

MUKAGATARE v. SUCCESSION BWANAKEYE (2)

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV0003/14/CS (Mukanyundo, P.J., Hitiyaremye and Rugabirwa, J.) February 03, 2017]

Law governing land – Modes of land acquisition – A person who claims ownership over the land should demonstrate the mode of its acquisition – Law N°43/2013 of 16/06/2013 governing land in Rwanda, article 10.

Law governing land – Land disputes – Inapplicability of acquisitive statute of limitation on the right over the land – A person who, through fraudulent means, occupies vacant and escheat land or other people's land, cannot invoke the right to prescription to claim definite right on it – Law N°43/2013 of 16/06/2013 governing land in Rwanda, article 46 and 47.

Facts: This case originates from the disputes which rose between Mukagatare and Bwanakeye from the plot of land on which Mukagatare built in 1995, claiming that it was given to her by the Commune of Ngoma after returning from the exile in 1994.

In the year 2000, Bwanakeye sued Mukagatare to local authority claiming that she built in his compound garden. The issue was not resolved and Bwanakeye filed a claim at the Intermediate Court requesting for the stay of the construction activities carried on at his plot of land. The Court held that Mukagatare should demolish the bungalow and the houses built in the garden of Bwanakeye François within a period of 30 days.

Mukagatare appealed to the High Court which sustained the rulings of the appealed judgment. She went on to appeal to the Supreme Court and basing on the objection raised by Bwanakeye, that Court held that her appeal does not fall within its jurisdiction. Consequently, Mukagatare sought redress from the Office of Ombudsman requesting for the review of the judgment RCA1633/06/HC/NYA due to injustice, and after scrutinizing it, the Ombudsman Office wrote to the President of the Supreme Court requesting for the review of the mentioned judgment on grounds that documents which Mukagatare produced before the High Court proving that the disputed plot was hers, were disregarded by that Court.

After overruling the objection of inadmissibility in the Supreme Court, the hearing in merit commenced, whereby Mukagatare argues that she has elements of evidence which were disregarded by the High Court, comprised of different documents substantiating that the disputed plot belongs to her whilst in contrast, Bwanakeye did not produce any written evidence, therefore the Court should have examined them according to the hierarchy of evidence. She also requests for various damages.

In their defence, the successors of Bwanakeye state that the reason why the Court disregarded the elements of evidence of Mukagatare is that she produced the documents which were not original, and that the period by which they allege that the disputed plot was allocated to the University of Rwanda; Bwanakeye François was already residing there. They further argue that the documents produced by the applicant do not indicate the measurements of the land she was given, while others indicate that the plot was lent to her so that she can erect a bar but was not given a plot of land.

Furthermore, they argue that even if that land belonged to the Government, that ownership would have been struck by the statute of limitation because the transfer deed of Butare veterinary laboratory of the land was signed on February 12, 1964, whereas the letter

allocating that land to Mukagatare was signed by the administration of Ngoma Commune on October 10, 1995, after the expiry of thirty years (30) provided by the law.

Regarding the statute of limitation, Mukagatare states that she rejects it because the disputed land never belonged to Bwanakeye, and she also requested for various damages.

Held: 1. Private individual land is that s/he was allocated by the competent authorities, purchased or got through donation, inheritance, succession, ascending sharing, and exchange or sharing. Therefore, the fact that succession Bwanakeye failed to prove the origin of the disputed land leads this court to rule in favour of Mukagatare because she has proved that it was given to her by the competent authority.

2. A person who, through fraudulent means, occupies vacant and escheat land or other people's land, cannot invoke the right to prescription to claim definite right on it, even if he/she has occupied it for a period longer than the prescription period; therefore, succession Bwanakeye should not argue that the Government could not transfer the disputed land alleging that he acquired it through prescription.

3. Procedural and counsel fees are awarded to a party who incurred expenses in lawsuits and s/he must have won the case.

**Application for the review of the judgment due to injustice has merit;
Overrules the judgment RCA1633/06/HC/NYA rendered by the High Court, Nyanza
chamber;
Court fees to Succession Bwanakeye.**

Statutes and statutory instruments referred to:

Law N°15/2004 of 12/06/2004 relating to evidence and its production, articles 3 and 13.

Law N°43/2013 of 16/06/2013 governing land in Rwanda, articles 10, 46 and 47.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] After returning to Rwanda from exile in 1994, Mukagatare Grâce, went to reside in the former Butare province. In 1995, she built a house in a piece of land she claims to have been given by the Commune of Ngoma. In the year 2000, Bwanakeye François began instituting lawsuits against Mukagatare Grâce arguing that she built in his garden and the issue was examined by the administration.

[2] In 2006, Bwanakeye François sued Mukagatare Grâce at the Intermediate Court of Huye requesting for stay of the construction activities on his piece of land. On 29 December 2006, the Intermediate Court of Huye rendered the judgment RC0069/06/TGI/HYE/RC0002/06/TP/BUT whereby it held that Mukagatare Grâce should demolish a bungalow and the houses which were built in the garden of Bwanakeye François within the period of 30 days.

[3] Mukagatare Grâce appealed against that ruling to the High Court, Nyanza chamber, which, on November 03, 2008, rendered the judgment RCA1633/06/HC/NYA holding that Mukagatare Grâce loses the case and that the appealed judgment rendered by the Intermediate Court of Huye on 23/06/2006 is sustained.

[4] Mukagatare Grâce appealed against the ruling to the Supreme Court and following the objection of lack of jurisdiction raised by the Counsel for Bwanakeye, the Supreme Court held that the appeal against the judgment RCA1633/06/HC/NYA rendered by the High Court, Nyanza chamber on 3 November 2006 does not fall into its jurisdiction.

[5] After getting that decision, Mukagatare Grâce took the matter to the Office of the Ombudsman requesting for the review of the judgment RCA1633/06/HC/NYA due to injustice. On 27 March 2013, the Office of Ombudsman wrote to the President of the Supreme Court requesting that the judgment mentioned above which was submitted by Mukagatare Grâce be reviewed due to injustice.

[6] The Office of the Ombudsman declares that the injustice in that judgment is demonstrated by the documents which Mukagatare produced at the High Court, Nyanza Chamber proving that the plot in litigation belongs to her, but which were disregarded by this Court. The same grounds were included in the submission of Mukagatare to the Supreme Court to demonstrate the injustice she suffered.

[7] In the course of the hearing held on 16 September 2014, Counsel Ngirabakunzi Evariste assisting Succession Bwanakeye François raised an objection for inadmissibility of Mukagatare Grâce's claim on the ground that it does not comply with the provision of articles 79 and 81 of the Organic Law N°03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court. On 10 October 2014, the Supreme Court overruled the raised objection and admitted the claim of Mukagatare Grâce for examination on its merit. The hearing was scheduled on 13 January 2015.

[8] Since that time, the hearing had been postponed for various reasons, but mostly due to the absence of some of the heirs of Bwanakeye François until it was conducted on 08 March 2016, whereby Mukagatare Grâce appeared before the Court, assisted by Counsel Hakizimana John, some of the members of Succession Bwanakeye François represented by Mukamunana Vénantie, who was assisted by Counsel Nizeyimana Boniface; Musada Jean Pierre, Ukuyemuye Jeanne, Nabonabana Jeannine, Nibakure Floriane, Tuyisenge Thaddée and Rutaganda Innocent were summoned on various occasions but they did not appear whereas Barandagiye Alphonse Marie, Uwimana Régine, Tuza M. Alice, Mukangamije Henriette, Mugeni Françoise, Bwanakeye Françoise, Bwanakeye M. Goretti, Bwanakeye M. Thérèse and Mukantagara Josephine were summoned to unknown place.

[9] The pronouncement of the judgment was scheduled on 15/04/2016 but it was not conducted, rather, the Supreme Court held that before the deliberation of the case, it is necessary to first carry out an inquiry at the place where the subject matter is situated and declared that the hearing will resume on 21/06/2016. The inquiry was conducted on 27/05/2016.

[10] On 21 June 2016, both parties appeared before the Court, Counsel Mukagatare Grâce assisted by Hakizimana John, while Counsel Nizeyimana Boniface assisted Mukamunana Vénantie who was representing some of the heirs of Bwanakeye François who gave her the power of attorney. On that day, the Court informed parties that it is necessary to request the

Director of Rwanda Natural Resources Authority to provide the information on the 45 hectares of land which is the subject of dispute which the Government of Rwanda offered to University of Rwanda in 1964 as demonstrated by the transfer deed.

[11] The hearing of the judgment resumed on 29/11/2016, both parties being present and assisted by their counsels, Each side presented his/her opinion on both the conducted inquiry and the report of the Director of Rwanda Natural Resources Authority.

II. ANALYSIS OF LEGAL ISSUES

1. Whether there exists injustice suffered by Mukagatare Grâce in the judgment rendered by the High Court, Nyanza chamber by holding that the plot of land in litigation belongs to Bwanakeye François.

[12] Hakizimana John, the Counsel for Mukagatare Grâce submitted before the Court that they hold a list of evidence comprising of documents which the High Court disregarded, which caused injustice. He states that those elements of evidence include the act of notoriety of 30 March 2000, cadastral plan of 24 April 2003 issued by Butare Municipality, lease contract of the plot in litigation between Huye district and Mukagatare Grâce concluded on 28 August 2005, payment slip of 28 August 2006 for cadastral plan, settlement report of the commission of 22 December 2000 drafted by the administration of Butare province on the issue which Mukagatare Grâce submitted to it, the letter of Mayor for Ngoma Municipality of 10 October 1995 which authorized Mukagatare Grâce to build a kiosk, the letter of Mayor of Huye district addressed to the Ombudsman of 03 December 2009 explaining that the land in litigation belongs to Mukagatare Grâce and that they did not find the cadastral plan of Bwanakeye François in their records as well as the act of transfer of land belonging to Butare veterinary laboratory of 12 February 1964 which proves the origin of this land, whereby the Government of Rwanda awarded it to University of Rwanda, this evidence contradicting the pleadings of Bwanakeye François whereby he argued that he acquired the land in litigation from his ascendants.

[13] Counsel Hakizimana John continues stating that beginning from previous Courts, Mukagatare Grâce relied on those written evidence which including the authentic deed, while Bwanakeye François did not produce any written evidence, therefore that the Court should have considered them according to the hierarchy of evidence.

[14] Regarding the report of the officers from the Rwanda Natural Resources Authority, Counsel Hakizimana John states that they concur with it because it proves the origin of the contested land, that it belonged to the Government which allocated it to her, facts which differ from the arguments of the successors of Bwanakeye François that it is their ancestors' land.

[15] Mukamunana Vénantie, one of the successors of Bwanakeye François and at the same time representing some of her siblings argues that the reason why the Court disregarded the elements of evidence submitted by Mukagatare Grâce is that she produced photocopies instead of original documents. She further explains that the plot of Bwanakeye François starts from the roadside to the valley and in addition to that no plots were demarcated in that piece of land. Instead, it was temporary let to Mukagatare Grâce for her to install her Kiosk but that she does not know how it turned into a house.

[16] She further explains that during the year 1964, in which they allege that plot was given to the University of Rwanda Bwanakeye, François was already residing there like any other residents whereby he came from Kansi in former Municipality of Nyaruhengeri. She alleges that he bought a part of it, although the documents for that purchase were lost. Furthermore, she states that other residents who occupy the land alleged to belong to the University possessed the land titles and have constructed permanent buildings. She further goes on to state that the deed of transfer for the laboratory's land was produced for the first time in this case, and even the university never claimed that piece of land they reside on. She concludes by explaining that the land where Mukagatare Grâce erected the building used to belong to their compound garden, which she was temporary given to install a kiosk likely to be shifted at any time.

[17] Counsel Nizeyimana Boniface replying on the evidence produced Mukagatare Grâce, states that she was given the act of notoriety of 30 March 2000 on the ground that she owns the Bar Isangano but they did not endorse that she owns a plot, because if it was the case they should have mentioned it's numbering. Concerning the cadastral plan of 24 March 2003 and the lease contract of 28 August 2006, he argues that they should be rejected because they indicate the measurements while the act of notoriety which should contain those measurements lacks them.

[18] Regarding the report of the commission of 22 August 2006, Counsel Nizeyimana Boniface demonstrates that the report indicates that Mukagatare Grâce was given that plot to facilitate her to carry out her commercial activities, rather than being given ownership over it. This is also evident in the letter of the *Bourgmestre* of Ngoma Municipality. Regarding the letter addressed by the Mayor of Huye District to the Ombudsman informing him that there exists no cadastral plan of Bwanakeye François in the records, he avers that this is not a matter of concern since even other occupants of that land do not have them. Regarding the transfer deed about the Butare veterinary laboratory land, he submits that this element of evidence proves the origin of the disputed land, whereby the Government of Rwanda transferred it to the University, therefore that, was the land allocated to Mukagatare Grâce, its measurements would had been indicated.

[19] He concludes by arguing that, even if the disputed land had belonged to the Government as contained in the last paragraph of article two of the transfer deed of the land of Butare veterinary laboratory, it would have to be given back to the *Centre Urbain de Butare*, due to statute of limitation because that transfer deed was signed on 12 February 1964 while the letter granting Mukagatare Grâce that land was signed by the administration of Ngoma Municipality on 10 October 1995, which implies after the expiry of thirty years (30) provided for by the law. Therefore he finds that the Government could have not allocated the land which had already been legally acquired by Bwanakeye François.

[20] Regarding the prescription alleged by Counsel for successors of Bwanakeye François, Counsel Hakizimana John argues that Mukagatare Grâce rejects it (acquisitive prescription) because the land in litigation had never belonged to Bwanakeye François, and that at the time Mukagatare Grâce requested for that plot there was a compound garden without a building. Regarding the origin of the disputed land, the report of the Director of Rwanda Natural Resources Authority emphasizes the statements of Mukagatare Grâce since it indicates the long history of the origin of this land, while the successors of Bwanakeye François argue that the plot is their customary land, which is contradicted by this report.

OPINION OF THE COURT

[21] Article 3 of the Law 15/2004 of 12/06/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges. A judge may nevertheless order any contending party to produce elements of proof they have”.

[22] Article 13, paragraph one of the Law N°15/2004 mentioned above provides that “the authentic deed is trustworthy and binding for all the parties as regard its contents are witnessed by a civil servant or where the latter worked them out within his or her mission. The contents of such a deed shall not be challenged except where there is prosecution for falsification of authentic documents or where either party alleges forgery”.

[23] Among the documents produced in the case file by Mukagatare Grâce as elements of evidences to prove that the disputed land belongs to her, includes the notoriety act of 30 March 2000, cadastral plan of 24 August 2003 issued by Butare Municipality, lease contract of that plot concluded on 28 August 2005 between Huye district and Mukagatare Grâce, payment bill of 28 August 2006 for cadastral plan of the plot, commission report of 22 December 2000 by the administration of Butare prefecture regarding the issue of Mukagatare Grâce, the letter of 10 October 1995 by the *Bourgmestre* of Ngoma Municipality authorizing Mukagatare Grâce to build a kiosk, the letter dated 03 December 2009 which the Mayor of Huye District wrote to the Ombudsman indicating that the disputed land belongs to Mukagatare Grâce and also informing him that there is no cadastral plan of Bwanakeye François in the records and the transfer deed of the land of Butare veterinary laboratory of 12 February 1964 which proves the origin of that land whereby the Government of Rwanda transferred it to University of Rwanda.

[24] The Supreme Court finds that, the statements of Mukamunana Vénantie representing some of the successors of Bwanakeye François that the reason why the High Court did not rule in favour of Mukagatare Grâce is that the documents she produced were not original are groundless, because the present documents produced to this Court are original and the remaining ones are supported by other evidence which include the report of the Director of Rwanda Natural Resources Authority indicating that the disputed land is not a customary land of Bwanakeye François as she argues, rather, it belonged to *Centre Urbain de Butare*¹. In addition, the arguments that Bwanakeye François bought one part of that land also is groundless because she does not substantiate it with evidence as provided for by article 3 of Law N°15/2004 of 12/06/2004 mentioned above.

[25] The Supreme Court also finds no merit in the arguments of Nizeyimana Boniface, the counsel for Mukamunana Vénantie that the documents which Mukagatare Grâce produces do not indicate the measurements of land she was given, and others indicate that she borrowed it to construct the Bar *Isangano*; because she was not given that plot given that the cadastral plan indicates that Mukagatare Grâce was given 5a and 40ca, and even alleging that notoriety *act* demonstrates that Mukagatare Grâce owns Bar *Isangano* but not a plot, cannot invalidate the elements of evidence she produced since that Bar was erected on the land.

[26] After examining the aforementioned documents, the Supreme Court finds that Mukagatare Grâce demonstrates the origin of the land she was sued for by Bwanakeye François because she proves that she was given that land by the competent authority in

¹ A copy, photocopy or other reproduction which has not been certified in conformity with the original is only valid if supported by other evidence not prohibited by law, when the original cannot be produced.

compliance with article 10 of Law N°43/2013 of 16/06/2013 governing land in Rwanda², whereas the successors of Bwanakeye François cannot demonstrate the origin of the disputed land, because sometimes Mukamunana Vénantie who represents some of successors states that they acquired it in accordance with the custom, and subsequently, she argues that her father Bwanakeye François came from Kansi, the former commune of Nyaruhengeri to settle on that land, and again that he bought it without providing supporting evidence as it was aforementioned.

[27] On the issue of determining whether the land which was allocated to Mukagatare Grâce did not belong to the Government, the documents in the case file including the transfer deed of the Butare Veterinary Laboratory by the Government of the Republic of Rwanda to the National University of Rwanda dated 12 February 1964 which indicates that the Government of Rwanda represented by the Minister for agriculture and the Minister of Education transferred the property of veterinary laboratory including 45 hectares of land to the University of Rwanda as it is indicated in that document whereby in paragraph 2 of article 2 they indicate that veterinary laboratory had to hand back six (6) hectares of land it was given by *Centre Urbain de Butare* after the signing of the transfer deed of the land.

[28] The report of the Director of Rwanda Natural Resources Authority who was called upon by the Court in order to prove that the land in litigation belongs to the Government, indicates that after the analysis of the map drawn in 1957 indicating the proposed expansion of Astrida city and the transfer deed of the land of Butare veterinary laboratory made by the Government of Rwanda to the university of Rwanda of 12/02/1964, it is obvious that *Centre Urbain* lent some pieces of land to the veterinary laboratory including the disputed one which is six (6) hectares located between Bwanakeye François and Mukagatare Grâce as it is stipulated in article 2 of the transfer deed.

[29] Following those documents, the Supreme Court finds that the disputed land located at Tumba sector, Huye district is owned by the Government because it belonged to the *Centre Urbain de Butare* which no longer exists, but pursuant to the Organic Law N°29/2005 of 31/12/2005 determining the administrative entities of the Republic of Rwanda, it turned into Huye district.

[30] Regarding Counsel Nizeyimana Boniface's arguments that the Government was no longer able to transfer the disputed land because Bwanakeye François had already owned it due to the prescription, the Supreme Court finds that Bwanakeye François should not pretend the right prescription to occupy the Government's land as it is provided by article 47 of the Law N°43/2013 of 16/06/2013 governing land in Rwanda which states that a person who, through fraudulent means, occupies vacant and escheat land or other people's land, cannot invoke the right to prescription to claim definite right on it, even if he/ she has occupied it for a period longer than the prescription period provided under article 46 of this Law³.

[31] Following the stated motivations, the Supreme Court finds that the disputed land belongs to Mukagatare Grâce because she has substantiating evidence which comprise of the documents issued to her by the competent authority. Consequently, the judgment

²Article 10 of the Law N°43/2013 of 16/06/2013 governing land in Rwanda provides that Private individual land shall comprise land acquired through custom or written law. That land has been granted definitely by competent authorities or acquired by purchase, donation, inheritance, succession, ascending sharing, and exchange or through sharing.

³In land related matters, the prescription period shall be thirty (30) years. The prescription shall be ascertained by a decision of a competent court.

RCA1633/06/HC/NYA rendered by the High Court, Nyanza Chamber on 03 November 2008 is overruled.

2. Whether the damages claimed by the parties should be awarded.

[32] Counsel Hakizimana John claims that Succession Bwanakeye François pays to Mukagatare Grâce damages worth five hundred thousand Rwandan franc (500,000Frw) for being dragged into vexatious litigation in courts and other administrative organs and five hundred thousand Rwandan franc (500,000Frw) of the counsel fees whereas Counsel Nizeyimana Boniface argues that they are baseless since she does not prove the prejudice she suffered.

[33] On the other side, Counsel Nizeyimana Boniface prays that if Succession Bwanakeye François wins this case, Mukagatare Grâce should pay pecuniary damages equivalent to one hundred million Rwandan francs (100,000,000) because Bwanakeye François had planned to carry out commercial activities on that land which is being litigated, which was not realized. These damages were computed taking into account twenty children he had to raise. He further requests that Mukagatare Grâce should pay twenty million (20,000,000Frw) in moral damages because these lawsuits are among the factors which accelerated his death and eight million (8,000,000Frw) which were paid to the counsels who pleaded this case from the beginning.

OPINION OF THE COURT

[34] The Supreme Court finds that the fact that Mukagatare Grâce continued following up the case till to this instance and hired the services of the advocate, she should be awarded five hundred thousand Rwandan francs (500,000) for the counsel fees as she requests. In addition to that, the Supreme Court finds that damages amounting to five hundred thousand Rwandan francs (500,000) for being dragged into vexatious litigation before this Courts and other administrative organs she requests for should also be awarded to her because it is obvious that she incessantly followed up this case.

[35] Concerning the damages requested by Succession Bwanakeye François, the Court finds that it should not be awarded because they lost this case.

III. DECISION OF THE COURT

[36] The application for review due to injustice of the judgment RCA1633/06/HC/NYA filed by Mukagatare Grâce has merit;

[37] Overrules the judgment RCA1633/06/HC/NYA rendered on 03/11/2008 by the High Court, Nyanza Chamber;

[38] Holds that the land located at Rimba village, Gitwa cell, Tumba sector, Huye district in South province in litigation between Mukagatare Grâce and Succession Bwanakeye François belongs to Mukagatare Grâce;

[39] Orders the Succession Bwanakeye François to pay five hundred thousand Rwandan francs (500,000) in damages for vexatious litigation and five hundred thousand Rwandan francs (500,000) for the counsel fees, all amounting to one million Rwandan francs(1,000,000);

[40] Orders the Succession Bwanakeye François to pay the court fees of one hundred Rwandan francs (100,000).