

RE DOREBABA

[Rwanda HIGH COURT – 2013HC – RCA 0051/13/HC/KIG (Hitimana, P.J.) March 7, 2013]

Law determining the jurisdiction of courts – Exequatur – Marriage certificate – Extracts of civil status certificates requested to be enforced in Rwanda and the reasons of its enforcement, should not be contrary to public order as well as legal tenets of Rwandan positive laws and in accordance with the laws of the country in which they were written, have all necessary evidence to prove their authenticity – Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as amended and complemented to date, article 92 – Law n° 22/99 of 12 November 1999 supplementing Book One of the Civil Code and instituting Part Five regarding Matrimonial Regimes, Liberalities and Successions, article 70.

Facts: The applicant filed a petition in the High Court requesting the certificate of marriage between her and her spouse named Ntwari Gatari celebrated in former Zaïre, the current Democratic Republic of Congo to be enforced in Rwanda. The grounds for her request rely on the fact that her husband was deceased therefore enforce it in Rwanda would benefit her of the rights vested with spouses by the Law.

Held: The authentic deed known as “register statement abstract of marriage” should be enforced in Rwanda, because the reasons of enforcement relied on by the applicant are not be contrary to public order as well as legal tenets of Rwandan positive laws and in accordance with the laws of the country in which it was written, has all necessary evidence to prove its authenticity.

**Petition has merit.
Costs to the applicant.**

Statutes and statutory instruments referred to:

Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as amended and complemented to date, article 92.

Law n° 22/99 of 12 November 1999 supplementing Book One of the Civil Code and instituting Part Five regarding Matrimonial Regimes, Liberalities and Successions, article 70.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Dorebaba Rugomboka filed a petition in this Court requesting that, marriage certificate between Dorebaba Rugomboka and Ntwari Gatari written on 18/07/1987 in former Zaïre, the current Republic Democratic of Congo, be enforced in Rwanda.

[2] The legal issue to be examined in this case is to determine whether, pursuant to article 92 of the Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, that register statements abstract of marriage between Dorebaba Rugomboka and Ntwari Gatari written in the Democratic Republic of Congo, former Zaïre on 18/07/1987 deserves to be enforced in Rwanda;

II. ANALYSIS OF LEGAL ISSUE

[3] Nkeza S. Clément, the counsel for Dorebaba Rugomboka in this case, requests the Court to order that the act termed as “extract of marriage certificate” between Dorebaba Rugomboka and Ntwari Gatari celebrated in the Democratic Republic of Congo, former Zaïre on 18/07/1987 should be enforced in Rwanda, pursuant to article 92 of Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts. He further explains that the established document indicates that Dorebaba Rugomboka and Ntwari Gatari were married in accordance with the laws of DRC, but that Gatari died on 06 May 2012; and the approval of enforcement of the document in Rwanda would facilitate Dorebaba Rugomboka to freely enjoy the rights resulting from marriage contract as by the law.

[4] Pursuant to the provision of article 92 of Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as modified and complemented to date, the documents stated in this article that can be enforced in Rwanda are “authentic deeds which have proof to have been written by foreign authorities”.

[5] Article 92 of the stated Organic Law stipulates in addition that authentic deeds which have proof to have been written by foreign authorities can be enforced in Rwanda by the High Court, if they fulfil the following conditions :

- if the reasons for seeking the execution of the authentic deeds are not contrary to public order as well as legal tenets of Rwandan Public laws;
- if according to the Country in which they were written, they have all necessary evidence to prove their authenticity.

[6] The Court finds that the reason for the petition of Dorebaba Rugomboka requesting the enforcement of this document, is to allow her to enjoy the right as a spouse of the late Ntwari Gatari, that right being provided for by article 70 of the Rwandan Law n° 22/99 of 12 November 1999 supplementing Book One of the Civil Code and instituting Part Five regarding Matrimonial Regimes, Liberalities and Successions which reads in its paragraph one that if one of the spouses dies, the remaining spouse holds entire assets and respects the duty of raising children and assisting the parents of the deceased if need be, and therefore this reason of enforcement is not in contradiction with public order as well as legal tenets of Rwandan Public laws.

[7] The Court in addition finds that, the Extract from the register of declarations of marriage between Dorebaba Rugomboka and Ntwari Gatari done in the Democratic Republic of Congo, former Zaïre on 18/07/1987 that Dorebaba Rugomboka requests to be executed in Rwanda, is an act established in the Democratic republic of Congo by Gumba Mwishabongo, the civil status Officer appointed as such by article 76 and 78 of family law of this country, and having the quality of civil status registrar in DRC and that in accordance with the provision of article 368 of

its civil code, the marriage may be celebrated in accordance with the family formalities prescribed by the customs. In this case, the civil status registrar shall register the marriage and draws up the related act; and as evidenced by this document, it is the civil status officer who authenticated it;

[8] Furthermore it finds that the document bears the signature of the Notary for the city of Goma who certified it on 24 December 2012, and the Embassy of the Democratic Republic of Congo in Kigali certified it on 31 December 2012 as well;

[9] Pursuant to the aforementioned assertions, it finds that the deed which Rugomboka Dorebaba is requesting to be enforced in Rwanda and the reasons thereto are not in contradiction with public order as well as legal tenets of Rwandan positive laws and in accordance with the laws of the country in which they were written, have all necessary requirements to prove their authenticity, the reason why it is ordered that the deed termed as “register statement abstract of marriage” deserves to be enforced in Rwanda.

III. THE DECISION OF THE HIGH COURT

[10] Admits the petition of Dorebaba Rugomboka because it was filed in accordance with the rules of procedure, and finds it with merit;

[11] Rules that the deed evidencing the marriage union between Dorebaba Rugomboka and Ntwari Gatari celebrated in the Democratic Republic of Congo, former Zaïre on 18/07/1987 (Extract of register of marriage) be enforced in Rwanda because it fulfils all requirements of the Rwandan laws;

[12] Orders Dorebaba Rugomboka to pay the court fees equivalent to 7,000 Rwf deducted from deposited fees at the time of filing the petition.

