

NDITIRIBAMBE v GATERA ET AL

[Rwanda SUPREME COURT – RS/ INJUST/RC
00007/2018/SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire,
Rukundakuvuga and Hitiyaremye, J.) 13 March 2020]

Review of a judgment due to injustice – Scope of the subject matter of the case under review due to injustice – The rulings of a final judgment cannot be reversed through the review due to injustice of another judgment of which they are not in the same sequence.

Review of a judgment due to injustice – Scope of the subject matter of the case review due to injustice – New claims which were not litigated upon at the first instance or issues which were not raised in the case which is being reviewed due to injustice.

Contracts – Sale agreement – Obligations of the seller – The seller guarantees the buyer peaceful possession (garantie contre l'éviction).

Facts: This case started before Gasabo Intermediate Court, whereby Nditiribambe sued Gatera requesting damages for his house located in the plot he sold to him, which was destroyed as a result of the execution of the judgment of Gatera against Nyamaswa, who sued him for selling his plot and won the case. In that case, opposing Nditiribambe to Gatera, the court ordered the latter to pay Nditiribambe the compensation for the demolished house as well as the loss of expected rent. Gatera applied for the opposition before this same court since the case was tried in his default, which court relied its decision on the ruling of the case between Gatera and Nyamaswa against which

Nditiribambe applied for third-party opposition but lost it on the ground that he indicated in his court briefs that he was aware of disputes over that plot at the time of its acquisition; therefore the court did not hold Gatera liable for damages incurred as a result of enforcement of the judgment he lost against Nyamaswa on the ground that he did not sell the said plot to him with full knowledge that he did not own it.

Nditiribambe was not contented with the judgment and appealed to the High Court stating that the Intermediate Court disregarded that he bought the plot from Gatera without bad faith and that he immediately used the proceeds of sale to pay back the loan Gatera owed to the bank since the house was mortgaged to secure its payment; therefore, he believed the plot was registered on no any other person since Gatera could not have mortgaged it as long as he did not own it.

The defendant elaborates on the injustice he suffered and states that the court disregarded the elements of evidence he produced constituted by the amicable settlement agreement concluded between Gatera and Nyamaswa clearly indicating that he lawfully bought the plot; therefore, he should be restored in its ownership and be awarded compensation for his destroyed houses by them.

In his rebuttal against this allegation, Gatera argues that the courts erred where they held that a sale agreement had been concluded between him and Nyamaswa whereas the latter did not present a written agreement or indicate the agreed price of sale as well as the size of the plot, the reason why he also finds that the judgment RCA0086/09/HC/KIG which attributed it to him has to be reviewed due to injustice, and he finds no injustice in the judgment RCA0379/12/HC/KIG under review due to injustice, because the court could not instruct him to retransfer the plot

which was no longer in his ownership, but that if the court finds necessary to review all judgments, the retrial of the judgment RCA0086/09/HC/KIG that opposed him to Nyamaswa and which awarded him the plot should be carried out. Concerning damages, he finds that he could not be held liable for them, rather Nyamwasa should be the one to be held liable for having been dishonestly attributed that plot, and for this reason, houses were destroyed.

Furthermore, the defendant states that he deserves to be awarded damages for his house destroyed during the execution of the judgment RCA0086/09/HC/KIG, for he acquired that plot with good faith.

As far as this allegation is concerned, Gatera rebuts that he should not be ordered to pay damages, because they should instead be paid by Nyamaswa for having been party to deceitful litigation in which he won the property not belonging to him. Nyamaswa states also that he should not be held liable for them since he has never been a party to that case under review; therefore, the person responsible to pay those damages is the one who executed the judgment in contravention of the law. The applicant concludes by requesting to be compensated for costs incurred for court proceedings.

Held: 1. The rulings of a final judgment cannot be reversed through the review due to injustice of another judgment of which they are not in the same sequence, therefore, the ruling of the final judgment between Gatera and Nyamaswa should neither be retried nor modified through the trial of the case for which Nditiribambe applied for review due to injustice.

2. New claims which were not litigated upon at the first instance or issues which were not raised in the case which is being

reviewed due to injustice, therefore Nditiribambe cannot request for the damages which he did request before.

3. The seller guarantees the buyer peaceful possession (garantie contre l'éviction).

**Application for review of the judgment due to injustice has merit;
The ruling of the judgment under review is reversed.**

Statutes and statutory instruments referred to:

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9 and 63;

Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 81;

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 11 and 81

No cases referred to.

Authors cited:

François Collart Dutilleul and Philippe Delebecque, Contrats civils et commerciaux, Dalloz, 7ème éd., 2004, n°246, p.230.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 10/10/2004 Nditiribambe Samuel bought a plot for 850,000 Frw from Gatera Jason. Later on, Nditiribambe Samuel was dispossessed from that plot and the house he had built as a result of lawsuits between Gatera Jason and Nyamaswa Faustin. on 15/06/2006 Gasabo Intermediate Court rendered the judgment RCA0096/06/TGI/GSBO and declared that the plot in which a house was build belonged to Nyamaswa Faustin; the judgment against which Nditiribambe Samuel applied for third-party opposition but that he lost in the final judgment RCA0086/09/HC/KIG rendered by the High Court on 21/10/2009.

[2] The judgment RCA0086/09/HC/KIG was executed, and Nditiribambe Samuel was ordered to remove the buildings off the plot awarded to Nyamaswa Faustin, and consequently, he sued Gatera Jason before Gasabo Intermediate Court requesting damages for his house removed off the plot Gatera sold to him.

[3] On 17/12/2010, that court rendered the judgment RC0389/10/TGI/GSBO and found with merit the claim of Nditiribambe Samuel because Gatera Jason sold to him a house and a plot without informing him that the plot on which the house was built had already been the subject of sale to Nyamaswa Faustin, and ordered Gatera Jason to pay him damages he requested amounting to 9,450,000 Frw, consisting of 8,000,000 Frw equivalent to the value of his destroyed house, 1,200,000 Frw of loss of expected rent and 250,000 Frw for counsel fee.

[4] Gatera Jason applied for opposition to the judgment rendered in his absence, and the Intermediate Court of Gasabo, in the judgment RC0069/11/TGI/GSBO rendered on 24/05/2012, declared the claim of Nditiribambe Samuel without merit because, in the judgment RC0026/08/TGI/GSBO in which he

lodged a third party opposition against the decision of the judgment RCA0096/06/TGI/GSBO, he submitted in his court briefs and statements that he relied his decision to buy from Gatera Jason on the agreement of 03/10/2004, where Gatera Jason agreed to refund the price of sale to Nyamaswa Faustin, which indicates that there no longer existed any concern between Gatera Jason and Nyamaswa Faustin. He also relied on the land titles Gatera Jason submitted to him, implying that he was informed about the background of the plot at the time of acquisition, and for these reasons, Gatera Jason did not sell to him very well aware that the land was no longer in his ownership; therefore, he cannot be held liable for the demolition done as a result of the execution of the ruling of the case he lost against Nyamaswa Faustin.

[5] Nditiribambe Samuel appealed before the High Court arguing that the Intermediate Court of Gasabo disregarded the fact that he acquired the plot from Gatera Jason without bad faith and that both Gatera Jason's father and spouse, as well as the Executive Committee of Ruhura II, countersigned it. In addition to that, he used the total amount to pay back the bank because the house was mortgaged to secure the loan Gatera Jason owed it. Therefore, he believed that the plot would not be registered to someone else because it could not have been mortgaged to the bank unless he owns it, and for this reason, he should pay him compensation for the loss incurred for his enrichment by selling that plot to two persons.

[6] That court rendered the judgment RCA 0379/12/HC/KIG on 19/07/2013 and declared his appeal without merit for the following grounds:

- The contract concluded on 03/10/2004, where Gatera Jason agrees to refund the price of sale of the plot to Nyamaswa Faustin, does not replace the one they had concluded before at the time of acquisition by Nyamaswa Faustin and in that contract nowhere is mentioned that the latter agreed to revoke the contract of sale of the plot concluded before;
- Those interviewed confirmed that Nditiribambe Samuel was aware of the disputes about the plot when he bought it because it had been acquired by Nyamaswa Faustin;
- Nditiribambe Samuel built in that plot on the basis of the titles he received from Gatera Jason before while they were invalidated by the Mediation Committee (Abunzi) in the case between Nyamaswa Faustin and Gatera Jason.

[7] After he applied for the review of that judgment (judgment RCA 0494/13/HC/KIG rendered on 16/05/2015), which was rejected, Nditiribambe Samuel wrote to the Office of the Ombudsman applying for the review of that judgment for the grounds of being vitiated by injustice.

[8] After the assessment of that application, the Office of the Ombudsman found out that it is the judgment RCA0379/12/HC/KIG which should be reviewed due to injustice because this is the case which was the subject of hearing in merit at the final stage, and on 03/02/2018, the Office wrote to the President of the Supreme Court, requesting him that the concerned judgment be reviewed for the grounds of being vitiated by injustice.

[9] After examining the report from the General Inspection of Courts on that judgment, the President of the Supreme Court instructed its registration in registers for the revision.

[10] The hearing was scheduled on 26/02/2019, and it was not conducted because the parties to the case requested the court to order Nyamaswa Faustin to intervene, which the court admitted and ordered the parties to share with him court briefs, and the hearing was postponed to 14/05/2019.

[11] On that day, the parties to the case appeared, but Nyamaswa Faustin appeared without legal counsel. Another person named Uwimana Coloneria also appeared and requested to voluntarily intervene in the case because she had interests relating to the plot she was granted by Gatera Jason where she built a house which was later destroyed as a result of the execution of the judgment RCA 0086/09/HC/KIG. After hearing the replies of the parties to the case on that request, the court admitted her request and adjourned the hearing for allowing her and Nyamaswa Faustin to seek legal counsel and submit their court briefs.

[12] Subsequently, the hearing has been adjourned due to reasons from parties to the case and it was heard in public on November 07, 2019, whereby Nditiribambe Samuel was represented by his wife Nyirahabimana Rehema who is also assisted by Counsel Nzabamwita Jean Claude, Gatera Jason assisted by Counsel Katushabe Mary, Nyamaswa Faustin assisted by Counsel Mulingande Jean Claude and Uwimana Coloneria assisted by Counsel Murekatete Marigarita.

[13] After hearing the pleadings from all parties, the Court found that it needed more clarifications about the description of

the plot and houses built at it which were destroyed during the execution of the judgment RCA0086/09/HC/KIG rendered by the High Court on October 21, 2009 and on January 13, 2020 visited the subject matter, whereby it heard the witnesses and designed a blueprint of subject matter which parties agreed on. On February 06, 2020, the parties to the case were again convened before the court to submit their additional briefs if any, and they all appeared represented or assisted as before, except Uwimana Coloneria who withdrew herself from the case.

[14] In his pleadings, Nditiribambe Samuel explained that the injustice he suffered in the judgment RCA0379/12/HC/KIG lied on the fact that he was refused to be awarded the damages for his house which was destroyed and 13 cases he litigated. He prays for justice to be done and for this reason, be awarded those damages and given back his plot illegally allocated to Nyamaswa Faustin by the judgment n° RCA 0086/09/HC/KIG.

[15] Gatera Jason explains that Nyamaswa Faustin's disputes were baseless, despite the courts allocated him the property which does not belong to him, the reason why he finds that the judgment which handed him that plot should be reviewed due to injustice since the ruling is in contravention with the law, therefore Nditiribambe Samuel should be handed over his plot.

[16] As far as he is concerned, Nyamaswa Faustin supported that Nditiribambe Samuel should not sue him because he concluded a land acquisition agreement with Gatera Jason with full knowledge that it was no longer in his ownership. He also prayed that Nditiribambe Samuel should be instructed to restore the landmark stones he uprooted, and be ordered to give back the part of that plot measuring 3m/20m he retained during the execution of the judgment RCA0086/09/HC/KIG.

[17] Legal issues analyzed in this case are the following:

- Whether Nditiribambe Samuel should be awarded the plot by which Nyamaswa Faustin was allocated in the judgment n° RCA0086/09/HC/KIG;
- Whether Nditiribambe Samuel should be awarded damages he requested related to his destroyed house;
- Whether Nditiribambe Samuel should be awarded damages he requested related to lawsuits which he got involved in against Gatera Jason and Nyamaswa Faustin;
- Whether Nyamaswa Faustin should be awarded what he is requesting.

II. ANALYSIS OF LEGAL ISSUES

A. Whether Nditiribambe Samuel should be awarded the plot by which Nyamaswa Faustin was allocated in the judgment n° RCA0086/09/HC/KIG

[18] Counsel Nzabamwita Jean Claude who assists Nyirahabimana Rehema representing Nditiribambe Samuel states that the amicable settlement agreement signed on October 3, 2004 between Gatera Jason and Nyamaswa Faustin clearly shows that he bought the plot in accordance with the law, therefore he should get handed it back.

[19] Gatera Jason argues that the courts erred because they held that there had been a sale agreement between him and

Nyamaswa Faustin while the latter did not produce a written sale agreement they concluded or indicate the price they agreed on and the size of the plot, the reason why he finds that the judgment which allocated it to him has to be reviewed on the grounds of being vitiated by injustice since their ruling contravenes the law.

[20] He explains that Nyamaswa Faustin lent him money, and at the time of reimbursement, the balance of 50,000 Frw remained unpaid. They agreed that after getting the land titles, they will conclude a sale of the plot where Nyamaswa will pay him additional amount of money, but they did not agree on the size and the price of the plot to be sold; therefore, that there is no way Nyamaswa Faustin can pretend to have made a purchase.

[21] He continued stating that after they failed to agree on the subject of sale and the price, they concluded a settlement on 3/10/2004 where they agreed that he will pay Nyamaswa Faustin 50,000Frw he owed him and 67,272 Frw not later than 30/1/2015 for late payment. After this settlement, he sold a plot to Nditiribambe Samuel in order to pay back the total amount of money he owed Nyamaswa Faustin, but the latter refused, and he rather sued before the court.

[22] He states that even though the courts erred, Nditiribambe Samuel should not claim for the entire plot sold measuring 20m/30m because he knows that there is a part of it he still possesses. He explains that the plot Nyamaswa Faustin owned comprises of two parts of which an unsold part measuring 15 meters out of 10 meters and a part belonging to Nditiribambe Samuel which measures 15 meters out of 20 meters. He concludes by stating that in the interests of delivering due justice, Nyamaswa Faustin should hand the part of the plot he took from them back to everyone.

[23] Counsel Katushabe Mary who assists him argues that the settlement document of 3/10/2004 between Gatera Jason and Nyamaswa Faustin indicates that the latter did not buy the plot which is the subject matter in this case, and finds that the judgment RCA 0379/12/HC/KIG is not vitiated with injustice since the Court could not order Gatera Jason to give back the plot which was not in his possession. However, she states that if the Court finds it necessary to review all the judgments, an analysis should be carried out on the judgment RCA 0086/09/HC/KIG which allocated it to Nyamaswa Faustin.

[24] Nyamaswa Faustin states that in 2003, Gatera Jason told him that he owns a plot of land for sale. After visiting it they agreed on 50,000Frw and he paid him, but when he asked him to sign a written agreement of sale, Gatera Jason intentionally kept on buying time, and after he discovered that he was deceiving him, he called on the neighbours who asked Gatera Jason if there is money he still owes him, and he replied that there wasn't, and when they asked him whether he gave it to him as a loan, he said that they were planning a sale of the plot. They asked him why he refuses to sign a written agreement with him and he replied that he wishes to pay back only the amount he received and its interests. They concluded a settlement on 03/10/2004 where Gatera Jason agreed to refund 50,000Frw plus 67,272 Frw of interests not later than January 30, 2005.

[25] He continues stating that Nditiribambe Samuel should not sue him because he concluded an agreement of sale with Gatera Jason on October 10, 2004 with full knowledge that on that date Gatera Jason had not yet cleared the issue between them because the issue was meant to be resolved on January 30, 2005 after paying the amount of money he agreed on in the amicable

settlement agreement; therefore, the land was still in his possession the time he made a sale with Gatera Jason.

[26] Counsel Muligande Jean Claude assisting him states that Nyamaswa Faustin admitted without choice the statements of the document of October 03, 2004, because after failing to get ownership of the plot he bought, he agreed to be refunded the money.

DETERMINATION OF THE COURT

[27] In the judgment RCA0379/12/HC/KIG under review due to injustice, Nditiribambe Samuel was suing Gatera Jason requesting damages related to his house destroyed during the execution of the judgment RCA0086/09/HC/KIG which held that the plot at which a house is built belongs to Nyamaswa Faustin because he bought it from Gatera Jason.

[28] However, based on the explanations of Nditiribambe Samuel about the injustice found in the judgment RCA0379/12/HC/KIG under review, and the rectifications or modifications requested as well as the rebuttals of Gatera Jason; it is clear that they both readdress the holdings of the judgment RCA0086/09/HC/KIG they lost because they pray this Court to declare that there has not been a sale between Gatera Jason and Nyamaswa Faustin, rather that there has been a borrowing of money.

[29] The issue that has to be analyzed is to know whether the ruling of another final judgment can be subject to reversion through the review due to injustice of the judgment which is not

in the same court proceedings basing on the sole fact that they are connected.

[30] Article 11 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that a case that was definitively decided and of which the possibility to be reviewed due to a decision tainted with injustice is exhausted cannot be summoned again for the same facts and between the same parties pleading the same subject matter.

[31] With regarding the review of the case due to injustice, article 81 of Organic Law N° 03/2012/OL of 13/06/2012 Organic Law determining the organization, functioning and jurisdiction of the Supreme Court provided that a party to the case which does not contend with the final judgment can apply for its review due to injustice¹.

[32] That Organic Law provided also the modalities and time for the review due to injustice of the cases definitively decided on, and in its transitional and final provisions, it provided the modalities of that review for the cases definitively decided on before its publication. Article 86 of that law provided that final decisions alleged to be unjust made after the establishment of the Office of the Ombudsman in 2003, whether executed or not

¹The review of a final decision due to injustice shall only be applied for on any of the following grounds:

1° when there is unquestionable evidence of corruption, favoritism or nepotism that were relied upon in the judgment and that were unknown to the losing party during the proceedings;

2° when there are provisions and irrefutable evidence that the judge ignored in rendering the judgment; 3° when the judgment cannot be executed due to the drafting of its content.

which shall be referred to the Office of the Ombudsman within one (1) year as of the publication of this Organic Law in the Official Gazette of the Republic of Rwanda. This means that after the publication of this Organic Law, a party to the case whose judgment became final before the publication of this Organic Law but finds it unjust has also gotten the remedy to apply for its review.

[33] The court finds therefore that since that remedy was available but not exercised by Nditiribambe Samuel or Gatera Jason to apply for the review of the judgment RCA0086/09/HC/KIG which allocated the plot to Nyamaswa Faustin, the decisions on the subject matters of that case between them became definitive. This means that that plot was conclusively allocated to Nyamaswa Faustin, and Nditiribambe Samuel has no longer any right over it because failure to apply for a review of that judgment resulted in the impossibility to re-adjudicate it as provided by article 11 of the aforementioned Law n° 21/2012 of 14/06/2012.

B. Whether Gatera Jason and Nyamaswa Faustin should be ordered to award Nditiribambe Samuel the damages related to his house destroyed during the execution of the judgment RCA0086/09/HC/KIG

[34] Counsel Nzabamwita Jean Claude states that the High Court held that Nditiribambe Samuel should not be awarded the damages for his house destroyed during the execution of the judgment RCA0086/09/HC/KIG since he bought the plot at which a house was built with the knowledge that it had been already sold to Nyamaswa Faustin by disregarding that the amicable settlement agreement signed between Gatera Jason and

Nyamaswa Faustin clearly indicates that he bought that plot without bad faith and in accordance with the law.

[35] Gatera Jason retorts that he should not be ordered to pay any damages; rather, they should be awarded by Nyamaswa Faustin who defended fallacious claims and to whom the Court allocated the property which does not belong to him, since he did not contribute to injustice Nditiribambe Samuel suffered because he did the best he could to demonstrate to the court that the subject matter belongs to him but they both lost the case.

[36] Counsel Katushabe Mary assisting him states that Nditiribambe Samuel should not have sued Gatera Jason because he himself admits that no sale had been concluded between him and Nyamaswa Faustin, and therefore he did not contribute to the loss of the judgment RCA0086/09/HC/KIG or its execution, especially that everything relied on the courts' decisions, and not on the action or instructions of Gatera Jason.

[37] Counsel Muligande Jean Claude assisting Nyamaswa Faustin states that the latter has never been a party to the case under review, therefore that the requested damages should be paid by the person who may have wrongly executed the judgments and that his client should not be held liable for anything since he did not contribute in any way to the destruction of the house of Nditiribambe Samuel.

DETERMINATION OF THE COURT

[38] As held above, the decisions of the judgment RCA0086/09/HC/KIG that the concerned plot belongs to Nyamaswa Faustin, became final. This implies that he cannot be

held liable for the damages resulting from the execution of that judgment since he did not individually contribute to it. This denotes also that Gatera Jason sold to Nditiribambe Samuel the plot which did no longer belong to him because holding otherwise could amount to the contradiction of the final court decision. Thus, the court shall examine in the subsequent issues whether Gatera Jason should be ordered to pay damages for that.

[39] No legal provision in Rwanda law provides for the remedy in case a person purchased something from the person who is not the owner, and later be asked to hand it back to its owner. However, article 9 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that in the absence of relevant rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and legal scholars' opinions (*principes généraux du droit*)².

[40] In this context, the Court finds that there exists a general principle of the law that can help to settle this case. That principle states that “*The vendor guarantees the purchaser proper and peaceful possession against de facto and de jure disturbances (garantie contre l'éviction)*”. In other words, when the purchaser is deprived of his right to proper and peaceful possession against de facto and de jure disturbances, he may request the vendor to refund him/her the price of acquisition, the output product he/she was ordered to refund, judicial damages, damages (*dommages et*

² That article provides that A judge adjudicates a case based on relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.

intérêts), as well as the expenses incurred for the conclusion of the agreement. However, it is understandable that the vendor would not be ordered to do it as long as the purchaser had known that he/she would be dispossessed of the thing he/she bought at the time of the purchase. Law scholars explain that that principle is inspired by the duty of mutual respect and loyalty in the conclusion of the contract (*obligation de loyauté*)³.

[41] As far as this case is concerned, the court finds that Gatera Jason, the seller of the plot to Nditiribambe Samuel and for which he is requested to pay damages, admits himself that Nditiribambe Samuel purchased a plot which was a subject of disputes in the judgment RCA0086/09/HC/KIG believing that he was buying it from the right owner, and this is itself an indication that he did it with good faith, unaware that he could be dispossessed of it. Consequently, the fact that he was dispossessed of it by the person who became its owner by the decision of the court, entitles him the right to request compensation from the vendor basing on the stated principle that the vendor guarantees the purchaser proper and peaceful possession against de facto and de jure disturbances, and the issue is the determination of the amount of damages, and this is going to be analysed in the subsequent part of the judgment.

C. Determination of the amount of compensation in relation to the destroyed house of Nditiribambe Samuel that Gatera Jason should be ordered to pay

[42] Counsel Nzabamwita Jean Claude prays that based on the injustice Nditiribambe Samuel suffered, he deserves to be

³François Collart Dutilleul na Philippe Delebecque, Contrats civils et commerciaux, Dalloz, 7ème éd., 2004, n° 246 p.230

awarded the compensation for his destroyed houses equivalent to 3,867,000 Frw as indicated by the valuation report he uploaded in IECMS, and 1,200,000 Frw of expected rent from those houses which had five rooms among which three were rented for 25,000 Frw per month each, and two rooms rented for 15,000 Frw per month each.

[43] By the time the court arrived at the location of the subject matter, it asked the parties to the case about the characteristics of destroyed houses and agreed that the first house had three doors, and the second with two doors and a toilet, built with adobe bricks where one house was roofed with one line of metal sheet and another with two lines of metal sheets.

[44] Regarding the value of destroyed houses of Nditiribambe Samuel, Gatera Jason stated that the value of the houses can be estimated to 3,000,000 Frw but that an estimate of 500,000 Frw of the value of the remains he managed to recuperate after the destruction should be deducted from this amount.

[45] Counsel Katushabe Mary who assists him stated that 3,867,000 Frw Nditiribambe Samuel is requesting as the value of the destroyed houses includes the materials he managed to recuperate during the execution of the judgment, which includes roofing sheets, doors, and a window as indicated in the valuation report, therefore that he should not claim for their compensation. By contrast, the request should concern the plot of land and labor expenses (*main d'oeuvre*).

[46] Nyamaswa Faustin stated that by estimation he finds that the destroyed houses of Nditiribambe Samuel now have the value of 3,000,000 Frw but an amount of 300,00 Frw of the value of the non-destroyed material has to be deducted.

[47] A witness named Ngarambe Félix, who is also the Executive Secretary of Ruhuha Cell and executed the judgment RCA 0086/09/HC/KIG stated that by estimation, he finds that those houses can be valued to 4,500,000 Frw and an amount of 500,00 Frw has to be deducted from that value as the value of the non-destroyed materials.

[48] A witness named Gasana Athanase, who was also a tax collector from rents paid in relation to those houses, stated that he knew those houses which have been destroyed, and for him, they can be estimated to 5,000,000 Frw.

[49] With regard to the materials which were not affected by the demolition of the houses, Nditiribambe Samuel alleged that when someone's house is destroyed, the remains are worthless.

[50] Concerning the money from the rent Nditiribambe Samuel is requesting, Gatera Jason stated that he should produce a rent contract he concluded with at least one person so that it would be relied on for the analysis of the requested damages.

[51] He also stated that he found that the amount of rent can be estimated to 7,000 Frw per month per room for the three doors, and 4,000Frw per month for each room for the remaining two doors, but that by the time those houses were destroyed, those rooms were no longer rented due to lack of lessees, that if all rooms were still occupied Nditiribambe Samuel could not have requested the amount of rent for only one year because the judgment was executed in 2010 while he sued in 2013; therefore, he should have considered all those years.

[52] Nyamaswa Faustin stated that the amount of money Nditiribambe Samuel is requesting is excessive and that he heard

people saying that he was paid 10,000 Frw for one room per month and he noticed that only one room was sometimes occupied while others were not.

DETERMINATION OF THE COURT

[53] The parties to the case agree on the features of destroyed houses, their size, and the number of rooms. The only issue consists of the current value of those houses, the amount of the rent for their rooms and if they were rented.

[54] Concerning the value of the destroyed houses, given that no valuation report was established before their destruction, the court finds that in its discretion, basing on the consensus of the parties on their features and number of rooms, basing also on their location (in a business center), it can be held that they are worth 3,500,000 Frw.

[55] With regard to the materials that may have not been damaged by the destruction of the houses, the Court finds that apart from that Nditiribambe Samuel is rejecting it, all those interviewed, either party to the case or witnesses, confirm that they were there, thus, their value should be determined to be deducted from the value of destroyed houses.

[56] Given that there exists no other evidence the court can base on in determining their value, it should be considered the price provided by the parties to the case and witnesses and with the consideration that the materials undergo depreciation once they are removed from the house, the Court finds, upon its discretion, that the materials which remained after the destruction have to be valued at 150,000 Frw.

[57] Consideration made of the motivations stated in the previous paragraphs, the Court finds that Gatera Jason has to pay Nditiribambe Samuel 3,350,000 Frw of the value of his destroyed houses (3,500,000 Frw - 150,000 Frw).

[58] Concerning damages relating to expected rents, Nditiribambe Samuel used to receive from his houses which have been destroyed, the Court finds that the fact that they were for business purposes and located in a business center implies that he suffered a loss from the lack of money he used to collect from their rental.

[59] The Court finds also that even though Nditiribambe Samuel has not produced a rental contract to be relied on in determining the amount of the rent for each room, upon its discretion, based on their characteristics and their location in a business center, it can be held that each room was rented for 8,000Frw per month, therefore the loss of the rent he suffered in one year due to the destruction of his houses is equal to 480,000 Frw (8,000 Frw x 5 x12 months), and this amount has to be paid to him by Gatera Jason.

[60] In general, the Court finds that Gatera Jason has to pay to Nditiribambe Samuel 3,830,000 Frw (3,350,000 Frw + 480,000Frw).

D. Concerning judicial damages requested by Nditiribambe Samuel for the lawsuits in which he participated

[61] Nzabamwita Jean Claude prays that based on the injustice inflicted to Nditiribambe Samuel he should be paid 402,000 Frw he paid Gatera Jason for the execution of the judgment

RC0196/13/TB/RHHA⁴, 235,000 Frw he paid him for the execution of the judgment RCA0084/14/TGI/GSBO⁵ as indicated by the statement of the execution of those judgments, and 73,200 Frw he paid for the execution of the judgment RCA0086/09/HC/KIG whereby he was instructed to willingly remove the buildings not later than February 03, 2010 on his expenses, 6,000,000 Frw of counsel fees he paid for 13 cases against Gatera Jason and Nyamaswa Faustin, 1,000,000 Frw for counsel fee he paid for the review due to injustice of this case as well as 1,000,000 Frw for judicial damages.

[62] Gatera Jason argues that the payment of all amounts of money by Nditiribambe Samuel was done under the courts' instructions for the execution of the judgments he lost; therefore, he should not be ordered to award him any damages.

[63] Counsel Katushabe Mary assisting him states that not all judgments alleged by Nditiribambe Samuel to have participated in should be the subject of his request for damages because it is not all of them which were mentioned in the application to examine injustice.

DETERMINATION OF THE COURT

⁴ It is a case of 31/10/2013, in which Gatera Jason sued Nditiribambe Samuel requesting damages for dragging him in unnecessary lawsuits, and the Court held that Nditiribambe Samuel had to award him 400,000 Frw for judicial damages.

⁵ It is a case of 29/07/2015 originating from the claim Gatera Jason filed against Nditiribambe Samuel requesting damages related to the judgment n° RCA0494/13/HC/KIG which reviewed for new grounds the judgment n° RCA0379/12/HC/KIG, and the court held that Nditiribambe Samuel had to pay him 235,000 Frw for counsel and judicial damages.

[64] In this case, the issue being analysed is to know whether the judgment RCA0379/12/HC/KIG in which Nditiribambe Samuel is requesting damages for his destroyed houses, the loss related to rent and counsel fee, is vitiated by injustice. However, in analysing the prayer of Nditiribambe Samuel, the Court finds that it includes what he did not request in the judgment under review due to injustice. Among that, include the money he paid to Gatera Jason during the execution of the aforementioned judgments, the money he paid for the execution of the judgment RCA0086/09/HC/KIG, as well as the counsel fees paid for his cases against Gatera Jason and Nyamaswa Faustin which were not in the same proceedings with this one under review due to injustice.

[65] An issue to be clarified is to determine whether the provisions of the Article 63 of Law n°30/2018 of 02/06/2018 determining the jurisdiction of the courts that when the Court receives an application for review of a judgment due to injustice, it re-examines the merits of the case, which entitles the party to the case to file new claims which have not been the subject of adjudication in the judgment under review.

[66] The court finds that the fact that a party to the case who finds injustice in the judgment in which he/she was a party has been entitled to apply for its review as it was provided by the article 81 of Organic Law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, does not entail he/she can use this remedy to bring new claims which are not in line with the initial claim at the first instance or raise issues which were not analysed in the case under review because this is considered as going beyond the scope of the said judgment.

[67] The Court finds therefore that, based on the explanations provided in the previous paragraph, the amount of money Nditiribambe Samuel paid to Gatera Jason:

- a. 402,000 Frw for the execution of judgment n° RC0196/13/TB/RHHA;
- b. 235,000 Frw he paid him in the course of execution of the judgment n° RCA0084/14/TGI/GSBO;
- c. 73,200 Frw he paid for the execution of the judgment n° RCA 0086/09/HC;
- d. The counsel fee he paid for the cases which are not in line with this case under review due to injustice; should not be considered in this case because it does not fall within its scope.

[68] Concerning the judicial damages and counsel fee amounting to 2,000,000 Frw Nditiribambe Samuel is requesting basing on this case under review due to injustice, the Court finds that he deserves to be awarded them because there are some expenses he incurred for this case follow up, of which he wins, and it finds that they are in range considering the three instances it went through.

E. Concerning the requests of Nyamaswa Faustin

[69] Nyamaswa Faustin prays that Nditiribambe Samuel be instructed to restore the boundary stones of the plot (*bornes*) he uprooted at the beginning of the case, and be ordered also to concede the part of the plot he remained with measuring 3 meters out of 20 meters because he did not hand it during the execution of the judgment RCA0086/09/HC.

[70] He also prays that he be paid all expenses incurred on cases, including 200,000 Frw for transportation fee, 100,000 Frw for catering services, 200,000 Frw for the loss he suffered, 500,000 Frw for being dragged in unnecessary lawsuits, 1,000,000 Frw for moral damages and 500,000 Frw for counsel fee, and the total being 2,500,000 Frw.

[71] Other parties to the case did not react to the request of Nyamaswa Faustin, be it on the boundaries of the plot, damages, despite being mentioned in his additional court brief he uploaded in the IECMS.

DETERMINATION OF THE COURT

[72] The Court finds that the restoration of the boundaries of the plot does not fall within the scope of the subject matter of this case reviewing the judgment RCA 0379/12/HC/KIG due to injustice; thus, it should not be examined.

[73] However, the Court finds that Nyamaswa Faustin should be awarded counsel and judicial damages because it has been necessary for him to pay counsel fee and he incurred some expenses for the follow-up of the in which he was forced to intervene, and in its discretion, it awards him 800,000 Frw which includes 500,000 Frw for counsel fee and 300,000 Frw for judicial damages to be paid by both Nditiribambe Samuel and Gatera Jason because they are the ones who requested for his intervention.

[74] With regard to 200,000 Frw of the loss, 500,000 Frw for dragging him in unnecessary lawsuits and 1,000,000 Frw for

moral damages, the court finds that he should not be awarded those amounts because he did not provide arguments about them.

III. DECISION OF THE COURT

[75] Finds the claim filed by Nditiribambe Samuel for the review due to injustice of the judgment RCA0379/12/HC/KIG rendered by the High Court on July 19, 2013 with merit in part;

[76] Quashes in whole the judgment RCA0379/12/HC/KIG rendered by the High Court on July 19, 2013;

[77] Orders Gatera Jason to pay Nditiribambe Samuel 5,830,000 Frw, which includes:

- 3,350,000 Frw for the value of his destroyed houses;
- 480,000 Frw for expected rents of his destroyed houses;
- 2,000,000 Frw for counsel fees and judicial damages;

[78] Orders Gatera Jason and Nditiribambe Samuel to pay Nyamaswa Faustin 800,000 Frw, which includes 500,000 Frw for counsel fee and 300,000 Frw for judicial damages, where each one should pay him 400,000 Frw.