

SUCCESSION MUKAGAHIMA v. NGARAMBE

[Rwanda SUPREME COURT – RCAA0039/15/CS (Mugenzi P.J., Nyirandabaruta and Gakwaya J.) 06 July 2018]

Criminal procedure – Claim for damages – Filing a civil action requesting for the annulment of a document differs from filing a claim of damages within criminal proceedings – Law relating to the code of criminal procedure, article 139.

Contract law – Contract of donation – A donation is made by authentic deed, written agreement or simple transfer to the beneficiary – Law N° 22/99 of 12/11/1999 completing civil code book I and instituting part 5 relating to matrimonial regime, donation and succession, article 27.

Facts: Ngarambe filed a claim before Nyarugenge Intermediate Court, requesting for the annulment of the documents relied on to grant “acte de notoriété” to Mukagahima Génèreuse for the house alleged by Ngarambe to be his, he requests the Court to order the registration of that house on his name, he also prays to order Mukagahima to give him damages, interests he lost and the counsel fees.

Mukagahima states that the claim of Ngarambe should not be admitted because the grounds of the claim have been litigated in another criminal case which she won and Ngarambe was a party to that case claiming for damages but his claim was inadmitted because Mukagahima was found not guilty. The Intermediate Court of Nyarugenge rendered the judgment holding that the claim of Ngarambe has no merit,

Ngarambe appealed before the High Court, stating that the Court rejected his claim basing on the criminal case while it has no link with the civil case because the parties and the subject matter are not identical. That Court rendered the judgment deciding that the appeal of Ngarambe has merit.

Mukagahimana was not contented with the rulings of that judgment and appealed before the Supreme Court stating that, the High Court should have declared that claim inadmissible, that the Court disregarded the evidence proving the origin of the property and the fact that she lived with Ngarambe as wife and husband.

And after, Mukagahima passed away, the Court examined first the issue of her children who have not yet the age of majority, examining how they should be represented in the hearing. The Court decided that it is needed to find a guardian for those minor children pursuant to Law governing persons and family.

Ngarambe states that article 139 of the Law relating to criminal procedure does not prohibit some one to file a civil claim on the grounds that are different from those ones he/she based on to file a claim for damages in criminal case. He also states that; the appellants contradict themselves because they state that Ngarambe made a donation but they deny the origin of his property.

Held: 1. Filing a civil action requesting for the annulment of a document differs from filing a claim of damages within criminal proceedings. Therefore, the claim is admitted.

2. A donation is made by authentic deed, written agreement or simple transfer to the beneficiary.

**Appeal has merit.
The appealed judgment is reversed.**

Statutes and Statutory instruments referred to:

Law N° 43/2013 of 16/06/2013 43/2013 governing land in Rwanda, article 10.

Law N°30/2013 of 24/05/2013 relating to the code of criminal procedure, article 139.

Law N° 22/99 of 12/11/1999 completing civil code book I and instituting part 5 relating to matrimonial regime, donation and succession, article 27 and 28.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 106 and 162.

Law of 10/07/1888 governing contracts or obligations, article 258.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Ngarambe Jean filed a claim before the Intermediate Court of Nyarugenge requesting the annulment of land documents delivered by local government authorities for which they were relied on to grant Mukagahima Génèreuse “acte de notoriété” of the property composed of a house that Ngarambe Jean claims that it is his, he requests the Court to decide that property be registered on his name, and order Mukagahima Génèreuse to pay damages, interests he lost and counsel fees.

[2] Mukagahima Génèreuse raised an objection of inadmissibility of Ngarambe Jean’s claim because the subject matter was adjudicated in another case RP0295/14/TGI/NYGE, rendered on 10/07/2014, in which Mukagahima Génèreuse was accused of the offence of fraudulent acquisition of documents issued by the competent authority and use of counterfeit documents , in this case Ngarambe Jean sued for damages but his claim was not admitted because Mukagahima Génèreuse was acquitted for those offences which are similar to those of civil case.

[3] The Intermediate Court of Nyarugenge rendered the judgment RC0742/14/TGI/Nyge on 24/03/2015, and held that the claim of Ngarambe Jean has no merit, because it found that in case RP0295/14/TGI/NYGE, the Court found Mukagahima Génèreuse not guilty of the offence of fraudulent acquisition of documents and use of counterfeit documents, and decided that there is no basis to annul those documents while they were legally delivered, and ordered Ngarambe Jean to give Mukagahima Génèreuse 500.000 Frw of counsel fees, damages for unnecessary law suits and procedural fees.

[4] Ngarambe Jean appealed before the High Court, stating that the lower court rejected his claim basing on criminal case whereas the cases are different because the parties and the subject matter are not identical. That Court rendered the judgment RCA0174/15/HC/KIG on 23/10/2015, and decided that the appeal of Ngarambe Jean has merit, it ordered the annulment of the certificates delivered by local authorities which include the certificate of 30/02/2009, the one of

28/08/2004, proof of land acquisition N° 1253//2004 and “acte de notoriété” of 27/07/2010, delivered on Mukagahima Génereuse’s name, and decided that the house in litigation be registered on Ngarambe Jean, it also ordered Mukagahima Génereuse to pay Ngarambe Jean 1,225,000 Frw of damages and court fees.

[5] Mukagahimana Génereuse was not contented with the rulings of the case and appealed before this Court, stating that the High Court should not have admitted the claim and it disregarded the evidence of the origin of the property, she adds that the court disregarded that she lived together with Ngarambe Jean as wife and husband and that damages she was charged have no merit because she contributed to the construction of the house.

[6] The case was heard in public on 11/10/2016, on 10/01/2017 and on 18/04/2017, the Court examined the issue relating to those having capacity to take over the case on the side of Mukagahima Génereuse who died on 31/07/2016, Counsel Mugabonabandi Jean Maurice represented some of the heirs of Mukagahima Génereuse, while Ngarambe Jean was assisted by Counsel Kayitana Evode, the debate proceeded on the issue regarding how minor children are represented in court case.

[7] On 19/05/2017, the Court decided that a guardian be appointed for the minor children Ngarambe Bruce Kevin and Ngarambe Chris in accordance with the provisions of the Law N°32/2016 of 28/08/2016 governing the persons and family. They will be helped by Remera sector.

[8] The hearing of the case in merit was held in public on 22/05/2018, Mugabonabandi Jean Maurice representing Mugabo Aimé Fernand, Umulisa Murielle and Ndayisenga Sandrine (the guardian of Ngarambe Bruce Kevin), Counsel Bizimana Emmanuel and Counsel Safari Kizito represented Ngarambe Jean while Counsel Uwamahoro Marie Grâce represented Nzabandora Ildephonse, the guardian of Ngarambe Chris. The heirs of Mukagahima Génereuse explained their grounds of appeal, the representatives of Ngarambe Jean replied on them. On that day, the Court decided to adjourn the hearing so that the court conducts field investigation.

[9] The investigation was conducted on 21/03/2018, in Amajyambere village, Rukiri I cell, Remera sector, Gasabo district, Kigali city, where object in litigation is located, the Court heard the witnesses of both sides, the hearing was reopened on 22/05/2018, the parties were represented as before and were given opportunity to comment on the result of investigation and the statements of the witnesses.

II. ANALYSIS OF LEGAL ISSUES

1. Whether the claim of Ngarambe Jean should not have been admitted.

[10] Counsel Mugabonabandi Jean Maurice, who represents Mugabo Aimé Fernand, Umulisa Murielle and Ndayisenga Sandrine (the legal guardian of Ngarambe Bruce Kevin), states that the claim of Ngarambe Jean should not have been admitted by the lower Courts because article 139 of the Law relating to the code of criminal procedure prohibits a person to file an action in a criminal court and filing the same action in civil Court, he adds that the case file contains the judgment N° RP0295/14/TGI/NYGE which acquired the force of res judicata, whereby the

Intermediate Court of Nyarugenge based on the testimony provided by the local authorities confirming that the property was registered on Mukagahima Génèreuse on request of Ngarambe Jean, this led to decide that Mukagahima Génèreuse is not guilty, consequently, the claim for damages lodged by Ngarambe Jean was inadmitted.

[11] Counsel Mugabonabandi Jean Maurice states that the objection raised is not a new claim, that they raised it even in lower Courts, and that objection may be raised at any stage of proceedings, that Ngarambe Jean waited the case to acquire the force of res judicata without appeal, then he lodged a simillar claim to that one of criminal case before civil Court whereas the laws prohibit that.

[12] Counsel Uwamahoro Marie Grâce, who represents Nzabandora Ildephonse states that article 139 of the Law relating to code of criminal procedure applies when the claim for damages is admitted and examined, the Claim of Ngarambe Jean was not admitted because Mukagahima Génèreuse was found not guilty, she finds that is possible to file that claim as civil action, because civil laws and criminal laws are separately independent, and the judge in civil case is not obliged to follow what a judge in criminal case did , she concludes that the civil claim must fall under the Law relating to the civil procedure.

[13] Counsel Bizimana Emmanuel who represents Ngarambe Jean, states that Mukagahima this grounds of appeal of Génèreuse's heirs should not be admitted because it is a new claim filed in appeal level while it was not litigated in lower Court, he links this with the provision which provides that a party appeals against irregularity in the judgment, that since the previous courts did not decide on inadmissibility of the claim, he finds noe irregularity in the judgment, he adds that in case the court finds it otherwise, the court would hold that this ground of appeal has no merit because parties in criminal action and those of civil action are different, he adds that the civil claim was not even admitted.

[14] Counsel Bizimana Emmanuel further states that article 139 of the Law relating to the code of criminal procedure prevents some one, who claimed damages within criminal proceedings, to claim for them in civil action basing on the same offence, but it does not prevent some one to file a claim with different grounds. With regard to criminal case that acquired force of res judicata and has not been subject to appeal, Counsel Bizimana Emmanuel states that, it is not true because their claim in criminal case was not examined and decided upon.

COURT'S DETERMINATION

[15] Article 139 of the Law N° 30/2013 of 24/05/2013 relating to the code of criminal procedure provides that "A person aggrieved by an offence who wishes to sue for damages may either file an action in a criminal court or a civil court. However, once the aggrieved person chooses to file his/her action in one court, either criminal or civil, he/she cannot later file the same action in another court".

[16] Article 106 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that, "The authority of a final judgment extends only to the subject - matter of the judgement. It is necessary that the subject matter of the case be the same, that action be based on

the same grounds, that the action be pending between the same parties and that the action be brought by or against the same parties in their original names.”

[17] The case file indicates that in case N° RP0295/14/TGI/NYGE, Mukagahima Génèreuse was accused before the Intermediate Court of Nyarugenge for the offence of fraudulent acquisition documents to be issued by the competent authority and use of counterfeit document, Twiringiyimana Célestin was also accused in that case the offence usurpation of power , in that case, Ngarambe Jean sued for damages, the Court ruled on the case on 10/07/2014, it decided that Mukagahima Génèreuse and Twiringiyimana Célestin are not guilty, it also declared inadmissible the claim of damages filed by Ngarambe Jean.

[18] The case file also indicates that Ngarambe Jean after that judgment, he filed a case before the Intermediate Court of Nyarugenge in the case N° RC0742/14/TGI/NYGE, he requested the annulment of documents issued by local authorities which served to register his property composed of a house on Mukagahima Génèreuse, thus he seeks that the house be registered on his name, and be paid damages for being deprived the rights and interestes from his house, he also requests the counsel fees.

[19] The Court finds that, what article 139 of the Law N° 30/2013 of 24/05/2013 mentioned above prohibits is, if some one takes the option of filing a claim of damages before the criminal Court, he can not change and file it before civil Court, this not what Ngarambe Jean did, because the claim he filed before Nyarugenge Intermediate Court in civil case is intended to annul the documents issued by local authorities, it has no link with the claim for damages he filed within criminal proceedings in the case N° RP0295/14/TGI/NYGE, when Mukagahima Génèreuse was prosecuted before the Intermediate Court of Nyarugenge for the fraudulent acquisition of documents issued by the competent authority. And use of counterfeit documents Therefore, the Court finds without merit the statment of Counsel Mugabonabandi Jean Maurice that the claim of Ngarambe Jean should not have been admitted by previous courts because he filed a case before the criminal court and then before the civil court.

[20] The Court further finds that, as indicated above, to base on the principle that the judgment acquired force of res judicata, there should be claim withthe same subject matter, between same parties and pleading in the same names as before. No one can pretend that the previous courts disregarded that principle with regard to that case because the criminal case N° RP 0295/14/TGI/NYGE, the case between the Prosecution and Mukagahima Génèreuse , is different from the presenet case, either regarding their nature because one is criminal while other is civil, or regarding the object of the claim and the parties, thus, the statement of the counsel for Mugabo Aimé Fernand, Umulisa Murielle and Ndayisenga Sandrine (the legal guardian of Ngarambe Bruce Kevin), that the Court disregarded the case which acquired the force of the res judicata has no merit.

[21] With regarding the statment of Counsel Bizimana Emmanuel that this ground of appeal concerning the objection raised by the heirs of Mukagahima Génèreuse for inadmissibility of Ngarambe Jean’s claim must be dismissed because it is a new claim, the Supreme Court finds that this issue is not examined for the first time because the High Court reffered to it and decided upon it in paragraph 12, thus that objection cannot be considered as new claim filed for the first time in this Court.

2. To know the owner of the property in litigation

[22] Counsel Mugabonabandi Jean Maurice states that in paragraph 18 and 19 of the judgment N° RP0295/14/TGI/NYGE, the Intermediate Court of Nyarugenge demonstrated the origin of the property as it was affirmed by local government authorities, thus, if there is a criminal case which held on the origin of the property, it cannot be quashed by the civil case.

[23] Counsel Mugabonabandi Jean Maurice further states that, the High Court based its decision on the document made in 1995 produced by Ngarambe Jean as proof of origin of the property while they indicated the irregularities of that document, because the person mentioned in that document is Ngarambe Jean Pierre, who is different from Ngarambe Jean, they also contest the donation because the donor did not sign the donation document. He explains that, it is not true where they argue that he put his fingerprint, instead, it looks like an ink poured on it, there is not even the signature of the receiver on that document, and the donor does not indicate the location of the land he donated.

[24] Counsel Mugabonabandi Jean Maurice also states that, the statement of the counsel for Ngarambe Jean that there should be a document proving that the latter really donated to Mukagahima Génèreuse the property in litigation, is false because the Law on succession provides that, the donation is valid even upon simple transfer to the receiver, it is no where provided that the donation is valid when it is written. He continues stating that, the statement of Ngarambe Jean that Mukagahima Génèreuse registered on her names that property in 2009 and 2010, while he was imprisoned, it is not true, because since 2004, those properties were registered on Mukagahima Génèreuse when she and Ngarambe Jean lived together, thus, he prays to Court to base on the document of 2000 indicating that the old woman Ntacyobazi Anastasie donated to Mukagahima Génèreuse and Ngarambe Jean, the land in litigation.

[25] Regarding the statement of witnesses questioned in the investigation of 21/03/2018, Counsel Mugabonabandi Jean Maurice states that the testimony of Izere Valentine can help the Court, with regard to the documents which Ngarambe Jean requested for the annulment, Mukagahima Génèreuse was lawfully issued those documents, thus they should not be annulled, that, Twiringiyimana Célestin testified that, he was in village's committee since 2003 up to 2006, and get back into committee in 2009 up to now, he explained that Ngarambe Jean himself went before officials requesting to register the property to Mukagahima Génèreuse, this complies with the criminal case they filed to court; lastly Bakina indicated that he knows the history of the land in litigation because he said that he is aware of the time that land was donated to Ngarambe Jean and Mukagahima Génèreuse and that he signed as witness on the donation contract.

[26] Counsel Mugabonabandi Jean Maurice further argues that he does not agree with the testimonies of other witnesses, because Nzabandora Jimmy and Ngarambe Jean are full siblings, he can be biased due to their blood relation, and also he states that Ngarambe Jean was given the that land with a house when he was living with Mukagahima Génèreuse, whereas Ngarambe Jean stated that he was not living with her, they contradict each other while Ngarambe Jean is the one who introduced him to Court; that with regards to the witness Kanani, the court should take

into consideration how Ngarambe Jean as an intellectual (Ingénieur) took a bricklayer assistant of 15 years old, who barely knows how to write as a witness and protractor of a document which he produces as evidence of his claim; regarding the witness Mukampabuka Hélène, who states that there were pea nuts in the land, and contradicts with Kanani who states that there were grasses called *ibyicamahirwe* while they were all present; Radjab on his side states that, he begun building in 1999, which differ from the statements of the parties.

[27] Counsel Uwamahoro Marie Grâce states that Ngarambe Jean indicates that he was given the land by Ntacyobazi Anastasie, thus, he is the owner of the property, with regard to names of Ngarambe Jean-Pierre, he states that there was a mistake on the names, she adds that it was not possible for Ngarambe Jean to donate Mukagahima Généreuse without written and signed document, and that all donations received by Ngarambe Jean were in written contract, that the donation alleged to be awarded to Mukagahima Généreuse, could not be given orally.

[28] Counsel Uwamahoro Marie Grâce states that, the appellant make false statement by arguing that, on the donation document there is no the donor's signature because there is fingerprint, as regards to the fact that Mukagahima Généreuse was in possession of the property in litigation since 2004, she states that if the Supreme Court finds that the property belongs to Ngarambe Jean, Mukagahima Généreuse shall file a claim for her rights.

[29] Counsel Uwamahoro Marie Grâce continued stating that, there are evidence indicating that there are two donations, the first is that one made by Ntacyobazi Anastasie and concerns the land of 20x14metres given to Mukagahima Généreuse and Ngarambe Jean, then, Kigali city granted that land to Kizito Jean. She states that the second one is indicated by the document of 27/02/1995, whereby Ntacyobazi Anastasie donated to Ngarambe Jean alone, which is the object of the claim in this case, thus, if the counsel for the heirs of Mukagahima Généreuse disagree with the fact that Ngarambe Jean was donated that land, they should prove the origin of the land that Ngarambe Jean gave her.

[30] With regard to the investigation, Counsel Uwamahoro Marie Grâce states that the testimony of Izere Valentine is irrelevant because she does not explain how Ngarambe Jean donated to Mukagahima Généreuse, that Twiringiyimana Célestin also did not explain the exact point of the issue because he did not state that Ngarambe Jean donated to Mukagahima Généreuse, rather, it is a hearsay. Also the testimony of Bakina Jean is baseless because he stated that he came after the contract was concluded, they gave him a drink and he signed, while Nzabandora Jimmy and Kanani are indicating the origin of the property, they stated that the property belongs to Ngarambe Jean, thus, it has to be registered in his names.

[31] Counsel Bizimana Emmanuel states that the appellants contradict themselves because they state that Ngarambe Jean made a donation while they refute its origin, also, the date on which Mukagahima Généreuse indicated that she was awarded the land documents, coincide with the period for which Ngarambe Jean was imprisoned. He states that, the request of Counsel Mugabonabandi Jean Maurice that Ngarambe Jean and Mukagahima Généreuse should share because they lived and built that house together, he finds that, it is a new claim, which is prohibited by article 4 and 7 of the Law N° 21/2012 of 14/06/2012 relating to civil procedure because they did not request for sharing they just mention it before the Supreme Court for the first time. As regards to know whether Ngarambe Jean is the same as Ngarambe Jean-Pierre who

is stated in the document made in 1995, he states that, he is the one and the proof is his baptism card which shows that his name is Jean-Pierre.

[32] Counsel Bizimana Emmanuel also states, the fact that Radjab did not prove that he was a bricklayer, this was not the purpose, and cannot weaken his statement, regarding the issue that Kanani was a bricklayer assistant working with an ingeneer, no law was violated, He concluded stating that as Ngarambe Jean appears on the donation contract, as there is no document which replace the first one, the Court should base on this to decide that the property belongs to Ngarambe Jean.

[33] Counsel Safari Kizito states that regarding the origin of the property, Bakina Bernard cannot help the Court, because he came after the contract was already concluded, that he was given a drink and he signed, that Twiringiyimana Célestin does not reveal the truth because he was accused in criminal case together with Mukagahima Généreuse; the testimony of Nzabandora Jimmy who explained that Ngarambe Jean was the only one to be donated is the right version, his testimony cannot be dismissed because of being a brother of Ngarambe Jean,concerning Kanani and Mukampabuka Hélène, the fact that one can see pea nuts and other some thing else, it depends on their choice whereasRadjab, he revealed that he does not know the origin of the land, that he started building in 1999, and that Ngarambe Jean was only one he used to see, this should also be considered.

COURT'S DETERMINATION

[34] Article 162 of the Law N° 15/2004 of 12/06/2004, relating to evidence and its production, provides that testimonial evidence is statements made in court by an individual regarding what he or she personally saw or heard with that is relevant to the object of trial.

[35] Article 27 of the Law N° 22/99 of 12/11/1999 completing book one of civil code and establishing book five relating to matriomonal regimes, donations and successions provided that donation is made by authentic deed, written agreement or simple transfer. While article 28 of that Law ptrovides that, The inter vivos donation takes effect on the date of its acceptance. The receiver of the donation may accept it in writing or verbally.

[36] The case file indicates that, at time Mukagahima Généreuse was accused before the Intermediate Court of Nyarugenge in the case N° RP0295/14/TGI/NYGE, the offence of fraudulent acquisition of documents issued by the competent authority, and use of counterfeit documents the Court found her not guilt basing on the testimony of witnesses including Twiringiyimana Célestin and Nibisekere Louis, who testify that, at time they were authorities of local government, they received Ngarambe Jean, requesting to register the property to Mukagahima Généreuse,because he was stating that he is about to separate with his first wife, and wanted to register that property to Mukagahima Généreuse, his second wife so that the child they gave birth together will survive, that there is also a document indicating that it is a land

from the ancestors which shows that Ngarambe Jean and Mukagahima Génèreuse were given a piece of land with a house by Ntacyobazi Anastasie, therefore, the fact that Ngarambe Jean sought for registering that piece of land in the names of Mukagahima Génèreuse, the latter had to accept it.

[37] The grounds based on in the judgment N° RP0295/14/TGI/NYGE rendered by the Intermediate Court of Nyarugenge, were pointed out by witnesses during court investigation, whereby witness Bakina Bernard told the Court that the old woman Ntacyobazi Anastasie donated a land to Ngarambe Jean and his wife Mukagahima Génèreuse and by that time they were living as wife and husband. Twiringiyimana Célestin, states that, for the land to be registered on Mukagahima Génèreuse, Ngarambe Jean brought her and asked to register the land on his wife, Izere Valentine states that she was a chief of the village since 2010, though she states that she does not know the origin of the property, she stated that what she knows is that Mukagahima Génèreuse presented a certificate indicating that she is registered on that property, which they based on to give her the “acte de notoriété”.

[38] The Court finds, the fact that Ngarambe Jean made a donation to Mukagahima Génèreuse and asked local authorities to register it on her that registration itself suffices and it is not contrary to article 27 of the Law N° 22/99 of 12/11/1999 relating to matrimonial regimes, donations and successions mentioned above which was in force that time, because that article provides that the donation can be simply handled to the receiver, this means that since Ngarambe Jean transferred the donation to his wife through local authorities and applied for its registration on her names, it was not necessary to establish either an authentic deed or private deed for that donation, this is contrary to the findings of the High Court, meaning counsel for Ngarambe Jean made false statement that Mukagahima Génèreuse sought for registering the land and a house while Ngarambe was imprisoned.

[39] The Court finds that basing on article 10 of the Law N° 43/2013 of 16/06/2013 governing the use and management of land in Rwanda, the land in litigation was donated to Mukagahima Génèreuse as a gift, thus, there is no basis to annul the certificates of local authorities which gave her the right to register that property on her names because she got them lawfully.

[40] Basing on motivations above, the Court finds that the property in litigation belonged to Mukagahima Génèreuse, thus, it should be given to her heirs because she passed away.

[41] The Court finds, regarding the fact that Ntacyobazi Anastasie donated that property to Ngarambe Jean alone, it does not make any change because, he gave that property to Mukagahima Génèreuse as a donation.

3. Whether the heirs of Mukagahima Génèreuse are entitled to damages they request

[42] In his court submissions, Counsel Mugabonabandi Jean Maurice representing the heirs of Mukagahima Génèreuse, stated that the Court awarded Ngarambe Jean unjustified damages equivalent to 1,225,000Frw because he should not have won the case, instead, Ngarambe Jean should be the one to pay to Mukagahima Génèreuse damages because he drags her in unnecessary law suit, he prays the Supreme Court to rectify the mistakes committed by the High Court, and overturns the damages awarded, rather, Mukagahima Génèreuse's heirs should be

awarded damages she requested in previous courts, counsel fees for all previous levels and procedural fees, all damages they request worth 5,000,000 Frw.

[43] In his court submissions, Counsel Kizito Safari representing Ngarambe Jean stated that damages awarded to Ngarambe Jean by the High Court were worthy because he was deprived rights to his property, this led him to file a court case seeking for justice. He lodged a cross appeal stating that damages for being deprived the rights to the house equal to 100,000 Frw are insufficient compared to moral prejudice that Ngarambe Jean suffered, he requests the Supreme Court to award him all damages he requested equal to 3,000,000 Frw, material damages equal to 200,000 Frw every month, since 2010, procedural fee equal to 500,000 Frw and counsel fees equal to 1,500,000 Frw at this level in addition to those awarded in the appealed judgment.

COURT'S DETERMINATION

[44] Article 258 of civil code book 3, provides that "any act of a man, which causes damage to another obliges the person by whose fault it happened to repair it".

[45] The Court finds that as it has been proven that the property belongs to Mukagahima Génèreuse, it implies that Ngarambe Jean was not deprived the rights to the property, thus, the damages he has been awarded by the High Court have to be cancelled, rather the heirs of Mukagahima Génèreuse are the ones to be awarded damages of 300,000 Frw for procedural fees and 500,000 Frw for counsel fees at this level because it is worthy, with regard to moral damages, they can not be awarded because they failed to prove them.

III. DECISION OF THE COURT

[46] Decides that the appeal lodged by Mukagahima Génèreuse and pleaded by her children Aimé Fernand, Umulisa Murielle, Ngarambe Bruce Kevin and Ngarambe Chris, has merit;

[47] Decides that the judgment N° RCA0174/15/HC/KIG rendered on 23/10/2015 by the High Court is reversed ;

[48] Decides that the property in litigation belongs to Mukagahima Génèreuse, and has to be given to her children Mugabo Aimé Fernand, Umulisa Murielle, Ngarambe Bruce Kevin and Ngarambe Chris who are entitled to inherit her ;

[49] Orders Ngarambe Jean to pay the heirs of Mukagahima Génèreuse damages equal to 800,000 Frw as motivated above ;

[50] Orders Ngarambe Jean to pay the court fees equal to 100,000Frw.