

TUYISENGE v. MUKARONI

[Rwanda SUPREME COURT – RS/INJUST/RC00008/2018/SC
(Rugege, P.J., Kayitesi R, Kayitesi Z, Hitiyaremye and
Cyanzayire J.) June 28, 2019]

Contract law – Donation contract – Termination of contract – If the receiver of a donation accepts related obligations and fails to comply with them, it is a reasonable ground to terminate that contract because it has become a bilateral contract.

Contract Law – Termination of contract – Though the Law provides that the termination of the donation contract has to be decided by the Court, it is not necessary to file a claim for the termination of that contract if the contracting parties consent for its termination and bear its consequences.

Facts: Kabaziga gave his grandchild Bizimana all her properties and entrusted him with obligations of their management and exploiting them to produce what he will use to feed her because she has become older, then she also donated him one piece of land, they concluded a written contract which was signed by their family members.

Afterwards, when Kabaziga noticed that her grandchild does not execute his obligations as they agreed, she terminated the contract and made another contract with one of Bizimana's wives called Mukaroni with whom they were not legally married, then the land that Mukaroni received as a donation, she registered it in her names and she was granted emphyteutic lease title on that land.

Bizimana got married legally to his second wife called Tuyisenge, then he divided his properties to his two wives except for two pieces of land which were possessed by Mukaroni.

Tuyisenge filed a claim before abunzi committee of kabeza cell against Mukaroni and Bizimana, requesting to share two pieces of land which were in possession of Mukaroni, Abunzi committee of the cell decided that the disputed land belongs to Mukaroni. Tuyisenge appealed for that decision before the Abunzi committee of the Cyuve sector which sustained that two pieces of land in litigation, belongs to Mukaroni.

Tuyisenge filed a claim to the Primary Court of Muhoza against the decision of Abunzi committee, that Court dismissed that decision of Abunzi, it decided that all two pieces of land which are under litigation have to be divided by two, $\frac{1}{2}$ of each piece of land will be allocated to the common property of Tuyisenge and Bizimana, and that $\frac{1}{2}$ belongs to Mukaroni, it decided that the document of 01/02/2000 terminating the donation of the piece of land which Bizimana was given by his grandmother is void because it disregarded the provisions of the Law.

Mukaroni applied for the case review before the Primary Court of Muhoza, stating that some of her elements of evidence produced before the Court, were not examined, these include a land title which proves that the land under litigation belongs to her. She also states that Bizimana and Tuyisenge did not put a caveat on that title or get registered on that land. The Court decided that the claim for the case review of Mukaroni has merit in part, and decided that the judgment rendered by the Primary Court of Muhoza is reversed with regard to the piece of land N° 1 and decided that the piece of land N° 2 registered on Mukaroni belongs to her, and ordered Tuyisenge to pay Mukaroni for

counsel fee, it also ordered Tuyisenge and Bizimana to refund Court fee to Mukaroni jointly.

Tuyisenge wrote to the office of Ombudsman requesting to render her justice because she found that the ruling of the judgment in the case review rendered by the Primary Court of Muhoza was unjust. After analysis of that issue, the office of Ombudsman wrote to the President of the Supreme Court requesting him that the case be reviewed due to injustice. After analyzing the report of the Inspectorate General of Courts, the President of the Supreme Court ordered to review the concerned case.

Before the Supreme Court, Tuyisenge states that she prays to render her justice because she finds that the contract of donation concluded between Bizimana and Kabaziga was terminated illegally because the termination should have been decided by the Court, but was not the case.

Mukaroni defends herself stating that the statement of Tuyisenge that the contract of donation contract was terminated illegally, has no merit because there was no need for the donor to seize the Court seeking for that termination while the contracting party consented for it.

Held: 1. If the receiver of a donation accepts related obligations and fails to comply with them, it is a reasonable ground to terminate that contract because it has become a bilateral contract.

2. Though the Law provides that the termination of the contract of donation has to be decided by the Court, it is not necessary to file a claim for the termination of that contract if the contracting parties consent for its termination and bear its consequences.

Thus, the termination of the contract of donation is not contrary to the law.

The claim for the review of the case due to injustice has no merit.

Statutes and statutory instruments referred to

Law N°43/2013 of 16/06/2013 determining the use and management of land in Rwanda, article 10.

Law N°22/99 of 12/11/1999 completing book one of civil code and instituting part three governing matrimonial regimes donations and successions, articles 37,38 and 40.

French Civil Code, article 956.

No cases referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] When Bizimana Daniel was living with Mukaroni Xaverine without being legally married, his grandmother Kabaziga who was no longer capable to cultivate, gave him, her properties for their management and to make it more productive so that, he can feed her, particularly she gave him a piece land located chez Ndagozera as a donation. This was put in writing on 04/4/1999 in presence of family members who signed it. When Kabaziga did not find assistance she was expecting from him and after noticing that he was mismanaging her properties due to his misbehaviors, she terminated the contract, she

canceled responsibilities of management of her properties and returned a piece of land she gave him as a donation. She entrusted her properties to Mukaroni for their management and was also given an obligation of looking after her, she also donated to the latter, the land returned from Bizimana. The contract for that was also made on 01/2/2000 in presence of family members. Mukaroni registered that land and was given a land title with UPI number 4/03/02/04/2883.

[2] When Bizimana Daniel got married to Tuyisenge Francoise before administrative organs on 15/9/2006, (but they were living together as he was living with Mukaroni as well), that day, he shared his properties between his two wives, Tuyisenge and Mukaroni, except two pieces of land owned by Mukaroni. Bizimana stated that one piece of land was given by his parents when he was living together with Mukaroni. For the second piece of land, Bizimana and Mukaroni, each pretends to be his as a donation from Mukabaziga. Tuyisenge, the legitimate wife sued to courts praying to have a share on those pieces of land.

[3] Tuyisenge sued Mukaroni and Bizimana before the Abunzi Committee of Kabeza cell, requesting to share two pieces of land possessed by Mukaroni, stating that the latter remains with half of each piece of land, and that Tuyisenge and Bizimana be given $\frac{1}{2}$ of each piece of land. She adds that those pieces of land are composed of land located at Kalinzi and land located next to Ntaganzwa place, this was given to Bizimana by his grandmother Kabaziga for him to manage it and feed her. Mukaroni pleaded that the land in litigation was really given to Bizimana by his grandmother Kabaziga by the contract of 04/4/1999, but that land was returned in terminating that

contract and was later given to Mukaroni in the contract of 01/02/2000, thus it is her property which cannot be shared with them.

[4] On 01/03/2006, the Abunzi committee decided, that the piece of land in litigation belongs to Mukaroni, that it was given to her by Bizimana's grandmother, that committee also decided that the first piece of land in litigation shall be shared between all Bizimana's children.

[5] Tuyisenge appealed against that decision before the Abunzi committee of the Sector of Cyuve, on 21/10/2011, that committee decided that Mukaroni Xaverine be given all pieces of land which were in litigation.

[6] Tuyisenge filed a claim against the decision of Abunzi committee before the Primary Court of Muhoza, that Court rendered the judgment RC1017/011/TB/MUH on 20/11/2013, and quashed it, it decided that two pieces of land under litigation should be divided into 2, that the half of each piece of land becomes the common property of Bizimana and Tuyisenge, and that other half of each piece of land belongs to Mukaroni, the court decided to annul the document of 01/02/2000 from which is alleged to have terminated the final donation of the land to Bizimana by his grandmother, because it does not fulfill the requirements of the Law.

[7] Mukaroni applied for the case review of the judgment RC 1017/011/TB/MUH rendered on 20/11/2011 before the Primary Court of Muhoza, stating that some of the elements of evidence produced before that Court, including her land title were not examined. She also states that Bizimana and

Tuyisenge did not put a caveat on that land title or registering that land in their names.

[8] On 25/04/2014, The Court rendered the judgment RC0741/13/TB/MUH, and decided that the claim for the review of the case RC1017/011/TB/MUH has merit in part, it reversed the judgment RC 1017/011/TB/MUH rendered by the Primary Court of Muhoza on 20/11/2013 with regard to the piece of land N° 1, it also decided that Mukaroni is the real owner of the piece of land N° two 883/MUS/CYU registered in her names, it ordered Tuyisenge to pay to Mukaroni 150.000Frw of Counsel fee, and ordered Tuyisenge and Bizimana to pay Court fee equal to 3.500Frw jointly, and that Mukaroni is reimbursed 2000Frw which she paid as Court fee.

[9] Tuyisenge wrote to the Ombudsman requesting to render her justice because she finds that the judgment RC0741/13/TB/MUH rendered by the Primary Court of Muhoza on 25/04/2014 is vitiated by injustice.

[10] After examination of that application, the office of Ombudsman found that the case RC 0741/13/TB/MUH has to be reviewed due to injustice, and wrote to the President of the Supreme Court on 21/03/2016, requesting him to review that case due to injustice. After examination of the Inspectorate of Court's report, the President of the Supreme Court decided to review that case.

[11] The case was heard on 03/06/2019, Tuyisenge and Bizimana represented by Counsel Kanyarugano Cassien, Mukaroni represented by Counsel Nyirabera Josephine. The main issue to be analyzed in this case is to know whether the

termination of the contract of donation between Kabaziga and her grandchild Bizimana Daniel was lawfully effected.

II. ANALYSIS OF LEGAL ISSUES

Whether the termination of the contract of donation of 04/04/1999 was lawfully effected.

[12] Counsel Kanyarugano Cassien representing Tuyisenge Françoise and Bizimana Daniel states that the injustice, in this case, is based on the mistakes of the Primary Court of Muhoza, whereby it decided in the case being reviewed due to injustice, to terminate the contract of donation dated 04/4/1999 for Bizimana, he finds, that procedure contradicts the provisions of the Law because it should have been first requested before the Court (Termination of the contract)

[13] Counsel Kanyarugano Cassien states that the Law N°22/99 of 12/11/1999 completing book one of civil code and instituting part three governing matrimonial regimes donations and successions which was in force during the hearing of this case, provided that “the donor of a gift, if he has the grounds of its revocation, he has to file a claim before a competent Court which decides on its revocation He states that the Judge based on article 37 of the Law N°22/99 of 12/11/1999 aforementioned, and revoked the donation, he finds that the procedure was contrary to the Law especially that Bizimana does not appear on the document of 01/02/2000 which is alleged to have revoked the donation he was given by his grandmother on 04/04/1999.

[14] Counsel Kanyarugano Cassien on behalf of the claimants adds that the land under litigation, in this case, was divided by two, Tuyisenge and Bizimana were given a half and

the other half was given to Mukaroni, but after its division, Mukaroni kept to exploit it alone.

[15] As regards to the termination of the contract of donation of 04/04/1999, Counsel Nyirabera Josephine representing Mukaroni states that the statement of the representative of Tuyisenge has no merit, that the termination of the contract should have been requested before the Court because there was no need for the donor to seize the Court while her contracting party agreed for the termination of the contract, this is emphasized by the fact that, the original contract of 04/04/1999 was given by Bizimana to Kabaziga who tore it up, the reason why the original copy is not available in the case file. Besides, after the termination of the contract, Bizimana kept quiet and did not react, this proves that he consented.

[16] As regards to the issue that the land under litigation was divided between parties to the case, Counsel Nyirabera Josephine states that the statement of the representative of the defendants is false because when Bizimana shared his properties to his wives, the land under litigation has never been divided, this is also indicated by the fact that during the period of the systematic land registration, Mukaroni registered it in her names on hundred percent (100%). She further argues that if she co-owned that land with Bizimana, the latter could have put a caveat on that registration indicating that there are disputes, she finds that if he did not do that, this means that the land belongs to Mukaroni.

DETERMINATION OF THE COURT

[17] Tuyisenge Françoise and Bizimana Daniel state that, the injustice they suffer in the case under review is based on the mistakes of the Primary Court of Muhoza, whereby it decided that, the contract of donation of the land which Bizimana concluded with his grandmother Kabaziga on 04/4/1999 was terminated by their mutual consent, without being decided by the Court.

[18] Regarding the elements of evidence, the case file indicates a document of 04/4/1999, from which Kabaziga gave her properties to Bizimana who had to care for her, she also gave him a piece of land as a donation, Bizimana consented to everything. The case file also indicates that the document of 01/2/2000, which Kabaziga made for revoking Bizimana's responsibilities of managing her properties and taking care of her. She got back her piece of land and were given to Mukaroni, the latter accepted the donation and she fulfilled her obligations. In the document of 01/2/2000, Kabaziga explains that she terminates the contract he had with Bizimana of management of her properties and the donation he made to him on 04/4/2000, Kabaziga explains that she revoked the donation agreement of 04/4/1999 she made to Bizimana because he did not take care of her and that he may mismanage her properties due to his misbehavior, (adultery), she made the same contract with Mukaroni, and put a clause stipulating that if she also fails to take care of her, she will look for another one to manage her properties. Within that contract, she grants to Mukaroni the land returned from Bizimana, and her family agreed upon the agreement. This contract as well as the previous one were made in front of her family and was signed. The case file contains the land title N° 4/03/02/04/2883 of 19/12/2011 which indicates that Mukaroni immediately registered that land.

[19] One of the grounds set forth by the Law governing liberties and succession, from which the contract of donation is terminated, is no execution of obligations attached with it by the receiver, and this is done within one year from the day the fault is committed or the day it is known to the donor.

[20] With regards to the grounds of termination of the contract of donation of 4/4/1999 between Kabaziga and her grandchild Bizimana regarding the management of her properties, looking after her using those properties and a donation of the land under litigation as indicated above, the Court finds that Kabaziga indicated in new contract reasons of terminating the first contract. These reasons include that Bizimana did not manage her properties and failed to look after her properly, instead, he might have mismanaged it because of his misconduct. The Court finds that this is enough reason to terminate the contract of donation made by Kabaziga to Bizimana due to his failure of executing his obligations, basing on article 38, litera 3 of the Law N° 22/99 of 12/11/1999¹ which was in force when the claim was filed. That termination was done on 01/02/2000, when it was clear that Bizimana failed to execute obligations he was given, the revocation was done within one year, this is in accordance with the provisions of article 40 of the Law above cited. This is also the case in comparative Law, like in France, whereby some donation can be handed over, and the receiver may be requested to comply with some obligations: for example, an old woman who gives her neighbour a house but requesting him to feed her and looking after her during her lifetime. in that case everyone has to execute

¹ Law N°22/99 of 12/11/1999 completing book one of civil code and instituting part three governing matrimonial regimes donations and successions

his/her obligations. The contract of donation becomes bilateral, if any of the parties, does not execute his/her obligation, the other party, can apply for termination of the cont² (Certaines donations peuvent être consenties en demandant au gratifié d'exécuter certaines charges: par exemple, une dame âgée donne son immeuble à un voisin en lui demandant, en-contrepartie, de la nourrir et de l'entretenir sa vie durant. Dans ce cas, chacun doit exécuter une obligation [.....]. La donation devient un contrat réciproque, et si l'une des parties ne respecte pas ses obligations, l'autre aura la possibilité de demander l'annulation de la convention).

[21] The Court finds however that though the law provides that the termination of the contract is decided by the Court, it is not necessary to go before the Judge if the parties to the contract consent to terminate it and bear its consequences.

[22] With regard to this case, though the termination of the donation was not claimed to be decided by courts under article 40 of the Law N°22/99 of 12/11/1999 mentioned above, this is also what provided by foreign laws such as article 956 of French Civil Code, and it is not contrary to law because it was decided by the contracting parties by their mutual consent as proven by their respective conduct. Kabaziga who terminated the contract gave its reasons in a document and revealed it to her family and Bizimana as well, as motivated above, the latter did not react to it. Furthermore, the fact that the properties and obligations she gave to Bizimana and the donation of the land, in particular, were withdrawn and entrusted them to his wife Mukaroni,

²Act <https://www.notaire.be/donations-successions/les-donations/une-donation-est-irrevocable>

Bizimana accepted without any claim, he did not even deny his misconduct, it is a proof that he agreed.

[23] The Court finds that another fact which proves that Bizimana agreed to return the donation is that Mukaroni who received it, registered it with Bizimana's awareness, but the latter did nothing to put a caveat on it, till Mukaroni was given a title of that land with number 2883/MUS/CYU as it is indicated in the case file. That silence of Bizimana proves his acceptance that he had no longer rights over that land, that belongs to Mukaroni. The Court also finds that was the same reason at the time of sharing the land between both wives Mukaroni and Tuyisenge, that piece of land was not put on the list of the land that Bizimana gave to be shared between them as demonstrated by the document of 15/06/2006 for which Bizimana donated to two of his wives the land inherited from his father Rwanuburi composed of 4 plots, and they signed.

[24] In light of the provisions of the law, elements of evidence and motivations provided above, the Court finds that the termination of the contract of donation f 4/4/1999 occurred on 1/02/2000, is not contrary to law, thus there are no reasons to annul the contract of 01/2/2000. The land under litigation belongs to Mukaroni because she owns it as a donation from Kabaziga basing on article 10 of the Law N°43/2013 of 16/06/2013 determining the use and management of land in Rwanda which provides that private individual land shall comprise land acquired through custom or written law. That land has been granted definitely by competent authorities or acquired by purchase, donation, [.....] the ruling of the case RC 0741/13/TB/MUH/TB/MUH rendered by the primary Court on 25/04/2014 for which it was applied to be reviewed

due to injustice, it is sustained because it is not vitiated by injustice.

[25] Concerning the issue of whether the land under litigation was divided between Bizimana's wives, the Court finds it not necessary to examine this issue.

2. Whether the damages requested can be awarded.

a. Regarding damages requested by Tuyisenge Françoise and Bizimana Daniel.

[26] Counsel Kanyarugano Cassien representing the claimants, in this case, states that Mukaroni cultivates the land of Tuyisenge since 2006, she has been benefiting it for twelve years now (12years), that the land rent fee is 90,000Frw per year, for ten years she has been exploiting it, she earned 1,000,000Frw this is the amount she has, to return, and 200,000Frw paid to the Court bailiff Irakiza Elie who executed the judgment.

[27] Counsel Nyirabera Josephine on behalf of Mukaroni states that Tuyisenge should not be awarded what she requests because the land under disputes is not hers, that her client cannot pay damages for the property proven that it is hers.

DETERMINATION OF THE COURT

[28] The Supreme Court finds that the Damages claimed on behalf of Tuyisenge and Bizimana have no merit because they have no rights on the land under litigation, and related rights cannot be granted to them.

b. concerning the cross-appeal lodged by Mukaroni Xaverine

[29] In the cross-appeal, Counsel Nyirabera Josephine representing Mukaroni requests for her damages worth 2,500,000Frw for being dragged in lawsuits, which include 1,000,000Frw for counsel fee, 500,000Frw for a procedural fee and 1,000,000Frw for moral damages.

[30] Counsel Kanyarugano Cassien states that damages claimed by Mukaroni have no merit because he finds that this case is not vitiated by injustice.

[31] The Supreme Court finds that the procedural and counsel fee requested by Mukaroni should be granted because she had to hire advocate and bore some expenses related to following up the case, but because what she requests are excessive, the Court grants in its discretion, 500,000Frw for counsel fee, 300,000Frw for a procedural fee, all amounting to 800,000Frw. With regard to moral damages, they cannot be granted because she did not prove it, also she cannot be granted damages for being dragged into lawsuits because it is the right of the claimants when they feel to have suffered injustice in the judgment for which it was applied to be reviewed.

III. THE DECISION OF THE COURT

[32] Finds with no merit the application of Tuyisenge Francoise for the review due to injustice the case RC 0741/13/TB/MUH rendered by the Primary Court of Muhoza on 25/04/2014, in which Bizimana was forced to intervene.

[33] Sustains the ruling of the judgment RC0741/13/TB/MUH rendered on 25/04/2004 by the Primary Court of Muhoza except for procedural and counsel fees.

[34] Orders Tuyisenge Françoise to pay Mukaroni Xaverine 800,000Frw for procedural and counsel fees.