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CANDARI V. MUKAMANA ET AL.

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CANDARI V. MUKAMANA ET AL. [Rwanda SUPREME COURT – RCAA 0024/14/CS (Mukanyundo P.J., Kayitesi R. and Gatete J.) April 10, 2015] Family law – Family – Succession – The children who were not born by the deceased, can not inherit him because they have no relation unless it is proven that they were adopted. Family law – Family – Matrimonial regime – When spouses are married under community property regime all properties are considered to be owned by both spouses unless one of them put a reservation clause in that agreement (réserve) regarding the property which belongs to his/her children who were born before that marriage. Evidence law – Private document – Irregularity of a document – A document, even if it is made before a notary but in violation of the provisions of the law, is not considered valid. Fact: Havugimana and Mwamini had two children who are Mukamana Mamique and Havugimana Celestin. Mwamini died and Havugimana re-married again with Candali and had a child called Iradukunda Jean Luc. Havugimana also died and then the children of Mwamini sued Candari in Intermediate Court of Gasabo claiming the estate left behind by their parents. That Court ruled that the estate left behind by Havugimana be inherited by all his children and ½ of the remaining estate be given to Candari as a wife he legally married. Candari appealed against that judgment before the

High Court, whereby Umuhoza recognized by the Court as also a child of Havugimana, intervened requesting to inherit her father. The

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High Court based on the Law No 22/99 of 12/11/1999 relating to the matrimonial regime, liberalities and succession which was in force at that time, ruled that the estate of Havugimana have to be divided into two, a half of it ($\frac{1}{2}$) be given to Candari as his wife and another half ($\frac{1}{2}$) given to all Havugimana's children. Candari appealed before the Supreme Court stating that, some of the properties to be inherited are not jointly owned with Havugimana because she had some of them before they got married while others she acquired them after the death of Havugimana. She also states that she has sold some of them. Thus, they should not be included among Havugimana's estate to be inherited. She further claims that she made a transactional agreement with Havugimana's children before the notary, whereby they agreed that she will get 40% of the deceased's estate whereas the children will get 60%, they also agreed that the children that Candari had before she got married with Havugimana have also to have a share on that estate, thus, she prays that the court considers that transactional agreement. She explains that the reason why one of the deceased's children was not among the family council was that she had not yet known that he was a deceased's child. The defendants before this Court, argue that there is no proof that there are properties that Candari brought to Havugimana and in case she brought any, should be among the property to be inherited by all heirs of the deceased because they were married in community property regime. Concerning the properties, she sold, they argue that she sold them after the lawsuits had begun, thus she did that to misappropriate them. They request the Court to invalidate the sale of the house and be included among the properties to inherit. Concerning the transactional agreement

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concluded before the notary, they argue that it should not be considered by the Court because it was concluded while the case was ongoing before the Court, it was made in absence of one of the deceased's children and also it gave rights to the properties to unknown children, who were never cited during the last court hearings. Held: 1. The children who were not born by the deceased, can not inherit him because they have no relation unless it is proven that they were adopted.

2. When spouses are married under the community property regime all properties are considered to be owned by both spouses unless one of them puts a reservation clause in that agreement (*réserve*) regarding the property which belongs to his/her children who were born before that marriage.

3. A document, even if it is made before a notary but in violation of the provisions of the law, is not considered valid the notary, but disregarding the provision of the Law, is void. The appeal has merit in part. The cross-appeal has merit. Statutes and statutory instruments referred to. Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3. 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. article 3.

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Decree-Law of 30/07/1888 relating to contracts or obligations, (abrogated by the law No 020/2019 of 22/08/2019 abrogating all laws established before the independence) articles, 263 and 590. No case Law referred to. I. BACK GROUND OF THE CASE. [1] This case started before Gasabo Intermediate Court, where Mukamana Mamique and his brother Havugimana Emmanuel, were accusing Candari Verena, the wife of their late father Havugimana Célestin whom he married after the death of their respective mother, in their pleadings, they were praying the Court the rights on the properties left by their parents. [2] That Court decided that the properties left by Havugimana Célestin be inherited by all his children, ½ of the remaining properties be given to Candari Verena as his wife whom he legally married. [3] Candari appealed for that judgment before the High Court, and Umuhoza Aïsha recognized by the judgment RC0095/12/TB/Kma as a child of Havugimana Célestin intervened, in that case, praying to have right to inherit his father. [4] The Court decided on 25/04/2014, that, the properties composed of a house where Candari lives, a house located at Gisozi near Agakinjoro, a house located at Kiyovu of Kagugu and a vehicle parked at Candari Verena's house, are properties to be divided by two, ½ of it to be given to Candari as legal

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wife of Havugimana Célestin, while ½ be given to all children of Havugimana Célestin who are, Mukamana Mamique, Havugimana Emmanuel, plus Umuhoza Aïsha and Shema Iradukunda Jean Luc, which should be shared equally. [5] Candari Verena appealed before the Supreme Court arguing that the High Court disregarded the fact that before she married Havugimana Célestin she had properties, also it decided that the properties to be inherited include the properties she acquired after the death of her husband, while those properties were not available at the opening of the inheritance after the death of Havugimana, also that the Court disregarded the provisions of the Law governing matrimonial regime. [6] The hearing of the case was scheduled on 04/11/2014, but it has been postponed awaiting the decision in the case opposing Umuhoza Aïsha to Candari Verena, at 03/03/2015, it was heard in public Candari Verena was present assisted by Counsel Mbonyimpaye Elias, Havugimana Emmanuel and Mukamana Mamique were also present assisted by Counsel Nzabonimana John Peter, while Umuhoza Aïsha was assisted by Counsel Umutesi Jeanne d'Arc Aïsha was assisted by Counsel Umutesi Jeanne d'Arc. II. ANALYSIS OF THE LEGAL ISSUES. Whether the properties acquired by Candari Verena after the death of Havugimana Célestin must be withdrawn from the properties to be inherited. [7] Counsel Mbonyimpaye Elias and Candari Verena who he represents state that this case is based on

inheritance of

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Havugimana Célestin's properties who was legally married to Candari Verena, that the property she acquired together with Havugimana Célestin is available and is composed of one house built at Gisozi near the memorial, that other properties are composed of a house located at Kiyovu of Kagugu and another one located at Gisozi near Agakinjira and a vehicle which Havugimana's children state that she acquired it together with their father but it is not true because she bought it after the death of her husband, thus it should not be included in the properties to be inherited because after the death of Havugimana, the contract of marriage with Candari was terminated as provided by article 236 of civil code book I, which implies that, the matrimonial regime of Community property which they chose is consequently terminated as provided by article 24 of the Law governing matrimonial regime, donation and succession. [8] He continues stating that, in their submissions, they indicated how Candari acquired her properties, and they provided evidence indicating that she sold them and are no longer in her possession: that the vehicle was taken by Dusabemungu Aloys (who used to be also, her husband) in the case RC0277/12/HC/KIG, thus, it is no longer available. He states that, afterward, Candari made an agreement with Havugimana's children before the Notary on 02/09/2014 and Candari agreed to receive 40% of de cujus's properties, and children agreed to take 60%, they agreed also that, Candari's children which she had before she marries Havugimana have also to get a share, thus she prays the Court to consider that transactional agreement basing on article 155 of the civil code book I, Candari explains that, Umuhoza Aisha was absent from the family council because she did not know whether she is also Havugimana Célestin's child.

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[9] In her appeal submissions, Candari Verena states that the house of Kagugu has no link with the properties she acquired together with Havugimana Célestin because that house was lent for her in the beginning by a white man called Jeff who was her friend and who had pity for her because she had a toddler, then he gave it to her to raise that child because was not for Havugimana. [10] He explains that within the properties that Havugimana's children want to inherit, comprise the properties that Candari Verena got after the death of Havugimana, that there is a house she built in a plot she bought for the children she had with Bukuru Ananie before she marries Havugimana though they added it to the plot possessed by Havugimana for an extension, she consented because she believed that, there will not be discrimination between her children and those for her husband, thus, that property belongs to her and is registered on her. [11] Counsel Ndayayisenga in the submissions she made for Candari Verena, states that the judge for High Court disregarded the properties that Candari Verena brought for wedding Havugimana, and did not decide about the children she had before marrying him who are Dufatanye Trésor and Uwimana David instead, he decided that their properties should be beneficial to Havugimana's children while they have no property remained either from Havugimana or from their father Bukuru Ananie, thus the judge erred

in the provisions of the Law governing matrimonial regime, liberalities and succession, the latter was opened at the death of Havugimana Célestin meaning that the properties that Candari got after his death can not be shared between his heirs.

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[12] He explains that Candari delayed in handing to the heirs of Havugimana Célestin their properties because they were still minors and was making profit from them as buying and reselling, he states that she joined the plot she brought from Bukuru to theirs, then she built in many houses in the year 2000, using her proper funding, thus, the children can not argue that she did not look after them while she paid for them school fees though, they escaped her due to expropriation fee of house. Located at Kimicanga. [13] Counsel Nzabonimana John Peter, who represents Mukamana Mamique and assisting Havugimana Emmanuel, state that, the grounds of appeal of Candari have no merit, because no evidence indicates that there are properties that Candari brought to Havugimana Célestin from Bukuru Ananie, however, if it is true, nothing prevents all his heirs to inherit all properties of the de cujus because they were in the regime of Community property, mostly because the Law provides that the widower remain with the obligation of management of the whole property and look after the children left by the de cujus but Candari Verena disregarded that obligation of looking after the children because after the death of their father, they run away and they did not even attend university while their father had financial means. The children of Havugimana agree that the succession was open when their father died, but as heirs, they requested Candari Verena to share the properties left by Havugimana but she denied. As she denied while she is the one on the management of properties, this does not vet her the rights to appropriate and keep alone the properties of the de cujus, unless she proves that the succession occurred after the death of Havugimana.

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[14] They state that Candari Verena can not exclude the house of Kagugu among properties to inherit based on the fact that she sold it, but she did so, on 28/02/2014, while that house was still in disputes, even the Court has included it among the properties to inherit, this also applies for the house located at Gisozi near Agakinjoro, thus as she dared to sale the properties which were still in disputes, it is a fault for which she should bear the consequences, they pray the Court to order void that sale contract, rather restore the house in Havugimana's properties to inherit because Candari Verena sold it aiming at embezzling the properties to inherit. [15] Counsel Nzabonimana continues adducing that the statement of Candari Verena that, she built the houses she pretends to be hers by her own money is false because she has no other source of income which would help her to get a loan from a bank so that she could buy the houses rather she looked for the properties together with Havugimana Célestin and requested for titles after his death. Concerning the house of Kagugu sold while it was still in dispute, he finds that everything proves that a property transfer was completed, that the Court should also look at the letter dated 20/08/2012 which

Candari wrote to Gisozi sector's administrators notifying them about the properties left by Havugimana Célestin. [16] Concerning the agreement made before a notary, Counsel Nzabonimana states that it is void because Candari Verena abused the children by making them believe that the government will take away their plot if they didn't sign, but they erred in the procedure because the family council was not complete as Aïsha was not present while she has been intervening in the case. He states that another critic toward that

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document is that, it mentions the children that Candari had with Bukuru Ananie while they don't count among Havugimana Célestin's heirs. He states also that; this document was made by children for expropriation because Candari was telling them that if they don't sign the government will take it for free without compensation. They pray the Court to consider the letter dated 20/08/2012 which Candari wrote to Gisozi sector's administrators notifying them about Havugimana Célestin's properties. [17] Concerning the vehicle that Candari Verena states that she lost in the case opposing her to Dusabemungu Aloys, he states that it is staging, because the latter who won it, is also her husband with whom she has a child, but the children accept to remove it from the properties to inherit and only houses should remain. [18] Counsel Umutesi Jeanne d'Arc and Umuhoza Aïsha whom she assists state that as long as Havugimana Célestin died whereas the liquidation of the succession did not follow because Candari did not allow her husband's children to inherit him just after his death, rather she kept on benefiting that property, all properties have to be shared. [19] They state that the argument of Candari Verena that there are properties she brought from her previous husband and incorporated them to Havugimana's properties, has no merit because she would have separated them, if she failed to do so, it can not be considered by the Supreme Court. [20] Concerning the issue on not opening the succession, Counsel Umutesi states that the fact that Candari failed to indicate to Havugimana's children his properties to inherit

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rather she continued benefiting from them and making other properties from them, thus all properties must be shared, the argument that she got other properties after the death of Havugimana has no merit as she was in community property as the matrimonial regime is concerned and there was no succession if Havugimana died while his children were minor, Candari Verena was the one to manage their properties, then when they get the majority age, she would give them 50% of their properties while she would remain also, with 50%. [21] Counsel Umutesi continues stating that, before the High Court, the judge motivated what is the community property regime, he stated that the spouses who choose that regime, share all properties, either in their possession before the marriage or whether they acquired them during their marriage. She states that at the time Candari Verena married Havugimana, she did not mention that she has other children or mention that, there are properties for those children she keeps aside, that, she just mentions those children before the Court. [22] Concerning the document made before the notary, argued by Candari Verena, Counsel Umutesi states that it has

no merit as it was made in the course of the hearing of the case by the Court, also it was made disregarding Aïsha, whereas she is also Havugimana Célestin's child, also that, even though the Court includes Aïsha, it will still have no merit because other unknown children who were never mentioned in all previous Court cases, thus, reference should be made on article 70 of the Law relating to matrimonial regime, donation and succession. [23] Concerning the sold properties, she states that it is Candari Verena's fault, which she should bear because as long as there was no sharing, Candari would manage all properties

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and handle them to children within the appropriate time. Umuhoza Aïsha on her side states that the vehicle has to be returned because she lost the case due to her faults as she married another man after the death of her husband, and there is money for the expropriation of the house of Kimicanga that she dismissed while other children benefited from it. DETERMINATION OF THE COURT [24] Article 3 of the Law N° 22/99 of 12/11/1999 relating to matrimonial regimes liberalities and succession provides that, the regime of community property is a contract by which the spouses opt for a marriage settlement based on joint ownership of all their property-movable as well as immovable and their present and future charges. [25] Article 49 of the Law N° 22/99 of 12/11/1999 provides that succession is an act by which the rights and obligations on the property of the de cujus are transferred to the heir. The second paragraph provides that, the succession goes through probate at the death of the cujus, at his/her domicile or residence. [26] Article 50 provides that, all legitimate children of the de cujus, in accordance with civil laws, inherit equally without any discrimination; between male and female children. [27] Article 51 provides that, at the time of the succession between children, the family council shall determine the part of the property to be earmarked for the raising of minors and the part to be shared between all the children of the de cujus.

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[28] Article 70 litera 1° provides that in case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire property while assuming the duties of raising the children and assistance to the needy parents of the de cujus; The litera 7, provides that, the surviving spouse who no longer has any children under his/her care and wants to remarry shall obtain full ownership of the 1/2 of the property and another half shall be given to the deceased's heirs; [29] The interpretation of those articles mentioned in previous paragraphs, means that if one of the spouses who are in community property regime dies, the widower, keep on managing the entire property (acte d'administration) while assuming the duties of raising the children and assistance to the needy parents of the de cujus, this means that the widower does not inherit the property of the deceased spouse, rather the deceased spouse is inherited by his/her children and his/her parents as indicated by the order provided by article 66 of the Law N° 22/99 of 12/11/1999. Concerning the property left by the de cujus, the widow retains 50% of it. [30] Among the documents of the case file, there is a certificate of marriage between Havugimana and Candari Verena given by Kacyiru

sector's administration, that certificate indicates that they were legally married, and they chose community property as the matrimonial regime was concerned. [31] The case file indicates also that Candari Verena and Havugimana Célestin gave birth to a child called Iradukunda Jean Luc, while Havugimana Célestin had Havugimana Emmanuel and Mukamana Mamique with Mwamini who died before him, plus Umuhoza Aïsha who has been declared by the Court as a child of Havugimana Célestin from another wife. All

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parties to the case recognize these children as are for Havugimana, even the High Court held so, in the case RCA0557/13/HC/Kig, even before this Court none of the parties appealed for the ground that, among the children decided by the Court to share the estate left by Havugimana there is some included who are not eligible. [32] Concerning the properties to be inherited, the Court finds that there is a house located at Gisozi near the Kigali Genocide memorial, a house located at Kiyovu of Kagugu and another house located at Gisozi near Agakinjoro. The vehicle mentioned in the hearing is clear that Candari Verena lost it in the case RCA0577/12/HC/KIG opposing her to Dusabemungu Aloys, which decided that the vehicle belongs to Dusabemungu Aloys¹, it should be then excluded from property to inherit even the heirs of Havugimana Célestin agree upon that² except for Umuhoza Aïsha but she is not indicating other alternatives. [33] Concerning the properties sold by Candari Verena while she owns them jointly with Havugimana's children, the Court finds that the sale Contract is contrary to Law especially article 263 of civil code book III because she was not the sole owner, and she sold them disregarding that those properties were still in disputes even the previous Courts had decided upon them. [34] The Court finds that as decided by the High Court, it sustains the motivations of that Court, thus, basing on articles mentioned in the previous paragraph, the property comprising of the compound of houses located at Gisozi near the Kigali Genocide memorial with title n° 2710, a house located at Gisozi 1, In this case, it has been decided that a vehicle Toyota Harrier with Congolese plate n° 9880AA/19 be returned to Dusabemungu Aloys. 2 See the hearing minutes of this case of 03/03/2015 page 5.

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near Agakinjoro, a house located at Kiyovu of Kagugu, which has to be shared by Havugimana Célestin's heirs whereby $\frac{1}{2}$ has to be given to Candari Verena as his wife who he legally married, the remaining $\frac{1}{2}$ has to be shared between Havugimana Emmanuel, Mukamana Mamique, Umuhoza Aïsha and Iradukunda Jean Luc based on the provisions of article 70, litera 7°, of the Law N° 22/99 of 12/11/1999 aforementioned. [35] The Court finds also without merit, the argument of Candari Verena that there are properties she acquired after the death of Havugimana Célestin, because, as the opening of succession occurred just after the death of Havugimana Célestin as provided by article 49 of the Law N° 22/99 of 12/11/1999 aforementioned, however, the "liquidation" of the de cujus's properties did not occur as well, whereas Candari Verena had the obligation to manage the whole property on behalf of Havugimana Célestin's heirs as provided by article 70, litera one³ of the Law N° 22/99 of 12/11/1999, this means that even

the properties she may be acquired after, though she is not evidencing for it, they must be considered as derivative from the benefit produced by community property she had with Havugimana Célestin. Her request that she should keep them for her alone, it could be seen as unjust enrichment (enrichissement sans cause). [36] The Court finds also without merit the argument of Candari Verena that her children Dufatanye Trésor and Uwimana David she had with Bukuru Ananie, have to share the community properties she has with Havugimana Célestin, because these children have no relation with Havugimana 3 If one of the spouses dies, the widower, keep on managing the entire property while assuming the duties of raising the children and assistance to the needy parents of the de cujus

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Célestin as he is not their father and no certificate indicates that he adopted them. Furthermore, there is no particularity in the matrimonial contract of Candari Verena and Havugimana Célestin regarding the property of those children, which she pretends to have brought from her husband Bukuru Ananie, from which the Court may refer to decide that the concerned property belong to those children, thus, basing on the provisions of article 3 of the Law N°15/2004 of 12/06/2004, relating to evidence and its production⁴ Candari can not get relief for her requests to Court because she has no evidence. [37] Though the document of 02/09/2014 was made before the notary, its signatories agreed how to share Havugimana Célestin's property, the Court finds it void because it has been made disregarding the provisions of article 50 of the Law N° 22/99 of 12/11/1999, as motivated in the previous paragraph, the children Dufatanye Trésor and Uwimana David, that Candari Verena had with Bukuru Ananie, were included among the heirs of Havugimana Célestin whereas nothing proves that they are his according to the Civil Law. Furthermore, Umuhoza Aïsha who intervened in this case, was forgotten as one of Havugimana Célestin's children recognized by the Law, thus, its signatories can not produce it as provided by article 5905 of civil code book III, because it was made on 02/09/2014 whereas Umuhoza Aïsha was recognized as a child of Havugimana Célestin on 28/12/2012 4 Any contending party has to produce elements of proof to support her/his argument 5 A transactional agreement made by any person who shares interests with others, is neither enforceable to whom he/she shares interests nor they can take advantage of it.

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[38] The Court finds without merit the argument that Umuhoza Aïsha did not get her share on the money for the expropriation of the house of Kimicanga, because a document was produced before the High Court dated 20/12/2013, in which all parties to the case including Umuhoza Aïsha, agreed to share the money from expropriation between Candari Verena, Mukamana Mamique and Havugimana Emmanuel, that issue was resolved by that transactional agreement made by all parties, thus, it should not be raised again in this case as provided by article 591 Civil book III. Regarding the cross appeal [39] Counsel Nzabonimana John Peter file a cross appeal case, requesting for Mukamana Mamique and Havugimana Emmanuel, moral damages equivalent to 5,000,000Frw because they are

orphans but were deprived the rights to their property which was left to her by the de cujus instead of looking after them, she dragged them into an unnecessary lawsuit. They request also 1,000,000Frw for counsel fee and 500,000frw for procedural fee. [40] Counsel Umutesi Jeanne d'Arc based on article 167 of the Law N° 18/2004 of 20/06/2004 aforementioned, states that Umuhuza Aïsha sue for cross appeal requesting the Supreme Court to order Candari Verena to pay for moral damages equal to 5,000,000Frw for depriving her the rights to her father's property, and dragging her into an unnecessary lawsuit, to pay 1,000,000Frw for counsel fee and 500,000Frw for procedural fee. [41] Counsel Mbonyimpaye Elias's submissions state that the Court has to decide that the appeal of Candari Verena has merit

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then decides that the accused should be the ones to pay the moral damages equivalent to 1,000,000Frw and 500,000Frw for procedural fees, including counsel fee. DETERMINATION OF THE COURT [42] The Court finds that the moral damages requested by the defendants, in this case, have merit because Candari Verena ignored them and they have spent a long time living hard life whereas there are properties left by their father Havugimana Célestin which would support them to solve some daily life problems. The Court in its discretion, award moral damages to Mukamana Mamique, Havugimana Emmanuel and Umuhuza Aïsha, each 1,000,000Frw, 500.000Frw for counsel and procedural fee and 500.000Frw for counsel and procedural fee for Umuhuza Aïsha. III. DECISION OF THE COURT [43] Decides that, the appeal of Candari Verena has merit with regard to the vehicle wich is removed from properties to be inherited; [44] Decides admissible the cross appeal lodged by Mukamana Mamique, Havugimana Emmanuel and Umuhuza Aïsha and declares that, it has merit; [45] Decides

that

the

appealed

judgment

RCA0557/13/HC/KIG rendered by the High Court on 25/04/2014 is reversed only regarding the vehicle whose plate number is 9880AA/19 which has to be removed from the properties to be inherited.

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[46] Decides that, the heirs of Havugimana Célestin and Candari Verena's property are: Mukamana Mamique, Havugimana Emmanuel, Umuhuza Aïsha and Iradukunda Jean Luc; [47] Orders Candari Verena to pay to Mukamana Mamique, Havugimana Emmanuel and Umuhuza Aïsha each 1,000,000Frw for moral damages and pay 500,000Frw to Mukamana Mamique and Havugimana Emmanuel for procedural and counsel fee, and also pay 500.000Frw to Umuhuza Aïsha for procedural and counsel fee, all amounting to

4,000,000Frw. [48] Orders Candari Verena to pay Court fee equivalent to 100,000Frw.

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