

NICYABERA v. MUKAGATARE

[Rwanda SUPREME COURT – RS/INJUST/RC00004/2018/S C (Ntezilyayo, P.; Nyirinkwaya, J; Cyanzayire, J; Rukundakuvuga, J and Hitiyaremye, J.) January 21, 2020]

Family – Unlawful cohabitation – Right to property – When a man and a woman cohabit without being legally married, the activities of one of them to increase the value of the family property allow him/her to have right to it.

Land – Land Registration – Nullity of land registration certificate – The person who obtains the land title without proving its legitimate acquisition, provided for by the law is in violation of the law, a certificate of land registration that would be obtained in that process do not grant to him/her the rights over the land because they can be invalidated if anyone proves the ownership.

Facts: The judgment was initiated in the Primary Court of Kibungo where Nicyabera sued Mukagatare of occupying her father's land while they have never been legally married and they did not get a child. The Court rendered the judgment and declared that Mukagatare has right to the land claimed by Nicyabera. The Court motivated that Mukagatare was married to her husband Gashabure because she had presented a certificate issued by competent authorities and she should ensure the administration of the entire patrimony of Gashabure and discharge the responsibility of children custody and help the deceased's parents if needed.

After being informed that there was a court decision according to which Gashabure was legally married to Mukagatare, she filed a claim before the Primary Court of Nyamata for third party opposition. The Court rendered the judgment by declaring that Nicyabera's claim lacks merits as she failed to produce the evidence contradictory to the one relied on; and it declared that the judgment subjected to her application for third party opposition shall be sustained. Nicyabera lodged appeal to the Intermediate Court of Gasabo against this judgment stating that the elements of evidence she produced have been disregarded, the Intermediate Court decided that Nicyabera's appeal has merits and in ruling, the Court held that Mukagatare was legally married to Gashabure by relying on false evidence and it decided that the judgment is reversed in whole and quashed; and it held that Mukagatare was never married to Gashabure. After the ruling of this judgment, Nicyabera Espérance applied for review of the case which ordered the registration of Gashabure's land to Mukagatare where she stated that the Court ruled the case on basis of evidence that Mukagatare was married to Gashabure while there is another judgment which decided the marriage did not happen.

The Primary Court of Kibungo held that Nicyabera's claim lacks merits because the plot of land under litigation was registered to Mukagatare but Nicyabera did not make opposition. No one did not file a claim against that authentic deed for its invalidation, therefore the judgment was sustained.

Nicyabera submitted the case to the Office of the Ombudsman seeking the review of the judgment rendered by the Primary Court of Kibungo as it was vitiated by injustice. After review and analysis, the Office of the Ombudsman found that the judgment RC 0488/011/TB/KGO subjected to application for review was not the one vitiated by injustice, but the judgment vitiated by injustice is RC 0016/14/TB/KGO rendered on the date of the hearing of the case RC 0488/011/TB/KGO subjected to review; and the Office informed the President of the Supreme Court requesting the review of the judgment RC 0016/14/TB/KGO on grounds of being vitiated by injustice. The President of the Supreme Court decided that the case should be referred to the Court Registry for review.

Nicyabera states that her criticism against the case subjected to review due to injustice is that there is a plot of land registered to Mukagatare, which gives her the right to the land. She states that the fact that

Mukagatare registered the land in her name is not enough to have rights to the land under litigation as she failed to certify the land ownership. Nicyabera states that Mukagatare should have indicated whether she acquired the land through custom, purchase, donation, ascending sharing, exchange, and succession or through land sharing. She concludes by stating that the Primary Court of Kibungo erred by declaring that the land belonged to Mukagatare because she has the certificate of emphyteutic lease, whereas keeping the certificate is not an evidence beyond doubt of land ownership.

Mukagatare submits that the land registered to her is plot of land which has been definitely granted by competent authorities after being divided into three parts. The other two parts of land were given to Nicyabera and her brother Ruduha. She avers that Nicyabera does not have any right to the plot of land registered to her as she has acquired her own part. She further states that the fact that the property is registered to her without any opposition means that she has right to it, the reason why she sold plots of it for personal needs.

Held: 1. When a man and a woman cohabit without being legally married, the activities of one of them to increase the value of the family property allow him/her to have rights on it. Therefore, Mukagatare had the right to the property commonly owned with Gashabure. This is the reason why Gashabure gave her a part of her portion before her departure; and she has no right to seek again for another portion of the property because she had already acquired her portion, the land under litigation shall be owned by Gashabure's heirs.

2. The person who obtains the land title without proving its legitimate acquisition, provided for by the law is in violation of the law, a certificate of land registration that would be obtained in that process do not grant to him/her the rights over the land because they can be invalidated if anyone proves the ownership, therefore, the certificates of land under litigation registered to Mukagatare shall be invalidated.

**Application to review the judgment on grounds of being vitiated by injustice has merits;
The ruling of the reviewed case is reversed.**

Statutes and statutory instruments referred to:

Law n° 43/2013 of 16/06/2013 governing Land in Rwanda, article 10;

Law n° 59/2008 Prevention and Punishment of Gender- Based Violence, article 39;

Law n° 15/2004 of 12/06/2004 relating to Evidence and its Production, article 65.

Cases referred to:

The judgment RCAA 0018/13/CS, Harerimana et al v. Sebukayire rendered by the Supreme Court on 4/10/2014

Judgment

I. BACKGROUND OF THE CASE

[1] Nicyabera Espérance filed a claim against her mother-in-law, Mukagatare Mariane before the Primary Court of Kibungo, requesting restitution of her father's land she acquired as they had neither been legally married nor got any child.

[2] On 28/06/2012, the Court adjudicated the Case RC 0488/011/TB/KGO and ruled that Mukagatare Mariane has right to the land claimed by Nicyabera Espérance. In making that decision, the Court

motivated that Mukagatare Mariane was married to her husband GASHABURE Michel because she had submitted a certificate issued by the competent authorities. Therefore, according to the Article 70, paragraph one, providing that in case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire patrimony while assuming the duties of raising the children and assistance to the needy parents of the de cujus (...), Mukagatare Mariane shall ensure the administration of the entire patrimony of Gashabure Michel and assume the duties of raising the children and assistance to the needy parents of the de cujus.¹

[3] After being informed that there had been the judgment RC 0015/012/TB/NMTA which held that GASHABURE Michel was legally married to Mukagatare Mariane, Nicyabera Espérance filed a claim to the Primary Court of Nyamata for third party opposition. On 02/07/2013, the Court rendered the judgment RC 0390/012/TB/NMTA by ruling that Nicyabera Espérance's claim lacks merits as she failed to produce evidence contradictory to the evidence on which the judgment RC 0015/012/TB/NMTA was based and it held that the case subjected to opposition shall not be reversed.

[4] Nicyabera Espérance filed appeal against the judgment before the Intermediate Court of Gasabo stating that the elements of evidence she produced were disregarded. On 29/11/2013, the Court adjudicated the judgment RCA 0307/13/TGI/GSBO and ruled that Nicyabera Espérance's appeal has merits and in adjudicating the judgment RC 0015/012/TB/NMTA the Court held that Mukagatare Mariane was married to Gashabure Michel basing on false evidence. Therefore, it ordered that the judgment RC 0390/012/TB/NMTA was reversed in whole and ordered that the judgment RC 0015/012/TB/NMTA was quashed by declaring that Mukagatare Mariane was never married to Gashabure Michel.

[5] After the ruling of the case, Nicyabera Espérance applied for review of the case RC 0488/11/TB/KGO which decided the registration of Gashabure Michel's land to Mukagatare Mariane, stating that the Court had ruled it according to evidence that Mukagatare Mariane was married to Gashabure Michel and there is the case RCA 0307/13/TGI/GSBO which held that such marriage did not happen.

[6] On 27/10/2014, the Primary Court of Kibungo adjudicated the case RC 0016/14/TB/KGO and ruled that the claim filed by Nicyabera Espérance lacks merits as the plot of the land under litigation was registered to Mukagatare Mariane, but Nicyabera Espérance did not make opposition. No one did not file a claim against that authentic deed for its invalidation, therefore the judgment RC 0488/011/TB/KGO is sustained.

[7] On 20/01/2015, Nicyabera Espérance submitted the case to the Office of the Ombudsman requesting the review of the judgment RC 0488/011/TB/KGO rendered by the Primary Court of Kibungo as it was vitiated by injustice.

[8] After review and analysis, the Office of the Ombudsman found that the judgment RC 0488/011/TB/KGO was not the one vitiated by injustice, but the case vitiated by injustice is RC 0016/14/TB/KGO rendered on the date of the hearing of the case RC 0488/011/TB/KGO subjected to review; and the Office informs the President of the Supreme Court requesting review of the judgment RC 0016/14/TB/KGO on grounds of being vitiated by injustice.

¹ The Court was referring to Article 70 of Law N° 22/99 of 12/11/1999 to supplement Book One of the Civil Code and to institute part five regarding matrimonial regimes, liberalities and successions

[9] Basing on the report of the Inspectorate General of Courts, on 12/02/2018, the President of the Supreme Court decided that the case should be referred to the Court Registry for review and it was recorded under RS/INJUST/RC 00004/2018/SC.

[10] In her submissions, Nicyabera Espérance sustains that the fact that Mukagatare Mariane was granted land titles is not enough to secure the right to the land under litigation because she did not indicate the acquisition origin, given that she was not legally married to her father. However, Mukagatare Mariane claims that she has right to the land because it was given to them by the local authorities who were together with her husband in 1970.

[11] The case was heard in public audience on 11/11/2019, Nicyabera Espérance was assisted by Counsel Munyankindi Monique, Mukagatare Mariane by Counsel Rwimo Clotilde. First of all, the parties debated on objections raised by the legal counsel for Mukagatare Mariane.

[12] The first objection raised by Counsel Rwimo Clotilde was related to admissibility of the claim because she stated that Nicyabera Espérance had no interest nor capacity in claiming Gashabure Michel's property because there was no evidence that she is his child. On the other hand, Counsel Munyankindi Monique, Counsel for Nicyabera Espérance, stated that she is Gashabure Michel's daughter because he had registered her on his identity card, and according to the birth certificate of Nicyabera Espérance, it is clear that she is the daughter of Gashabure Michel.

[13] The Court made decision on the bench and decided that the objection lacks merits because the Court declared that concerning the claims related to the cases vitiated by injustice, the issues related to interest and capacity cannot be heard, except when the injustice is based on those issues.

[14] The second objection raised by Counsel Rwimo Clotilde was related to the fact that the Office of the Ombudsman had stated that the injustice was in the judgment RC 0016/14/TB/KGO whereas it was not the one which was requested to review the case. Regarding that objection, Counsel Munyankindi Monique sustained that such does not constitute an objection, the fact that a case vitiated by injustice was submitted to the Office of the Ombudsman and the latter found it in another case different from the submitted one, such does not constitute an issue, the important is that the subject matter is the same for both cases.

[15] That objection was also decided by the Court on the bench and it declared that it lacks merits, and it is not an issue if the Office of the Ombudsman would receive a judgment alleged by a party to be vitiated by injustice, but finds it in another judgment, the important is that the cases were adjudicated on the same subject matter.

[16] The Court ordered the continuation of the case hearing on the merits, but it found that it was necessary to visit the place where the subject matter is located before the hearing closure. On 16/01/2020, the Court visited the place where the subject matter is located in Rugaju Village, Ntanga Cell, Mugesera Sector, Ngoma District, Eastern Province and it asked the citizens about what they know about the land under litigation, in the presence of parties to the case. On 05/02/2020, the parties appeared again before the Court to comment on the findings of the Court's investigation.

[17] According to the nature of this case, the legal issues are to determine whether the fact that Mukagatare Mariane was issued a land title was enough to grant her the right to the land under litigation as it was declared in the case subjected to application for review due to injustice, and whether the fact that Mukagatare Mariane is not married to the deceased Gashabure Michel deprives her of the rights on the

property they commonly owned as pleaded by the side of Nicyabera Espérance. The issue related to the claimed damages was also examined.

II. ANALYSIS OF LEGAL ISSUES

a. Whether the fact that Mukagatare Mariane was issued a land title was enough to grant her the right to the land under litigation

[18] Nicyabera Espérance and her Counsel Munyankindi Monique state that their criticism for the case subjected to review on ground of being vitiated by injustice is that the Court declared that there is plot of the land registered to Mukagatare Mariane, which gives her the right to the land. They sustain that the fact that the land was registered to Mukagatare Mariane is not enough to secure the right to the land under litigation as she failed to prove its acquisition mode in accordance with the provisions of Article 10 of Law N ° 43/2013 of 16/06/2013 governing land in Rwanda. They submit that according to the provisions of this Article, she should prove that she acquired the land through custom, by purchase, donation, ascending sharing, exchange, succession or through land sharing.

[19] They conclude by stating that the Primary Court of Kibungo erred by ruling that the land belonged to Mukagatare Mariane because she had a certificate of emphyteutic lease, but that the certificate is not an evidence beyond doubt that its holder is the land owner as upheld by the Supreme Court in the judgment RCAA 0018/13/CS rendered on 24/12/2014.

[20] Mukagatare Mariane and her Counsel Rwimo Clotilde argue that the land registered to her is plot of the land granted to her by competent authorities after its division into three parts. The other two parts were given to Nicyabera Espérance and her brother Ruduha Muzerwa. They state that Nicyabera Espérance has no right to the part registered to her as she acquired her plot of land. They add that the fact that the land was registered to Mukagatare Mariane without any opposition means that she is the rightful owner, the reason why she sold plots of it for personal needs.

DETERMINATION OF THE COURT

[21] Article 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”. The Article also provides that “the land has been granted definitely by competent authorities or acquired by purchase, donation, inheritance, succession, ascending sharing, and exchange or through sharing”.

[22] The aforementioned Article provides that in order to obtain a certificate of land registration, a person must prove to the competent authority that he/she acquired it through one of the means referred to in that Article. In other words, anyone who may register the land under his/her name without indicating the means of acquisition provided for in that Article he/she would have done so illegally, therefore, the certificates issued to him/her do not grant to him/her the right to it because they may be invalidated if someone proves to be its owner. This was the position of the Supreme Court in the judgment RCAA 0018/13/CS2. It is the same with someone who may register their land under his/her names based on the

²In this case, the Court found that Sebukayire Tharcisse was issued the certificate of land registration without indicating to the issuers the origin of the land he claimed to be his own granted by competent authorities [...]; this indicates that Sebukayire

certificates later invalidated, that person may immediately lose the right based on the certificate of emphyteutic lease obtained in the same way.

[23] With regard to this case, the documents of the case file indicate that Nicyabera Espérance filed a claim to the Primary Court of Kibungo requesting review of the judgment RC 0488/011/TB/KGO which upheld that the land under litigation belonged to Mukagatare Mariane because it was owned by her husband Gashabure Michel to whom she was legally married, the new evidence she produced was a final judgment which upheld that Mukagatare Mariane and Gashabure Michel had never been legally married. That Court ruled that her claim lacks merits, it decided that there is a plot of the land registered under Mukagatare Mariane's names, thus, the judgment RC 0488/011/TB/KGO is sustained.

[24] Basing the legal provisions and explanations above mentioned, the Court finds that the fact that there is plot of land registered under Mukagatare Mariane does not grant her the right to the land, unless she indicates the origin of its acquisition.

Whether the fact that Mukagatare Mariane was not married to Gashabure Michel deprives her of the rights on the property they commonly owned before their separation

[25] Nicyabera Espérance avers that Mukagatare Mariane took over her father's land, Gashabure Michel after his death in 1994 while they had been separated since 1986, this means that for the past nine (9) years, they did not live together as spouses. She states that she invoked their past cohabitation but they had never been legally married and they did not get a child.

[26] She submits that Mukagatare Mariane began living with the father (of Nicyabera) in 1973, replacing two (2) other women, including her mother and the mother of Ruduha Muzerwa (another child of Gashabure Michel). She sustains that they were later separated and she left home, her father married another woman called Sezariya, after two (2) years Mukagatare Mariane came back, she disturbed them and Sezariya left home without giving birth to a child. She avers that in 1981 Mukagatare Mariane again left home, her father [Nicyabera's father] married another woman named Nyirabashumba Agnès and they lived together for almost three (3) years and she left home in 1984. Her father spent a long time alone, but in the meantime Mukagatare Mariane used to return to seek for compensation. Therefore, later in 1986, his father sold plot of the land to grant her a compensation and she left, he later married another woman.

[27] Nicyabera Espérance further states that Mukagatare Mariane returned in 1995 after being informed about the death of Gashabure Michel to recover her husband's land and she expelled them from it. She maintains that, for temporary dispute resolution, the local authorities divided the land into four (4) plots, the first was given to Nicyabera Espérance, the second to Mukagatare Mariane, the third to Ruduha Muzerwa (Nicyabera's brother) because they thought that the children of Gashabure Michel should not be deprived of their place of residence; and the fourth was granted to their aunt, but later Mukagatare took it from her. She submits that later her and her brother left because of threats against them, Mukagatare Mariane appropriated herself the whole plot of land. She concludes by requesting the restitution of the land of her father, the deceased Gashabure Michel, and it should be allocated to his heirs.

[28] Counsel Munyankindi Monique assisting Nicyabera Espérance avers that the deceased Gashabure Michel and Mukagatare Mariane have never legally been married; and for this reason, the disputed land should be dispossessed from her and allocated to the legal heirs of Gashabure Michel. However, she states

that if the Court finds that they cohabited as spouses, she has to be granted part of the land which should be merged with the plot she sold.

[29] Mukagatare Mariane sustains that she got married to Gashabure Michel in 1962 and they lived in Kabuga; and later they relocated in Gisaka in 1970 where the local authorities gave them a land which they developed. She states that she continued to live with her husband until 1993 when she left home, due to illness, to Rutongo for medical treatment, where she was during the genocide; and she returned to her home in 1995 and found that her husband was dead.

[30] Counsel Rwimo Clotilde assisting Mukagatare Mariane submits that her client acquired the land under litigation while living together with Gashabure Michel, because the local authorities granted it to them. She states that when arose the dispute over the land between Mukagatare Mariane and the children of her husband after his death, the local authorities divided the land into three (3) plots, one was given to Mukagatare Mariane and the other two (2) plots to Gashabure Michel's children, namely Nicyabera Espérance and Muzerwa Ruduha. She submits that the request of Nicyabera Espérance for dispossessing all property from Mukagatare Mariane may not be considered, but the fact that the local authorities decided to divide the land into three (3) parts should be taken into account because even Mukagatare Mariane has the right to the property left by her husband.

[31] When the Court visited the place where the subject matter is located to find out when Gashabure Michel and Mukagatare Mariane began to cohabit, when and how they were separated, it interrogated the witnesses and they stated the following:

- Hitiyise Straton, born in 1953, was asked when Mukagatare Mariane and her husband Gashabure Michel began to cohabit and when they separated. He stated that they arrived in Gisaka in the 1970s and they cleared the forest and started farming and by 1977 they were granted land by the local authorities. He submits that they lived together until 1993 when the wife left for medical treatment and she had never left home before. When he was asked if in the meantime there were other women married to Gashabure Michel, he replied that there were other women, but they were just temporary and they had never lived together as husband and wife.
- Twahirwa Jean Bosco, born in 1961, states that when Gashabure Michel was living alone by the time he acquired the plot of land, he developed it and built a house; later on in 1973, he married Mukagatare Mariane. He explained that they had been living together in the plot of land until when their relations were worsened, and Mukagatare Mariane deserted home for returning to her parents' home. Gashabure Michel had been cohabiting with three (3) other women, when Mukagatare Mariane got information about it she came back to disturb them and they left. He avers that in 1986 Mukagatare Mariane definitely separated with Gashabure Michel and the latter sold the plot of land to give her a compensation and she left. He was later married to another woman, but they also separated, and until his death, he has never had any other wife.
- Nyirabashumba Agnès, born in 1961, one of Gashabure Michel's former wives, stated before the Court that they were married in 1983 replacing Sezariya, who was also replaced by Ntamazimwe in 1985. She indicated to the the Court that Mukagatare Mariane was not present by that time because she had not been her co-wife. She explained to the Court that Mukagatare Mariane had left, and later she returned to claim the land from her husband. The latter sold the plot of land, he gave her a compensation and she left.
- Mukamfizi Siperansiya, born in 1954, stated before the Court that Gashabure Michel arrived alone in Gisaka, he told her that he had been married to two (2) wives who gave birth to two (2) children but later their relations became worsened, the reason why he married Mukagatare Mariane. She

stated that when they were living together, she got sick and he paid for her medical treatment, she deserted home and when she came back, he rejected her. She stated that Mukagatare Mariane lodged a complain to the local authorities and Gashabure Michel was required not to repudiate his wife empty handed so that he sold the plot of land, he gave her compensation and she left. She concluded her testimony by stating that by the time of Genocide they were separated a long time ago, Gashabure Michel was living alone.

- Mujiyambere Jean Chrysostome, born in 1973, stated before the Court that Mukagatare Mariane had left her home being ill for medical treatment in 1992; and the Genocide took place before her return. He stated that in the meantime, Mukagatare Mariane used to desert home and Gashabure Michel married other women because he was a man who could not live without a wife. When Mukagatare Mariane was informed that her husband married another woman, she immediately returned and the other woman left. After all, he said that Gashabure Michel died without living with a wife.
- Muzerwa Alexis stated that he was the counselor in 1992 and that he gave a document to Mukagatare Mariane when she planned to seek for medical treatment while she was cohabiting with Gashabure Michel; and that he does not have any information about the compensation given to Mukagatare Mariane.
- Mukangabitsinze Emeriyana born in 1962, who is the owner of the plot of land sold by Gashabure Michel, stated before the Court that when she was buying the land, Mukagatare Mariane and Gashabure Michel were together, and the statement that in 1986 Mukagatare Mariane left home is not true because they were still together until 1993.
- Habimana Jean Baptiste born in 1953 stated that Gashabure Michel and Mukagatare Mariane lived together until the 1990s; and when Mukagatare was sick, Gashabure paid for her medical treatment and later he repudiated her. He further states that Mukagatare returned to home but Gashabure refused to live with her; he gave her a compensation instead and she left.
- Jean Baptiste Ntambineza born in 1968 avers that the statement about compensation is not true, and Mukagatare Mariane left home in 1993 for medical treatment and by the time of Genocide she was still there. He sustains that Gashabure Michel was married to other women because Mukagatare Mariane had deserted home; but after returning she did not leave until she went to seek medical treatment.

DETERMINATION OF THE COURT

[32] Both parties concur that Mukagatare Mariane and the deceased Gashabure Michel lived together as husband and wife. Concerning the fact that they were legally married, there is a final judgment RCA 0307/13/TGI/GSBO which upheld that such marriage did not happen. The parties diverge on the time of their separation and its effects on their property commonly owned.

[33] Even though the Republic of Rwanda enacted the Law N° 59/2008 on prevention and punishment of gender-based violence in 2008 which provides for the effects on the property of the persons who entertained unlawful marriage as husband and wife when they separate³; by the time of the cohabitation

³ Article 39, paragraphs one and 2 of the law, provides that “those people entertaining unlawful marriages shall be married in accordance with the monogamous principle. If a person concerned with the provision of previous paragraph of this Article was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally”. (For the case n° RS/Inconst/Pén.0003/10/CS, Gatera Johnson, Kabalisa Teddy vs-, The Supreme Court ruled that they may separate for any other ground; it is not necessary for the purpose of the marriage of another spouse).

of Mukagatare Mariane and the deceased Gashabure Michel, there was a principle which stipulates that all persons are equal before the law. This principle was enshrined in the Constitution of December 20, 19784. In addition, on 02/03/1981 the Republic of Rwanda had ratified the Convention on the Elimination of All Forms of Discrimination against Women. The States Parties ratifying the Convention decide to take all necessary measures to amend or repeal any domestic legislation, administrative measures, culture or any other discrimination practices against women⁵.

[34] For settlement of the dispute between Nicyabera Espérance who states that Mukagatare Mariane has no right to the plot of land left by her late father (Nicyabera's father) because they have not legally been married, the Court must resort to the culture and practices prevailing by that time if they are not contrary to the principle of women and men equality stipulated under the above-mentioned Constitution⁶.

[35] The prevailing culture by that time established the procedure for consideration of the role of the wife in the family property, thus, when a woman was no longer able to continue to cohabit with her husband and they separated, she was entitled to a given object. This was done by considering that when the wife was living at home, some of the activities she had performed increased the value of the family property.

[36] With regard to the value of the activities performed by one of the spouses in order to increase the value of the family property, the French Court of Cassation also ruled that one of the spouses who abandons his/her job in order to take care of his/her household and cater for the education of the children, he/she is also involved in the increase of the home economy⁷. This is in line with the culture in Rwanda because the activities performed by a woman to increase the value of family property allow her to have right to it. Therefore, when a husband and a wife were no longer able to live together and separated, the wife had to be rewarded for her role in the increase of family property.

[37] With respect to this case, the first issue to be analysed is how and when Mukagatare Mariane and Gashabure Michel separated. Regarding this issue, when the Court visited the place where the subject matter is located and interrogated the witnesses about when and how Mukagatare Mariane and Gashabure Michel separated as stated above, some replied that Mukagatare Mariane did not separate with her husband Gashabure Michel, but she left her home instead, for medical treatment in 1993 and by the time of Genocide she was still under treatment. When she returned to her home in 1995, she found that her husband was dead. However, there are others who stated that Mukagatare Mariane separated with her husband a long time ago, and she has been even given compensation before she left.

[38] The Court finds that among the witnesses who state that Mukagatare Mariane and Gashabure Michel were still living together at the time of his death, there are those who exploit the fields given by Mukagatare Mariane, including Hitiyise Straton whose the wife exploits a plot of land in that farm. He did

⁴ Article 16 provides that: "All citizens shall be equal before the law, without any discrimination, especially in respect to race, color, origin, ethnic background, clan, sex, opinion, religion, or social status".

⁵ "States Parties shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

⁶Article 93, al. 2, provides that: "Custom shall remain applicable in as much as it was not replaced by laws or is not contrary to the Constitution, laws, regulations, public order or morals".

⁷ [...] La Cour de Cassation a même admis que l'activité d'un époux « dans la gestion d'un ménage et la direction du foyer » pouvait, suivant son importance, avoir excédé sa contribution aux charges du mariage et avoir été pour son conjoint une source d'économies. Il en était spécialement ainsi si l'épouse, pour se consacrer exclusivement aux soins du ménage et des enfants, avait renoncé à sa propre activité professionnelle et, par là-même, à toute source de revenus ...François Terré et Philippe Silmer, Droit civil. Les régimes matrimoniaux, 4ème édition Dalloz 2005, p. 661.

not deny that fact when the neighbours challenged his statements. Consequently, their testimony cannot be reliable.

[39] Among the witnesses who stated that Mukagatare Mariane and Gashabure Michel had been separated a long time ago and even before Mukagatare Mariane left, she has been granted a compensation, there are old woman Mukamfizi Siperansiya who stated that she was a very close neighbor to this family and Nyirabashumba Agnès, one of the women who lived together with Gashabure Michel after Mukagatare Mariane departure. It is clear to the Court that they relate what they know without bias because they do not have apparent interests in this issue.

[40] Article 65 of Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that the court assesses with discretion the relevance, pertinence and admissibility or rejection of testimonial evidence. It is not bound by the number of witnesses. It shall mainly consider their knowledge of facts and the objectivity and sincerity of their declarations and basing on its own findings during the field visit, in its discretion, the Court finds that by the time of Gashabure Michel's death, he had been separated from Mukagatare Mariane and before she left, he gave her a compensation.

[41] Basing on all explanations above mentioned, due to the fact that Mukagatare Mariane lived together with Gashabure Michel as husband and wife and they jointly exploited the land they commonly owned to improve its value, the Court finds that all the activities she performed gave her the right to it. This is why Gashabure Michel sold a part of it to give her a compensation before she left.

[42] The Court finds that Mukagatare Mariane's part equals to that compensation because she did not file a claim against the value of the compensation stating that it is inconsistent with her role. Therefore, the plot of land left by deceased Gashabure Michel must belong to his heirs.

[43] In concluding, on basis of the aforementioned explanations and legal provisions, the Court finds that the fact that there is a plot of land under litigation registered on Mukagatare Mariane does not allow her to have the right on it, the right she has on it is equivalent to the compensation given to her when she separated from her husband as above expounded, therefore, the claim filed by Nicyabera Espérance requesting the review of the case RC 0016/14/TB/KGO rendered by the Primary Court of Kibungo on 27/10/2014 has merits.

b. Regarding the damages claimed in this case

[44] Nicyabera Espérance requests the Court to award her procedural and counsel fees amounting to one million Rwandan francs (1,000,000 Frw), moral damages equivalent to one million Rwandan francs (1,000,000 Frw) for being victim of injustice as she was deprived of the right to her father's property for twenty two years (22).

[45] Mukagatare Mariane states that the damages claimed by Nicyabera Espérance are unfounded as she was the one who dragged her into unnecessary lawsuits, rather Nicyabera Espérance should award her the moral damages equivalent to two million Rwandan francs (2,000,000 Frw).

DETERMINATION OF THE COURT

[46] The Court finds that the moral damages claimed by Nicyabera Espérance are grounded as she was deprived of the right to the property left to her by her father, but one million Rwandan francs (1,000,000 Frw) claimed shall not be awarded because she failed to prove how it was calculated, therefore, according to the discretion of the Court, she is awarded five hundred thousand Rwandan francs (500,000 Frw). With

regard to procedural expenses and counsel fees, the Court also finds them founded because it is clear that she hired a legal counsel, but because the amount claimed is excessive and she failed to prove it, in its discretion, the Court awards her five hundred thousand Rwandan francs (500,000 Frw) for the counsel's fees and three hundred thousand Rwandan francs (300,000 Frw) for procedural expenses.

[47] With respect to the damages claimed by Mukagatare Mariane, the Court finds that they shall not be awarded to her because she wins nothing in this case.

III. DECISION OF THE COURT

[48] Holds that the claim filed by Nicyabera Espérance requesting the review of the judgment RC 0016/14/TB/KGO rendered by the Primary Court of Kibungo on 27/10/2014 on grounds of being vitiated by injustice, has merits;

[49] Holds that the plot of land under litigation located in Rugaju Village, Ntaga Cell, Mugesera Sector in the Eastern Province belongs to the heirs of Gashabure Michel;

[50] Holds that the certificate of emphyteutic lease with N°UPI: 5/06/06/03/3860 given to Mukagatare Mariane is invalidated;

[51] Orders to Mukagatare Mariane to pay to Nicyabera Espérance the moral damages amounting to five hundred thousand Rwandan francs (500,000 Frw) and eight hundred thousand Rwandan francs (800,000 Frw) for procedural and counsel fees.