

HABIYAKARE v. GAHONGAYIRE ET AL (1)

[Rwanda SUPREME COURT – RCAA0009/14/CS (Mugenzi, P.J., Gatete and Karimunda, J.) February 3, 2017]

Civil procedure – Death of one of the spouses who is a party to a claim against his/her partner – The party who is responsible to continue the proceedings in case of opposing interests between spouses in a case which includes another party – In order for a person to file a claim, he/she should have interest which should remain valid until the trial of the case – In case of death of one of the spouses, the property is owned by the surviving spouse ex officio, which results into the extinction of the related proceedings – The right to acquire the property entails the accomplishment of the duty attached to it therefore the acquirer becomes responsible to continue the proceedings against the remaining opponent even in case he sued him/her jointly with her/his deceased spouse – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 2 and 129 – Law N°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, articles 76, 8(2) and 52(3).

Facts: Gahongayire, the spouse to Mirimo, filed a case to the Intermediate Court of Nyarugenge whereby she requested the invalidation of the sale contract of the house concluded between Mirimo and Habiyakare, because it was sold without her prior consent.

This Court nullified the contract and ordered the house to be reintegrated in the community property of Gahongayire and Mirimo and that it should be managed by Mirimo who has the obligation to pay back 80,000,000Frw of the price of the house to Habiyakare.

Mirimo and Habiyakare lodged an appeal to the High Court alleging that Gahongayire was aware of the conclusion of the contract and that the house was sold in the interest of the household, and therefore, they prayed to Court to declare the contract valid or if not so, the family of Gahongayire and Mirimo be ordered to pay the current value of the house at the time of the proceedings to Habiyakare.

The appealed Court upheld the ruling and ordered that Habiyakare should be paid 80,000,000Frw of the price of the house agreed upon in the contract and that Gahongayire could not be held liable for the contract she did not conclude.

Habiyakare appealed to the Supreme Court whereby he sued Mirimo and Gahongayire alleging that the property was sold in the interest of the household in order to reimburse the loan that was granted to Mirimo by BCR and that only the name of Mirimo was registered on the land title. He alleged in addition that if the Court finds otherwise, he would be awarded the equivalent amount of the house as determined by the valuation report.

Meanwhile, Habiyakare initiated another claim to the Commercial Court stating that when they concluded a sale contract; the goodwill was also transferred to him. However, this court transferred the case to the Supreme Court for trial jointly with his appeal.

While the trial of the case was still pending, Mirimo died and the issue to know the person who should succeed the case after the decease arose. On this issue, Habiyakare states that according to him, Gahongayire has been entitled to the entire property, therefore she should be qualified to represent the heirs of Mirimo, especially that her claim consisted of the reintegration of the property into the community property, while the counsel for Gahongayire alleges that it is inadequate for her to represent Mirimo given that they have conflicting interests and that the succession is not yet open because the law provides that the surviving

spouse is entitled to the entire property and the succession is postponed to his/her death or remarriage. Therefore, the case ought to proceed between the existing parties in exclusion of Mirimo.

Held: 1. In order for the party to initiate a claim, he/she should have interest which should remain valid until the trial of the case because in contrary, the proceedings become extinct, therefore, the fact that Gahongayire no longer has interest to pursue the claim she filed against Mirimo about their property because after his death, she has been entitled to the entire property in accordance with the Law and this entailed the extinction of the proceedings between them.

2. The entitlement to the property entails the obligation thereto; therefore the hearing of the case should proceed between Habiyakare and Gahongayire who defended conflicting interests even before the decease of Mirimo.

**The hearing of the case shall proceed between the existing litigants.
Court fees suspended.**

Statutes and statutory instruments referred to:

Law N°27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, articles 76, 8(2) and 52(3).

Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 2 and 129.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 26 June 2008 Mirimo Gaspard entered into a sale contract of the house located on plot N°4593/Kicukiro with Habiyakare Robert, on 80,000,000Frw deposited on Mirimo's account open in BCR (I&M Bank) in order to pay the loan he owed this bank. Gahongayire, the spouse of Mirimo, filed a case to the Intermediate Court of Nyarugenge whereby she requested the invalidation of that contract alleging that the house was sold without her knowledge.

[2] In the judgment RC0249/12/TGI/NYGE, the Court invalidated the contract and ordered the house to be reintegrated among the property of Gahongayire and Mirimo who has to manage it after reimbursement of its cost amounting to 80,000,000Frw to Habiyakare.

[3] Mirimo and Habiyakare appealed respectively to the High Court alleging that Gahongayire Winnifrida was aware of the conclusion of the said contract, therefore, she should not request its invalidation, rather, the contract should remain valid because the house was sold in the interest of the household, and that, if not so, the family of Mirimo and Gahongayire should jointly pay the current equivalent value of the house amounting to 347,782,150Frw as determined by valuers.

[4] In the course of the deliberation of the judgments RCA0566/012/HC and RCA0581/012/HC, the Court upheld the ruling and in contrary that Habiyakare should be paid 80,000,000Frw agreed upon in the contract (article 263 CCB.III), and that Gahongayire could not be held liable of a contracts he was not a party to.

[5] The High Court explained that nothing indicates that Gahongayire was aware of the concluded contract and that the house was sold in the interest of the household, rather, it was done by Mirimo with the intention to embezzle family assets as shown in cases in which Gahongayire participated whereby she requested the cancellation of collateral over the said house to secure the payment of the loan she had no knowledge. The Court explained in addition that Habiyakare should be reimbursed 80,000,000Frw of the cost indicated in the contract and that Gahongayire should not be held liable to pay because she was not part of the contract.

[6] Habiyakare appealed to the Supreme Court, whereby he sued Mirimo and Gahongayire, and meanwhile, he filed a claim to the Commercial Court of Nyarugenge (RCOM0852/14/TC/NYGE) stating that in the course of the purchase of the stated house on the amount of 80,000,000Frw, “the goodwill” was also included on the amount of 36,000,000Frw, but the Commercial Court transferred the case to the Supreme Court in order to be joined to the case RCAA0009/14/CS.

[7] Concerning the grounds of appeal, Habiyakare alleged that the judge should have confirmed that the property was sold in the interests of the household because it was spent to pay back the loan owed to BCR which was granted to fund the family activities and that he bought the house without knowledge that it belonged to the family because only the name of Mirimo was registered on the title. He states that in case the court finds otherwise, he be awarded 347,782,150Frw which is the value determined by the valuation report in compliance with article 310 of CCB.III. He also requested to be paid 3,000,000Frw in damages which include 2,000,000Frw for being dragged into lawsuits and 1,000,000Frw for counsel fees.

[8] Concerning the objection of inadmissibility of the claim raised by Gahongayire because parties lost the case for similar grounds before the Intermediate and High Court, the Supreme Court decided on 19 February 2016 that the objection lacks merit and it decided to resume the hearing. The case was heard on 22 November 2016 and 14 December 2016 whereby it examined the issue about the person who should continue the proceedings after the decease of Mirimo who was a party. Habiyakare was represented by Counsel Munyangabe Henry Pierre while Gahongayire was represented by Counsel Rutabingwa Athanase and Niyomugabo Christophe.

II. ANALYSIS OF LEGAL ISSUE

Determination of how the hearing of the case should proceed after the death of Mirimo Gaspard.

[9] Counsel Munyangabe Henry Pierre for Habiyakare states that after the death of Mirimo, Gahongayire was entitled the right to entire property and this is the reason why she should be qualified to represent the heirs of Mirimo, especially that her request concerned the reintegration of the property into the community property. They request that one of the two potential solutions be referred to for handling the issue, the first one being to confirm the validity of the contract and the second being the reintegration of the property into the assets

of Mirimo who is represented by Gahongayire, the latter being obliged to fulfill the duty of Mirimo to pay back the equivalent value of the asset in dispute to Habiyakare.

[10] Counsel Rutabingwa Athanase and Niyomugabo for Gahongayire, state that it is inadequate for Gahongayire to represent Mirimo because they have conflicting interests in this case. They add that the succession is not yet open because the law provides that the surviving spouse is entitled to the entire property and succession is conducted after his/her death or remarriage, therefore the hearing of the case should continue for the present parties in exclusion of Mirimo.

THE VIEW OF THE COURT

[11] Article 8, paragraph 2 of the Law N°27/2016 of 08/07/2016, governing matrimonial regimes, donations and successions provides that where dissolution of community property occurs due to death of one of the spouses, the property is owned by the surviving spouse until succession execution¹”.

[12] Concerning the time of succession execution, article 52, paragraph 3 of the aforementioned law, provides that succession for spouses opens when they both decease or in case one of them remarries, unless otherwise provided by law.

[13] The court finds therefore that, pursuant to both complementary provisions, after the death of Mirimo, Gahongayire who was legally married to him in a community property regime, was entitled to the entire property of Mirimo (assets and liabilities) and the fact that Gahongayire is alive and not yet remarried, the opening of succession is precluded, therefore the heirs of Mirimo cannot be summoned to pursue the case in his lieu.

[14] The Court finds however that article 129 of the Law N°21/2012 of 16/04/2012 relating to civil, commercial, labour and administrative procedure provides that “when a case is not yet ready to be decided and the death of one of the parties is brought to its attention, the court summons those persons having the status to continue the proceedings”. These persons should not be perceived as heirs only, rather even any other person with such status can be considered.

[15] The Court finds that, given that the succession of Mirimo is impossible as long as his spouse Gahongayire is still alive, and not yet remarried, and being the one who was entitled to entire property of Mirimo as recalled above, it is understandable that she should be the one qualified to continue the proceedings in lieu of Mirimo who died, but it arises the issue that the interests of Gahongayire in the case conflict with those of Mirimo who is also one of the parties against whom she filed the claim.

[16] The Court considers however that, since the subjects of the claim Gahongayire pursued against Mirimo would be taken from the property of Mirimo, and given that this entire property was entitled to Gahongayire, the latter has no interest to pursue the claims she had against Mirimo, because as provided for by article 2 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, in order for the plaintiff's

¹ This is also what is provided for by the 1st paragraph, litera 1 of article 76 of the Law N°27/2016 of 08/07/2016, governing matrimonial regimes, donations and successions.

claim to be accepted, he/she should have interests². This entails that this interest should remain valid until the adjudication of the case, otherwise the case follows its fate.

[17] The court find therefore that, the fact that Gahongayire has no longer the interest to pursue the claim she filed against Mirimo in respect of the property given that she was entitled to the entire property of Mirimo in accordance with the law after the latter died; this led to the extinction of the proceedings.

[18] Concerning the issue of conflicting interests in the case between Habiyakare and late Mirimo, the Court finds that the case should proceed between Habiyakare and Gahongayire who succeeded Mirimo given that she was entitled to his entire property as explained above, because the entitlement to the property entails obligations thereto. In addition, the case should proceed between them as they had opposing interests even before the death of Mirimo.

III. DECISION OF THE COURT

[19] Decides that the case between Gahongayire Winnifrida and Mirimo Gaspard came to an end due to death of Mirimo;

[20] Orders that the claims Habiyakare Robert had against Mirimo Gaspard on one hand and Gahongayire Winnifrida on the other hand will be pursued against Gahongayire in this case;

[21] Orders that the hearing on the merit of the case concerning the appeal of Habiyakare and Gahongayire Winnifrida will resume on 11 April 2017.

² The said provision states that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit.