

NTAGANZWA v MUNYANTORE ET AL

[RWANDA SUPREME COURT – RS/ INJUST/ RC 00002/2019/SC (Ntezilyayo, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga, and Hitiyaremye, J.) 28 February 2020]

Auction– Successful bidder– When the creditor becomes the successful bidder of his/her debtor’s property, he cannot possess that property without paying the price on the pretext that the owner owes him money, because he/she is equally treated like the other bidders.

Facts: The case started before the Primary Court of Kacyiru, whereby Ntaganzwa filed a claim against the Court Bailiff Munyantore and Uwitonze, requesting the Court to invalidate the auction on the ground that his house was sold at a low price, auction procedures were not followed since no notices were posted and the money from the auction was not deposited on the Court’s account as provided by the law. The Primary Court found his claim without merit.

The plaintiff was not satisfied with the Court’s decision and appealed before the Intermediate Court of Gasabo and the that Court found his appeal without merit.

The appellant was not satisfied with the court’s decision and decided to write to the President of the High Court requesting the review of that judgment on the grounds that it was vitiated by injustice. After examination, the President of the High Court wrote to the President of the Supreme Court requesting him to review that case due to the injustice. The President of the Supreme Court ordered for the review of that case due to injustice.

The case was heard by the Supreme Court, whereby Ntaganzwa stated that the Intermediate Court did not consider the real value of the property as it was held in the judgment which was being executed, rather the defendants connived with the property valuer and they lowered the value of his house. He also stated that the notices for auction were not posted as provided by the law because it was not posted where it was supposed to be as indicated by the evidence they produced, he concluded by stating that Uwitonze illegally possessed his house since there was no evidence proving that he paid for the house in accordance with the law.

The defendants argue that the appellant’s allegation that the value of his property was lowered by conniving with the property valuer is misleading because the property valuer was appointed by the President of the Primary Court, and they have no relationship with him, and regarding the value that the appellant claims to have been set during the execution of the judgment is not true because he is the one who paid for the valuation and submitted it to the Court and the Court did not request for it or base on it. With regards to illegal notification of the auction, they argue that all procedures were followed and this is proved by the fact that it was postponed four times. The house was purchased by Uwitonze legally, because he was also allowed to make a bid and he is the one who offered the highest price.

Held: 1. When the creditor becomes the successful bidder of his/her debtor’s property, he cannot possess that property without paying the price on the pretext that the owner owes him money, because he/she is equally treated like the other bidders. Therefore, the fact that Uwitonze possessed the house of Ntaganzwa without paying for it is a ground for the auction to be invalidated.

2: When the notification of the auction was not conducted in compliance with the provided procedures, the auction is invalidated.

**The review of the case due to injustice has merit;
The ruling of the judgment is overturned.**

Statutes and statutory instruments considered:

Law N°12/2013 of 22/03/2013 governing the bailiff function, article 60;

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure articles 147, 263, 295, 306, 307, 312 and 315.

No cases were referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] In the judgment RCA 0175/15/HC/KIG rendered on 30/12/2015, in which Uwitonze Innocent was suing Ntaganzwa Faustin and Kabahire Louise praying that they be ordered to offer him the house they purchased which is located in the plot UPI 1/02/02/05/583 in Nyamugali Cell, Gatsata Sector, Gasabo District, Kigali City, as they agreed on 28/10/2013. The High Court held that there has been no sale, that the purpose was the loan with an interest rate (*Banque Lambert*), but because it is illegal, they rather drafted a fake agreement, and ordered Uwitonze Innocent to give back the house titles to other parties to the case, and also ordered Ntaganzwa Faustin to pay back to him the debt equivalent to 16,000,000 Frw.

[2] After the pronouncement of the judgment, the Professional Bailiff Munyantore Bonaventure started the process of forced execution of the judgment in order to recover the money awarded to Uwitonze Innocent, and wrote to the President of Kacyiru Primary Court requesting him to appoint the valuer of immovable property belonging to Ntaganzwa Faustin and Kabahire Louise located in the aforementioned plot in order to execute the judgment RCA 0175/15/HC/KIG.

[3] On 01/04/2016, the President of Kacyiru Primary Court ordered that the house of Ntaganzwa Faustin and Kabahire Louise be evaluated Eng. Sebakwiye Théophile. The latter carried out his duties and in his report of 08/04/2016 he indicated that the value of the house and its plot is equivalent to 13,033,020 Frw.

[4] On 19/04/2016, the President of Kacyiru Primary Court held that the property will be auctioned on 26/05/2016 at 10 am. He also ordered on the auction modalities and places of posting the auction notices.

[5] On 04/08/2016, the Bailiff Munyantore Bonaventure made an auction deed indicating that the auction was conducted on that day and that Uwitonze Innocent was the successful purchaser (who is also the creditor in the judgment under execution) because he was the one who provided

the highest price equivalent to 16,500,000 Frw among eight bidders who attended, and also on 04/01/2017 the house ownership was transferred from Ntaganzwa Faustin to Uwitonze Innocent.

[6] On 13/06/2017, Ntaganzwa Faustin filed a claim before Kacyiru Primary Court praying for the invalidation of the auction for it was not conducted in compliance with the law. He stated the following in his claim:

Bailiff Munyantore Bonaventure and Uwitonze Innocent connived with the valuer Sebakwiye Théophile and lowered the value of the house and he did not inform him on that value report which lowered the value of his house;

The decision on the appointment of a valuer, Munyantore Bonaventure received it on 12/04/2016 and it was clear that the valuation was carried out on 08/04/2016, and it is questionable how it had been done before a court's decision was released;

The Bailiff disrespected the law governing the entire process of the auction because all notices for the auction of 04/08/2016 have not been posted in all places as provided by the law;

Munyantore Bonaventure refused to register the other bidders who placed their bids for the auction prior to the one of 04/08/2019, he rather registered the commissionaires brought by Uwitonze Innocent, whom he copied in the deeds of the auction of 04/08/2019;

The money from the auction has not been deposited on the court's account.

[7] On 09/02/2018, the Primary Court of Kacyiru rendered the judgment RC 00411/2017/TB/KCY and held that the claim of Ntaganzwa Faustin lacked merit since the auction was conducted in accordance with the law.

[8] In making that decision, the Court motivated that the valuer was appointed by the Court and there is no way Ntaganzwa Faustin could pretend that he was not informed about it or it was done through the fraudulence of Munyantore Bonaventure and Uwitonze Innocent since they did not contribute to this appointment, and the money from the auction even exceeds the one mentioned in that valuation report.

[9] The Court also motivated that the statements of Ntaganzwa Faustin that the valuation report was presented before the decision appointing the valuer was made is not true because he was appointed on 01/04/2016, and the valuation report was released on 08/04/2016.

[10] Regarding the auction notice, the Court motivated that the case file clearly indicates that notices had been posted in all places stipulated by the law, and with regards to the fact that the money used to purchase the house had not been deposited on the Court's account, the Court motivated that, even though it is provided by the law, it was not necessary because the creditor was at the same time successful purchaser of the house subject to the payment.

[11] Ntaganzwa Faustin appealed before the Intermediate Court of Gasabo arguing that the Primary Court of Kacyiru disregarded that the value of his house was lowered and that the auction notices have not been posted in all places provided by the law.

[12] On 17/10/2018, the Intermediate Court of Gasabo rendered the judgment RCA 00052/18/TGI/GSBO and held that the appeal of Ntaganzwa Faustin had no merit because the Primary Court motivated that the auction was conducted in accordance with the law based on the evidence produced, and Ntaganzwa Faustin did not produce any new element of evidence in the appeal refuting the elements of evidence it based on, and it ordered him to pay to Uwitonze Innocent and Munyantore Bonaventure 1,000,000 Frw for the counsel fee.

[13] After that judgment was rendered, Ntaganzwa Faustin wrote to the President of the High Court requesting for its review due to injustice, and the latter after examining that request wrote to the President of Supreme Court requesting him to review it after analysing whether it has been vitiated by injustice.

[14] In his decision 0102/CJ/2019 of 09/05/2019, the President of the Supreme Court ordered that the judgment RCA 00052/18/TGI/GSBO be registered to be reviewed.

[15] The case was heard in public on 04/02/2020, Ntaganzwa Faustin was represented by Counsel Nzeyimana Lusinga Innocent while Munyantore Bonaventure and Uwitonze Innocent were represented by Counsel Twizeyimana Innocent.

[16] Counsel Nzeyimana Lusinga Innocent representing Ntaganzwa Faustin argued that the Intermediate Court of Gasabo disregarded that the auction was not conducted in accordance with the law, be it on the value given to the house, the notification of the auction, or the way Uwitonze Innocent was appropriated the property without purchasing it. For Counsel Twizeyimana Innocent representing the defendants, he argues that the Court disregarded nothing.

[17] Legal issues analyzed in this case were about to know whether in the judgment RCA 00052/18/TGI/GSBO the Intermediate Court disregarded that the valuation report of the house of Ntaganzwa Faustin was not prepared in compliance with the law; that the auction was not published as provided by the law; that Uwitonze Innocent was illegally appropriated the house of Ntaganzwa Faustin.

II. LEGAL ISSUES AND THEIR ANALYSIS

A. Whether the value of the house of Ntaganzwa Faustin was not determined in compliance with the law

[18] Counsel Nzeyimana Lusinga Innocent representing Ntaganzwa Faustin states that the Intermediate Court of Gasabo did not consider the real value of the auctioned property because in the judgment RCA 0175/15/HC/KIG under execution it was held that the value of the property was 51,720,900 Frw, but during its execution, Bailiff Munyantore Bonaventure in collaboration with Uwitonze Innocent and the valuer Eng. Sebakwiye Théophile frauded, and lowered the value of his house, and assigned to it the value of 13,033,020 Frw and they did not even submit to him that valuation report so that he could comment on it and carry out a counter-valuation report before auctioning the house.

[19] He also states that before appointing the valuer, they should have considered the one both parties agree on rather than considering only the one proposed by Uwitonze Innocent who wanted

to be appropriated the house, which led to the downgrading of the house, and they later fraudulently said that the house was sold on 16,500,000 Frw with the purpose to make this price equivalent to the debt he owed him equivalent to 16,000,000 Frw and they added 500,000 Frw as the bailiff fee.

[20] Counsel Twizeyimana Innocent representing Munyantore Bonaventure and Uwitonze Innocent support that the statements of Ntaganzwa Faustin that his property was downgraded by his clients in complicity with Ir Sebakwiye Théophile they appointed themselves are baseless because they are not the ones who appointed the valuer, the latter was rather appointed by the Primary Court of Kacyiru.

[21] He also states that the statements of Ntaganzwa Faustin that he did not receive the valuation report carried out by Eng. Sebakwiye Théophile are baseless because he did not produce any evidence to prove that he did not receive it or he requested for it and his request be rejected, and in addition he was present every time the auction had been postponed, so he should immediately claim any time he noticed an illegal act.

[22] He added that the valuation equivalent to 51,720,900 Frw, which Ntaganzwa Faustin claims to be disregarded, the latter used it in the judgment RCA 0175/15/HC/KIG for invalidating the sale agreement he had concluded with Uwitonze Innocent, therefore he should not base on it because it has never been requested by the Court.

[23] He also states that he himself knows that that value is not real because after the sale agreement of the house he had concluded with Uwitonze Innocent on 05/10/2013, he sold it to Kamana Kanani on 10,000,000 Frw as mentioned in the sale agreement they uploaded in case file.

DETERMINATION OF THE COURT

[24] Article 263 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, paragraph 3, stipulates that: “Before the sale of movable or immovable property with a value that exceeds three million (3,000,000) Rwandan francs, the court bailiff has to look for an expert in property valuation. Fees allocated to the expert shall be approved by the President of the Court who ordered for public auction, and shall be deducted from the sale price.”

[25] Article 54 of the Practice Directions by the Chief Justice governing civil, commercial, labour and administrative procedure also stipulates that : “ Without prejudice to Article 263 of the law n°21/2012 of the 14/06/2012 relating to civil, commercial, labour and administrative procedures, the court bailiff seeking to conduct a public auction first provides the President of the Primary Court of the area where the property is situated, with a written request to appoint an expert and determine his/her fees. The President shall reply within ten working days. The decision of the President of Court is administrative; it may be changed any time if it is proven in writing that it was taken erroneously”.

[26] The court finds that the aforementioned law and practice directions were respected because the decision of the President of the Primary Court of Kacyiru of 01/04/2016 indicates that he is the one who appointed Ir Sebakwiye Théophile as an expert to value an immovable property of Ntaganzwa Faustin and Kabahire Louise upon receipt of the letter of court bailiff Munyantore Bonaventure requesting him to appoint an expert to value that property in order to execute the

judgment RCA 0175/15/HC/KIG, therefore what the Counsel of Ntaganzwa Faustin is stating that Ir Sebakwiye Théophile was suggested by Uwitonze Innocent as the value reporter is groundless, and his statements that the Judge should have appointed an expert agreed on by both parties are baseless since it is not provided by any law or directive in place at that time.

[27] With regards to the statements of the Counsel of Ntaganzwa Faustin that Munyantore Bonaventure and Uwitonze Innocent have been accomplices with Eng. Sebakwiye Théophile in the fraud because the house worth 51,720,900 Frw as declared in the judgment RCA 0175/15/HC/KIG under execution, was valued to 13,033,020 Frw, the Court finds it groundless because the contradiction of experts on the property valuation itself is not an element of evidence for fraud, therefore he does not produce any other evidence to prove that there was a fraud in valuating his property.

[28] Basing on provided motivations, the Court finds that the house of Ntaganzwa Faustin was valued in accordance with the law.

B. Whether the auction was not published in accordance with the law

[29] Counsel Nzeyimana Lusina Innocent representing Ntaganzwa Faustin argues that the auction notice was not posted as provided by the law, and this is contrary to the provisions of the article 295 of the law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

[30] He states that the proof he has for not posting the auction notice in all places are the documents written by the local institutions where that notice should be posted which indicate that it was not posted on their offices, and a copy of the book in which the Intermediate Court of Gasabo records all received documents submitted by its clients which indicates that there is no auction notice submitted by Munyantore Bonaventure to be posted at that Court, if it was so, it should have been recorded in that book as it is the case for other auction notices.

[31] Counsel Twizeyimana Innocent representing Munyantore Bonaventure and Uwitonze Innocent argues that all steps provided by the law as regards to auction notice have been respected, and for that reason people attended all auction process from the first time up to the fourth time, the time by which an auction was finally being concluded, and in addition, this has been examined in the case under review, and the Intermediate Court of Gasabo held that the statements of Ntaganzwa Faustin are groundless.

[32] He also states that the documents used as elements of evidence by Ntaganzwa Faustin were written by the leaders of different institutions should not be based on in holding that the auction notices have not been posted at the offices of those institutions because they did not get a copy of them before posting, and the law in place at that time was not providing it.

DETERMINATION OF THE COURT

[33] An auction is a public event where goods or property are sold to the highest bidder. It goes without saying that the objective cannot be achieved when all information items related to that auction is not made public to a wide audience possible, and that is why, as regards to auction

decided by the Court in order to pay the creditor in the final judgment, the legislator provided notification modalities for the auction.

[34] Article 295 of the law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, in its paragraph three, stipulates that: “Upon request by the distrainer, and after verification that all the formalities for seizure have been met, the President of the Primary Court of the place where the auction will take place, or the President of Commercial Court, for execution of a judgment delivered by commercial court, fixes the date and place of sale, the places where it must be publicized by posting, and the conditions under which the posting is to take place. The order of the President of the court shall also be publicized, at least fifteen (15) days before the public auction, in one public newspaper and in another independent countrywide read newspaper determined by the President of the court or through the radio or television or any other technology. The President of the Primary Court or the President of Commercial Court may also determine other measures to give more publicity to the auction”.

[35] As regards to the auction under examination in this case, the President of Kacyiru Primary Court, based on the power entrusted to him by the article 295 of the aforementioned law, ordered that the house of Ntaganzwa Faustin and Kabahire Louise be auctioned on 26/05/2016 at 10 am, and for its publicity, the auction would be announced once on Radio Rwanda and published once in Imvaho, at least 15 days before auction and that it would be posted for 15 days before it is concluded at the following places:

- At offices of all Districts of Kigali City;
- At offices of Intermediate Courts in Kigali City;
- At offices of local government entities in Gasabo;
- At the office of Nyamugali Cell and Gatsata Sector.

[36] Regarding to where the auction should be posted, the Court finds that in the judgment RCA 00052/18/TGI/GSBO the Intermediate Court of Gasabo held that it was posted in all places as provided by the law without any motivation because in its decision it only stated that the Primary Court of Kacyiru indicated that it was posted, but in relation to the judgment rendered by that Court, it is obvious that it held so baselessly, and this is itself contradicts the provisions of the law because a judge is obliged to explain the legal provisions and evidences he/she bases on it making a decision as provided in the article 147, sub-section two of the law no 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

[37] With regards to evidence produced by Ntaganzwa Faustin, including the following documents:

- 1° A letter of 06/05/2018 from the Executive Secretary of Nyamugali Cell indicating that no auction notice had been posted at the office of that Cell;
- 2° A letter of 07/05/2018 from the Executive Secretary of Gatsata Sector also indicating that no auction notice had been posted on the building of that Sector’s office;
- 3° A letter of 15/05/2018 from the Executive Secretary of Nyarugenge District indicating that once there is no receipt evidence for the posting of a notice, that posting has no longer the value, it is considered as not posted at the office of that District;

4° A letter of 07/06/2018 from the Executive Secretary of Kicukiro District indicating that once there is no receipt evidence for the posting of a notice, that posting has no longer the value, it is considered as not posted at the noticeboard of office of that District;

5° A letter of 31/05/2018 from the President of the Intermediate Court of Gasabo stating that the person who brought the auction notice should be held liable of the acknowledgement of receipt of it since it is put on the copy he/she remains with;

6° A letter of 03/05/2018 from the Vice- President of the Intermediate Court of Nyarugenge stating that the one arguing that an auction notice was received should be held liable of its acknowledgement of receipt by the Court before it was posted;

7° A letter of 08/05/2018 from the President of the Primary Court of Kacyiru stating that the information about the posting of the auction at that Court should be asked from the one claiming he/she posted it;

8° A book in which the Intermediate Court of Gasabo records received documents indicating that there is nowhere a notice submitted by Munyantore Bonaventure is mentioned among the documents the Court received from 20/07 up to 04/08/2016, however, the book contains other auction notices submitted by other court bailiffs.

The Court finds that the letters and that court's book indicate that the person claiming to have posted the auction notice should prove it. The fact that the defense, except saying that it was posted, they cannot produced required evidence, and this means that it was not posted in all required places as stated by Ntaganzwa Faustin, since Munyantore Bonaventure, as a professional court bailiff, who is among the people assigned the activities of general interests and qualified as an auxiliary of justice as stipulated by article 60 of Law N° 12/2013 of 22/03/2013 governing the function of bailiff, and that he/she must perform his/her duties with due diligence, professionalism and discernment in respect of the laws, as stipulated in the article 69 of that law, he knew that it was his responsibility to produce, in case it is deemed necessary, evidence that he respected the Court's decision.

[38] Basing on the aforementioned motivations, the Court finds that the posting of the auction was not done in accordance with the provisions of the article 295 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

C. Whether Uwitonze Innocent was not appropriated the house of Ntaganzwa Faustin in accordance with the law

[39] Counsel Nzeyimana Lusinga Innocent representing Ntaganzwa Faustin states that Munyantore Bonaventure took his house and appropriated it to Uwitonze Innocent without purchasing it because there is no proof of payment for the price of that house, and this is contrary to the provisions of the article 306, paragraph 2, 307 and 3015 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, since the so called purchaser failed to present a bank deposit slip proving that he deposited the money on the Court's account.

[40] He also states that another evidence that Uwitonze Innocent was appropriated the house in contradiction with the law, is that the list of the so called bidders is made up of the names of the commissionaires mobilized by Uwitonze Innocent himself, and those names often appear in different auctions to fraudulently indicate that the auction attended by many bidders.

[41] He keeps on arguing that another evidence that the auction was frauded is the deeds of the auction issued by Munyantore Bonaventure on 06/07/2016 where he stated that the successful purchaser of the house was Musoni Jean Bosco since he offered 16,500,000 Frw, and he was supposed to pay on 07/07/2016 that day at 8 am, but at around 4 pm he issued another deed stating that the auction was postponed, and this contradicts with the provisions of the article 301 paragraph 3 of the Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure..

[42] Counsel Twizeyimana Innocent representing Munyantore Bonaventure and Uwitonze Innocent argues that the statements of Ntaganzwa Faustin are groundless because Uwitonze Innocent was also allowed to make the bid as other bidders based on the provisions of the article 315 of the aforementioned law, and he was the one who offered the highest price for the auction.

DETERMINATION OF THE COURT

[43] Regarding the ground that the auction of 04/08/2016 was attended by commissionaires mobilized by Uwitonze Innocent and which are familiar in the fraudulence of auctions to show that there are many bidders for them, the Court finds that apart from stating it, the counsel for Ntaganzwa Faustin cannot prove it, therefore finds those statements baseless.

[44] With regards to the fact that the house of Ntaganzwa Faustin was firstly appropriated to Musoni Jean Bosco in the auction of 06/07/2016 because he was the highest bidder, but on that day, the court bailiff Munyantore Bonaventure issued another deed of the auction stating that the auction was postponed on 04/08/2016 due to the fact that the successful purchaser of the house informed him that he was no longer able to purchase it because there was a problem with his source of funds, the Court finds this is not a proof of fraud in the auction because the article 312 of Law N° 21/2012 of 14/06/2012 mentioned above, which Munyantore Bonaventure referred to in postponing the auction as it is mentioned in its deed, that provides that “If the highest bidder does not pay as he/she agreed, the property shall be reauctoned.” This article gives him the right to postpone the auction in case the highest bidder does not pay as he/she agreed.

[45] Regarding the payment modalities for the auctioned property, the Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure that was in place at that time of auctioning, in its article 306 , paragraph two, provides that “The successful purchaser of movable or immovable property shall make payment within one (1) working day after the auction and the payment shall be made into a bank account of the Intermediate Court in the jurisdiction of which the public auction took place.” Its article 307 also provides that “The creditor shall be paid by the accountant to the Intermediate Court that received the money from the auction after deduction of court fees, the remaining amount shall be given back to the proprietor of the property sold, in case there are no other persons to be paid after fifteen (15) days.” Its article 315 provides that “A distrainer cannot appropriate the seized property without participating in the auction like others.”

[46] The Court finds that the aforementioned legal provisions mean that the successful purchaser is appropriated the property after he/she pays for it in due time and in accordance with the law, and also the creditor is paid in due time and as provided by the law.

[47] The Court finds then that the fact that the creditor is at the same time the successful purchaser, it does not entail that he/she has to be appropriated the auctioned property without paying on the grounds that he/she is the creditor because when he /she participates in the auction of the property of the debtor he/she is considered like others, this is intended to avoid selling the property on unreal price.

[48] Basing on the aforementioned motivations, the Court finds that Uwitonze Innocent was appropriated the house of Ntaganzwa Faustin in contradiction with the law, as stated by the latter, because it was appropriated to him without paying, rather on the ground that he was the creditor.

[49] To conclude, the Court finds that the auction concluded on 04/08/2016 has to be invalidated as prayed by Ntaganzwa Faustin, because it was not conducted in compliance with the law, be it on posting or the payment of the auctioned house.

D. With regards to the damages requested in this case

[50] Ntaganzwa Faustin prays for 3,000,000 Frw for moral damages for being dragged in unnecessary lawsuits, 1,500,000 Frw for counsel fee and 100,000 Frw for procedural fee, and the entire amount has to be awarded by both Munyantore Bonaventure and Uwitonze Innocent, the defendants.

[51] Uwitonze Innocent states that the damages requested by Ntaganzwa are baseless since he is the one who provoked all lawsuits instead of executing the Court's decision which declared him the loser.

[52] He also states that Ntaganzwa Faustin dragged him in many unnecessary lawsuits, and there are up to now calculated to six (6) lawsuits and he lost all of them and never satisfied and he continuously dragged him in lawsuits that costed a lot of money for counsel fee, and he requests to be awarded that money he spent worth 6,000,000 Frw which includes 4,000,000 Frw for the previous lawsuits and an addition of 1,000,000 Frw at this instance and 1,000,000 Frw for procedural fee.

[53] Munyantore Bonaventure did not comment on the damages requested by Ntaganzwa Faustin, he rather request also that he should award him 500,000 Frw as moral damages, 1,500,000 Frw for counsel fee and 500,000 Frw for procedural fee.

DETERMINATION OF THE COURT

[54] The Court finds that the damages requested by Munyantore Bonaventure and Uwitonze Innocent are baseless because they lost the case.

[55] The Court finds that Ntaganzwa Faustin has to be awarded the moral damages he requested because he was disowned from his property in contraction with the law, but he has to be awarded 1,000,000 Frw because the amount he is requesting is excessive, and he cannot prove the reason for it.

[56] The Court finds also that he should be awarded the counsel and procedural fees, and in the Court's discretion, he has to be awarded 500,000 Frw as counsel fee since he cannot prove

1,500,000 he is requesting, and he also has to be awarded 100,000 Frw for procedural fee because this amount is reasonable.

[57] The Court finds that both Munyantore Bonaventure and Uwitonze Innocent have to share the liability of paying that money since they both contributed to the selling of the house belonging to Ntaganzwa Faustin in the auction conducted in contradiction with the law.

III. DECISION OF THE COURT

[58] Declares with merit the claim filed by Ntaganzwa Faustin requesting the review due to injustice of the judgment RCA 00052/18/TGI/GSBO rendered by the Intermediate Court of Gasabo on 17/10/2018;

[59] Decides that the judgment is reversed in whole, and the auction of the immovable property of Ntaganzwa Faustin of 04/08/2016 is invalidated;

[60] Orders Munyantore Bonaventure and Uwitonze Innocent to pay to Ntaganzwa Faustin 1,600,000 Frw which includes 1,000,000 Frw as moral damages, 100,000 Frw for procedural fee and 500,000 Frw for counsel fee.