Nyarubande Village, Mbugangari Cell, Rubavu District in Western Province.

This court decided that the plot belongs to Kapere as it was even approved by the Registrar of land titles whereby it relied on evidence constituted by documents he addressed to the administration of the District for the request of that plot. It also rejected the arguments of Iyamuremye that the assets in the plot belong to Kapere while the plot does not belong to him. Iyamuremye lodged an appeal before the Intermediate Court of Rubavu, which upheld the first decision because there was no evidence proving undoubtedly his ownership over the plot.

After this judgment became final, Iyamuremye applied for case review whereby he advanced that he found a plan indicating the allocation of plots as a new evidence. He also alleged that when the hearing of the case was still pending, Kapere appropriated himself stones which were in the plot, therefore he should be held liable. In the judgment RCA0495/012/TGI/RBV, the court relied on that element of evidence as well as investigation carried out in the land bureau of Rubavu District, to the site of the disputed land, and it heard different witnesses, and therefore decided that the plot belongs to Iyamuremye to whom it should be registered. It decided in addition that Kapere should pay him 650,000Frw for the value of stones taken from the plot, 300,000Frw for moral damages and 200,000Frw of counsel fees.

After the delivery of that judgment, Kapere wrote to the Office of the Ombudsman requesting the review of the judgment RCA0495/012/TGI/RBV due to injustice. After the examination of his grounds, the Office of the Ombudsman requested in writing to the President of the Supreme Court the review of the case due to the disregard of some elements of evidence. After the examination of the report of General Inspectorate of Courts, the President of the Supreme Court ordered the dossier to be submitted to the registry of the court for hearing schedule.

In the course of the hearing, Counsel Idahemuka for Iyamuremye raised an objection where he stated that the Supreme Court lacks jurisdiction to hear the application for review of the judgment RCA0027/012/TGI/RBV rendered by the Intermediate Court of Rubavu due to injustice submitted by Kapere because that judgment resulted from a review of another judgment, while that is in contradiction with article 193 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which prevents any way of appeal for those kind of cases because a judgment may not be subject to review twice.

Counsel Gashagaza for Kapere states that his claim relies on the provision of article 29 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court which endows it the jurisdiction to review due to injustice the judgment for which he requested it, because he indicated to the Office of the Ombudsman, the injustice contained in it and the claim was admitted. He adds that it is this Organic Law which should be applied because it is superior to the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

Counsel Idahemuka for Iyamuremye alleges that Kapere has no interest in this case since he stated in his court submissions that in case the action is admitted by the Supreme Court, it should not be given merit. Counsel Gashagaza assisting Kapere states that he has interest in the case, since the Office of the Ombudsman acknowledged the existence of injustice in the judgment of which he applied for review, therefore that his opponent misunderstood his submissions.

Counsel Gashagaza states in addition that Iyamuremye should be ordered to pay his clients 2,000,000Frw of procedural expenses and counsel fees. In contrast, Counsel Idahemuka states that Kapere should be the one to pay 1,000,000Frw of counsel fees he incurred due to his action.

After respective grounds of both parties, the Court realised that it should first of all examine the admissibility of the application for review due to injustice of a case rendered under application for review. It realised also that it should examine if the plan for the allocation of plots which was submitted by Iyamuremye for his application for review of the judgment RCA0027/012/TGI/RBV rendered by the Intermediate Court of Rubavu on 25 April 2012 is likely to be a reliable evidence about the owner of the plot in disputes N°2129.

**Held:** 1. The application for review due to injustice consists of a special and extraordinary remedy with the purpose to rectify errors made in the final judgment, therefore even the judgment rendered under case review can be subject to this way of appeal.

2. There has been misunderstanding on the content of Kapere's submissions since he does not request for inadmissibility of the claim, therefore he has interest in the case given that he claims ownership of the disputed plot.

3. The plots allocation plan in the hands of Rubavu District constitutes a reliable evidence about the owner of the disputed plot between Kapere and Iyamuremye, therefore the fact for the Intermediate Court to have admitted the application submitted by Iyamuremye for review of the judgment RCA0027/012/TGI/RBV and reversed its ruling, has merit and caused no injustice to Kapere.

4. Damages requested from Iyamuremye by Kapere should not be awarded, given that he loses this case, rather it is down to him to pay 500,000Frw to Iyamuremye, awarded in the discretion of the court, corresponding to this instance, because he ought to hire the services of advocate.

**Claim lacks merit.**  
**Court fees to the Applicant of case review due to injustice.**

**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, articles 79 and 81.

Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 186 and 193.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3.

Decree law of 30 July 1888 relating to contracts or obligations, article 258.

**Cases referred to:**

Mberabagabo et al v. Dunia et al, RS/REV/INJUST/COM/0001/13/CS, rendered by the Supreme Court on January 03, 2014.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] Iyamuremye Mbanza Jeannot sued Kapere George before the Primary Court of Gisenyi, whereby he claimed the ownership over the plot N°2129 located in Nyarubande Village, Mbugangari Cell, Rubavu District in Western Province. In addition, he requested it to be registered in his names.

[2] On 16 December 2011, the Court rendered the judgment RC0794/011/TB/GIS whereby it decided that the plot in litigation belongs to Kapere George given that after the examination of evidence he submitted including the written document of 28/04/2009 established by the Administration of the Village of Nyarubande which resolved the dispute between him and Iyamuremye, whereby it stated that since assets in the plot belongs to him, the plot belongs to Kapere too, the document he wrote on 14/05/2009 to request for the titles of the plot, the documents of 21/05/2009 and 19/05/2009 which consist of payment evidence for plot demarcation by the District, the document of 15/02/2010 indicating that the plot was given N°2129 and provisionally registered to Kapere and the emphyteutic lease of 22/07/2011 between the Government and Kapere. It therefore found that it should only confirm what was done by the Registrar of land titles and that it was not relevant for witnesses to be heard as it was requested by parties because of the existence of the authentic deed.

[3] The court examined also the plot exchange contract of 17/06/2004 concluded between Iyamuremye and Kabanda Jean Népo whereby the latter gave him a plot located in Mbugangari village in exchange of his plot located in Kigali City. The court disregarded this contract because it was not indicated the blueprint of both exchanged plots especially that the court could not identify in which capacity the people Iyamuremye claims to have signed it did so, since it is not enough to mention the Chief of Zone 5 without indicating its location.

[4] The court found in addition that the statements of Kapere that he started to seek for the land titles in the year 2009 in the course of hearings should not be considered since for him what is relevant is that they were issued to him contrary to the other party who has not got any document, and that his grounds that the administration of the Village affirmed in

writing that the assets in the plot belong to Kapere while it does not belong to him should be disregarded.

[5] Iyamuremye appealed to the Intermediate Court of Rubavu, which rendered the judgment RCA0027/012/TGI/RBV on 25/04/2012, and upheld the appealed judgment due to the fact that he provided no evidence indicating without doubt his right over the plot in litigation. It ordered him to pay 100,000Frw to Kapere for dragging him into lawsuits, to pay prorated fees and court fees.

[6] After this judgment became final, Iyamuremye Mbanza Jeannot applied for case review on the ground that he found new evidence constituted by a blueprint of the allocation of plots, and that while the case was still being heard, Kapere transported stones which were in the plot, and therefore he should pay the equivalent value. In the judgment RCA0495/012/TGI/RBV, the court relied on that evidence, the investigation carried out in the Rubavu district land office and the visit of the site, as well as witness declarations, therefore declared the plot to belong to Iyamuremye. It declared in addition that it should be registered in his names and that Kapere should pay 650,000Frw for compensation of stones he appropriated himself, 300,000Frw in moral damages and 200,000Frw for counsel fees.

[7] To come up with this decision, the court found that Kapere holds the titles of the said plot, but in the course of the investigation, be it to the land bureau or to the site, it interrogated Bigirimana Makini who is in charge of it, topographers Munyabuhoro Jean Louis Robert and Kuramba Placide who stated that Kapere got the plot through the administration of Mbugangari Cell in the course of general land registration whereby the plot was allocated N°2129 without indicating its original number, while on the map, it is evident that Niyonshuti Jean Paul who was allocated it shared the limit with Kayitani Evariste and on the top, they shared the limit with Bizimana Mpakaniye, while Kapere does not appear on it. The said plot's number was N°4288 as seen on the map in custody of the land bureau, and was registered to Niyonshuti Jean Paul who shared the limit with Kayitani Evariste, therefore Kapere was given the number during the general systematic land registration carried out by the administration of the Cell on the basis of his own declarations.

[8] It found that the witness named Mataratara who states that the plot was given to Kapere, indicates another blueprint on which it is mentioned the name of Kapere, but if examined the location of the plot he declares to have been given to Kapere, it is evident that nothing links it to the plot allocated to Niyonshuti Jean Paul whom it is evident that his plot shares the limit with plots allocated to other militaries the same day, therefore he wonders the origin of the blueprint which does not exist in land bureau.

[9] Concerning various witness declarations, the Court found that the declarations of Mataratara should not be considered since they contradict with those made by Kapere during the hearing in the case opposing him to Iyamuremye on 28 April 2009 before local government institutions, whereby he stated that when he started building the house in the plot he found Bahati Augustin as a neighbour, whom they disputed about the shared demarcations and later in 2002 they resolved the issue. However, when the Court interrogated Bahati about the origin of the plot during the investigation, he stated that he bought it from Bizimana Mpakaniye as indicated by the sale agreement concluded on 28/08/2003, and when it was observed to find the location of the plot of Bizimana Mpakaniye which was bought by Bahati, it found that he does not share the bounds with Kapere, rather with Kayitani Evariste and on the left side from ITIG, with Niyonshuti Jean Paul. These findings compared to the map

produced by Mataratara, it is found that nowhere the plot he points to belong to Kapere shares the bounds with that of Niyonshuti Jean Paul.

[10] After the ruling of the case, Kapere George wrote to the Office of the Ombudsman whereby he applied for review of the judgment RCA0495/012/TGI/RBV due to injustice. After the examination of his grounds, the Office of the ombudsman wrote to the President of the Supreme Court requesting the review of the judgment due to the fact that there have been elements of evidence which were disregarded in its ruling. Following the consideration of the report produced by the Office of the Inspector General, the President of the Supreme Court ordered the dossier to be handed to the court registry in order to be scheduled for hearing.

[11] The hearing was conducted in public on 15 September 2015, whereby Kapere George was assisted by Counsel Gashagaza Philbert, while Iyamuremye Mbanza Jeannot was assisted by Counsel Idahemuka Tharcisse. The hearing was ordered to be conducted in camera on 16/10/2015, and the court decided to conduct the investigation in the land bureau of Rubavu district and to the site where the land is located. The hearing on the outcome of investigation was fixed on 15 December 2015.

## **II. ANALYSIS OF LEGAL ISSUES**

### **a) Whether the Supreme Court is competent to hear the case review due to injustice over the judgment rendered under case review.**

[12] Counsel Idahemuka for Iyamuremye states that the Supreme Court does not have jurisdiction to hear the case review of the judgment RCA0027/012/TGI/RBV due to injustice initiated by Kapere which was rendered by the Intermediate Court of Rubavu because the judgment was also rendered under review, which is contrary to the provision of article 193 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial labour and administrative procedure prohibiting any kind of remedy regarding such kind of judgments because no judgments may be reviewed twice, rather, it becomes final.

[13] Counsel Gashagaza for Kapere states that his claim relies on the provision of article 29 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court which provides for its jurisdiction to review the judgment for which he applied to be done due to injustice, because he indicated the injustice he faced to the Office of Ombudsman and his application was admitted. He declares in addition that the said Organic Law should be applied given that it is superior to the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

## **OPINION OF THE COURT**

[14] Before the pursuit of the hearing in the merit of the case, in the course of deliberation, the court found that article 193 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure provides that the decision on the application for review shall not be subject to any procedure of appeal.

[15] In addition, article 79(1) of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that The Office of the Ombudsman shall be the competent organ to petition the Supreme Court

over application for review of a final decision due to injustice, while its article 81 states that a final decision may be subject to review due to injustice as mentioned above, when there is unquestionable evidences of corruption, favoritism or nepotism that were relied upon in the judgment and that were unknown to the losing party during the course of the proceedings; when there are provisions and irrefutable evidence that the judge ignored in rendering the judgment; when the judgment cannot be executed due to the drafting of its content.

[16] The court found therefore that the application for review due to injustice which is provided for by articles 79 and 81 as mentioned above, constitutes an extraordinary remedy, the objective of which is to rectify the errors made in the final judgment on the basis of the above provisions, hence even the final judgment rendered under case review is concerned with this extraordinary remedy.

[17] Indeed, this has been the position taken by this very court in the case RS/REV/INJUST/COM/0001/13/CS rendered on 03 March 2014 among Mberabagabo innocent, Notary Kayitesi Judith, Butera Jean Pierre, Fiat and Dunia Bakarani in which BCR was forced to intervene, that once the party exhibits one of the instances provided for by article 81 as mentioned above, the judgment rendered under review on the basis of article 186 of the Law N°21/2012 of 14/06/2012 mentioned above; may be reviewed due to injustice.

**b) Whether Kapere has interest in this case.**

[18] Counsel Idahemuka for Iyamuremye alleges that Kapere has no interest in this case since he stated in his court submissions that in case the action is admitted by the Supreme Court, it should not be given merit.

[19] Counsel Gashagaza assisting Kapere states that he has interest in the case, since the Office of the Ombudsman acknowledged the existence of injustice in the judgment of which he applied for review, therefore that his opponent misunderstood his submissions.

[20] Concerning this objection, the Court found that there has been a misunderstanding of the content of court submissions of Kapere because he does not request the inadmissibility of the claim, and therefore it finds that he has interest in the case because he claims the ownership over the plot in dispute.

**Whether the plan referred to for the allocation of plots relied on by Iyamuremye for his application for review of the judgment RCA0027/012/TGI/RBV rendered by the Intermediate Court of Rubavu on 25 April 2012 is likely to settle the issue about the owner of the plot N°2129 in dispute between Iyamuremye Jeannot and Kapere George.**

[21] Counsel Gashagaza and his client Kapere allege that the new evidence according to Iyamuremye consisting of a plan he has been given by the Administration of Rubavu district which enabled him to apply for review of the judgment RCA0027/012/TGI/RBV rendered by the Intermediate Court of Rubavu on 25 April 2012 has no link with the plot N°2129 which was in dispute, and that it does not indicate its origin and the organ which issued it, as well as its signature and stamp.

[22] They state that consideration made of the provisions of article 186(3) of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, the judge should not have admitted the claim of Iyamuremye given that the lack by those elements of evidence of the link with the subject matter implies they are not conclusive.

[23] They explain that in the decision of the judge, he misled between the origin of the plot N°2129 whereby he stated that it originates from the plot N°4288 which was delivered by the District of Rubavu (as noticed on the plan of Rubavu District), and he explains in addition that it is evident that the plot is registered in the names of Kapere and who holds its titles as well, but that when he conducted investigation where he interrogated the staff in land bureau, he found that during the plot registration, Kapere got it on the basis of the information the land bureau was provided by the administration of the Cell of Mbugangari, but that this plot does not exhibit its former number in the district plans.

[24] They add that the judge explains also that the plot N°2129 originates from the plot N°4288 as it was clear on the plan found in the Rubavu district land bureau, and pursues that the said N°4288 was registered to Niyonshuti Jean Paul who shared the demarcation with Kayitani Evariste, therefore that Kapere was given that number by the land bureau on the basis of his own explanations given to the Cell Administration, but that as the Office of the Ombudsman discovered in the course of investigation it conducted, the plot N°2129 does not originate from N°4288, rather from the plot N°4300 located in Nyakabungo, Mbugangari which was allocated to Nsengiyumva Eneas on 28 January 2002 who was given its cadastral plan and a lease contract for residential use but failed to exploit it, therefore he was deprived of it in favor of Kapere who was given its cadastral plan and demarcation was done.

[25] They go on stating that the fact that the judge held that the plot appears nowhere on the plan of Rubavu District, was the result of the misrepresentation of facts which prevented him from knowing the plot in dispute because it shares the demarcation with the plots N°2130 and N°1707 as indicated by the said plan, located in the roads' junction and registered in the names of Kapere.

[26] Another element indicating that the plot N°2129 originates from N°4300 consists of the invoices issued by the administration of Rubavu district whereby it is explained the type of taxes to be “régularisation PC 4300”, which shows that it has no link with the plot N°4288 as alleged by Iyamuremye, and this caused the court to be misled about facts.

[27] Counsel Gashagaza and his client Kapere state in addition that the judge misrepresented that the plot N°4288 used to belong to Niyonshuti Jean Paul, even though it does appear nowhere on the plan of Rubavu district; is the one which became N°2129 registered in the names of Kapere during the general land registration. They explain that the Office of the Ombudsman realized in the course of land registration that the plot N°4288 was given N°2127 and is registered to Mukamana Salima and Uwihoreye Kassim, and does not belong to the same bloc as the plot N°2129 belonging to Kapere.

[28] They allege in addition that the Court disregarded the letter addressed to Kapere by the District Administration whereby he was warned about the lapse of 5 years without the use of the plot and the replies he provided as well as the authentic emphyteutic lease he holds, which all indicates his ownership over the said plot.

[29] Counsel Idahemuka and his client Iyamuremye state that the answer to this issue is found in 15<sup>th</sup> paragraph of the judgment RCA0495/012/TGI/RBV for which it was applied a review due to injustice, whereby the judge indicates that he conducted an investigation in the land bureau on the plans submitted by the parties and mentioned the staff in charge he found at the site who showed him the plan corresponding to the location of the plot.

[30] They allege that this court should decide to invalidate the decision of the Office of the Ombudsman, and that no injustice was suffered because its staff who conducted investigation acted ultra vires by invalidating an act taken by a competent authority.

[31] They further state that Kapere alleges to have been allocated this plot whereas it was initially allocated to Niyonshuti Jean Paul, and subsequently passed to Iyamuremye; therefore it was impossible for a single plot to be allocated to two individuals. For them, the fact that the Office of Ombudsman's servant states that Iyamuremye and Kabanda appear nowhere in the land bureau, does not contradict the judgment under review, because the judge did not even hold that the plot is registered to one of those two individuals, rather he stated that it is registered in the names of Niyonshuti Jean Paul, and this was not challenged by the Office of ombudsman's servant.

[32] They state again that there is contradiction in the statements of this servant of the Office of the Ombudsman whereby he holds that this plot was given to Kapere in 2005 after being deprived of another person and at the same time the court holding that he possessed its titles from 2002.

[33] After hearing all pleadings of both parties, the court decided to conduct an investigation on 26 November 2015 in the land bureau of Rubavu district and to the plot in dispute whereby it heard several people having knowledge on the matter.

[34] On the Rubavu district headquarters; the delegates of the court were received by Mr Gasuku Oscar, the director of One Stop Center which combine the former land bureau and human habitat settlement and Mr Munyabuhoro Jean Louis Robert, the topographer. They explained the history about the plots N°2129, N°4300 and N°4288 located in Mbugangari Cell in Gisenyi sector by referring to the master plan drawn in 2002 which is known as "Plan Parcellaire du Site Mbugangari", a plan with names of the owners of the plots which is also kept in Rubavu district bureau drawn from the former one as well as "another electronic plan" indicating new numbers allocated by Rubavu district to those plots.

[35] Concerning plans submitted by both parties in the dossier on pages 92 and 93, Gasuku Oscar states that the plan on page 92 is different from the one established by Rubavu District since there are many things inserted by the party, while concerning the plan on page 93, it is similar to the one in custody of the district, but that there is a number added by the party because where it is mentioned that number 4288 belongs to Niyonshuti Jean Paul, belongs rather to Kayitani Evariste on the plan in custody of the district while N°4289 belongs to Niyonshuti Jean Paul and Bizimana Mpakaniye owns the number of the plot located to the bottom of Kayitani Evariste's plot with N°4290.

[36] He explained that the new land center plan established in 2011 indicates that:

- The plot having number 4288 which belonged to Kayitani Evariste, changed to number 2129 was registered in the names of Mbanza Jannot for the execution of the judgment RCA0495/012/TGI/RBV;
- The plot which was registered to number 4289 belonging to Niyonshuti Jean Paul according to the land center plan was changed to be number 2130;
- It is found on the plan that the plot number 4300 was not yet allocated when the first plan was established, before it was given to Nsengiyumva Eneas and is registered on N°2131.

- The Plot number 4290 which changed to number 1707 belongs to Bizimana Mpakaniye.

[37] After the analysis of the data found on different plans, the investigation continued on the site of the plot in dispute, whereby Mr Munyabuhoro Jean Louis Robert, the topographer, indicated plots demarcations.

[38] Madam Mukampunga Marie Claire who resides in the plot N°4300 which changed to N°2131 was requested to produce the land titles of her plot and she produced the emphyteutic lease title number 2131/Rub/Gis that she was issued on 25 February 2014, and she explained that it was purchased by his former husband Mbutubucya Jean Bosco with whom they got divorced who purchased it from Nsengiyumva Eneas.

[39] Kayitani Evariste who was summoned by the Court was requested to indicate the plot he was allocated, and he showed the plot N°4289 which became N°2130. He stated in addition that after he was transferred to Democratic Republic of the Congo, he exchanged it with a house given by Gakwe Ndabarinze and he moved into that house, but that later, he learnt that he also sold it. When he was asked to state his neighbours, he replied that they were three military servicemen, whereby Niyonshuti Jean Paul who was a soldier was allocated the plot near his. He was asked the reason why on the plan found in the district, it is indicated that he was given the plot number 4288 which is now number 2129, and he replied that it is possible that it has been modified but that what he knows it that he was allocated a plot near the one given to Niyonshuti Jean Paul with whom they served together in the army. Concerning the issue that when he sold the plot, no dispute happened between him and Niyonshuti, he answered that it did not happen and that even Niyonshuti sold his plot later to Kabanda, who told him that he also sold it to Iyamuremye.

[40] Niyonshuti Jean Paul who was also summoned by the court, stated that in the year 2000, plots located in Mbugangari were allocated whereby 3 military servicemen (Niyonshuti, Sakera and Kayitani) deployed to Gisenyi airport were given plots. The commission which was in charge of plots allocation gave him a plot which shared the demarcation with the one given to Kayitani. He was asked why on the plan of the district it is clear that the plot number 4288 changed to number 2129 which he pretends to be his, belonged to Kayitani, and he replied that this was due to the mistake. He goes on stating that after he was given that plot, he leased it to Gashema who used to cultivate it and later, he was deployed to Kanombe in Kigali, and therefore he sold it to Kabanda who also sold it to Iyamuremye according to information he got.

[41] Concerning Kapere who pretends the ownership over the plot, Niyonshuti Jean Paul stated that he also was a soldier but did not live in Gisenyi; that he works in Kanombe in Military police. He denies to have never been awarded any plot in that Village.

[42] Kabanda Jean Népo who was also summoned by the court states that the plot N°2129 which belonged to Kayitani. He explains that he was in charge of administration of the airport when the military servicemen named Sakera Benjamin, Kayitani and Niyonshuti were given plots and that plot which is not constructed till now was given to Niyonshuti Jean Paul, Sakera was given to the upper side and that he bought it from Niyonshuti Jean Paul and after he was deployed elsewhere, he gave it to Iyamuremye whom he was linked to by his elder brother Ngabonziza who was in marine corps in exchange of the plot located in Kabuga.

[43] Concerning the issue that when they exchanged plots they did not explain in writing by mentioning numbers of exchanged plots, Kabanda replied that at the time no number were allocated yet, and that they only agreed on the plot concerned by the exchange.

[44] The Topographer Munyabuhoro Jean Louis Robert was asked the reason why the mentions on the plans differ from the reality on the site as far as the beneficiaries are concerned, and he replied that consideration made of the declarations of the interrogated persons, as well as the mentions on the plans, it is evident that the plot Niyonshuti was given was exchanged with the plot given to Kayitani, and that it is possible that at the time they were allocated them, their numbers were inexistent and they occupied them in disorder but that if need be, the mistake may be rectified.

[45] Mataratara Israel who was summoned by the court stated that he was present when plots were being allocated in Mbugangari Village, and that in the year 2000, the plot N°2129 was occupied by Kayitani, and later on by Niyonshuti. After a long period of time, Kapere requested him to build a house in it and when he checked on the plan he himself drew in the context of fighting against the unlawful construction, he found his name but informed him that the plot does not belong to him rather to Kayitani, but he refused and persisted that it is his. He further states that he informed Kapere that he allocated those three blocks to other individuals and showed him another plot and registered it in his names, but Kapere rejected it, and in contrary, he started the construction of a house foundation in the plot of Kayitani until he was stopped by the parties to the dispute.

[46] Bahati Augustin said that the plot number 4290 which became N°1707 in which he dwells, was acquired from Bizimana Mpakaniye in the year 2002, that in the plot located at the bottom of his, there was a foundation and that the owner used not to be seen. Later, Kapere used to come to visit it and erected a small house in it which was demolished by Iyamuremye, and this triggered the court proceedings till now.

[47] After the end of investigation, the hearing resumed on 15 December 2015, whereby parties submitted their comments on its outcome.

[48] Kapere states that there is confusion in the outcome of investigation because his plot originates from the plot N°4300 which is unconstructed and he holds its titles. He further states that on its upper side there is a plot of Bahati who even went beyond the boundary; therefore he does not conceive how Kayitani sold his plot while leaving aside the one he was allocated. He states that he really was a military serviceman who did not live in Gisenyi, but that in the course of allocation of plots, the in-charges used to identify military servicemen not living in the area, but that he was allocated the plot by MINIREISO and Mataratara showed it to him. He prays the court to take into consideration the plot's titles he was issued.

[49] Kapere States in addition that Kabanda Jean Népo who was the military officer ignores the procedure of plots allocation, because he was indicated the plot given to him. He spent two weeks in Goma and at his return; Mataratara identified him on the list of people who were allocated plots. Kapere asked him the plot he was allocated and he showed him the same plot, but told him that it was allocated to other soldiers and he requested him to give them other different plots. He quickly built the house foundation, but he later went back to his work and upon his return, he realized that the plot was constructed.

[50] Counsel Gashagaza states that as Gasuku Oscar has indicated, plots were devoid of numbers before, and this resulted into misappropriation of the plot belonging to Kapere. He

argues that all individuals interrogated did not indicate how plots were interchanged to the extent that every person shifted to the plot which does not belong to him, but that Bahati affirmed the plot to be of Kapere and that this is known by everyone, and that this is supported by the statements of Kapere that he was given by the Chief of the cell, therefore there is a confusion about the plot Kapere was allocated and of which he has titles.

[51] Counsel Idahemuka for Iyamuremye states that his client indicates that he was given the plot in the year 2002, while in the documents exhibited by Kapere, it is indicated that he was allocated it in the year 2009. He argues that the allocation of plots was done in public, and that Iyamuremye exchanged the plot he owned in Kabuga since he was going to work in Gisenyi.

[52] He explains that in the year 2002, computerized land registration was not yet done and therefore every individual used to memorize the persons with whom they shared boundaries, and this was the basis of the statements of those three military servicemen who stated that Kapere was not included, the reason why the mistake made concerning the allocation of numbers to plots may be rectified.

[53] Concerning Mataratara's witness declarations, Counsel Idahemuka states that he also admits that disputes arose, which also has been admitted by Kapere in the Court, therefore he finds that everyone knows that the plot in dispute was given to Niyonshuti and the contract shows the successive transfer of ownership right over that plot of land.

## **OPINION OF THE COURT**

[54] Article 3 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production provides that every litigant should produce reliable evidence of his allegations.

[55] The objective of the claim of Kapere for case review of the judgment RCA0495/012/TGI/RBV is to demonstrate that he suffered injustice from the decision of the Intermediate Court of Rubavu by admitting the claim for case review of the judgment RCA0027/012/TGI/RBV basing on the plan of allocation of plots which was qualified to be conclusive that Iyamuremye claimed to have been allocated by the administration of Rubavu district, indicating that the plot number 2129 belongs to him, which is not true, since the said plot originates from the plot which used to be number 4300 given to Nsengiyumva Eneas who after failing to erect a house on it, was devoid of it as evidenced by the invoice, where he was subsequently issued title documents by Rubavu district after demarcation was done.

[56] Iyamuremye alleges that the plot N°2129 in dispute originates from the plot N°4288 which belonged to Niyonshuti Jean Paul, who later exchanged it with that of Kabanda located in Kabuga since he was relocating from Gisenyi to work in Kigali.

[57] The outcome of analysis of the plans found in One Stop Center of Rubavu district, which is the department regrouping the former land bureau and Settlement service, compared to the information collected from the location of the plot in dispute, it is found that the plot in litigation between Iyamuremye and Kapere which is now number N°2129 used to be number 4288 and was allocated to Kayitani Evariste who alleges to have sold it to Gakwe Ndabarinze, while the plot N°4289 which belonged to Niyonshuti Jean Paul, is now recorded on N°2130 and shares the bounds to the upper side with the plot N°1707 belonging to Bahati Augustin.

[58] The court finds that the occurrence of mistake on plot numbers and their owners who were allocated them namely Kayitani and Niyonshuti may have resulted from the error made by Rubavu District at the time of allocation of numbers, because they were devoid of numbers, and it is evident that when the owners occupied them, no dispute happened till the present.

[59] Concerning the plot N°4300, it is clear that it used to belong to Nsengiyumva Eneas, and now has number 2131 and is accommodating houses of Mukampunga Marie Claire who has emphyteutic lease contract number 2131/Rub/Gis issued to her on 25 February 2014. She states that the plot was acquired by his husband Mbonabucya Jean Bosco whom they divorced, who purchased it from Nsengiyumva Eneas.

[60] Although mistakes were made in allocation of numbers of those plots, the current situation after the allocation of new numbers is that no dispute arose among the occupants of the plots N°2130, 2131 and 1707, rather over the plot N°2129 between Kapere and Iyamuremye.

[61] In consideration of aforementioned statements, the court finds that Kapere fails to indicate the origin of the plot N°2129 because his statements that it was allocated to Nsengiyumva Eneas who was later deprived of it due to his failure to construct it, and be given to him after payment of regularisation fees lack merit, because Nsengiyumva Eneas sold the plot N°4300 which become N°2131 to Mbonabucya, the spouse to Mukampunga Marie Claire who resides in it, and no one disputes about it. Indeed, the said plot was not given to Kapere in year 2000, when Kabanda and Niyonshuti were given plots in Nyarubande Village, Mbugangari Cell, Gisenyi Sector in Rubavu District as it was declared by witnesses, because if he was given in the same conditions as others, he would not have paid regularisation fees for the plot N°4300 as he alleges.

[62] The Court finds in contrast that in consideration of the fact that Kayitani and Niyonshuti were allocated adjacent plots which were later given numbers but with interchanged names of their owners, the plot in disputes which was indicated to have currently N°2129 and unconstructed, belongs to Iyamuremye as evidenced by the contract to exchange the plots concluded on 17 June 2004 between Iyamuremye and Kambanda Jean Népo who acquired it from Niyonshuti Jean Paul, whereby Kabanda exchanged with Iyamuremye the plot located in Mbugangari Village who in return gave him the plot located in Kigali City. That contract is also supported by the statements of the parties to it, the declarations of Niyonshuti Jean Paul as well as the plans in custody of Rubavu district's One Stop Center showing the allocation of plots.

[63] The Court finds therefore that, the plan of allocation of plots in custody of Rubavu District on which the Intermediate Court of Rubavu relied for the review of the case RCA0027/012/TGI/RBV consists of a reliable evidence about the owner of the plot in dispute between Kapere George and Iyamuremye Mbanza Jeannot, therefore the fact for that court to have admitted the claim for case review of the judgment RCA0027/012/TGI/RBV and modified its ruling, has merit and has caused no injustice to Kapere George.

[64] As it was therefore decided in the judgment RCA0495/012/TGI/RBV rendered on 24 June 2013 by the Intermediate Court of Rubavu, the Court finds that the plot N°2129 located in Nyarubande, Mbugangari Cell, Gisenyi Sector in Rubavu District should remain to be registered to Iyamuremye Mbanza Jeannot since he is the owner.

**d) Procedural fees requested by litigants.**

[65] Counsel Gashagaza for Kapere argues that Iyamuremye should pay to him 2,000,000Frw of procedural fees and counsel fees while counsel Idahemuka states that Kapere is the one who should pay him 1,000,000Frw of counsel fees he spent due to his claim.

**OPINION OF THE COURT**

[66] Concerning the payment of damages, article 258 of the civil code book III, provides that any act of a person that harms another obliges that person who committed the fault to repair.

[67] The court finds that damages requested by Kapere to the expenses of Iyamuremye should not be awarded because he loses the case, rather he should pay 500,000Frw to Iyamuremye on this level of proceedings, awarded upon the court's discretion because he ought to hire the services of an advocate for this case.

**III. THE DECISION OF THE COURT**

[68] Decides that the claim for case review due to injustice of the judgment RCA0495/012/TGI/RBV rendered on 24 June 2013 by the Intermediate Court of Rubavu submitted by Kapere George lacks merit;

[69] Decides that the plot N°2129 located in Nyarubande Village, Mbugangari cell, Gisenyi Sector, Rubavu district belongs to Iyamuremye Mbanza Jeannot, and should remain registered in his names as it was decided in the judgment RCA0495/012/TGI/RBV rendered on 24 June 2013 by the Intermediate Court of Rubavu;

[70] Orders Kapere George to pay Iyamuremye Mbanza Jeannot 500,000Frw of counsel fees for this instance;

[71] Upholds the ruling of the judgment RCA0495/012/TGI/RBV rendered on 24 June 2013 by the Intermediate Court of Rubavu;

[72] Orders Kapere George to pay 100,000Frw for court fees.