

## MUKAMUSONI v. GOVERNMENT OF RWANDA ET AL

[Rwanda SUPREME COURT – RADA0030/12/CS – (Mukamulisa, P.J., Mukandamage and Gatete, J.) October 10, 2014].

*Administrative procedure – Public auction – The Case requesting for annulment of the auction conducted unlawfully can be subject to appeal since it is not a case relating to dispute arising from enforcement of the judgment – Decree Law N°09/80 of 07/07/1980 relating to organisation and jurisdiction of Courts, article 176.*

*Administrative procedure – Public auction – A creditor or a debtor who deems that the bid price is low may request the public auction to be adjourned to another specific day on which day the public auction has to be conducted and the value of the property must be ascertained on the current market value – The law of 15/07/1964 of civil and commercial procedure, article 336.*

*Administrative procedure – Public auction – Alienation of an immovable property or any other form of creation of rights in favour of a third party by the debtor after being served with the writ of attachment is impossible unless the beneficiary accepts to pay the debt and the court fee owed to the creditor – The law of 15/07/1964 of civil and commercial procedure, article 361.*

**Facts:** In the context of enforcement of the judgment RPA8787/KIG in which Mukamusoni was ordered to pay 3,690,000Frw to Ntiserurwa and the prorated fee the court bailiff auctioned the house of Mukamusoni. Thereafter, Mukamusoni filed a case against the court bailiff and his employer which is the Government of Rwanda before the High Court asserting that the auction was unlawfully conducted. Kamali, who bought that house from Yansoneye Consolée who asserts that the house auctioned is a property he bought before the commencement of public auction process, intervened in the case. The Court decided that her claim is not founded and ordered her to pay Kamali damages, counsel fees, prorated fee and court fees.

Mukamusoni appealed before the Supreme Court asserting that the Court bailiff did not respect the procedure of auction, because he did not serve Mukamusoni with prescribed documents, he auctioned the property on a lower price and he executed the judgment on the prorated fee, yet it was paid.

The State raised an objection on inadmissibility of appeal on the ground that the judgment was rendered on the disputes arising from the enforcement of the judgment which is not subject to appeal while Kamali asserts that the issue in this case relates to the way the judgment was enforced and therefore, it should not be admitted.

Mukamusoni and Yansoneye assert that the claim of Mukamusoni is not related to disputes arising from enforcement of the judgment but instead, it is based on annulment of the public auction conducted unlawfully. The Court decided that the objection raised by the State of Rwanda has no merit.

With regard to the assertion that there are necessary procedures that were not respected by the court bailiff while conducting the auction, the State of Rwanda asserts that the president of the court issues the auction order after examining whether all formalities were respected and that order of the president of the court has never been invalidated, since Mukamusoni did not appeal against it.

**Held:** 1. The Case requesting for annulment of the auction conducted unlawfully can be subject to appeal since it is not a case relating to disputes arising from enforcement of the judgment.

2. A creditor or a debtor who deems that the bid price is low may request the public auction to be adjourned to another specific day on which day the public auction has to be conducted and the value of the property must be ascertained on the current market value.

3. Alienation of an immovable property or any other form of creation of rights in favour of a third party by the debtor after being served with the writ of attachment is void unless the beneficiary accepts to pay the debt and the court fee owed to the creditor.

4. The plaintiff must prove his allegations, failure of which the defendant wins the case. The fact that Mukamusoni failed to indicate the prescribed documents she asserts she was not served by the court bailiff, lends this ground baseless.

5. Kamali should be awarded damages for not residing in his house, procedural and counsel's fees, but all has to be determined within the discretion of the Court.

**Appeal has merit in part.  
The objection raised by Yansoneye is overruled.  
Cross appeal raised by Kamali has merit in part.  
The public auction conducted is valid.  
Court fees to be borne by the appellant and government treasury.**

**Statutes and statutory instruments referred to:**

Organic Law N°51/2008 of 9/9/2008 determining the organization, functioning and jurisdiction of Courts, article 93.

Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, article 9.

Decree Law N°09/80 of 07/07/1980 relating to organisation and jurisdiction of Courts, article 176.

The Law of 15/07/1964 of civil and commercial procedure, articles 336, 351, 357 and 361.

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] Mukamusoni Béatrice filed a case against the court bailiff Kagaju and his supervisor, the Government of Rwanda requesting the court to invalidate the public auction conducted on 21/06/2002 in the course of which her house was illegally sold while enforcing the judgment RPA8787/KIG which ordered her to pay Ntiserurwa Christophe 3,690,000Frw and the prorated fee equal to 147,600Frw. Kamali Emmanuel who bought the house and Yansoneye Consolée who asserts that the auctioned house belongs to him because she bought it from Mukamusoni, intervened in the case.

[2] The High Court rendered the judgment in default of Kagaju and Yansoneye, while they were legally summoned. It decided that the auction of the house of Mukamusoni Béatrice that was located in the plot N° 112 at Kimironko remains valid, because her

arguments that there have been irregularities, that the public auction was made on an unidentified house (*maison non identifiée*), that the court bailiff did not adjourn the auction due to the low price, yet she had requested him to do so, that the court bailiff mentioned 147,600Frw of prorated fee in the writ of attachment yet she had paid it, and that she did not refund her the balance after enforcement of the judgment, have no merit.

[3] The Court ordered Mukamusoni to pay Kamali Emmanuel damages equal to 1,000,000Frw and the counsel fees equal to 300,000Frw which in total equal to 1,300,000Frw and the payment of its prorated fee equal to 52,000Frw and to pay the court fees.

[4] Mukamusoni appealed before the Supreme Court asserting that the bailiff Kagaju did not respect the procedure of the public auction, that the house was auctioned at a lower cost but the judge did not consider it, that he enforced the judgment on the prorated fee yet it was paid, she was not given the balance of money after the auction of the house and the judge disregarded the submissions proving that among the auctioned assets included a house belonging to Yansoneye Consolée.

[5] The Attorney General for the Government of Rwanda raised an objection of inadmissibility of the appeal lodged by Mukamusoni, asserting that the judgment rendered on the disputes arising from enforcement of judgment is not subject to appeal.

[6] Yansoneye Consolée who intervened in the case asserts that the house that was auctioned belongs to her because she bought it from Mukamusoni Béatrice.

[7] The hearing was heard in public on 09/09/2014, Mukamusoni being represented by Counsel Mboniyimpaye Elie, while the State of Rwanda was represented by Ntaganda Felix, the Principal State Attorney, Kamali Emmanuel being represented by Counsel Bigaraba John, Yansoneye Consolée represented by Counsel Gumisiriza Hilary and Kagaju Alphonse defaulted while he was summoned to unknown address in accordance with the law.

## **II. ANALYSIS OF LEGAL ISSUES**

### **A. To determine whether the appeal of Mukamusoni should not have been admitted.**

[8] Ntaganda, the State attorney for the Government of Rwanda asserts that the appeal of Mukamusoni should not be admitted as she filed against the State of Rwanda and the court bailiff Kagaju who auctioned her house, claiming for the annulment of that auction because of irregularities and she filed before the High Court that replaced the Court of Appeal of Kigali, as it was the one that rendered at the last instance the judgment RPA8787/KIG that was to be enforced, thus the disputes based on the enforcement of the judgment are heard by the court that rendered it at the last instance and those judgments are not subject to appeal as provided for under article 208(2) of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

[9] Counsel Mboniyimpaye on behalf of Mukamusoni asserts that the objection raised by the State of Rwanda has no ground since article 208(1) of the Law N°21/2012 of 14/06/2012 on which the principal State attorney bases his objection of inadmissibility, provides for the disputes that arise in the course of enforcement of the judgment whether in process or already closed which is different from the claim of Mukamusoni consisting of annulment of the public auction conducted in violation of the law.

[10] He adds that the invocation of this objection leads to the modification, by the Government, of the claim filed by Mukamasoni in the High Court and this is prohibited on appeal level as provided for in article 4 of the Law relating to civil, commercial, labour and administrative procedure.

[11] Counsel Gumisiriza on behalf of Yansoneye also asserts that the claim instituted before the High Court by Mukamasoni was meant for the annulment of the public auction conducted in violation of the law, which is different from asserting that there are disputes arising between two parties as asserted by the State Attorney. He finds that there have been irregularities in the seizure and the auction of the property meant to be sold and the one which was not supposed to be sold; thus Yansoneye should not be the victim, and the court should base on article 268 of the law relating to civil, commercial, labour and administrative procedure which states about prohibition of sale of the seized assets, instead of basing on the aforementioned article 208.

[12] Counsel Bigaraba John representing Kamali asserts that the issue in this case concerns the way the judgment was enforced, therefore the fact that Mukamasoni did not seize other courts, rather she seized the court that rendered the judgment at the last level indicates that the subject matter consists of the disputes that arose from the enforcement of the judgment, and the resulting judgment is not subject to appeal.

## **THE VIEW OF THE COURT**

[13] Article 93(3<sup>o</sup>) of the Organic Law N<sup>o</sup>51/2008 relating to the organization, functioning and jurisdictions of courts provides that the High Court hears the claims relating to administrative cases at the level of the Province and Kigali City up to the Office of the President of the Republic relating to actions relating to damages based on grounds other than contractual or quasi contractual, if the damage is a result of an act or omission of the administration or due to acts carried out in public interest.

[14] With regards to the court that Mukamasoni seized, the documents included in the case file indicate that after the public auction of her house located in the plot N<sup>o</sup> 112 in Kimironko in the City of Kigali that took place on 21/06/2002, Counsel Pasteur Munyandamutsa Oscar who represented her instituted the claim in the first Instance Tribunal of Kigali requesting for the invalidation of the auction conducted by the court bailiff Kagaju because it did not respect the law, basing on article 176(1) of the Law N<sup>o</sup>09/80 of 07/07/1980 relating to the organization and competence of courts which provided that the disputes arising from the enforcement of judgments are referred before the First Instance Tribunal of the place of that enforcement.

[15] That Decree Law was repealed before the judgment was rendered during the law reform and judicial reforms in 2004 and the case was transferred to the High Court as it was the one with jurisdiction to hear it. It was registered on RAD0447/06/HC/KIG and the judgment was rendered on 27/02/2009 whereby the claim was dismissed as no security for court fee was paid. After its payment, the claim was recorded on RAD0078/09/HC/KIG in the same court on 22/07/2009 and it is this judgment which was appealed against before the Supreme Court.

[16] The Court finds that the statements of the Attorney General in respect of which Mukamasoni seized the court that ruled on the judgment RPA8787/KIG that was being

enforced at the last level and thus her claim relates to disputes arising from enforcement of that judgment, is not founded because she seized the First Instance Tribunal of Kigali in accordance with the Law N°09/80 of 07/07/1980 relating to organization and judicial competence that was into force at the time she instituted the claim, and the case was transferred in the High Court, where the claim was registered basing on the fact that it was the one with competence basing on article 93(3°) of the Law N°51/2008 stated above.

[17] With regards to the issue of determining whether the claim of Mukamusoni is based on the disputes arising from the enforcement of the judgment, the Court finds that basing on the facts of the case where her counsels explained before the High Court that the public auction was conducted on an unidentified property, that the court bailiff disregarded the suspension of the auction due to the low price, that he included in the writ of attachment 147,600Frw of prorated fee yet it was paid and so on; the subject matter of the case relates to the irregularities of the auction itself as there are some legal provisions it did not respect. Therefore, it does not consist of disputes arising from the enforcement of the judgment RPA8787/KIG, because the subject matter of the claim does not relate to the execution of the judgment in contradiction with its rulings.

[18] Pursuant to the aforementioned explanations, the Court finds that the objection of inadmissibility of the claim of Mukamusoni raised by the State attorney is not founded.

**b. To determine whether the public auction had irregularities.**

**Regarding the procedure of conducting a public auction.**

[19] Counsel Mbonyingaye on behalf of Mukamusoni asserts that the court bailiff Kagaju did not respect the formalities of the public auction, including the fact that he did not serve Mukamusoni with the prescribed documents as ruled in the final Judgment RP40276/Kig rendered by the First Instance Tribunal of Kigali on 15/07/2003, in which Mukamusoni was accused of having plucked off the displayed announcement of the public auction, yet it was not conducted.

[20] The State Attorney Ntaganda Félix, asserts that the arguments of the counsel of Mukamusoni that there are compulsory formalities that were not respected by the court bailiff should not be considered to be worth as the cause of nullity of the auction since the president of the Court issues an order of public auction after verification of the compliance with all formalities.

[21] He goes on to say that in the course of auction, the court bailiff complies with the order of the president of the court which is a decision to be respected by whoever is concerned and could be cancelled only through procedures provided for by the law under article 140 of the Constitution. He thus finds that, the order of the president has never been invalidated because Mukamusoni has never appealed against it so far, thus its enforcement remains valid.

[22] Counsel Ntaganda also asserts that Mukamusoni does not indicate the compulsory formalities that were not respected after the issuance of the order of the president that would cause the annulment of the auction.

[23] Counsel Bigaraba John on behalf of Kamali asserts that Mukamusoni does not indicate the documents that the court bailiff did not serve her, but he finds that all formalities were undertaken in accordance with the law, since:

On 21/03/2001, the court bailiff Sebagabo Stany served Mukamusoni an order of payment, failure of which would lead to the forceful recovery from her assets;

After realizing that Mukamusoni was indifferent, he drafted an attachment order of her house located in the plot N° 112 in Nyagatovu/Kimironko/Kacyiru/in Kigali City as indicted by the display affidavit drafted on 26/06/2001;

On 03/10/2001 Mukamusoni sold that house to Yansoneye on 4,000,000Frw and this sale was realized after the house was auctioned.

On 16/10/2001 the First Instance Tribunal released an order for the public auction of the house to take place on 26/01/2002 at 10h00 a.m and that at day it did not take place, rather, it was adjourned and scheduled on 21/06/2002.

## **THE VIEW OF THE COURT**

[24] Article 9(1) of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that “Every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case”.

[25] The Court finds that Mukamusoni fails to indicate the prescribed deeds that she contends to have not been served by the court bailiff. Indeed, even in the Judgment RP40276/Kig rendered by the First Instance Tribunal of Kigali on 15/07/2003 on which she relied (see page 5), it is obvious that the court doubted on whether she did not really receive the writs of attachment of her house because they were not served to her in person, therefore she was acquitted on the offense of selling someone else’s house, thus her appeal on this ground is not founded as it is obvious that all procedures provided for by the law were respected.

**Regarding the fact that the court bailiff refused to adjourn the auction as requested for by Mukamusoni and went ahead to auction the house on a low price.**

[26] Counsel Mbonyimpaye representing Mukamusoni asserts that she proved before the court that the court bailiff auctioned her house on a low price as it was indicated on the affidavit of the auction by her representative and in the valuation report but it did not consider it while this was requested before the deliberation of the case.

[27] The State Attorney Ntaganda argues that the fact that Mukamusoni claimed that the house was auctioned on a lower price does not motivate the fact that she failed to pay, and her assets had to be auctioned to obtain payment of the debt and her ground in respect of which the price was lower is baseless to entail the annulment of the auction as long as she did not pay voluntarily.

[28] He asserts that the law that was into force by then did not oblige the court bailiff suspend the auction because the price is lower, instead it gave him/her the discretion to appreciate, on his/her own initiative or upon the request, and in case he/she may find that the auction should be adjourned due to the lower price, he could do that, and however, even when he could do suspend it for lower price reason, he could not adjourn the auction on that ground anymore.

[29] Counsel Bigaraba John on behalf of Kamali asserts that although Mukamusoni argues that her house was sold on a lower price, she disregarded the fact that the auction took place after it has been adjourned before, and the answer to this issue relies on the provision of

article 336 of the Law of 15/07/1964 that governed the civil and commercial procedure as modified which provided that at the second instance, any price offered is accepted.

[30] He also asserts that even if it would have been the first time, this article indicates that the adjournment of the auction is not compulsory; instead it is in the discretion of the court bailiff.

## **THE VIEW OF THE COURT**

[31] Article 336 of the Law of 15/07/1964 relating to civil and commercial procedure that was in force by the time the house of Mukamusoni was auctioned, provided that “when it is obvious that the attached property could be sold at a lower price, the civil servant mandated to auction, upon the request of the distrainer or on his own initiative, can suspend the auction. In that case, the president of the court schedules another day of the auction basing on the period provided for under article 330 and complies with all requirements to avoid that any party to incur the loss. On that scheduled day, those assets must be auctioned in any situation whatsoever”.

[32] Again, article 351 of that law provided that “In case the debtor or the creditor finds the given price to be inadequate, he can request for the adjournment of the auction, but which cannot exceed one month from the time the first auction took place. The order of the president of the court is necessary for that adjournment”.

[33] The Court finds that as indicated under the letter dated 27/06/2002 by Counsel Pasteur Munyandamutsa Oscar who initiated the claim on behalf of Mukamusoni, admits that the auction was conducted twice as it was adjourned from 26/01/2002 to 21/06/2002. The court finds without merit the allegations of Mukamusoni in respect of which her house was auctioned on the lower price, because it was auctioned on 5,250,000Frw while she argues that she sold it to Yansoneye Consolée for 4,000,000Frw.

[34] The Court also finds that it cannot base on the value indicated by the valuation conducted on 02/05/2012 which Mukamusoni states that it was requested for by the lower court, so that it can determine whether the house was sold at a lower price, because the value of the auctioned house has to be determined at the time that challenged auction was conducted which is on 26/01/2002.

[35] The Court thus finds that the appeal of Mukamusoni with regards to this ground also has no merit.

### **Whether the Court bailiff has enforced the judgment while the payment was in process.**

[36] Counsel Mboniyimpaye on behalf of Mukamusoni argues that he proved to the court that the Court bailiff Kagaju enforced the judgment while the payment was in progress, including 147,600Frw of the prorated fee as indicated by the proof of payment, and the judge had decided that it has no merit because she did not indicate it to the Court bailiff while by that time, Mukamusoni was in prison for the charges to have removed the announcements, yet that did not happen as stated in the Judgment RP40276/Kig.

[37] The State Attorney Ntaganda adduces that the statements of Mukamusoni in respect of which she declares that the auction was conducted after she had started to pay does not matter because she did not prove it to the Court bailiff and the importance does not rely on the

beginning of the payment, rather, on the payment of the entire debt she was ordered to pay. He adds that even the amount she asserts to have paid is very slight, and consisted of the prorated fee she paid by the time she was about to be acquitted from the prison, and she can be refunded that amount.

[38] Counsel Bigaraba on behalf of Kamali asserts that the arguments of Mukamusoni are far from the truth as she never showed the Court bailiff that she paid and pretend that he disregarded and proceed with the auction of her house. He states that what Mukamusoni paid for is the prorated fee for her release from prison at the completion of her as indicated on the invoice dated on 19/10/2001 and the statement of release issued the same day; and this was not likely to prevent the auction.

## VIEW OF THE COURT

[39] The Court finds that from 21/03/2001 when Mukamusoni was notified of the order to pay by the court bailiff Stany Sebagabo until the day of the auction on 26/01/2002, she had never shown that she had paid the prorated fee and proves that the court bailiff continued requesting her to pay it.

[40] The Court finds however that Mukamusoni submitted to it the invoice N°0258424 proving that before the auction of her house, she had paid on 19/01/2001, the prorated fee amounting to 147,600Frw in enforcement of the judgment RP8787/KIG of 18/01/2001 she lost, thus the State of Rwanda should refund it to her because she paid it twice.

**Regarding the balance from the auction that Mukamusoni claims to have not been reimbursed.**

[41] Counsel Mbonyimpaye representing Mukamusoni asserts also that the Court disregarded the fact that the balance of proceeds of the auction was neither given to Mukamusoni nor deposited in the public treasury, while this indicates that the acts of the court bailiff Kagaju were in contradiction with the law.

[42] The attorney Ntaganda states that the fact for Mukamusoni to have not received the balance of the proceeds of the auction cannot be a ground for the cancellation of the auction, rather she can file a separate action from the action of auction cancellation for its recovery by indicating the difference between the proceeds obtained from the auction and the amount of payment because the allocation of the proceeds constitutes a step that comes after the auction is completed. He stresses that Mukamusoni has never claimed for that amount and be denied its reimbursement, and goes on to say that whenever she decide to get reimbursed, the money shall be paid without dispute.

[43] Counsel Bigaraba on behalf of Kamali declares that the fact that Mukamusoni argued that she did not receive the balance on the proceeds of the auction is not a ground of cancellation of the auction, rather, it is an issue of recovery.

## VIEW OF THE COURT

[44] Article 357 of the Law of 15/07/1964 relating to civil and commercial procedure that was in force when the house of Mukamusoni was auctioned provides that “when the price of

an immovable property is higher than the amount of the debt and the prorated fee, the balance is refunded by the accountant to the distrainee”.

[45] The Court finds that the State Attorney admits that the balance from the auction proceeds can be refunded to her, thus it should refund her the balance between the amount owed to Ntiserurwa Christophe and the proceeds of the auction in the following way: 5,250,000Frw – 3,690,000Frw = 1,560,000Frw.

**To examine whether among the auctioned assets included the house of Yansoneye Consolée.**

[46] Counsel Gumisiriza Hilary on behalf of Yansoneye asserts that in the course of enforcement of the judgment RPA0887/Kig, the court bailiff Kagaju auctioned her house and this is known and affirmed by Mukamusoni that Kagaju compiled their properties and auctioned them while Yansoneye has no relationship with the case.

[47] He asserts that in the High Court, Mukamusoni explained all that but this court did not take it into consideration and the issue is probably that the case was heard in her default.

[48] He asserts that the following evidence prove her ownership over the house:

The document of Mukamusoni of 10/12/2001;

The ownership title N° 1650/0454 of 04/12/2001;

The proof of sale of 02/11/2001;

The certificate of 04/12/2001 issued by the district of Kacyiru indicating that she is the one who pays tax for the plot in which the house is located;

The administration affidavit of 03/02/005 asserting the restitution of the house to her;

The decision of the court of 15/07/2003 awarding her the house;

The letter of the president of the former Court of Kigali City of 08/10/2004 which affirmed that the house belongs to her;

The bill issued by the government on 11/03/2002 to acknowledge the payment of 6% (2,000,000Frw);

The interrogation affidavit of Rucamumpunzi P. Célestin who affirms that Yansoneye bought the house before occurrence of any dispute on it, in presence of the administration and without any displayed announcement of the auction;

The affidavit of interrogation of Mukamusoni in which she admits that she sold the house to her;

The affidavit of interrogation of Yansoneye before the Judicial Police and prosecution whereby she explains that she acquired the house in compliance with the law.

[49] He concluded by requesting that Mukamusoni pay her damages amounting to 2,000,000Frw of proceedings and counsel fees.

[50] The State Attorney Ntaganda, declares that the sale between Mukamusoni and Yansoneye is null and void because it was concluded when the transfer was no longer possible since all formalities relating to the auction had started and Mukamusoni was aware of that, and the auction was preceded by announcements and it was conducted on the

concerned house, to the extent that all this could occur while Yansoneye knew that she bought the house without intervening.

[51] He asserts again that the fact that Yansoneye did not institute a claim against the auction of her house while she did not owe any debt, indicates that, the alleged sale was a parody not reality. He thus finds that if at all that sale was really concluded Mukamusoni must refund Yansoneye her money as she sold her in bad faith knowing that she aimed at selling her property that was about to be auctioned.

[52] Counsel Bigaraba John on behalf of Kamali states that after Mukamusoni had been served with the court order to pay and the writ of attachment, she no longer had the right to sale her property before the full payment of the debt.

[53] He further declares that after the attachment and its display as indicated by the affidavit of display made by the court bailiff Sebagabo on 26/06/2001, Mukamusoni disregarded the provision of article 361 of the law of 15/07/1964 stated above (similar to article 293 of the current CCLAP) thus the sale concluded on 03/10/2001 after all formalities had been accomplished is null and void, therefore, the appeal of Yansoneye is not founded.

[54] Counsel Mbonyimpaye on behalf of Mukamusoni asserts that she proved before the court that the property that the Court bailiff Kagaju auctioned, included the house of Yansoneye Consolee, and she also produced the letter of the president of the former Court of Kigali City addressed to the Mayor of Kacyiru district requesting him to give Yansoneye her house because she bought it in accordance with the law, but the court disregarded that, and ruled that the auction respected the law.

## **VIEW OF THE COURT**

[55] Article 361 of the law of 15/07/1964 relating to civil and commercial procedure that was in force when the house of Mukamusoni was auctioned provides that “the transfer of ownership of immovable or transfer of any other related right by the debtor after receiving the order of payment or after having been prohibited to undertake any act over them shall not be accepted, except if the beneficiary accepts to pay in the hands of the public accountant the amount of the debt and court fees owed to the distrainer”.

[56] As indicated in the documents of the case file, Mukamusoni was served the order to pay on 21/03/2001 by the court bailiff Stany Sebagabo. on 26/06/2001 that court bailiff displayed on the First Instance Tribunal of Kigali, on the office of the Prosecutor General of the Republic in Kigali and the Prefecture of Kigali City the announcement of seizure of the house located at plot N<sup>o</sup> 112 of Mukankusi in Nyagatovu, Kimironko, the City of Kigali, and on 03/10/2001 Mukankusi sold to Yansoneye Consolee that seized house.

[57] Basing on the abovementioned article of the law, the Court finds that Mukankusi was unable to sell her house as long as she knew that she received the order to pay, therefore, that sale is not valid, and the auction of the house of Mukamusoni remains valid.

[58] With regards to damages amounting to 2,000,000Frw of procedural and lawyer’s fees that Yansoneye claims for, the court finds that she should not be awarded it because she does not prove their basis.

**Cross appeal of Kamali Emmanuel.**

[59] Counsel Bigaraba John on behalf of Kamali alleges that the court did not award damages to his client on the ground that the rejection to be delivered her house was ordered by the court, but this is in disregard with the fact that this decision was taken upon the request of Mukamusoni.

[60] He thus finds that the auction was conducted on 21/06/2002, and he was deprived of his rights over the house he bought yet article 349 of the aforementioned law of 15/07/1964 states that the person who bought an asset in the auction becomes its owner.

[61] Basing on article 258 of the CCB III, he claims to be awarded by the court the following damages:

- 150,000Frw a month from the day he bought the house until the day of the judgment, because, if he let the house he should have gained that amount of money (deprivation of *usus*).
- 10,000,000Frw of deterioration of his house before he dwelled in it and to maintain it (deprivation of the right of enjoyment and benefits of obsolescence);
- 1,000,000Frw paid to the lawyer on the second Level of the court.

[62] Counsel Mbonyimpaye on behalf of Mukamusoni states that the damages Kamali claims for have no merit.

### **VIEW OF THE COURT**

[63] With regards to damages of the rent that Kamali claims for against Mukamusoni, the court finds that he should not be awarded them since he does not provide evidence for it.

[64] And for damages equal to 10,000,000Frw for the deterioration of his house without having dwelled in it, the court finds that those damages are excessive, instead 1,000,000Frw ordered by the High Court should be upheld because it is fair.

[65] With regards to 1,000,000Frw of procedural and the counsel fees that Kamali claims for against Mukamusoni, the court finds that he does not justify how they were calculated, and it thus finds that he can be awarded 500,000Frw in the discretion of the court on this instance, in addition to 300,000Frw awarded by the High Court, which in total equal to 800,000Frw.

[66] The court finds that, all damages that Mukamusoni has to pay to Kamali equal to 1,000,000Frw + 800,000Frw = 1,800,000Frw.

### **III. DECISION OF THE COURT**

[67] The Court holds that the appeal of Mukamusoni has partial merit;

[68] The Court holds that the cross appeal of Yansoneye Consolée has no merit.

[69] The Court decided that the cross appeals of Kamali Emmanuel has merit in part.

[70] The Court orders that the auction conducted on 21/06/2002 in regard to the house of Mukamusoni Béatrice located in the plot N<sup>o</sup> 112 in Nyagatovu, Kimironko, in the City of Kigali remains valid.

[71] The Court orders the State of Rwanda to pay to Mukamusoni Béatrice 147,600Frw she paid twice and 1,560,000Frw of the balance on the auction price of the house, which in total is 1,707,600Frw.

[72] The Court orders Mukamusoni Béatrice to pay to Kamali Emmanuel damages equal to 1,800,000Frw as explained above.

[73] The Court also orders Mukamusoni Béatrice to pay  $\frac{1}{2}$  of 100,000Frw of the court fees, which is 50,000Frw, in addition to what she paid while lodging her appeal and the remaining  $\frac{1}{2}$  is to be bore by the government.