

MBESIGYE v MUKANGWIJE ET.AL

[Rwanda SUPREME COURT-RS/INJUST/RC 0001/2022/SC (Cyanzayire, P.J., Kalimunda and Hitiyaremye, J.) 20 January 2023]

Civil Law – Property sharing between spouses who live under a simple cohabitation – When spouses living under a simple cohabitation decide to dissolve their cohabitation life, they can partition the existing property on the sole condition that such a property is either “co-owned” or “jointly acquired”. Terms “co-owned” or “jointly acquired” do nevertheless mean that every spouse needs to prove his or her quantified contribution to creation of the concerned property; they rather mean that the concerned property must have been generated within the exact time limits of their cohabitation period- And, what matters most is a logic that while the separating spouses were still living together, everyone has, in one way or the other, contributed for the family prosperity – Law n° 59/2008 of 10/09/2008 on Prevention and Punishment for Gender-based violence, article 39.

Civil procedure – the nullity of marriage contract – Effects of the nullified marriage on the well-intended spouse – When the marriage contract is nullified by the Court’s decision, the good-faith spouse that is a spouse who honestly did not know and had no single reason to know that such a marriage is defective reserve all rights arising from the marriage contract including the right on the property partition as provided for by their chosen type of matrimonial regime. Law n0 32/2016 of 28/08/2016 relating to Persons and Family, articles 199 and 201.

Facts: Mukagwije got legally married to Niyodusenga on the 22/11/2002 and they got married under the regime of community of property. In 2007, Mukangwije got seriously sick and she went back home for treatment and she took longer to return. In the meantime, Niyodusenga cohabitated with Mbesigye and they also got legally married on the 23/11/2012 with the former his marriage contract still viable. When Mukangwije came back, he found her husband legally living with another wife and Niyonsenga was convicted to the offence of bigamy. Following his conviction, Mukangwije seized the Intermediate Court of Rubavu and she prayed the Court to remove the names of Mbesigye Marguerite on her Land Titles. Her request was joined to the claim by Mbesigye who had prayed the Court to allow partake on the property that she and Niyodusenga had jointly acquired. The Court held that the concerned property should be registered under the names of Niyodusenga and Mukangwije, and this ruling made Mbesigye lodge an appeal before Musanze High Court Chamber, and the latter held to stay the appealed judgement.

The Appellant petitioned the President of the Court of Appeal and sought for the reviewing of the case for injustice-related grounds. The President of the Court of Appeal wrote to the President of the Supreme Court notifying him of the petition, and the case was now handed over to the Supreme Court which had to examine whether Mbesigye should be entitled with a portion of 50% on the concerned property registered under UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60; UPI: 3/03/04/06/383 and UPI: 3/03/04/481.

The appellant laments that the Intermediate Court of Rubavu and Musanze High Court Chamber have both held that she deserves no share on a set of property that she co-acquired with Niyodusenga, a man she married while Mukangwije had left the family. She rebuts the High Court’s stance by which she should partake on the concerned property since nothing proves that

she co-owns the concerned property, arguing that she is a partaker on the family property since she worked hard for the family prosperity and she contributed with funds that Niyodusenga, her husband, used for the purchase of the disputed plots.

Mukangwije submits that she co-owns the disputed property with Niyodusenga to whom she is legally married. Niyodusenga argues that the argument and request by Mbesigye for 50% of the disputed property has no justification as she is not his legally married wife since he is legally married to Mukangwije. Besides, he adds that he cohabitated with the claimant from 2007, and not 2006 as she alleges.

Held: When spouses living under a simple cohabitation decide to dissolve such a cohabitation, they can partition the existing property on the sole condition that such a property is either “co-owned” or “jointly acquired”. It is therefore fair that Mbesigye deserves 50% of the property she co-acquired with Niyodusenga from the year 2007, with a sole exclusion of the property added value.

The application for injustice-related review of case n0 RCA 00028/2019/HC/MUS has justification in part.

Mbesigye has a share of 50% on the disputes property with a sole exception on the property registered under UPI: 3/03/11/04/5600 together with its added value.

Statutes referred to:

Law n° 32/2016 of 28/08/2016 governing persons and family, articles 192,199 and 201;

Law n° 59/2008 of 10/09/2008 relating to Prevention and Punishment of Gender-based violence, article 39

Cases referred to:

Case n° RS/Inconst/ Pen. 0003/10/CS of 07/01/2011 with Gatera Johnson v. Kabarisa Teddy, para 15

Case n° RCAA 0022/13/CS of 25/07/2014 with Ngangare John v. Mukankuranga Grace, paragraph 24

Case n° RCAA 0048/14/CS of 11/03/2016 with Ahishakiye v. Namagabira Venantie, paragraph 26-27;

Case n° RCAA 0014/15/CS of 01/12/2017 with Mutoni K. Jackline v. Niwenshuti Aloys et al. paragraph 33.

Judgment

I. THE BACKGROUND OF THE CASE

[1] Mukangwije Espérance got legally married to Niyodusenga Espérance on the 22/11/2002, and they got married under the regime of community of property. In the year 2007, Mukangwije Espérance got seriously sick and she went back home in Rusizi District for treatment and she took long to return. By the time she come back, she found Niyodusenga Anaclet, her husband, now

living with Mbesigye Marguerite to whom he again got legally married and with whom he had two children, yet the former marriage contract was still valid.

[2] When Mukangwije Espérance recovered she come back to her home in Gisenyi, and she found her husband in marriage and in cohabitation with Mbesigye Marguerite. The prosecution accused Niyodusenga Anaclet for bigamy and Mbesigye took advantage of her husband's arraignment and she sued him for damage compensation. On 31/05/2017 the Primary Court of Gisenyi heard case RP 00147/2016/TB/GIS and convicted Niyodusenga Anaclet to the charged offence and sentenced to a fine of 300,000 Rwf and ordered him to give Mbesigye Marguerite 800,000 Rwf for moral damage compensation. The prosecution appealed the verdict before the Intermediate Court of Rubavu and the appeal was docketed as RPA 00292/2017/TGI/RBV. The case was heard on 3/11/2017, and the appellants court held to stay the criminal verdict with a sole change on Mbesigye Marguerite's damage compensation.

[3] Following the criminal verdict, Mukangwije Espérance seized the Intermediate Court of Rubavu and prayed the Court to remove the names of Mbesigye Marguerite on the Land Titles with UPI: 3/03/11/04/5600; UPI: 3/03/11/06/60; UPI: 3/03/04/06/383 and UPI: 3/03/04/06/481. This was combined with a claim that Mbesigye Marguerite had earlier lodged whereby she prayed the court to allow her a share on the houses that she co-owned with Niyodusenga Anaclet. The joinder was recorded as RC 00063/2018/TGI/RBV-CBM RC 00068/2018/TGI/RBV and it was heard on the 22/02/2019. The Court held that the above mentioned immovable property should be registered under the names of Niyodusenga Anaclet and Mukangwije Espérance on a pro rata of 50% per each. The Court has as well ordered that Mbesigye Marguerite should be deregistered on the disputed land titles and it ordered him to give Niyodusenga Anaclet 100,000 Rwf and then Mukangwije Espérance 825,000 Rwf for the caused damage compensation.

[4] Mbesigye Marguerite appealed the ruling before Musanze High Court Chamber, the appeal was recorded as RCA 0028/2019/HC/MUS and the case was heard on the 31/07/2019. The appellate Court stayed the appealed judgement and it ordered Mbesigye Marguerite to refund Mukangwije Espérance with 250,000 Rwf for case-related expenses. In so holding, the Court based on the following grounds :

- a. Niyodusenga Anaclet produced an evidence proving that he unilaterally owns the disputed property, and the proof indicates that Mbesigye Marguerite only featured as a witness¹.
- b. He as well proved for the source of funds that he used for the purchase of the disputed property ; submitting that he worked for the University of Rwanda, then Rubavu District and RPF Inkotanyi for different times.
- c. He acquired the disputed property while in legal marriage with Mukangwije Espérance, and this construes that it is rather with this latter that he co-owns the purchased property.
- d. The sole evidence that Mbesigye Marguerite puts forth is not convincing enough to earn her a right on the disputed property, since she only claims that she worked for the family prosperity and she took care of the children. Her proof remains

¹ House purchase agreement of 21/07/2006, that of 01/03/2010, that of 11/10/2011 and that of 2013.

insignificant to win a share from a legally married man, who additionally proved for his absolute acquisition of the disputed property.

[5] Following the ruling on the case, Mbesigye Marguerite petitioned the President of the Court of Appeal and prayed him for the reviewing of case n^o RCA 00028/2019/HC/MUS rendered by Musanze High Court Chamber, and she lamented of injustice. She argued that she married Niyodusenga Anaclet with good faith, and she requested for a portion on their jointly acquired property as per the terms of their marriage regime; arguing that she deserves ½ of the disputed property as per the provision of article 199 of the Law n^o 32/2016 of 28/08/2016 that governs Persons and Family². Upon the examination of the petition, the President of the Court of Appeal reported the case to Chief Justice, who in turn, verified the application, and thereof ordered the Supreme Court to rehear the case, and the claim was thereby registered as RS/INJUST/RC 00001/2022/SC.

[6] The case was heard in public on the 12/09/2022 with Mbesigye Marguerite assisted by Counsel Mukansanga Ziada, Mukangwije Espérance assisted by Counsel Bizimungu Vita Guido while Niyodusenga Anaclet was assisted by Counsel Mwanamungu Alexis. The Court closed the hearing and slated the pronouncement on the 07/10/2022.

[7] While in the deliberation on case's issues, the court found it so important to first look for an Expert for property valuation and task her with the valuation of the disputed property, additional developments with their added value computed as from the date the contested ruling has been pronounced. On 24/10/2022, the Court appointed Madam Dushime Justine, as a property valuation Expert to execute its order of 07/10/2022 and mandated her make a report on the following:

- a. The physical characteristics of the disputed property, that is, its identification number (UPI), its location and any other details that she deems important.
- b. The value of the disputed property as at 31/07/2019 the date at which case RCA 00028/2019/HC/MUS that hereby seeks for a review has been pronounced. The property value must be as current as the report submission date.
- c. The disputed property additional developments and their corresponding added value computed from the pronouncement of the contested ruling.

[8] The Property Valuation Expert submitted her report to the Court and it indicated the following:

- a. The property registered under UPI: 3/03/11/04/5600 is located in Bushenge Village, Gikombe Cell of Rubavu Sector in Rubavu District. Its value stands at 10,432,312 Rwf and the value of the additional developments amounts to 705,520 Rwf;

² Where the Court declares a marriage null, it produces same effects towards spouses if it was contracted in good faith. The property is shared in accordance with laws governing their matrimonial regime.

- b. The property registered on UPI: 3/03/04/481 is located in Munini Village, Rubavu Cell of Gisenyi Sector of Rubavu District. Its current value stood at 17,055,205 Rwf and the additional developments amounted to 18,000 Rwf;
- c. The property registered on UPI: 3/03/04/06/383 is located in Munini Cell of Rubavu Cell, of Gisenyi Sector in Rubavu District. Its current value is 49,294,061 Rwf and the additional developments stood at 1,922,970 Rwf.
- d. The property registered under UPI: 3/03/11/01/60 is located in Gabiro Village of Buhaza Cell in Rubavu Sector of Rubavu District. It has a value of 17,816.908 Rwf, and the additional developments amounted to 85,618 Rwf.

[9] The hearing was conducted on the 19/12/2022 with all litigants present. Mbesigye Marguerite was for this time assisted by Counsel Munyensanga Gisèle while the rest of the litigants were assisted as before. Madam Dushime Justine, the Property Valuation Expert was as well present, and she first made the duty-related oath and then presented the details her report to the Court.

[10] The Expert reported to the Court that she reached and visited the disputed property and she entered every single house for a thorough inspection of the property. She explained that value she submits may not be equal to the value presented by the previous Valuator whose valuation report was presented before the Intermediate Court of Rubavu due to a fact that she thereby found different surface areas for the houses, coupled with a reality that the disputed property location area has considerably appreciated due to its growing infrastructural development.

[11] Niyodusenga Anaclet submitted that he is not agreeing with the results from the valuation report, arguing that the disputed property value has been hiked, and more heightened than the version that the claimant has presented before the Intermediary Court of Rubavu. Besides, he complained that the value of the additional developments has been terribly underestimated. However, the rest of the litigants made no objections.

[12] After the Court has from each litigant on the presented report, the hearing was closed and the ruling pronouncement was slated on the 20/01/2023.

[13] Along this case, the court examined the following issues:

- a. Whether Mbesigye Marguerite deserves 50% of the property registered under UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60; UPI: 3/03/06/383 and UPI: 3/03/04/481
- b. Damages

II. THE ISSUES OF THE CASE AND THEIR ANALYSIS

- **Whether Mbesigye Marguerite deserves 50% of the property registered under UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60, UPI: 3/03/06/383 and UPI: 3/03/04/481;**

[14] Mbesigye Marguerite and her legal advisor lament that the Intermediate Court of Rubavu and Musanze High Court Chamber have both held that she deserves no share on a set of property

that she co-acquired with Niyodusenga Anaclet, a man she married while Mukangwije had left the family. They also add that by the time of immovable property general census and registration, Mukangwije Espérance was thereby present, but she never bothered to oppose the initial registration process, arguing that the story of her mental illness is just a mere narrative that she and Niyonsenga Anaclet have fabricated to dispossess her of the disputed property.

[15] They also lament that the stance by Musanze High Court Chamber by which she does not co-own the disputed property since she only features the disputed property purchasing agreements as a witness not as a partner; arguing that such a position is unfair since the court has disregarded a fact that she tediously contributed to the acquisition of the disputed property as she worked for the prosperity of the family and she took good of the children and she wants her contribution to be valued. They also added that Mbesigye Marguerite, as a respectful woman, used to give funds to her husband, who could then buy the assets and have them registered under his name while the wife would only come as a witness ; adding that by time the disputed assets were being bought (2007-2014) Niyodusenga Anaclet was actually unemployed and he had no income to purchase the concerned assets. They argue that the wife acted in faith, and she had no possible to keep funds disbursement evidence as she always believed that all the transactions were effected in a perfect partnership.

[16] Mbesigye Marguerite and his legal advisor further add that from the year 2007 to 2012, Niyodusaba Anaclet was still a student, and for all that time, it is actually Mbesigye who struggled with the family alone, and whenever she got money, she always gave it to the husband for the purchasing of the plots. For reference, they cited case no RS/ INCONST/PEN 0003/10/CS rendered by this Court on 07/01/2011 where he has, under paragraph 12, held that a piece of land that is unilaterally registered on the husband should be equally co-owned by his spouse guided by the logic that both spouses have jointly contributed for the projects of family prosperity.

[17] They also quote articles 193 and 199 of the Law n0 32/2016 of 28/08/2016 governing Persons and Family whereby this law provides that when causes leading to the absolute nullity of marriage arise, the family property is shared in accordance with the spouses' matrimonial regime. They therefore argue the law allows Mbesigye Marguerite a portion of 50% of the whole family property which spouses generated while their marriage contract was still valid. The concluded by requested the court for revocation of all court's orders that permitted Mukangwije Espérance to register the disputed property under name, and they prayed the court to have 50% of the disputed property registered under the names of Mbesigye Marguerite.

[18] Furthermore, they submitted that Mbesigye Marguerite cohabited with Niyodusaba Anaclet since the year 2006, as it evidenced by the documents of disputed property purchasing agreements. They also rebut the idea of refund for the property additional development, arguing that any property added valued was self-funded by the income that Niyodusenga Anaclet kept earning as rentals from the family houses.

[19] Mukangwije Espérance refers to all the previous case rulings and submits that she co-owns the disputed property with Niyodusenga Anaclet to whom she is legally married. They made a reference to article 6 of the Law n0 27/2016 of 08/07/2016 governing matrimonial regimes,

succession and liberalities³, and argued that the request by Mbesigye Marguerite has no justification. They also highlighted that Mukangwije Espérance left the conjugal home in 2006 and not in 2007 as she alleges, arguing that she keeps contradicting herself on time references.

[20] Niyodusenga Anacllet and his legal advisor argue that the argument and request by Mbesigye Marguerite for 50% of the disputed property has no justification as she is not his legally married wife since he was legally married to Mukangwije Espérance on the 22/11/2002 as their marriage certificate so indicates. He adds that it is therefore Mukangwije Espérance who co-owns the family property as it was previously held by Musanze High Court Chamber. In addition, he submits that he started cohabitating with Mbesigye Marguerite from the year 2007 and not 2006 and the latter alleges.

DETERMINATION OF THE COURT

[21] Article 192 of the Law n0 32/2016 of 28/08/2016 on Persons and Family provides that the nullity of marriage can only be ordered by judgment..., while article 199 of the same law provides that when the court declares the marriage null, it produces same effects towards spouses if it was contracted in good faith. The property is shared in accordance with laws governing their matrimonial regime. Article 201 of the above mentioned law provides that the nullified marriage grants to the spouse who acted in good faith and to children from such marriage all rights related to marriage.

[22] The most important point from the above mentioned articles specifies that it is the Court's order that declares the nullity of marriage; the articles still make it clear that in case of nullity of marriage, the spouse in good faith, that is, the one who never knew or who had no reason to know of any marriage related defects that might lead to its nullity, such a spouse reserves all the marriage related rights including the right of share on the family property as per their matrimonial regime agreement.

[23] With regard to this case, the file contains a verdict of case n0 RP 00147/2016/TB/GIS rendered by the Primary Court of Gisenyi on the 31/05/2017 whereby this court convicted Niyodusenga Anacllet to the offence of Bigamy. At the appeal level, the same verdict was again confirmed by the Intermediate Court of Gisenyi just as it has been above mentioned. For the both instances, the Courts have found that by the time Mbesigye Marguerite married Niyodusenga Anacllet, nothing indicates she knew or was likely to know of her partner's previous marriage, and the Court allowed her some damage compensation.

[24] Again, the file indicates that following the criminal case, Mukangwije Espérance took advantage of Mbesigye's divorce claim, and she intervened into the case and prayed for the invalidation of the marriage contract between Niyodusenga Anacllet and Mbesigye Marguerite. Nevertheless, her claim was not admitted owing to a fact that the principal divorce claim was as well not admitted. The case file contains no evidence to prove that Mukangwije Espérance has

³ Spouses under the community of property regime manage the property together and have the same right to recover the property if taken, and act as legal representative of the property; and any property registered in one spouse's name is part of the property belonging to spouses under the community of property regime

again lodged the same claim, it rather contains an evidence that she instead lodged a different case, and she prayed the Court to have Mbesigye Marguerite removed on Titles of the disputed land.

[25] The Court found that due the absence of the Court's order invalidating the marriage contract between Niyodusenga Anaclet and Mbesigye Marguerite, the Court cannot apply the provisions of articles 199 and 201 of the above mentioned Law n0 32/2016 of 28//08/2016 relating to right on property among cohabitating spouses just as the claimant so requests.

[26] However, the Court found a similar precedent along case n0 RS/REV/INJUST/CIV 0007/15/CS rendered by this Court on the 04/12/2015 with Nyirakamana Marciana and others suing Mukasharangabo Eugenie and others. For the above case, the Court first reminded that the Constitution of the Republic of Rwanda and other laws only recognise the monogamous marriages, and found that Karimunda Gérard married Nyirakamana Marciana before he legally divorces with his former wife and that made his second marriage illegal and therefore invalid.

[27] For the above case, the court referred to article 39 of the Law n0 59/2008 of 10/09/2008 relating to the Prevention and Punishment of Gender-based Violence⁴, and found that Nyirakamana Marciana, though not legally married to Karimunda Gérard due to a fact that she married him before he legally divorces his former wife, she still reserves a right to ½ of the property that she co-acquired with Karimunda Gérard, computing from the onset of their cohabitation life.

[28] The same precedent features in some other similar litigations where this Court has adjudicated the issue of the right on property among spouses who live their conjugal life under a simple cohabitation. For a case Gatera Johnson and Kabarisa Teddy attacked the above mentioned article 39 for its alleged unconstitutionality to the Constitution of the Republic of Rwanda, the Court held that when spouses living under a simple cohabitation decide to dissolve such a cohabitation, they can partition the existing property on the sole condition that such a property is either "co-owned" or "jointly acquired". The court has thereby added that the right on spouses property does not rise from a mere fact the concerned spouses cohabitated, it must be proven that such a property is either co-owned or jointly-acquired⁵.

[29] For a conjugal property case that Ngangare John litigated with Mukankuranga Grace, The Court made a reference to the case with Gatera Johnson and Kabarisa Teddy, and explained that the purpose of article 39 of the above mentioned Law n0 59/2008 of 10/09/200 is to ensure the protection of the right on property for the good of any of the spouses living their conjugal life under a simple cohabitation. By the virtue of each spouse's common contributions to their cohabitation prosperity, such spouses must first partition and share the co-owned property, before their cohabitation life dissolves and before any of the spouses marries a different person.

[30] There is another property partitioning related case between Ahishakiye Jean and Namagabira Venantie whereby the Court made a reference to the above mentioned Article 39, and

⁴ 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. The property distribution referred to in paragraph 2 of this Article shall not encroach on the children's legally recognized rights.

⁵ Case n0 RS/Incost/Pen. 0003/10/CS with Gatera Johnson and Kabarisa Teddy, rendered on the 07/01/2011, para 15.

to the ruling on the case of Gatera Johnson and Kabarisa Teddy, and it moved that since Ahishakiye Jean has cohabitated with Namagabira Venantie as husband and wife, and they together generated a set of property, they must have it partitioned and shared before they put an end to their cohabitation life. The court moved that Ahishakiye should not take all the concerned property alone since he is not able to rebut Namagabira Venantie on the argument that they both contributed to the acquisition of the disputed property since Namagabira Venantie argued that she always seconded the husband in their business activities, and she as well helped with some other contributions that led to family prosperity achievements.

[31] The issue of quantification of spouses' contributions for the family property has always been a challenge for property sharing. This concern featured in the case of Mutoni K. Jackline v. Newenshuti Aloys and Mukambuguje Alodie whereby the Court had to clarify the terms "co-owned" or "jointly acquired" the Court moved that these terms do not mean that every spouse needs to prove his or her quantified contribution to creation of the concerned property; they rather mean that the concerned property must have been generated within the exact time limits of their cohabitation period- And, that what matters most is a logic that while the separating spouses were still living together, everyone has, in one way or the other, contributed for the family prosperity⁶.

[32] For the above litigation, the Court explained that it is not the spouses quantifiable contributions for the acquired property that gives a right to the concerned property sharing, as such quantification can only come as an additional evidence that proves that the concerned property has been generated or and developed while the litigating spouses were still cohabitating as husband and wife; regardless of any spouse's ability to quantify and account for their own contribution for the generation or the development of the concerned property⁷.

[33] For a certain dispute between Twahirwa Ahmed and Kaligirwa Rehema, this Court referred to article 39 of the above mentioned Law n^o 59/2008 of 10/09/2008 and found that the disputed house was acquired while the litigating spouses were still living together as husband and wife under a simple cohabitation, and the court moved that if at all they cannot keep up with their cohabitation life, they should then both partake the disputed house since it is logically understandable that they both contributed to the acquisition of the disputed house since everyone made a contribution for the family support and property; the court has therefore moved that no spouse should think of an absolute ownership.

[34] For all the above mentioned cases that all came around to the content of article 39 of the Law n^o 59/2008 of 10/09/2008 relating to the Prevention and Punishment of Gender-based violence, they all feature the following important aspects:

- a. Those who live under a simple cohabitation as husband and wife decide to separate and end their cohabitation life, can only partition and share the existing family property on the sole condition that such property is either co-owned or has been jointly acquired.
- b. Terms "co-owned" or "jointly acquired" do nevertheless mean that every spouse needs to prove his or her quantified contribution to creation of the concerned

⁶ Case n^o RCAA 0014/15/CS rendered on the 01/12/2017, Para 33.

⁷ Ibidem, para 35.

property; they rather mean that the concerned property must have been generated within the exact time limits of their cohabitation period.

- c. What matters most is that each spouse has, in one way or the other, contributed to their family prosperity achievements.

[35] With regard to this case, all litigants concur on the fact that Niyodusenga Anaclet cohabitated with Mbesigye Marguerite from since the time Mukangwije left the conjugal house and went back to her parents due to illness. Litigants also agree that Niyodusenga Anaclet has later on legalised his cohabitation with Mbesigye Marguerite and legally married her in the 2012. The newly formed couple kept living together till Mukangwije Espérance came back. Niyodusenga Anaclet was convicted the offence of bigamy and a related verdict was pronounced on the 31/05/2017.

[36] Litigants again concur on the fact that Mukangwije Espérance left her marital home since 2007. Such an assertion features from the submission that Mbesigye Marguerite has filed to the Intermediate Court of Rubavu and in the paragraph 2 of the court's judgement copies ; such affirmation is still deducted from the statements by both Niyodusenga Anaclet and Mukangwije Espérance while in the proceedings. All the above confirms that Mbesigye Marguerite cohabitated with Niyodusenga Anaclet from 2007, the year Mukangwije Espérance left the marital home.

[37] The arguments by wich Mbesigye Marguerite alleges to have lived with Niyodusenga Anaclet from 2006 makes no sense as she herself admits that she joined Niyodusenga Anaclet when Mukagwije Espérance had left the house. This also concurs what she said in the submission of her divorce claim to the Primary Court of Gisenyi, where she admitted that she joined Niyodusenga with his three children, yet one the children was born in 2006, and this makes clear that by this time, Mukangwije Espérance was still around.

[38] The court has found that the property that is subjectable to sharing between Niyodusenga Anaclet an Mbesigye Marguerite is the sole property that was generated within the time limits of their cohabitation period, and that is from the year 2007 up to 2017, the year the verdict for his bigamy was pronounced.

[39] The file contains the purchasing agreements for the following assets:

- a. The house purchase agreement of 21/07/2006;
- b. The house purchase agreement of 01/03/2021,
- c. The plot purchase agreement of 11/10/2011
- d. The plot purchase agreement of 07/01/2013.

▪ **Considering the explanations provided by Niyodusenga Anaclet to the Intermediate Court of Rubavu, the pleadings of case n0 RC 00063/2018/TGI/ RBV of 13/02/2019, the above mentioned plots were given the following UPI numbers:**

- a. The plot of 21/07/2006 was registered under UPI: 3/03/11/04/5600;
- b. The plot of 01/03/2021 was registered under UPI: 3/03/11/01/60;
- c. The plot of 11/10/2011 was recorded under UPI: 3/03/04/481;

d. The plot of 07/01/2013 was registered under UPI: 3/03/04/383.

[40] Considering the purchase agreements provided in the preceding paragraph, the Court has found the property under UPI: 3/03/11/04/5600 purchased on the 21/07/2006 not subjectable to the property sharing between Niyodusenga Anaclet and Mbesigye Marguerite due to a fact that the above property was acquired before 2007, and thus before the duo cohabitates as husband and wife. It is therefore obvious that such a property is a separate portion that unilaterally belongs to Niyodusenga Anaclet and Mukangwije Esperence. The court has hence moved that Niyodusenga Anaclet and Mbesigye Marguerite can only share a set of property generated within the time limits of their cohabitation period, and that is from 2007 just as it has been above mentioned. And that property includes:

- a. The property purchased on the 01/03/2010 and registered under UPI: 3/03/11/01/60;
- b. The property purchased on the 11/10/2011 and registered with UPI: 3/03/04/06/481;
- c. The property purchased on the 3/03/04/06/383 and registered with 3/03/04/06/383.

[41] With regard to the exact share devolving on each on the litigating spouses, the Court has found that Niyodusenga Anaclet and Mbesigye Anaclet each deserves 50% of the disputed property. The Court has however found that before the disputants share the concerned property, the court moved that the concerned property's added value, as computed and presented by the property valuator, should first be deducted from the value of the disputed property.

[42] The disputed property valuation report indicated the following:

- a. The property registered under UPI: 3/03/11/01/60, had an added value of 85,618 Rwf;
- b. The property registered under UPI: 3/03/04/06/481 had an added value of 18,000 Rwf;
- c. The Property registered under UPI: 3/03/04/06/383 had an added value of 1,922,970 Rwf.

[43] Concerning the complaint by Niyodusenga Anaclet by which rebuts the presented property Valuation Report, arguing that it extremely heightened the disputed property value, and that it unacceptably underestimated the concerned property added value; the Court has thereof found his argument meritless, since the appointed Expert has unquestionably presented her findings in the hearing of 19/12/2022, and Niyodusenga Anaclet, if not disagreeing for the sake of a disagreement, he presents no alternative reference to debunk the Expert's valuation report.

[44] With all the above provided explanations, the Court has moved that Mbesigye Marguerite has a right to 50% of the above highlighted property, and that is the sole property that is subject to the related partition and sharing. But before the sharing, the court ordered the concerned property should first be deducted of the exact value that Niyodusenga Anaclet has thereof added computing from the pronouncement of the ruling on this case that seeks for a review.

▪ **About the damage compensations**

[45] Mbesigye Marguerite laments that the Intermediate Court ordered her to pay Mukagwije Espérance 825,000 Rwf for damage compensation over dragging her into unnecessary lawsuits and for the Counsel fee yet it is Mukangwije Espérance who initiated the case, and she submits

that she sees no reasons as to why she should be charged for such damages, and she suggests that the complainant should seek damages from Niyodusenga Anacllet since it is him who brought the claimant into the lawsuits. She also adds that even the High Court has equally prejudiced her as it stayed the pronounced damages and it recharged her for more 250,000 Rwf for the Counsel fee. And, she prayed the Court to have all the charged damages nullified.

[46] She requested the Court to order Niyodusenga Anacllet to give her 1,000,000 Rwf over dragging her into unnecessary lawsuits, and 1,000,000 Rwf for both the Counsel fee and the incurred case-related expenses at this instance since he kept bringing her in courts cases yet he well knew that the disputed property was jointly acquired. She submitted that Niyodusenga Anacllet deserves no damage compensation as it him who initiated the whole mess. She added that Mukangwije Esperance damages' request should be addressed to Niyodusenga Anacllet, her husband, as it the latter who breached their marriage agreement and unlawfully remarried.

[47] Mukangwije Esperérence laments and blames Mbesigye Marguerite, the family friend who took advantage of her sickness and mislead her husband into an unlawful cohabitation and later into an illegal remarriage, yet she well that his former marriage contract is still valid. She as well blamed her for having dared to appropriate herself the family property and registering it under her own names, and now dragging her into court cases. She laments that Mbesigye Marguerite was not enough fined, compared to her continued intentions of prolonging the lawsuits and making her incur more loss for Counsel fees and other case follow-up costs.

[48] She laments that since the year 2016, Mbesigye Marguerite kept dragging her into unnecessary lawsuits, and she requested for 5,000,000 Rwf that includes 4,000,000 Rwf for both the damage compensation and the incurred case-related expenses, and 1,000,000 Rwf to pay the Counsel fee for the Supreme Court instance .

[49] Niyodusenga Anacllet submits that Mbesigye Marguerite should give Mukangwije Espérence a sum of 850,000 Rwf as she was instructed by the Court since it is Mbesigye who brought Mukangwije into court cases, and this compelled the latter to seek for lawyers to assistance her with the case at the first and last instances.

[50] He also requested the Court to order Mbesigye Marguerite to give 2,000,000 Rwf for dragging him into lawsuits, 500,000 for case follow-up expenses, and 1,000,000 Rwf for the Counsel fee at this level of instance; and it all came to 3,500,000 Rwf adding to the damages that the High Court had previously charged her with. And he then says the damage compensation that Mbesigye Marguerite requests from him are simply unworthy.

DETERMIATION OF THE COURT

[51] The Court moved that all the damage compensation requests that were made along this case are all not worthy-giving since every litigating party won the case for a certain interest.

III. DECISION OF THE COURT

[52] Holds that the application by Mbesigye Marguerite of injustice-related review of case n0 RCA 00028/2019/HC/MUS rendered on the 31/07/2019 by Musanze High Court Chamber, has merit in part;

[53] Holds the reviewed case has changed in part.

[54] Rules that Mbesigye Marguerite has no share right on the property registered under UPI: 3/03/11/04/5600;

[55] Holds that Mbesigye Marguerite has a right to 50% on the rest of the disputed property. But before the partition and sharing, the disputed property shall be first deducted of the précised value that Niyodusenga Anaclet thereof added, computed from the pronouncement of the ruling on this case that arose for a review; and the property added value is as follows:

- a. 85, 618 Rwf as added on UPI: 3/03/11/01/60;
- b. 18,000 Rwf as added on UPI: 3/03/04/06/481;
- c. 1,922,970 Rwf as added on UPI: 3/03/04/06/383.

[56] Orders Niyodusenga Anaclet and Mukangwije Espérence to each give Mbesigye Marguerite 116,667 Rwf as a refund for their contribution for the payment for the property valuation report that was produced upon the Court's request.