

MBERABAGABO ET AL v. FIAT AMELIE ET AL

[Rwanda SUPREME COURT – RS/REV/INJUST/COM 0001/13/SC (Kayitesi, P.J., Hatangimbabazi, Mukandamage, Rugabirwa and Gakwaya, J.) March 28, 2014]

Commercial procedure – Case review – The grounds for injustice – The party cannot say that the court which has rendered the judgment on application for review of the judgment for extreme injustice was not competent in case it has decided basing on legal provisions governing the review of the judgment and the parties have based on them within their submissions filing the claim – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 186 paragraph 3 and 6.

Commercial procedure – Exercising two ways of appeal at the same time – Where the party has abandoned one of the ways of appeal he/she had started this shall not be considered as exercising two procedures of appeal at the same time – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 12.

Commercial procedure – Redemption of the property that ought to be auctioned – The validity of the sale aiming at the redemption before the auction – If the redemption results from the sale of the house, that contract is valid – Any person or the debtor can redeem the seized property as long as it is done before the end of the sale and in the interests of the creditor and of the debtor – The sale contract aiming at redeeming the seized property is valid – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 311.

Contracts or obligation law – Liability – Damages for rents – The person who deprived another of rents on the pretext that he has bought the leased property at auction while he has violated the law together with the one who conducted the auction they jointly pay him the damages – Law of 30/07/1888 relating to contracts or obligations, article 258.

Facts: Banque Commercial du Rwanda (BCR) which became I&M BANK has given the loan to Dunia Bakarani who he failed to pay off and to the former seized the court and won the case against him. There the procedures of executing the court judgment were initiated and conducted by Notary Kayitesi Judith whereas in the meanwhile Dunia sold the seized house to Fiat Amelie and cleared that debt and even the Bank notified the notary that that debt has already been paid. Notary Kayitesi ignored this and went on with the auction whereby the house was bought by Mberabagabo two days after clearing the debt. Dunia lodged a claim before the Commercial High Court claiming to nullify the auction of his house because it was conducted after paying the debt. Fiat Amélie who bought that house from Dunia Bakarini by an agreement before the auction took place voluntarily intervened in that case.

The Commercial High Court decided that the auction was legally conducted, and that Fiat Amelie's claim is inadmissible since he has no status and interests for seizing the court.

Dunia and Fiat appealed against that judgment before the Supreme Court but withdrew their appeal before the case hearing and they rather seized again the Commercial High Court applying for review of the judgment on the grounds that the Court has confused the facts and this time the court decided that the auction performed is nullified, and ordered Kayitesi (the notary), Mberabagabo Innocent who co-owned a company with Butera who bought the house at the auction to pay Fiat Amelie 29,575,000Frw for the rents of the house he would have earned for 13 months if the house he bought was not auctioned and were ordered to pay also 500,000Frw for the lawyer's fees.

Kayitesi, Mberabagabo Innocent and Butera wrote to the Ombudsman requesting her to petition for application for review of the judgment for the manifest injustice since there are laws and the evidences which have been ignored and its review on grounds of injustice was approved that.

Before the Supreme Court, Kayitesi, Mberabagabo Innocent, Butera explain that injustice is proven by the fact that the Commercial High Court was not competent to review the judgment on the grounds of injustice but rather the Supreme Court was the only one which was competent thus the Commercial High Court would not have admitted Dunia and Fiat's claim for the review of the judgment while they have lodged the appeal before the Supreme Court and that the sale of that house between Dunia and Fiat that enabled the former to get money to pay BCR could not suspend the auction which was conducted because that house was no longer within their possession. They have also said that the fact that Fiat Amelie was awarded the money for the rent by the Commercial High Court is injustice since they committed no fault.

Fiat and Dunia have said that the Commercial High Court was the one which was competent to review the judgment on the grounds of extreme injustice since it results from confusion of the facts and they have based on the provisions relating to the review of the judgment.

They have also said that they have not concurrently exercised two ways of appeal since while lodging the application for review of the judgment they have proven that they have withdrawn the appeal they had lodged before the Supreme Court. They have also said that the sale between them is valid since Fiat has voluntarily executed the judgment and paid BCR which issued to him the debt-clearance certificate and it notified this to Kayitesi Judith requesting her to stop the auction. In addition, they say that the fact that Mberabagabo Innocent and Butera have bought that house at auction fully knowing that it has been sold is a serious fault for which they have to be held liable and pay to Fiat the rentals they have deprived him of.

They have concluded claiming the damages for being involved in the court proceedings for no ground and the lawyer's fees. As for them Kayitesi Judith, Mberabagabo Innocent and Butera argued that the claimants of that money do not deserve it since they committed no fault.

Held: 1. The party cannot say that the Court which has rendered the judgment reviewing another because of extreme injustice was not competent in case it has decided basing on legal provisions relating to review of judgment and the parties have based on them within their submissions filing the claim, thus the word "extreme" which has been used in the subject matter of the case has no effect in knowing the court which was competent to examine the case.

2. Where the person who applied for review of judgment has withdrawn the appeal before the hearing of the case, this is not considered as concurrently exercising two ways of appeal.

3. Any person or the debtor has the right to redeem the seized property by satisfying the damages and the costs of the seizure as long as it is made before the end of the sale and in the interests and with the consent of the debtor without necessarily requesting the Court order staying the auction before redeeming the seized property.

4. A person who deprived another of the rentals of the house he has legally bought on the pretext that he, himself has bought at auction which was nonetheless illegal is jointly liable with the one who conducted the auction. However, the one who co-owns the company with the buyer of the house is not liable in case the latter has personally bought it.

Butera's claim has merit
The claim by other appellants has no merit
Court fees to the appellant

Statutes and Statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure article 186, paragraph 3 and 6 and that of 293, Law of 30/07/1888 relating to the contracts or obligations, article 258

No case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Banque Commerciale du Rwanda (BCR) which later became I&M Bank has granted the loan to Dunia Bakarani who failed to reimburse as agreed upon to the extent that the procedures of executing the judgment RCOM 0005/09/HCC which became final were initiated since it won the judgment RCOMA 0013/10/CS. Dunia Bakarani lodged a claim before the Commercial High Court requesting to stay the auction of his house located in plot n° 339 in Rubavu Town due to the auction carried out by Notary Kayitesi Judith while on 15/12/2011 he was notified that Banque Commercial du Rwanda was already fully paid on 13/12/2011. As for Fiat Amélie, he voluntarily intervened in that case since he had bought the house from Dunia Bakarini before the auction.

[2] On 18/10/2012 the Commercial High Court delivered the judgment RCOM 0070/12/HCC for the case it was seized with and decided that the auction was legal and that the claim of Dunia Bakarini, who voluntarily intervened in the case, had not to be admitted since he had no status and interests of claiming with more reasons that the sold house was no longer his.

[3] Dunia Bakarani and Fiat Amélie seized again the Commercial High Court applying for the review of judgement RCOM 0070/12/HCC basing on article 186 in its paragraph 3 and 6 of Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

[4] The Commercial High Court delivered the judgment RCOM 0306/12/HCC on 21/01/2013 whereby it decided that the claim of Fiat Amélie and Dunia Bakarani has merit and decided that Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre lost the case, and nullified the auction of the house located in plot n° 339 in Rubavu Town conducted on 15/12/2011.

[5] The court also ordered Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre to jointly pay, Fiat Amélie the sum of money amounting to 29,575,000Frw for the rentals of the house and 500,000Frw for the lawyer's fees which make a total of 30,575,000Frw, and immediately after delivery of the court decision starting with the money that Notary Kayitesi Judith has deposited in the National Bank after the auction, and ordered them to jointly pay the court fees amounting to 9,000Frw.

[6] On 6/2/2013, the Ombudsman wrote to the Supreme Court requesting the review of judgment RCOM 0306/12/HCC rendered by the Commercial High Court due to injustice resulting from the fact that there are laws and evidences which were ignored.

[7] After analysing the report of the Inspector General of courts on this judgment, on 27/3/2013 the President of the Supreme Court, basing on article 80 of Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, decided to refer this judgment to the registry of the Supreme Court to be tried again.

[8] Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre applied for the review of judgment RCOM 0306/12/HCC on the following injustice grounds:

- a. disregard of the evidences and laws that are obvious to everyone, they claim the judge has ignored article 78 and 79 of the of Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.
- b. admission and examination of the claim on merits contrary to the legal provisions, they argue that, even if he were competent, the judge could not have admitted the claim and examined it on merits basing on article 12 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.
- c. Support of the fraud and faults of the plaintiffs; they argue that the claim of the plaintiffs was based on fraud and violated the law for purposes of staying the auction purporting to base on the contract of sale of the house which was already seized and was no longer in the possession of its owner as supported by article n° 295 of Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at that time.

[9] Fiat Amélie requests the Supreme Court to order the plaintiffs to pay him 3,500 USD per month for the period of 13 months for the rents of the house he bought before the auction. Himself and Dunia Bakarani request to order the plaintiff to pay them 2,000,000 Frw for having involved them in the court proceedings for no ground and 2,000,000Frw for the lawyer's fees. I&M Bank (former Banque Commerciale du Rwanda) also lodged a cross appeal requesting the Supreme Court to order Fiat and Dunia to pay the former the procedural fees amounting to 500,000Frw and the lawyer's fees amounting to 500,000 Frw.

[10] The public hearing was held on 4/2/2014; Mberabagabo Innocent, Butera Jean-Pierre and Kayitesi Judith represented by Counsels Nzamwita Toy and Twagirayezu Christophe, Fiat Amélie and Dunia Bakarani were represented by Counsels Shema Gakuba Charles and Buhuru Pierre-Célestin while I&M Bank (former Banque Commerciale du Rwanda) was represented by Counsel Batware Jean-Claude.

II. ANALYSIS OF LEGAL ISSUES

a. Whether the Commercial High Court was not competent to hear the case RCOM 0306/12/HCC

[11] Nzamwita Toy, the counsel for Mberabagabo Innocent, Butera Jean-Pierre and Kayitesi Judith says that the Commercial High Court was not competent to hear the case RCOM 0306/12/HCC since FIAT Amélie and Dunia Bakarani had lodged an application for

review of judgement RCOM 0070/12/HCC finally rendered by that court due to extreme injustice whereas basing on article 78 and 79 of Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, that claim should not have been filed with that court since the Supreme Court is the only competent court to examine the applications for reviewing the judgments on grounds of extreme injustice. Thus, he finds that since the Commercial High Court has given itself the competence it does not have, this constitutes the ground that reveals injustice in this case.

[12] Counsel Nzamwita Toy explains that Fiat Amélie and Dunia Bakarani could not base on article 186 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure when filing the claim before the Commercial High Court since the application for reviewing the judgment due to injustice is filed pursuant to article 78 and 79 of Organic Law n° 03/2012 mentioned above. Twagirayezu Christophe, the counsel for Mberabagabo Innocent, Butera Jean-Pierre and Kayitesi Judith explains that in paragraph 8 of judgment RCOM 0306/12/HCC, the Commercial High Court based on article 189 of Law n° 21/2012 of 14/06/2012 mentioned above and decided that it is competent to admit the application for review; but it ignored that there is an Organic Law which gives the Supreme Court the competence to examine the application for review of the judgment due to injustice.

[13] Counsel Buhuru Pierre Célestin representing Fiat Amélie and Dunia Bakarani says that in judgment RCOM 0306/12/HCC the plaintiffs applied for reviewing judgment RCOM 0070/12/HCC due to injustice and that the court which delivered the judgment for which the review is applied for is the one competent to hear this case basing on provisions of article 186 and 189 of Law n° 21/2012 of 14/06/2012 mentioned above. Thus, he finds that, since these articles give competence to the court which has rendered the final judgment for which review is applied for, the Commercial High Court committed no fault as it is the one that delivered the final judgment RCOM 0070/12/HCC.

[14] Shema Gakuba Charles, the counsel for Fiat Amélie and Dunia Bakarani, says that the plaintiffs applied for the review of the judgment RCOM 0070/12/HCC before the Commercial High Court on the grounds of extreme injustice caused by serious mistakes of confusing the facts basing on article 186, paragraph 3 and 6 of Law n° 21/2012 of 14/06/2012 mentioned above, while article 78 and 79 of Organic Law n° 03/2012 mentioned above do not include “confusion of the facts” among the grounds for application for review of the final judgment on the grounds of injustice and thus, he finds that the argument has not to be considered.

[15] Counsel Batware Jean-Claude who represents I&M BANK (former Banque Commerciale du Rwanda) says that the judgment RCOM 0306/12/HCC requested to review the judgment RCOM 0070/12/HCC on grounds of extreme injustice and serious errors committed based on confusion about the situation of facts as provided for by article 186 paragraph 3 and 6 of Law n° 21/2012 of 14/06/2012 mentioned above and that this is evident in the subject matter of judgment RCOM 0306/12/HCC. Thus, he finds that Fiat Amélie and Dunia Bakarani had to refer that petition nowhere else but to the Commercial High Court which delivered the judgment RCOM 0070/12/HCC which became final.

THE VIEW OF THE COURT

[16] The Supreme Court finds the subject matter in the judgment RCOM 0306/12/HCC is “the application for review of judgment RCOM 0070/12/HCC on the grounds of extreme

injustice that resulted from the serious errors committed based on confusion about the situation of facts (article 186 paragraph 3 and 6 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure).

[17] On reading paragraph 8 of judgment RCOM 0306/12/HCC, it is evident that the Commercial High Court decided that it is competent to hear the case since article 189 of Law n° 21/2012 of 14/06/2012 mentioned above provides that the application for the review of the final judgment is brought before the same court which rendered it and that the judgment RCOM 0070/12/HCC for which review is sought was decided by that court and that the plaintiffs based on article 186 paragraph 3 and 6 of Law n° 21/2012 of 14/06/2012 mentioned above while lodging their petition .

[18] Article 186 paragraph 3 of Law n° 21/2012 of 14/06/2012 mentioned above provides that “an application for review can be made if, since the time of rendering the judgment, it was evident that there was injustice due to the judgment for which the review is sought, whether an element of evidence was in the file but was not noticed by the court or was revealed later” and paragraph 6 of the same article provides that “an application for review can be made if, during the hearing, there were errors committed based on confusion about the situation of facts or basing on a non-existing law”.

[19] Article 189 paragraph 1 of Law n°21/2012 of 14/06/2012 mentioned above provides that “the application for review of a final judgment shall be brought before the same court that rendered it but with a judge or judges that did not preside over the hearing”.

[20] Article 78 of Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that “the Supreme Court shall have exclusive jurisdiction over applications for review of final decisions due to injustice upon approval of the President of the Supreme Court and article 79 of the aforesaid Organic Law provides for the procedure for petitioning the Supreme Court over the applications for review of final judgment due to injustice.

[21] The analysis of provisions of those articles and the subject matter of judgment RCOM 0306/12/HCC shows undoubtedly that before the Commercial High Court, Fiat Amélie and Dunia Bakarani filed the application for review of judgment RCOM 0070/12/HCC basing on article 186 paragraph 3 and 6 of Law n° 21/2012 of 14/6/2012 mentioned above. This is demonstrated under point 10 of the court submissions of FIAT Amélie and Dunia Bakarani submitted to the Commercial High Court stating that their petition is based on article 186,187, 188 and 189 of Law ° 21/2012 of 14/6/2012 mentioned above. Thus, that Court was competent to hear the case since it is the one that which had finally decided the judgment RCOM 0070/12/HCC.

[22] With regard to the allegations of the plaintiffs that Fiat Amélie and Dunia Bakarani seized the Commercial High Court applying for review of judgment RCOM 0070/12/HCC due to extreme injustice and that, due to this, they should have filed the petition with the Supreme Court, this Court finds that it is not true since it is clear from article 186 paragraph 3 of Law n° 21/2012 of 14/06/2012 mentioned above that the party who has right to apply for review may do so on the ground that, since the time of rendering the judgment, it was evident that there was injustice due to the judgment for which the review is sought and the use of the word “extreme” in the subject matter has no effect in knowing the court which is competent to hear the case RCOM 0306/12/HCC since it is clear that the claim filed in this case is based on the provisions of Law n°21/2012 of 14/06/2012 mentioned above.

[23] In light of the above explanations, the Supreme Court finds the argument of the plaintiffs unfounded since the Commercial High Court was competent to hear the application of review of judgment RCOM 0070/12/HCC filed by Fiat Amélie and Dunia Bakarani.

b. Whether Fiat Amélie and Dunia Bakarani have concurrently exercised both ways of appeal.

[24] Counsel Nzamwita Toy says that pursuant to the provisions of the article 12 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, the Commercial High Court could not have admitted the application for the review of the judgment and examine it because, on 26/10/2012, Fiat Amélie and Dunia Bakarani had lodged the appeal against the judgment RCOM 0070/12/HCC before the Supreme Court and later, on 6/11/2012, they applied for the review of same judgment; thus, he finds that since they resorted to two ways of appeal: ordinary appeal and the application for review whereas the exercise of the first entails the loss of the right to exercise the second, Fiat Amélie and Dunia Bakarani had no right of applying for the review of judgment RCOM 0070/12/HCC while they had already appealed against it before the Supreme Court.

[25] Counsel Buhuru Pierre Célestin says that the provisions of article 12 of Law n° 21/2012 of 14/6/2012 mentioned above are related to ordinary ways of appeal, opposition and appeal and that the application for review is an extraordinary way of appeal. He explains that the fact that the judgment RCOM 0070/12/HCC was decided on the execution of the judgment and it could not be appealed against, Fiat Amélie and Dunia Bakarani withdrew their appeal claim and filed an application for review pursuant to article 26 of the Law n° 21/2012 of 14/6/2012 mentioned above which provides that in case of self-deprivation of the right to action, the acceptance of another party is not necessary.

[26] Counsel Batware Jean-Claude says that the application for review of judgment is an extraordinary way of appeal and that, during their pleadings before the Commercial High Court, FIAT Amélie and Dunia Bakarani said that they have withdrawn their claim of appeal before the Supreme Court and thus, he finds that their self-deprivation of the right to action was enough since it does not require the acceptance of another party.

THE VIEW OF THE COURT

[27] With regard to the objection raised before the Commercial High Court by Mberabagabo Innocent, Butera Jean-Pierre and Kayitesi Judith requesting to dismiss the claim of Fiat Amélie and Dunia Bakarani because they concurrently exercised two ways of appeal, the Supreme Court finds that under paragraph 6 of the judgment RCOM 0306/12/HCC the aforesaid Court decided they did not exercise two ways of appeal since the application for review was lodged after withdrawing the appeal claim before the Supreme Court.

[28] Article 12 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “a party shall not choose both ways of appeal for the same case. The first appeal shall be only considered and he/she shall for the same case lose the right to exercise the second way of appeal”.

[29] By analyzing the provisions of that article, the Supreme Court finds that it is clear that the ways of appeal mentioned are the ordinary ways of appeal, that is to say the opposition and appeal. However, notwithstanding what has been said, nothing prohibits, in this case, the

application of legal principles governing the concurrent exercise of two ordinary ways of appeal. It finds that what is prohibited by the legislator is to *concurrently exercise two ways of appeal*¹ while in this case it is clear that Fiat Amélie and Dunia Bakarani filed an appeal with the Supreme Court on 26/10/2012, later they applied for review before the Commercial High Court on 6/11/2012 withdrew the appeal on 11/12/2012. Therefore, it is evident that they did not simultaneously exercise two ways of appeal since they filed the ordinary appeal on 26/10/2012, 12 days later they lodged the extraordinary claim of application for the review on 6/11/2012 and later on they withdrew the appeal they had lodged before the Supreme Court.

[30] Basing on what has been said above; the Supreme Court finds that the arguments of the plaintiffs in respect to the ground of injustice should be considered baseless since the Commercial High Court committed no errors.

C. Whether the contract of sale between Fiat Amélie and Dunia Bakarani should not be considered as valid.

[31] Counsel Nzamwita Toy says that basing on the provisions of article 295 of Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was into force when the sale contract of the house between Fiat Amélie and Dunia Bakarani was made, that sale should not be taken as valid since Fiat Amélie has delivered the sale price proceeds to I&M BANK (former Banque Commercial du Rwanda) instead of depositing it with the State Treasurer. He adds that this action of Fiat Amélie led the notary to proceed with the auction in the State's interests. Thus, he finds that the debt-clearance certificate that I&M BANK (former Banque Commercial du Rwanda) issued to Dunia Bakarani was not in itself enough to stay the auction. Furthermore, he says that the notary had no obligation of staying the auction basing on that certificate since it required another court order from the President of Rubavu Intermediate Court ordering him to stay the auction. He concludes saying that the provisions of article 318 of Law n° 18/2004 of 20/06/2004 mentioned above which was into force at that time cannot be based on in this case while the provisions of article 295 of Law n° 18/2004 of 20/06/2004 mentioned above were not complied with.

[32] Counsel Shema Gakuba Charles says that the fact that Fiat Amélie bought that house and later paid to I&M BANK (former Banque Commercial du Rwanda) shows that Dunia Bakarani voluntarily executed the judgment and he finds that as long as I&M BANK (former Banque Commerciale du Rwanda) issued the debt-clearance certificate to Dunia Bakarani and notified it to Notary Kayitesi Judith requesting her to stay the auction, the Commercial High Court committed no fault since the sale contract was made before the auction was conducted and the sale proceeds were given to I&M BANK (former Banque Commerciale du Rwanda). Thus, he finds that depositing the sale proceeds with the State Treasurer was not necessary since the house of Dunia Bakarani was seized in the interests of I&M BANK (the former Banque Commercial du Rwanda).

¹ “What the rule “*Electa una via non datur recursus ad alteram*” prohibits, is the simultaneous referral to two ways of appeal against the same decision” Albert FETTWEIS, Manuel de procédure civile, deuxième édition, Faculté de droit de Liège, 1987, PP 479-480. It has been decided that the appeal of the judgment in absentia, lodged after the opposition, but which is important, has to be admitted if the opposition itself is inadmissible”, in Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2^e édition, Larcier, Bruxelles, 2006, P. 927. In case the opposition was made after the appeal, if the appeal is inadmissible, there will be no hinderance on the admissibility of a regular opposition, made for the first time. Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2^e édition, Larcier, Bruxelles, 2006, P. 927.

[33] Counsel Batware Jean-Claude says that basing on the article 314 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, any person shall have the right to redeem the seized property by satisfying the damages and costs in the interests and with the consent of the debtor. He explains that before the auction, I&M BANK (former Banque Commerciale du Rwanda) and Dunia Bakarani had reached the consensus since the latter voluntarily paid the former that notified this to the notary; thus he finds that the auction was illegally conducted.

THE VIEW OF THE COURT

[34] Article 293 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure (former article 295 of Law n° 18/2004 of 20/6/2004 which was into force that time of the sale of the house between Fiat Amélie and Dunia Bakarani) provides that “the alienation of immovable property and the establishment of any charges related to it by the debtor after being served with the order to pay or objection shall be automatically void unless the acquirer deposits in the hands of a government accountant an amount which is equal to the debt and costs which are supposed to be paid to the distrainer”.

[35] Article 313 of Law n° 21/2012 of 14/6/2012 mentioned above (former 317 of Law n° 18/2004 of 20/6/2004 mentioned above) provides that any distrainee debtor may, at any time, redeem the seized property by paying to the court’s account, a sum sufficient to satisfy the principal debt which led to the seizure, interests and costs and specifying that the sum is meant to satisfy the debt of the distrainer, if the rights of the latter are subsequently recognized”.

[36] Article 314 of Law n° 21/2012 of 14/6/2012 mentioned above (former article 318 of Law n° 18/2004 of 20/6/2004 mentioned above) provides that “any person shall have the right to redeem the seized property by satisfying the damages and the costs of the seizure, as long as it is made before the end of the sale, in the interests and with the consent of the debtor”.

[37] Those legal provisions demonstrate that, though is seized, any person or the debtor can, as long as it is made before the end of the sale, redeem the seized property if it is made in the interests of the creditor and of the debtor implying that the sum is meant to satisfy the debt of the distrainer and the seizure costs.

[38] With regard to article 293 of Law n° 21/2012 of 14/6/2012 mentioned above, the Supreme Court finds that it is not necessary to deposit with the State Treasurer the sum of the debt and costs of the seizure and no indispensable formality is required since what is necessary is to pay to the creditor on top of that article 293 of the aforementioned Law is not of public order.

[39] With regard to the allegations of the plaintiffs that the contract of sale of the house between Fiat Amélie and Dunia Bakarani should not be considered valid because it was necessary to get another court order of the President of the Intermediate Court staying the auction before entering into that sale contract, the Supreme Court finds that it is not true since it is not provided for by any law, instead any person or the debtor has the right to redeem the seized property by satisfying the damages and the costs of the seizure, as long as it is made before the end of the sale, in the interests and with the consent of the debtor.

Therefore, it is not necessary to request the President of Intermediate Court's order staying the auction before redeeming the seized property.

[40] In light of all those grounds, the Supreme Court finds that the sale contract between Fiat Amélie and Dunia Bakarani has to be considered as valid since it was made for redeeming the house which was seized by I&M BANK (former Banque Commerciale du Rwanda) which was paid and notified Notary Kayitesi Judith before the auction.

a. Whether damages for the rent of the house awarded by the Commercial High Court have basis.

[41] Counsel Nzamwita Toy says that ordering Notary Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre to pay to Dunia Bakarani 30,000,000 Frw in damages amounts to injustice since they committed no fault and on top of that Notary Kayitesi Judith was acquitted by two courts. He says that Butera Jean-Pierre could not commit any fault since he did not buy nor sell the house and Mberabagabo Innocent committed no fault since he saw the advertisement for and attended the auction at which he bought the house; thus he finds that the Commercial High Court's decision awarding those damages is baseless.

[42] Counsel Buhuru Pierre Célestin says that the Commercial High Court decided that the auction conducted by Notary Kayitesi Judith was illegal, it deprived Fiat Amélie and Dunia BAKARANI of its rents since that house was leased at 3,500 USD per month before its sale and that buyers at auction used fraud and that it is Butera Jean-Pierre who drafted that contract. He explains that before the auction Mberabagabo Innocent, Butera Jean-Pierre and Bisamaza formed the company called "Prime Lodge", and they shortly changed the destination of the business which was carried out in the sold house, thus he finds that, as long as the Commercial High Court has upheld the decision taken on those explanations, it is clear that it has explained the faults they committed.

[43] Counsel Gakuba Shema Charles says that on 13/12/2011 I&M Bank (former Banque Commerciale du Rwanda) wrote to Notary Kayitesi Judith requesting her to stay the auction since Dunia no longer had any debt towards the bank. Therefore, since the notary ignored all this and auctioned the house while Butera Jean Pierre and Mberabagabo Innocent bought the same house fully knowing that this was fraudulent, he finds this as serious faults for which they have to be held liable.

THE VIEW OF THE COURT

[44] The Supreme Court finds that in paragraph 14 of the judgment for which review is sought, the Commercial High Court has decided that "the committed faults deprived Fiat Amélie who bought the house before the auction from the rents of his house amounting to 3,500USD per month for the period of 13 months which make the total of 45,000USD equivalent to 29,575,000Frw which amount at the time of the execution of this judgment has to be deducted from money deposited with BNR when the auction was carried out (article 258 CCB III)", thus it has ordered Notary Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre to jointly pay to Fiat Amélie 30,575,000Frw after delivery of the judgment, starting with the amount that Notary Kayitesi Judith deposited with BNR on 19/12/2011 after conducting the auction.

[45] With regard to Notary Kayitesi Judith, the Supreme Court finds that since she proceeded with the auction and sold that house located in plot n° 339 in Rubavu (former

Gisenyi) despite the fact that I&M Bank (former Banque Commercial du Rwanda) had notified her, before the auction, that Dunia Bakarani had already finished to pay it and requested her to stay the auction she committed the fault for which she has to be held liable and pay damages thereof since this act caused damage to Fiat Amélie and deprived him of the rents for the house, which he had bought before the auction, amounting to 3,500USD per month for the period of 13 months which makes the total of 29,575,000Frw by the time the Commercial High Court delivered its judgment. In addition, the Supreme Court finds that the fact that Notary Kayitesi Judith was acquitted in criminal cases does not exempt her from being held liable for torts or quasi-torts she committed against Fiat Amélie, thus the Notary Kayitesi Judith has to make good the damage.

[46] With regard to Mberabagabo Innocent, the Supreme Court finds that since he was notified that the house he bought from the auction was litigious as it was bought by another person before; but he kept its possession and changed the activities which were carried out in that house, this is a fault for which he has to be held liable because he deprived Fiat Amélie of the rents for the house, which he had bought before the auction, amounting to 3,500USD per month for the period of 13 months which makes the total of 29,575,000Frw by the time the Commercial High Court delivered the judgment, thus Mberabagabo Innocent has to make good the damage.

[47] With regard to Butera Jean-Pierre, the Supreme Court finds that he caused no damage to Fiat Amélie since he did not buy that house at auction and the fact that he is among shareholders of the company called “Prime Lodge” is not the ground that can make him liable for the faults of Mberabagabo Innocent, thus Butera Jean-Pierre cannot be held liable for the damage caused by Mberabagabo Innocent.

[48] In light of all the above grounds and basing on article 258 of the Civil Code Book Three which provides that “ any act of a person that causes damage to another person, obliges the one whose fault has caused damage to make good the loss”, the Supreme Court finds that only Notary Kayitesi Judith and Mberabagabo Innocent have to pay Fiat Amélie 29,575,000Frw for the rents of the house which he had bought before the auction amounting to 3,500USD per month for the period of 13 months, thus the judgment RCOM 0306/12/HCC has to be overruled with regard to Butera Jean-Pierre since it has ordered him jointly with others to pay to Fiat Amélie that sum of money.

a. Whether the defendants should be awarded damages they claim

[49] Counsels Buhuru Pierre Célestin and Gakuba Shema Charles request the Supreme Court to order Notary Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre to pay to FIAT Amélie and Dunia Bakarani 2,000,000Frw for having involved them in court proceedings for no ground and 2,000,000Frw for the lawyer’s fees.

[50] Counsel Batware Jean-Claude requests the Supreme Court to order Notary Kayitesi Judith, Mberabagabo Innocent and Butera Jean-Pierre to pay to I&M Bank (former Banque Commerciale du Rwanda) 500,000Frw for the procedural damages and 500,000Frw for the lawyer’s fees.

[51] Counsel Nzamwita Toy, says that the defendants should not be awarded those damages since the plaintiffs committed no fault.

THE VIEW OF THE COURT

[52] The Supreme Court finds that Fiat Amélie and Dunia Bakarani cannot be awarded 2,000,000Frw in damages they request for having been involved in court proceedings for no ground since they have right to lodge a claim in case they find that they have suffered from injustice.

[53] With regard to 2,000,000Frw for the lawyer's fees that Fiat Amélie and Dunia Bakarani request, the Supreme Court finds that it has to award them 500,000Frw for the lawyer's fees at its discretion since what they request is excessive.

[54] With regard to 500,000Frw for the procedural damages and 500,000Frw for the lawyer's fees that I&M Bank (former Banque Commerciale du Rwanda) requests, the Supreme Court awards 500,000 Frw at its discretion since it finds what they request to be excessive.

[55] Basing on all those grounds, the Supreme Court has to order Notary Kayitesi Judith and Mberabagabo Innocent to pay to Fiat Amélie and Dunia Bakarani 500,000Frw for the lawyer's fees and pay to I & M Bank (former Banque Commercial du Rwanda) 500,000Frw for the procedural and lawyer's fees.

III. THE DECISION OF THE COURT

[56] Decides that the claim lodged by Notary Kayitesi Judith and Mberabagabo Innocent is without merit;

[57] Decides that Butera Jean-Pierre's claim has merit;

[58] Orders Notary Kayitesi Judith and Mberabagabo Innocent to jointly pay to Fiat Amélie 29,575,000Frw for the rent of the house;

[59] Orders Notary Kayitesi Judith and Mberabagabo Innocent to jointly pay to Fiat Amélie and Dunia Bakarani the lawyer's fees amounting to 500,000Frw plus 500,000Frw which was awarded by the Commercial High Court, which make in total 1,000,000Frw;

[60] Orders Notary Kayitesi Judith and Mberabagabo Innocent to jointly pay to I&M Bank (former Banque Commerciale du Rwanda) 500,000Frw for the advocate's and the procedural fees;

[61] Orders Notary Kayitesi Judith and Mberabagabo Innocent to pay the court fees equal to 14,500Frw.