

HABIYAKARE v. GAHONGAYIRE ET AL (2)

[Rwanda SUPREME COURT – RCAA0009/14/CS (Mugenzi, P.J., Gatete and Karimunda, J.) July 21, 2017]

Family law – Matrimonial regime – Whatever the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the consent of both spouses shall be required for the donation of a personal immovable property and of any other property in the community, as well as for the acknowledgement of any right attached to these properties – Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions, article 21.

Law governing contracts – Sale – Annulment of the contract – The sale of third party's property is void; it may give rise to damages where the buyer has not known that the thing belonged to third party – Decree Law of 30/07/1888 relating to contracts or conventional obligations, articles 33 and 276.

Law governing contracts – Bad faith – The burden of proof of bad faith – Good faith is always presumed and the burden of proof of the bad faith relies on the one who alleges it – Decree Law 30/07/1888 relating to contracts or conventional obligations, article 650.

Law governing contracts – Sale – Effects of eviction of the buyer – In case of eviction of the purchaser, the seller must reconstitute of the price – Decree Law of 30/07/1888 relating to contracts or conventional obligations, article 306.

Evidence Law – Burden of proof – Every plaintiff must prove a claim – Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3.

Facts: Mirimo concluded a house sale contract with Habiyakare on the price of 80,000,000Frw in order to pay the loan he owed to the bank. Gahongayire, who is legally married to Mirimo, filed the case to the Intermediate Court of Nyarugenge whereby she requested it to revoke that contract alleging that she was not notified of its conclusion whereas the sold house belongs to the household.

This Court revoked the contract and ordered the restitution of the purchased house into the property of Gahongayire and Mirimo and be managed by the latter who was also ordered to pay its price of 80,000,000Frw 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, therefore they prayed the Court to uphold the contract and if it finds otherwise, to order the couple of Mirimo and Habiyakare to pay the current value of the house at the time of the trial amounting to 347,782,150Frw.

Gahongayire responds that the house was not sold in the interest of the household because Mirimo sold it in secret while he was not cohabiting with Gahongayire and without notifying her and that she never knew the existence of the loan which was being paid as well as attached property thereto.

The High Court upheld the ruling and ordered Mirimo to pay Habiyakare 80,000,000Frw only of the price of acquisition of the house which was agreed upon in the contract and that Gahongayire could not be held responsible of the contract in which she did not take part.

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 Mirimo owed to the BCR and indeed, that land was solely recorded in his names. He alleges in addition that if the High Court finds otherwise, he should be awarded the value of the house established by the valuation report.

Meanwhile Habiyakare initiated a claim to Commercial Court advancing that at the time of purchase of the house involved in the contract, the goodwill was also included. However, this Court transferred the case to the Supreme Court in order to be tried jointly with his appeal judgment.

Before the trial of the case, Mirimo died and the issue to determine the person who should succeed the proceeding arose. Concerning this issue, the Supreme Court decided that the trial between Mirimo and Gahongayire closed subsequent to the death, therefore, the Supreme Court held that Gahongayire should continue with the case on the disputes between Mirimo and Habiyakare on one hand and those between her and Habiyakare on the other hand.

Held: 1. The sale by Mirimo of the co-owned property with his legally married spouse without mutual agreement is the ground to revoke the contract and the purchased property should be taken back into the household property which was entitled to Gahongayire subsequent to the death of Mirimo. However, Habiyakare should be awarded compensation given that he bought in good faith.

2. It is the obligation of Gahongayire who has been given back the house to reimburse 80,000,000Frw of its price to Habiyakare.

3. The fact that Habiyakare paid the price of the house amounting to 80,000,000Frw without being handed the house or being paid back the amount he would have invested for a period of 3265 days, resulted into the loss which should be repaired and compensation is computed on basis of interest rate of 8,75% awarded by commercial banks for money deposits. Therefore, he should be awarded 63,486,111Frw.

4. No evidence is produced by Habiyakare to support the allegations in relation to the payment of 36,000,000Frw and additional 30,000USD for goodwill acquisition as mentioned in the court submissions before Commercial Court and the payment slips found in the case file that he alleges would be relied on; do not indicate the purpose of money deposit effected on the account of Mirimo.

**Appeal with merit.
Cross-appeal without merit.
Sale contract revoked.
Court fees to the respondent.**

Statutes and statutory instruments referred to:

Decree Law of 30/07/1888 relating to contracts or conventional obligations, articles 33, 276, 306 and 650.

Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions, article 21.

Law N°15/2004 of 12/06/2004 on evidence and its production, article 3.

Case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Gahongayire Winnifrida, spouse of Mirimo, initiated a claim to the Intermediate Court of Nyarugenge, whereby she requested the cancellation of the sale contract of the house located on plot N°4593/Kicukiro concluded between Habiyakare Robert and Mirimo Gaspard on 26 June 2008 on price of 80,000,000Frw transferred to the account of Mirimo open in BCR (I&M Bank) for the payment of the loan he owed this bank because this contract was concluded without her knowledge.

[2] In the case RC0249/12/TGI/NYGE, the court cancelled the said contract and ordered hand back the sold house into the co-owned property of Gahongayire and Mirimo and that it will be managed by the latter, who should also reimburse 80,000,000Frw of the price of the house to Habiyakare.

[3] Mirimo and Habiyakare lodged an appeal to the High Court alleging that the contract in dispute should remain valid given that Gahongayire was aware of its conclusion and that the house was sold in the interest of the household but that in case the cancellation is envisaged, the family of Mirimo and Gahongayire should jointly pay the value of the house of 347,782,150Frw as indicated by valuers to Habiyakare.

[4] In the case RCA0566/012 - RCA0581/012/HC, the High Court upheld the appealed judgment, therefore that Habiyakare should be paid 80,000,000Frw agreed in the contract and pursuant to article 263 of the civil code book III but that Gahongayire should not be held liable for the contract she was not engaged in.

[5] The High Court explained that nothing indicates that Gahongayire was aware of the existence of the said contract or that the house was sold in the interest of the household, rather the sale was done to embezzle the property of the family as evidenced by cases initiated by Gahongayire whereby she was requesting the cancellation of the security over the said house from attached assets to secure the loan she was not aware of and that Habiyakare should be paid the price mentioned in the contract.

[6] Habiyakare appealed to the Supreme Court suing Mirimo and Gahongayire whereby he requested the Court to consider the property in dispute to have been sold in the interest of the household because it was meant to reimburse the loan Mirimo owed BCR which was taken for family matters and that he bought it with the knowledge that it belonged to Mirimo only as indicated by the land title but that in case the Court finds otherwise, he should be awarded 347,782,150Frw, the value determined by the valuation report pursuant to article 310 of civil code book III, 2,000,000Frw of being dragged into unnecessary proceedings and 1,000,000Frw of counsel fees, the total being 3,000,000Frw.

[7] Habiyakare filed also a claim to Nyarugenge Commercial Court whereby he requested the resolution of the sale contract concluded on 26 June 2008 and be reimbursed 347,782,150Frw of the current value of the house, the value of the goodwill amounting to 30,000,000Frw and 30,000USD he alleged to have paid Mirimo, 20% of interests on the sum

of these amounts from 30 July 2008 until the full payment as well as moral damages amounting to 20,000,000Frw. The Commercial Court realised that the case at hand RCOM0852/14/TC/NYGE is related to the trial RCAA0009/14/CS initiated to the Supreme Court, therefore it transferred it to the Supreme Court in order for both judgments to be joined and heard together.

[8] Concerning the objection of lack of jurisdiction which was raised by the counsel for Gahongayire whereby he requested the inadmissibility of the claim of Habiyakare arguing that he lost the case on similar grounds before both the Commercial Court and Commercial High Court; the Supreme Court dismissed this objection on 19 February 2006 and the hearing of the case resumed on 22 November 2016 and 14 December 2016 whereby the issue for determination consists of who should pursue the proceedings after the death of Mirimo who was one of the parties.

[9] On 03 February 2017, the Supreme Court decided that the judgment between Mirimo and Gahongayire closed due to the death of Mirimo therefore the case should be pursued by Gahongayire on claims of Habiyakare vis-a-vis Mirimo on one hand and claims of Gahongayire vis-a-vis Habiyakare on the other hand.

[10] The hearing of the case resumed on different dates and it was held at the last time on 28 June 2017, Habiyakare Robert represented by Counsel Munyangabe Henri Pierre while Gahongayire Winnifrida was represented by Niyomugabo Christophe and Rubasha Herbert. The Court decided first to join the case RCOM0852/14/TC/NYGE with that of RCAA0009/14/CS because they are related.

II. ISSUES FOR DETERMINATION

A. Whether the sale contract concluded between Habiyakare and Mirimo should be considered valid and consequently Habiyakare be awarded the house he bought.

[11] Counsel Munyangabe Henry Pierre representing Habiyakare states that the previous Courts should have been confirmed that the house at plot N°4593/Kicukiro was sold in the interest of the household because 80,000,000Frw contributed to the payment of the loan Mirimo owed to the BCR for family activities even though it was only Mirimo who was mentioned on the title of the house.

[12] Gahongayire and her Counsel Niyomugabo Christophe, argue that the house was not sold in the interest of the household because Mirimo sold it confidentially while he was in separation with Gahongayire without informing her and this is indicated by cases Gahongayire initiated against her husband whereby she was requesting the cancellation of the security over attached properties without her knowledge and that she was not even aware of the loan which was meant to be paid to BCR, therefore she could not even know securities furnished for that.

[13] They pursue that the sale contract should remain cancelled as decided by previous Courts, therefore the house remaining into the custody of Gahongayire especially that Habiyakare did not do any modification on it since he was not even awarded it. They add that even though Gahongayire is the one who succeeded the obligations of Mirimo, she should not be held liable for acts which were done in unlawful way.

[14] Counsel Rubasha Herbert who also represents Gahongayire argues that the law was not followed because Mirimo behaved like someone who was not legally married because he ought to inform Habiyakare that he was married, therefore pursuant to article 51 of the law N°45/2011 of 25/11/2011 governing contracts, the said contract should not be considered valid and Gahongayire continues to administer the property in accordance to article 6 of the Law N°27/2016 of 08/07/2016 on matrimonial regimes, liberalities and succession.

OPINION OF THE COURT

[15] Article 21 of the Law N°22/99 of 12/11/1999 to supplement book I of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions which was into force at the time of the sale by Mirimo states that “Whatever be the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the agreement of both spouses shall be required for the donation of a personal immovable property and of any other property in the community, as well as for the acknowledgement of any right attached to these properties”.

[16] Concerning whether Gahongayire was notified of the mentioned contract, the Court notes that as decided by previous Courts, there is neither signature of her wife Gahongayire was affixed to the contract of 26 June 2008 concluded between Habiyakare and Mirimo for the purchase of the house at plot N°593/Kicukiro nor any other evidence was produced by Habiyakare or Mirimo when he was still alive proving that Gahongayire was notified about the sale of the concerned property and she did not ratify it later especially that she decided to initiate a claim, therefore it is clear that Mirimo sold the co-owned immovable property without informing her spouse which is in violation of the provision of article 21 of the stated Law N°22/99. Consequently, pursuant to article 33 of civil code book III which provides that contracts may only be revoked (...) for reasons based on law this contract should be revoked.

[17] As far as the fact that the property was sold in the interest of the household is concerned, the Court finds that as explained by previous Courts, no evidence in support of it was produced because, though the amount of 80,000,000Frw was deposited on the account of Mirimo in BCR for the payment of loan he owed to it, but the statements of Gahongayire that she did not know about the loan and what it was meant for, were not refuted and this is supported by cases Gahongayire initiated in a bid to indicate that she never knew about the loan awarded and to cancel the attachment on the properties furnished without her knowledge. She argues also that no reliable reason would lead Mirimo to do anything in the interest of the household without consent of his wife.

[18] Concerning whether Habiyakare bought the house in bad faith, the Court establishes that the finding of the lease contract N°L4156 issued on 15 March 2001 by former the City of Kigali Prefecture, the said property was registered in the names of Mirimo only and it is not yet indicated any other way Habiyakare would know if this sold property was in dispute, especially that the contract was signed before the notary¹ and it contains a provision which states that the payment of the loan owed by Mirimo was meant to be effected on the account of BCR. Therefore it was his duty to inform his wife about the stated sale.

[19] The Court finds that the statements of Gahongayire and her advocates that Habiyakare bought with bad faith are not supported by evidence while the burden of proof of the bad

¹The purchase contract was signed in the presence of Notary (Page 12 in the file before Commercial Court).

faith relies on the one who alleges it², as provided for by article 650 of civil code book III which states that: “Good faith is always presumed, and it is for anyone who alleges bad faith to prove it”.

[20] The Court finds therefore that following the explanations stated above, the fact that Mirimo sold the property he jointly own with his spouse without the consent of all partners, this renders the contract voidable and the purchased house should be returned back into co-owned property of which Gahongayire took full enjoyment after the death of Mirimo. However, Habiyakare who purchased with good faith should be awarded damages in compliance with article 276 of the above stated law which provides that “the sale of third party's property is void; it may give rise to damages where the buyer has not known that the thing belonged to third party”.

B. Whether Gahongayire should pay some damages to Habiyakare.

a. Concerning the value of the house which Habiyakare requests to be reimbursed.

[21] Habiyakare states that in case he is not awarded the house he acquired; he should be reimbursed by Gahongayire 80,000,000Frw of the price he paid plus the value added amounting to 267,782,150Frw, because he purchased without bad faith and the money paid formed part of the property co-owned by Murimo and Gahongayire, who got entitled to it after the decease of Mirimo. He argues that he deserves to be paid the current value of the house because even though he did not renovate it, its value increases with time therefore he requests an amount of 347,782,150Frw.

[22] Gahongayire and Counsel Niyomugabo Christophe state that Habiyakare and Mirimo concluded a contract unlawfully therefore he cannot at turn request for damages and that Gahongayire should not be held liable of unlawful acts. They state in addition that no modifications were made on the house by Habiyakare to increase the value as alleged it was not handed to him after the conclusion of the contract.

FINDINGS OF THE COURT

[23] The Court finds that due to the fact that Habiyakare paid 80,000,000Frw to purchase a house as indicated by the document of the contract of 26/6/2018, while it is also impossible to be awarded it because the sale contract is not in compliance with the law as explained above, Habiyakare should be paid back the sum of money by Gahongayire who became entitled to the whole property she co-owned with Mirimo, who was paid that amount. This being said, the revocation of the contract as explained above, entails the house comes back into the ownership of Gahongayire, therefore the non-reimbursement of its price would constitute an impoverishment of Habiyakare and subsequently the enrichment of Gahongayire.

[24] The Court finds that since the contract concluded between Habiyakare and Mirimo infringed the Laws, it entails its revocation as explained above, but given that Gahongayire is

²The explanations that the burden of proof relies on he/she who alleges the bad faith were provided in the judgment RCAA0029/12/CS delivered on 08 March 2013, Busingye Pascaline against Mukarushema Epiphrosodie, Law report, Booklet 3, N°18, p.54.

handed back the house; she should pay back its price to Habiyakare who had bought it with good faith as provided for by article 306 of civil code book III³.

[25] Regarding whether Habiyakare would be compensated 347,782,150Frw which he alleges to be the current value of the house according to the established valuation, the Court considers that it should not be considered because as raised by his counsel, the house had never been handed to him and no renovation was made on it, therefore the fact that he paid the price from long ago does not constitute a reason for requesting the value added while he never owned it nor renovated it.

[26] The Court finds in contrary that given that Habiyakare paid 80,000,000Frw in order to acquire the house which he did not receive from a long time nor reimbursed the amount which he would spend for other things; this entails that he incurred a loss which should be repaired, therefore damages should be awarded on the basis placement interest of 8,75% awarded by commercial banks for money deposits⁴, therefore, for a period of 3265 days from 26 June 2008, the date of the conclusion of the contract, till 21 July 2017, the date of the delivery of the judgment, Habiyakare should be paid compensation calculated as follow:
$$\frac{80.000.000\text{Frw} \times 3265\text{days} \times 8,75}{360 \times 100} = 63.486.111\text{Frw}.$$

b. Regarding 36,000,000Frw and 30,000USD alleged by Habiyakare to have paid for the “goodwill”.

[27] Habiyakare states that he acquired the goodwill attached to the house he bought at the price of 36,000,000Frw and 30,000USD without indicating any written contract because it was concluded verbally and mutual agreement as traders. He continues that there exist various payment slips indicating that he used to deposit some money to the bank account of Mirimo, who when still alive, admitted to have received the money and in the letter dated 15 April 2011, the latter admitted the transfer of the land, which was hindered by the fact that he was not yet delivered the tax clearance certificate by Rwanda Revenue Authority.

[28] Gahongayire and her Counsel Niyomugabo as well as Counsel Rubasha, argue that Habiyakare does not produce evidence of the payment of the money alleged to have been paid for the goodwill nor indicate the purpose of it particularly that since the sale contract of the house was made in writing, nothing was likely to prevent the inclusion of the clause relating to the purchase of the goodwill and indeed, the alleged deposit slips do not indicate the payment in relation to it.

FINDINGS OF THE COURT

[29] The Court considers that pursuant to article 3 of the Law N°15/2004 of 12/06/2004 on evidence and its production which provides that each party should prove his/her allegations, it is the duty of Habiyakare who alleges to have paid Mirimo 36,000,000Frw and 30,000USD for the purchase of the goodwill as mentioned in the case submission document before the Commercial Court, to provide reliable evidence. However, he does not indicate the supporting evidence of that purchase and even the payment slip found in the file do not indicate the purpose of the payment to the account of Mirimo.

³This provision states that “In the same case of stipulation of non-guarantee, the seller, in case of eviction, is held to the restitution of the price, unless the purchaser knew at the time of the sale the danger of the eviction, or that he did buy at his perils and risks”.

⁴ www.imbank.com, consulted on 21st July 2017.

[30] The Court finds in addition that since the first contract was concluded in writing, no reason is advanced to substantiate the fact that the said contract relating to the goodwill was not made in the same form with the first; therefore that amount should not be compensated while it is not indicated that it was paid nor its purpose. Consequently, Habiyakare should not be awarded them because he did not provide evidence thereto.

c. With regard to procedural and counsel fees.

[31] Counsel Munyangabe states that Habiyakare should be awarded damages amounting to 2,000,000Frw for unnecessary proceedings initiated against him as well as 1,000,000Frw of counsel fees.

[32] Gahongayire and her counsels state that she should not be ordered to pay any damages because the opponent made mistakes by infringing the laws at the time of purchase. In the court submission of cross-appeal by Counsel Niyomugabo Christophe, he had requested 2,000,000Frw of counsel fees while in the hearing, Gahongayire requested 10,000,000Frw for being dragged into unnecessary proceedings and 5,000,000Frw of counsel fees.

FINDINGS OF THE COURT

[33] The Court considers that pursuant to article 258 of civil code book III which provides that the person that causes prejudice to another obliges the one whose fault caused prejudice to repair the damage, Habiyakare who acquired the property from Mirimo which he jointly owns with his wife Gahongayire who was not notified by him resulted in dragging him into lawsuits and he incurred expenses for their follow up and payment of counsel fees for three instance of proceedings, therefore he deserves to be awarded compensation by Gahongayire who became entitled to the property she co-owned with Mirimo⁵, because she is responsible for the effects of the contract concluded by the deceased in his lifetime, but since Habiyakare failed to demonstrate modalities of computation of 2,000,000Frw of procedural fees he requests, he should be awarded 1,000,000Frw under the discretion of the court as well as 1,000,000Frw of counsel fees as requested since the amount is in range.

[34] In conclusion, as previously explained, apart from 80,000,000Frw of the price of the house Gahongayire is obliged to pay in compensation to Habiyakare, she should also pay him interests emanating from that sum of money amounting to 63,486,111Frw, 1,000,000Frw of procedural fees and 1,000,000Frw for counsel fees, the total being one hundred forty-five million, four hundred eighty-six thousand, one hundred eleven (145,486,111Frw).

[35] Concerning cross-appeal raised by Gahongayire and her counsels for the request of damages, the Court finds that she should not be awarded them because the grounds she relied on were established without merit as explained above.

III. DECISION OF THE COURT

[36] Finds the appeal lodged by Habiyakare Robert with merit;

⁵Article 8, paragraph 2 of the Law N°31/2016 of 01/08/2016 governing matrimonial regimes “where dissolution of such a regime occurs due to death of one of the spouses, the property is owned by the surviving spouse until succession execution”, while article 52, paragraph 3 of the same law provides that succession for spouses opens when they both decease or in case one of them remarries, unless otherwise provided by law.

[37] Finds the cross-appeal raised by Gahongayire Winnifrida without merit;

[38] Annuls the purchase contract of 26 June 2008 for the house N°4593/Kicukiro between Mirimo Gaspard and Habiyakare Robert;

[39] Orders that the house at plot N°4593/Kicukiro remains into the ownership of Gahongayire Winnifrida;

[40] Orders Gahongayire Winnifrida to pay the sum of Habiyakare Robert one hundred forty-five million, four hundred eighty-six thousand, one hundred eleven (145,486,111Frw); Orders her to pay 100,000Frw of court fees.