

NYIRANJANGWE v. BPR Ltd ET.AL

[Rwanda SUPREME COURT – RCOMAA0019/15/CS (Hatangimbabazi, P.J., Gakwaya and Mukamulisa, J.) April 13, 2018]

Mortgage – Nullification of the auction – The auction based on the valuation which was invalidated by Council of Real Property Valuation is null and void because it is deemed to be unlawfully conducted – Law N°17/2010 of 12/05/2010 establishing and organising the real property valuation profession in Rwanda, article 36.

Fact: Nyiranjagwe concluded a loan contract with Banque Populaire du Rwanda (BPR Ltd), they agreed that if she fails to perform the contract, the house which she furnished as mortgage will be auctioned without recourse to judicial proceedings. Nyiranjagwe defaulted on the performance of that contract thus; the Registrar General of RDB issued an order to auction that mortgage.

Nyiranjagwe filed an *ex parte* application to the Commercial Court of Huye requesting to suspend that auction of her house because the valuation of which that auction is based is inconsistent with the general principles of valuation on immovable property, that court ruled that the claim has no merit.

Nyiranjagwe filed another claim in that Court suing the court bailiff and BPR Ltd, stating that the auction was unlawfully conducted because her house was auctioned at lower price than the actual value, thus, she requests to declare that auction null and void. The Court rendered the judgment and nullified the auction and all related contracts thereof.

The court bailiff and BPR Ltd were not satisfied with the rulings of the court and appealed to the Commercial High Court, B.E.S. & Supply Ltd voluntarily intervened as the buyer of that house; this court ruled that the auction was lawfully conducted, therefore it sustained it.

Nyiranjagwe appealed to the Supreme Court arguing that the Commercial High Court disregarded the main ground on which she relied requesting the termination of that contract. Court bailiff, BPR Ltd and B.E.S & Supply Ltd raised a preliminary objection of inadmissibility of the appeal basing on the value of the subject matter which they contend that it is not equal to 50,000,000Frw provided by the law; the Court held that before ruling on that objection, it is necessary first to appoint the valuer to determine the value of that house, thereafter, the Court overruled that objection; BPR Ltd again raised another objection stating that the appeal of Nyiranjagwe should not be admitted because the grounds of her appeal were ruled upon in another binding judgment, that objection was also overruled.

Nyiranjagwe explains that Commercial High Court disregarded the main ground of her appeal that the auction was carried out on her house was based on valuation report which was invalidated by Council of Real Property Valuation, that caused her house to be sold at a lower price compare to its value, therefore, she requests for the annulment of that auction and to awarded the costs.

In their defence, the Court bailiff, BPR Ltd and B.E.S & Supply Ltd state that the ground of Nyiranjagwe's appeal lacks merit because in appealed judgment, the Commercial Court motivated that ground and the requested costs should not be awarded because she does not

demonstrate who should pay them and the reason, thus, they find that they are ones to be awarded those costs.

Held: 1. The auction based on the valuation which was invalidated by Council of Real Property Valuation is null and void because it is deemed to be unlawfully conducted.

2. Costs of the case are awarded in the discretion of the court when the applicant did not demonstrate how they were calculated.

**Appeal has merit.
The court fees to the respondents.**

Statute and statutory instruments referred to:

Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, article 208 and 267.

Law N°17/2010 of 12/05/2010 establishing and organising the real property valuation profession in Rwanda, article 36.

Law N°10/2009 of 14/5/2009 on mortgage, article 19 and 24.

Decree-law of 30/07/1888 relating to contract or conventional obligation, article 258.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Nyiranjagwe Zura concluded a loan contract with Banque Populaire du Rwanda (BPR), she furnished a house as mortgage and they agreed that it will be sold without recourse to judicial proceedings in case she fails to perform the contract. Nyiranjagwe Zura did not perform that contract; then on 27/1/2014, Registrar General in Rwanda Development Board (RDB) authorised to sale in auction the house of Nyiranjagwe Zura located in South Province, Nyanza District, Busasamana Sector, Gahondo cell, and appointed Ruganda Cryspin to sell that mortgage and that his mandate will be terminated on 24/04/2014.

[2] On 5/03/2014, Nyiranjagwe Zura filed an *exparte* application to the Commercial Court of Huye requesting to suspend that auction of her house because it was being conducted contrary to the certificate from Rwanda Development Board (RDB). On 07/03/2014, that court rendered the judgment RCOM0084/14/TC/HYE, found her claim with no merit.

[3] Nyiranjagwe Zura filed another claim to the Commercial Court of Huye, suing Ruganda Cryspin, the court bailiff and BPR Ltd stating that they unlawfully auctioned the mortgage she provided to this bank because they sold it at less value than the right value. Thus, she is requesting to declare it null and void. On 07/11/2014, that Court rendered the judgment RCOM0166/14/TC/HYE, and decided to nullify the auction of Nyiranjagwe Zura's house carried on 24/3/2014 and all related contracts.

[4] Ruganda Crystin and BPR Ltd were not satisfied with the rulings of the Commercial Court of Huye, and appealed to the Commercial High Court. B.E.S. & Supply Ltd voluntarily intervened as the buyer of that house in litigation. On 13/02/2015, that Court rendered judgment RCOMA0606/14/HCC – RCOMA0608/14/HCC, and ruled that the auction of the mortgage mentioned in this judgment was lawfully conducted; therefore, it is valid.

[5] Nyiranjangwe Zura was not contented with the rulings of that judgment and appealed to the Supreme Court stating that the Commercial High Court failed to examine her main ground for which she requested the nullification of the auction which took place on 24/3/2014.

[6] Ntwali Justin, the counsel for BPR Ltd, Murutasibe Joseph, the counsel for B.E.S. & Supply Ltd and Nkundabatware Bigimba Félix, the counsel for Ruganda Crystin raised an objection of lack of the jurisdiction of the Supreme Court on the basis of article 28, paragraph 4 of the organic law determining the organization, functioning and jurisdiction of the Supreme Court which provides that in order to admit the second appeal, the subject matter should have at least the value of 50,000,000Frw, but in this judgment the auctioned house does not have the value worth 50,000,000Frw. They explain that the house was given the value of 42, 000,000Frw as it is indicated in valuation report that was used for auctioning the house which is also accepted by RDB. Therefore, the fact that the value of subject matter does not equal to 50, 000,000Frw at least, the appeal of Nyiranjangwe Zura does not fall into the jurisdiction of the Supreme Court.

[7] On 24/02/2017, this court found that before ruling on the objection of lack of jurisdiction of the Supreme Court, it is necessary to appoint the valuer so that he determines the current value of the house in litigation; it adjourned the hearing, that it will resume on 15/03/2017 so that the parties Nyiranjangwe Zura, BPR Ltd and B.E.S & Supply Ltd inform the court the valuer they agreed on, if not, he will be appointed by the court.

[8] On 15/03/2017, the case was not heard because one of the judges of the bench was on official mission abroad and it was postponed on 16/05/2017. On 20/04/2017, the Supreme Court informed the parties that their case will be heard on 2/5/2017 instead of 16/05/2017.

[9] On 2/05/2017, the Supreme Court appointed Ir. Nkabije Alphonse Marie as property valuer in this case, it ordered him to submit his report not later than 22/05/2017, and ordered the parties to argue on it not later than 30/5/2017; the hearing will be resumed on 27/06/2017. On that day the case was not heard because one judge of the bench was on official mission abroad and postponed it on 18/07/2017, but on 29/06/2017, Supreme Court notified the parties that the case will be heard on 25/07/2017 instead of 18/07/2017 as it was confirmed during the hearing of 27/06/2017.

[10] The case was held in public on 25/07/2017, Nyiranjangwe Zura assisted by Counsel Kabasenga Berthilde and Mugabo Pio; BPR Ltd represented by Counsel Ntwali Justin; Ruganda Crystin represented by counsel Nkundabatware Bigimba Félix, whereas B.E.S. & Supply Ltd represented by Counsel Kiloha Olivier. On that date, the Court heard the arguments of the parties on the report of valuer Ir. Nkabije Alphonse Marie, which indicates that the value of the house in litigation equals to 79, 250,670Frw.

[11] On 22/09/2017, the Supreme Court rendered the interlocutory judgment and overruled the objection of lack of the jurisdiction of the Court raised by BPR Ltd based on the fact that the value of the subject matter does not worth 50, 000,000Frw, that the appeal of Nyiranjangwe Zura falls into the jurisdiction of the Supreme Court.

[12] After that decision, Ntwali Justin, the counsel for BPR Ltd raised another objection of inadmissibility of Nyiranjangwe Zura's appeal basing on article 142 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, because her ground of appeal is about the valuation report of her house while there is a binding judgment RCOM0084/14/TC/HYE which examined that the same valuation report.

[13] On 29/12/2017, the Supreme Court rendered an interlocutory judgment and overuled the objection of inadmissibility raised by BPR Ltd because the grounds of her appeal were heard in another binding judgment; that her appeal is admitted and the hearing of the judgment will be resumed on 20/2/2018.

[14] On that date, the hearing on merit was conducted in public, Nyiranjangwe Zura assisted by Counsel Kabasenga Berthilde and Mugabo Pio; BPR Ltd represented by Counsel Ntwali Justin; Ruganda Cryspin represented by Counsel Ndagijimana Ignace while B.E.S. & Supply Ltd represented by Counsel Busogi Emmanuel.

II. ANALYSIS OF THE LEGAL ISSUES

a. Whether the Commercial High Court disregarded to examine the main ground of Nyiranjangwe Zura's appeal of nullifying the auction carried out on her house

[15] Nyiranjangwe Zura states that the Commercial High Court disregarded the main ground of appeal which she relied on to request the annulment of the auction; she adds, that ground was relied on by Commercial Court of Huye in deciding that her claim has merit and consequently the auction was annuled

[16] Nyiranjangwe Zura explains that she prayed for declaring null and void the auction since it was based on valuation report which is not valid, and this led her house to be auctioned on less value. She further explains that this ground does not appear anywhere in appealed judgment. She explains again that the fact that Commercial High Court disregarded to examine it while it is a ground she uses in her pleadings, it would be considered as lack of motivation in this case. Therefore she finds that the appealed judgment should be quashed and the rulings of the judgment RCOM0166/14/TC/HYE rendered by the Commercial Court of Huye on 18/06/2014 be sustained.

[17] Nyiranjangwe Zura adds that article 8 of the instructions N°03/2010/org of 16/11/2010 of the registrar general on modalities of lease, sale, public auction and possession of the mortgage which Commercial High Court based on, does not allow to rely on valuation report which is not valid, that the content of this article concens this valuation report.

[18] Counsel Kabasenga Berthilde and counsel Mugabo Pio argue that the main ground which their client Nyiranjangwe Zura used in her pleadings on the first instance was the annulation of

the auction because her house was auctioned on less value, because it was given the value of sixty eight millions rwandan franc(68) but it was sold at eighteen millions only (18), the beneficiary sold it at thirty six millions (36), this demonstrates how court baillif auctioned it at the less price. They further argue that their opponents state in part article 36 of the Law N°17/05/2010 of 12/5/2010 mentioned above because it further provides that in case of disputes, the matter shall be submitted to competent organ, that is the reason why the court baillif cannot auction the property as he/she wants. They also state that the other proof which demonstrates that the court baillif was intentionally devaluated the house of Nyiranjangwe Zura is that he declared that the house was built with mudbricks while it is fired bricks, this proves that he did not act professionally.

[19] Ntwali Justin, the counsel for BPR Ltd states that this ground of appeal is groundless because the Commercial High Court examined the grounds of appeal of BPR Ltd and Ruganda Crispin, that the Court could not examine her grounds while she did not appeal. He further explains that it is not true to state that there is lack of motivation since from paragraph 4 to paragraph 7 of the appealed judgment, the Commercial High Court motivated it, and also examined the voluntary intervention of B.E.S Supply Ltd.

[20] Nkundabatware Bigimba Félix, the counsel for Ruganda Crispin states that this ground of appeal is groundless because the Commercial High Court motivated enough its decision.

[21] In his submissions, Murutasibe Joseph, the counsel for B.E.S & Supply Ltd also states that this ground of appeal is groundless because from paragraph 4 to paragraph 7 of the appealed judgment, the Commercial High Court motivated it enough and demonstrated the provisions of the law it relied on.

VIEW OF THE COURT

[22] Article 36 of the Law N°17/2010 of 12/05/2010 establishing and organising the real property valuation profession in Rwanda provides that “where a party does not agree with a real property valuation, he/she shall refer the matter to the Council. In such case, the Council shall select other certified valuers who shall decide other valuation methods to be used. In case the dispute is not settled, it shall be submitted to competent court of Law”

[23] Article 19, paragraph one of the Law N°10/2009 of 14/5/2009 on mortgage as it was amended to date, provides that “the receiver shall be responsible for the selling of the mortgage at an appropriate market price after informing the two parties thereon”.

[24] Article 267, paragraph one of the Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, provides that “when it is obvious that the seized property under sale is likely to be sold at a too low price, the court bailiff, upon request by the distrainer, the distrainee, may postpone the auction to another day.” Whereas paragraph 2 of this article provides that “in that case, the public auctioneer shall set another day of auction not to exceed fifteen (15) days and shall take all necessary precautions to protect the interests of the parties.”

[25] As it is indicated in paragraph 7,8,9 and 10 of the judgment RCOM0166/14/TC/HYE of 18/06/2014 rendered on the first instance by Commercial Court of Huye, Nyiranjangwe Zura filed a claim requesting to declare null and void the auction of her house done on 24/03/2014 because it was relied on the valuation report of 29/09/2013 that was invalidated by the institute of real property valuers, this was informed to RDB, BPR Ltd and Ruganda Cryspin, the court baillif as it is affirmed by the letter of the executive director of the institute of real property valuers of 20/03//2014. That Court held that auction of Nyiranjangwe Zura's house on 24/3/2014 is nulled, it motivated that, as it abvious in paragraph 28 of its judgment, the fact that court baillif was informed that the valuation which he was going to rely on in auction,was invalidated by the competent organ, despite this, he based on it, that contract of the public auction which was concluded basing on the document which was declared null, hence that contract is not valid because it was unlawfully concluded.

[26] As it is indicated in the submissions, B.P.R. Ltd appealed to the Commercial High Court stating that the Commercial Court of Huye disregarded the objection of the inadmissibility of claim of Nyiranjangwe Zura because the object in litigation in this case was heard in the judgment RCOM 0084/14/TC/HYE which became binding whereby it held that Nyiranjangwe Zura knew the second valuation report, which confirmed that her house has the value of 42,000,000Frw after the auction, while that valuation report was heard in the judgment RCOM0084/14/TC/HYE, that basing on article 19, paragraph 2 of the Law N°10/2009 of 14/5/2009 on mortgage and article 208 of the Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, that it would not declare that Nyiranjangwe Zura has the right to file a claim to the court requesting for the annulment of the auction, because even if she had that right, it shall not remove that the auction was lawfullly conducted and the disputes provided under article 208 of the Law N°21/2012 of 14/06/2012 are not related with the issue of valuation. B.P.R. Ltd also appealed stating that the Commercial Court awarded Nyiranjangwe Zura damages while she did not prove them.

[27] The case file demonstrates that Ruganda Cryspin also appealed against the judgment RCOM0166/14/TC/HYE stating that the Commercial Court should not have overruled the objection of inadmissibility of Nyiranjangwe Zura's claim because she was not the one who should be sued, that the Commercial Court disregarded the laws and wrongful interpreted provisions of law, moreover, it contradicted itself on whether the instructions were respected.

[28] In the appealed judgment, Commercial High Court examined three issues related to whether the objection of inadmissibility of Nyiranjangwe Zura'claim raised by Ruganda Cryspin because she was wrongly sued, whether Ruganda Cryspin devaluated the house of Nyiranjangwe Zura during the auction and whether the claim of Nyiranjangwe Zura should not have been admitted because it was decided upon in the judgment RCOM0084/14/TC/HYE.

[29] As it is indicated in paragraphs 4,5,6 and 7 of the appealed judgment, the Commercial High Court motivated that basing on article 8,11,12 of the instructions of the registrar general N° 03/2010/ORG of 16/11/2010 on modalities of lease, sale, public auction and possession mortgage, the receiver shall have the obligation of conducting the valuation of mortgage, and report it to the registrar general for approval in instructions of auction, which means that the valuation carried out on request of mortgagor shall not have binding force, even if it was carried out by authorized experts. It also motivated that the fact that Nyiranjangwe Zura failed to prove

that her house was auctioned on the price which is very different from those on the market, that during the auction there was a buyer who could pay more than what that mortgage was sold on and that on collusion of Ruganda Cryspin and B.P.R. Ltd that mortgage was auctioned on low price, Ruganda Cryspin and B.P.R. Ltd should not be liable for the devaluation of the mortgage furnished by Nyiranjangwe Zura.

[30] The instructions of the auction of Nyiranjangwe Zura's house indicate that the auction will take place on 24/02/2014, and if it will not take place due to the absence of bidders or in case they offer a little bid, that public auction shall be postponed for the first time on 3/03/2014, for the second time on 10/03/2014, for the third time on 17/03/2014 and last on 24/03/2014.

[31] The letter of the Registrar General dated 28/02/2014 indicates that on 5/02/2014, Nyiranjangwe Zura wrote to her office requesting to declare nul and void the order to auction her house because the valuation in that order devaluates her property, then the Registrar General informed her that since she was not satisfied with the conducted valuation, she may submit her claim to the council of valuers, basing on article 36 of the Law N°17/2010 of 12/05/2010 mentioned above.

[32] The case file demonstrates that on 20/03/2014, the Acting Chairperson of the Regulatory Council of Real Property Valuation wrote to the Registrar General of RDB a letter which he received on 24/03/2014 and copied to Institute of Real Property Valuers, Managing Director of B.P.R. Ltd, Ruganda Cryspin and Nyiranjangwe Zura informing her that the valuation report on the immovable property of Nyiranjangwe Zura based on order n° 14-003881 for the auction of the mortgage dated on 27/1/2014 is invalid because it is inconsistent with the general principles of valuation on immovable property, for the interest of both parties on the conducted auction, the council finds that the value of the property should not be considered as the initial value since it is difficult to determine whether that value corresponds with the prices on market.

[33] As it is indicated in the case file, in reply to the letter dated 20/03/2014 mentioned above, on 08/04/2014, the Registrar General of RDB wrote to Regulatory Council of Real Property Valuation and copied to CEO of BPR Ltd, Ruganda Cryspin and Nyiranjangwe Zura informed it that basing on article 24 of the Law N° 10/2009 of 14/5/2009 on mortgage, she requests the concerned person to seize the competent court to settle that issue.

[34] The Supreme Court finds that the examination of the appealed judgment indicates that in quashing the judgment rendered on the first instance, the Commercial High Court did not examine the main issue which was submitted by Nyiranjangwe Zura of annulling the auction conducted on her house on 24/03/2014 because during the auction of the mortgage in litigation, the court baillif used the valuation report which was invalidated by Institute of Real Property Valuers on 20/03/2014, but instead, it only examined the issue of determining whether the court baillif Ruganda Cryspin devalued the house of Nyiranjangwe Zura during the auction.

[35] Supreme Court finds that the court had to examine the issue which was submitted by Nyiranjangwe Zura at the first instance, especially that in its submission at appeal level, B.P.R. Ltd argued that the Commercial Court could not rule on whether Nyiranjangwe Zura had the right to file a claim to the court, requesting for the annulment of the auction because even if she had that right, it does not mean that the auction was not lawful conducted.

[36] Supreme Court further finds that the interpretation of article 36 of the Law N°17/2010 of 12/5/2010 mentioned above, together with article 19, paragraph one of the Law N°10/2009 of 14/5/2009 mentioned above and article 267 of the Law N°21/2012 of 14/6/2012 mentioned above, is that in case the mortgage could be auctioned at a lower price than that is on the market, on the request of mortgagor or mortgagee, receiver suspends the auction and postpones it to another day, and makes sure that no one is prejudiced.

[37] Supreme Court finds that since 5/02/2014, Nyiranjangwe Zura wrote to the Registrar General requesting to declare null and void the order to auction her house because the valuation which is indicated in that order devalues her property, thereafter, in accordance to the response of the Registrar General, she referred the matter to the council of valuers, then that council wrote a letter on 20/3/2014 to the Registrar General and copied the Institute of Real Property Valuers, Managing Director of B.P.R. Ltd, Ruganda Crispin and Nyiranjangwe Zura, informing them that the valuation report of Nyiranjangwe Zura's immovable property is invalid due to the fact that it is inconsistent to the regulations governing the valuation of immovable property, but instead of suspending the auction of 24/3/2014, the court baillif disregarded it, and auctioned the mortgage basing on invalidated valuation, therefore, that auction should be annuled because it was unlawful conducted.

[38] Basing on the motivations provided above, the Supreme Court finds the appeal lodged by Nyiranjangwe Zura with merit.

b. Whether the parties should be awarded damages requested in this case

[39] Counsel Kabasenga Berthilde and Counsel Mugabo Pio state that their client Nyiranjangwe Zura prays for 1,500,000Frw in damages for being dragged into unnecessary lawsuits and the counsel fees she paid in previous cases, 3,000,000Frw of the procedure damages, 12,960,000Frw of the loss she incurred due to not living in her house while those they rented her house while she is sheltered in the house of benefactor, her demands are based on the fact that her house was rented at 270,000Frw per month for four years, she also requests 10,000,000Frw in moral damages.

[40] Counsel Kabasenga Berthilde and counsel Mugabo Pio further state that Ruganda Crispin can not request for any cost since he played a big role in all this, and the house which was valued at sixty eight millions (68,000,000Frw) by the time registering the mortgage, the experts in valuation put it at the value of fourty two millions (42,000,000Frw) and in addition to this when the court baillif was auctionning it he decribed it wrongly.

[41] Ntwali Justin, the counsel for B.P.R. Ltd argues that damages which Nyiranjangwe Zura requests for are groundless especially that she does not indicates whom she requests them from and reason; that the bank cannot pay them because till now she failed to reimburse the loan and it's interests were halted since the beginning of the case which caused a loss to the bank , moreover, what happened the bank had no role in it. He further states that the other reason that the bank should not be asked to pay damages is that if the court declares that the auction is cancelled, the house will not be given to the bank rather it will be given to Nyiranjangwe Zura, therefore she is the one who must pay the value added on the house.

[42] Ndagijimana Ignace, the counsel for Ruganda Cryspin argues that they lodged a cross appeal requesting 3,000,000Frw in damages, which includes 1,000,000Frw of the counsel fees and 2,000,000Frw of the procedural fees, also they should be awarded 2,500,000Frw of the counsel fees in all the previous cases. He states in addition that the court baillif should not be held liable for the value added on the house, rather the one who is given the house, especially that in case of reimbursment of the money, it will not be given to the court baillif, that is the reason why Ruganda Cryspin should not be held liable.

[43] Busogi Emmanuel, the counsel for B.E.S. Supply Ltd states that they bought the house at the price of thirty five millions (35,000,000Frw) and used 16,735,800Frw to renovate it, the last valuation report indicated that it has the value of seventy nine millions two hundreds and fifty thousand six hundred and seventy francs (79,250,670Frw), therefore they request that Ruganda Cryspin and B.P.R. Ltd be reimbursed the value added on it and the one who will be found liable to pay the counsel fees of 1,000,000Frw.

VIEW OF THE COURT

[44] Article 258 of the civil code book three provides that “any act of a man, which causes damage to another obliges the person by whose fault it happened to be held liable”

[45] Regarding 1,500,000Frw of the counsel fees that she paid in the previous cases and on this instance, Nyiranjangwe Zura requests for its reimbursement by B.P.R. Ltd and Ruganda Cryspin, the Supreme Court finds that she should be awarded it because it became necessary to hire a lawyer from the first instance till to this court

[46] Regarding 3,000,000Frw of the procedural fees from the first instance to this court which Nyiranjangwe Zura requests to be paid by B.P.R. Ltd and Ruganda Cryspin, the Supreme Court finds that they should be awarded since she followed up her cases, but the fact that she does not indicates how they are culculated, in its discretion it awarded 300,000Frw for the Commercial Court, 500,000Frw for Commercial High Court and 500,000frw for this instance, all together equal to 1,300,000Frw.

[47] Regarding 10,000,000Frw in moral damages which Nyiranjangwe Zura requests to be paid by B.P.R. Ltd and Ruganda Cryspin, the Supreme Court finds that she should be awarded, but the fact that what she requests are excessive, she is awarded in the discretion of the court 2,000,000Frw.

[48] Regarding 12,960,000Frw which Nyiranjangwe Zura demands from B.P.R. Ltd and Ruganda Cryspin, of the loss she suffered due the fact that she did not live in her house, while they rented it and for her she is sheltered in the house of benefactor, the Supreme Court finds that even if it is obvious that Nyiranjangwe Zura was renting that house 120.000Frw of the rent per month before it was auctioned as it is indicated in lease contract she concluded with Ecobank Rwanda Ltd on 1/10/2012 and the receipt n°03/06/2013 that was submitted to that bank on 8/6/2013; but can not be awarded them because she requested those damages for the first time before this court.

[49] Concerning the costs B.P.R. Ltd and Ruganda Cryspin requests to be paid by Nyiranjangwe Zura, Supreme Court finds that they should not be awarded it because they lost the case.

[50] Regarding costs which B.E.S. Supply Ltd requests for renovating the house that was auctioned and 1,000,000Frw of the counsel fees, the Supreme Court finds that it should not be awarded because it voluntarily intervened in this case at the second instance with the purpose of praying to the High Court to hold that the claim of Nyiranjangwe Zura should not have been admitted at the first instance because the grounds that are based on are *res judicata* and to rule that the mortgage in litigation was lawful auctioned, but as it is indicated in its defense submission before this Court, it supported the defense of B.P.R. Ltd and Ruganda Cryspin, therefore it should not request for the first time on this level that B.P.R. Ltd and Ruganda Cryspin be ordered to reimburse that amount of money while from the beginning it supported their pleadings.

III. DECISION OF THE COURT

[51] Finds the appeal of Nyiranjangwe Zura with merit;

[52] Holds that the auction of Nyiranjangwe Zura's house that was took place on 24/03/2014 and the related contracts are nullified;

[53] Orders B.P.R. Ltd and Ruganda Cryspin to jointly pay to Nyiranjangwe Zura 1,500,000Frw of the counsel fees, 1,300,000Frw of the procedural fees for the first instance up to this court and 2,000,000Frw in moral damages, all together amounting to 4,800,000Frw;

[54] Orders B.P.R. Ltd and Ruganda Cryspin to jointly pay 700,000Frw for the valuation which was ordered by this court;

[55] Orders B.P.R. Ltd and Ruganda Cryspin to jointly pay the court fees worth 100,000Frw.