

RWANDA / JUDGMENT

KAMUGWIZA v HASHIM SAKINA

RLR V.1-2024

COURT

Supreme Court

DECIDED

20 May 2022

CASE / FILE NUMBER

RS/INJUST/RC 00008/2020/SC

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2022-05-20
- Case/document no.: RS/INJUST/RC 00008/2020/SC
- Collection: Supreme Court

Text

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KAMUGWIZA v HASHIM SAKINA [Rwanda SUPREME COURT-RS/INJUST/RC 00008/2020/SC (Mukamulisa, P.J., Nyirinkwaya, Hitiyaremye, Muhumuza and Karimunda, J.) 20 May 2022] Civil law – Mandate – Mandate for disposal of property – A person entrusted with general mandate has solely the powers to carry out ordinary activities related to the property management and growth; whereas extraordinary activities such as property sale or disposal in any manner presuppose a specific mandate providing to the mandatary at least with the nature on the property to be sold; the mandate should clearly and unequivocally indicate the property. Civil law – Mandate – General mandate – The power of attorney issued in general terms has to be construed as meant for the property management in the interests of the mandator since it is impossible for a living person with abilities and powers to provide the power of attorney for selling by another person of his/her real and potential assets. Facts: This case started from the Intermediate Court of Gasabo, Sakina sued Kamugwiza for having concluded with Mukuralinda the forged contract to illegally sell his plot, he states that he had mandated Mukuralinda to buy plots and build houses for him; but later on, Mukuralinda averred that he lost his identity card, and it was necessary to issue a new power of attorney ,the new power of attorney was then signed

before the Notary, but the the word “ selling” was added so that the mandatory sold Sakina’s plot and he never gave him the proceeds from such sale. The Intermediate Court found that Sakina failed to explain how he issued the power of attorney for property selling and consequently lost the case. Sakina appealed the ruling before the High Court which invalidated the sale contract with Kamugwiza as well as the sale agreement of 21/03/2015 on the plot UPI: 5/07/09/02/984, the land titles of emphyteutic lease issued to Kamugwiza on 20/02/2015 and 13/07/2015. Kamugwiza who submits that she legally acquired the disputed plot filed appeal against the ruling before the Court of Appeal which declared baseless his claim; therefore, she lodged application for the judgment review on grounds of injustice. In the hearing before the Supreme Court, Kamugwiza submits that the suffered injustice is based on the fact that the lower Court did not take into consideration the power of attorney authorising, inter alia, the property sale so that it nullified the contract for the plot sale without indicating the defects of the agreement in accordance with the law as the it was concluded by the persons with capacity to do so. Sakina submits that he has never issued the power of attorney for selling the plot, the issue is that they read to her the power of attorney for only buying and building the houses for him, they presented to him two documents telling him that they were identical, the second text contained the added term “selling”. He added that he so much trusted Mukuralinda with him he grew up and later he got short-sighted due to sickness so that he issued to him the above-mentioned power of attorney. Held: 1 - A person entrusted with general mandate has solely the powers to carry out ordinary activities related to the property management and growth. Extraordinary activities such as property sale or disposal in any manner presuppose a specific mandate providing to the mandatory at least with the nature on the property to be sold; to that effect, the mandate for property disposal should not be general, it should clearly and unequivocally indicate such property; therefore, the power of

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attorney of 09/05/2014 should not serve as basis for selling any property of Sakina since it was unlawfully drawn up.

2. The power of attorney issued in general terms has to be construed as meant for the property management in the interests of the mandator since it is impossible for a living person with abilities and powers to provide the power of attorney for selling by another person of his/her real and potential assets; therefore the power of attorney issued to Mukuralinda was only meant for the property management. The application for injustice-related review of the judgment RCAA 00001/2019/CA lacks merits. Statute referred to: Law N0 22/2018/ of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9 and 11 Repealed statutes referred to: Law of 30 July 1888 instituting Civil Code Book III, article 530 Cases referred to: Cass. Civ. 1ère, 21 Décembre 1976, Bull.Civ. I, N° 421. The Church of Christ Charitable Trust & Educational Charitable Society V. M/s Ponniamman Educational Trust, rendered by the Supreme Court of India on 03/07/2012 Mrs. Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese Rep by Its Procurator Devssia’s Son Rev. Father Joseph Kappil, of 01/04/2022 by the Supreme Court of India, paragraph 09, 17-18.

Doctrines Authority given to the agent by explicit agreement, either orally or in writing. B.A. Garner, Black's law dictionary, ST. PAUL, MINN., WEST PUBLISHING CO., 2019, 11th ed., p.128. Philippe Malaurie, Laurent Aynès and Pierre Yves Gautier, Droit des contrats spéciaux, Paris, L.G.D.J., 2018, pp.345-346. Francois Collart Dutilleul and Philippe Delebecque, Contrats civils et commerciaux, Paris, Dalloz, 2019, p.548. Jacques Raynard and Jean-Baptiste Seube, Droit des contrats spéciaux, Lexis-Nexis, Paris, 2019, p.397, 398.

Judgment

I. BACKGROUND OF THE CASE

This case started from the Intermediate Court of Gasabo, Sakina Hashim sued Kamugwiza Phoebe for having concluded the forged sale contract with Mukuralinda Alain Bernard, the latter sold his plot registered on UPI: 5/07/09/02/984 located in Kabeza Village, Kanzenze Cell, Ntarama

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Sector in Bugesera District he pretexted that he was mandated by Sakina Hashim to sell such plot, while he did never issued any power of attorney to sell, to receive payment or to proceed with the ownership transfer on his behalf; he requested to the Court to hold that the sale by Mukuralinda Alain Bernard of his plot is void, and consequently the plot sale agreement was not concluded.

In her defence, Kamugwiza Phoebe argued that the sale agreement was concluded, she bought the plot at 45,000,000 Frw paid to Mukuralinda Alain Bernard who represented Sakina Hashim by means of the power of attorney; she therefore prayed the Court to declare Sakina's claim baseless and hold that the plot sale agreement was lawfully concluded as nobody requested for its invalidation nor filed third party opposition against it.

During the pre-trial conference, the parties requested for the intervention of Famida Hashim and Mukuralinda Alain Bernard in the case. During the hearing, the Court realised that nothing proves that Mukuralinda has been notified of this case and the statement of Counsel Nizeyimana Boniface who pretended to represent him was not admitted as he represented Kamugwiza Phoebe who requested for the intervention of Mukuralinda Alain Bernard, it decided that Mukuralinda Alain Bernard should not be considered as party in this case.

With regard to the merits of the claim, the judgment N0 RC 00303/2016/TGI/GSBO was rendered on 29/06/2017, and the Court held that the power of attorney issued to Mukuralinda Alain Berbnard by Sakina Hashim had no defects since it was drawn up before the Notary and Sakina Hashim signed on it as adult, healthy person and without duress. It is evident that Mukuralinda Alain Bernard had the mandate to sell Sakina Hashim's property whenever he deemed it necessary; and the Court held that the sale agreement should not be invalidated. Concerning the damages claimed by the respondents, the Court declared them grounded and it ordered to Sakina Hashim to pay to Kamugwiza Phoebe and Famida Hashim 1,300,000 Frw for each one as lawyer and procedural fees.

Sakina Hashim appealed against the ruling before the High Court submitting that Kamugwiza Phoebe could not by the plot on 21/03/2015 while it is clear that she was issued the land title for emphyteutic lease on 20/02/2015 and later on 13/07/2015 she was again given another land title for the same property; it was questionable how she should be given two different titles on the same property. Sakina Hashim adds that he also had been issued with land title for emphyteutic lease on 20/02/2015 for the same property, it is evident that on the very date, two land titles on the same property were issued to two different persons, this fact is confusing; he requests to be redressed in his rights and regain his plot sold by Mukuralinda Alain Bernard without his permission.

During the hearing of 19/04/2018, the parties requested for the intervention of Mukuralinda Alain Bernard at the appeal level, but he should not be imposed any damage. The Court declared the request grounded and it ordered to Mukuralinda Alain Bernard to interne in the case as litigant.

In the judgment RCA 00265/2017/HC/KIG rendered on 09/11/2018, the Court held that the appeal filed by Sakina Hashim had merits and nullified the sale agreement of 21/03/2015 on the plot under UPI: 5/07/09/02/984 as well as the land title for emphyteutic lease issued to Kamugwiza Phoebe on 20/02/2015 and on 13/07/2015. For so deciding, the Court found that:

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i. With regard to the plot registered under UPI: 5/07/09/02/984, Rwanda Land Management and Use Authority indicated that two land titles were not issued on 20/02/2015, one land title was only issued to Sakina Hashim. The Court found that though Kamugwiza Phoebe has land title for emphyteutic lease issued on 20/02/2015 and 13/07/2015, she failed to produce the documents got from the seller and indicate the date of ownership transfer. ii. ii. Sakina Hashim could not have sold the disputed property and keep the original copies of land titles. iii. It is not understandable that Mukuralinda Alain Bernard could be paid 45,000,000 Frw and give such amount to the owner in hands.

Following the property valuation report which indicated that the disputed property has the value of 182,165,000 Frw, Kamugwiza Phoebe appealed against the ruling before the Court of Appeal, submitting that the High Court should not have nullified the sale agreement of 21/03/2015 since it was lawfully concluded and Sakina Hashim has, inter alia, authorised Mukuralinda Alain Bernard to sell his property.

Sakina Hashim raised the objection related to the court's lack of jurisdiction, he argues that the value of the subject-matter does not amount to 75,000,000 Frw as per the requirements set by the Law N0 30/2018 of 02/06/2018 determining the jurisdiction of courts as the subject-matter concerns the nullification of the sale agreement over the plot sold for 45,000,000 Frw, the value of 182,165,000 Frw indicated in the property valuation report produced by the appellant should not serve as basis because it does not appear in the sale agreement, neither was it litigated from the beginning of the case.

On 08/11/2019, the Court examined the objection raised on the lack of jurisdiction in the judgment N0 RCAA 00001/2019/CA, and found that the respondent did not challenge the valuation report produced by Kamugwiza Phoebe; therefore nothing precludes it to uphold that the value of the subject-matter is the one presented by the appellant, it held that the objection is unfounded.

On 06/05/2020, the Court rendered the judgment on the merits on the issue of determining whether the sale agreement between Kamugwiza Phoebe and Mukuralinda Alain Bernard should be nullified; and it found that the High Court did not err by deciding that such agreement should be nullified. The Court of Appeal so decided with reference to the following reasons:

- i. The fact that the land registered under UPI 5/07/09/02/984 was registered on Kamugwiza Phoebe on 20/02/2015, but the sale agreement with Sakina Hashim was concluded on 21/03/2015, it is not possible for her to buy a plot already registered under her names; ii. The fact that Mukuralinda Alain Bernard addressed a letter to the Mayor of Bugesera District on 24/06/2015 applying for the registration to Kamugwiza Phoebe of the plot UPI 5/07/09/02/984 she bought from Sakina Hashim; the letter was written when the plot was already registered to Kamugwiza Phoebe on 20/02/2015;

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ii. The fact that the documents providing the power of attorney on which Mukuralinda Alain Bernard allegedly relies to sell such property on behalf of Sakina Hashim are clearly different, the one of 15/01/2009 mandates him to buy plots and build houses for Sakina Hashim, and the other one of 09/05/2014 grants to him general mandate including the property sale; both documents were signed before the Notary on the same date of 09/05/2014; it is evident that they were fraudulently drawn up; iii. The fact that the ownership transfer between Kamugwiza Phoebe and Sakina Hashim was not performed as the latter still holds the land title, while as per the articles 4 and 5 of the sale agreement of 21/03/2015, Mukuralinda Alain Bernard who then represented Sakina Hashim has stated that he thereby handed to Kamugwiza Phoebe all land titles related to the plot she sold, and the fact that Sakina Hashim still keeps the original land titles proves that he did not sell the plot. iv. Kamugwiza Phoebe petitioned the President of the Supreme Court, and prayed him to have the judgment RCAA 0001/2019/CA rendered by the Court of Appeal on 06/05/2020 reviewed for injustice-related grounds. Following the analysis of her petition, the President of the Supreme Court took the decision n0 057/CJ/2020 of 16/11/2020 and forwarded the case to the Registry of the Supreme Court for being re-adjudicated.

The case was heard in public on 12/10/2021, Kamugwiza Phoebe was represented by Counsel Nizeyimana Boniface, Sakina Hashim by Counsel Nsabimana Jean Baptiste, Mukuralinda Alain Bernard by Counsel Niyitegeka Eraste while Famida Hashim was represented by Counsel Nsabayeze Evariste; the first issue was the objection raised by Counsel Nsabimana Jean Baptiste who requested to determine whether the Court of Appeal had the jurisdiction to hear Kamugwiza Phoebe's second appeal. On 29/10/2021, the Court heard the interlocutory judgement and held that a litigant who did not apply for the judgment review on grounds of injustice cannot file incidental claim to request to the Court to examine the challenged judgment decisions, it ruled

that the objection over the Court of Appeal's lack of jurisdiction raised in that Court cannot be re-examined in this case.

The case on the merits was heard on 11/01/2022, all the parties again were represented as before, and they then debated about the issue of whether Sakina Hashim had mandated Mukuralinda Alain Bernard for the selling of a plot under UPI: 5/07/09/02/984, they also pleaded about the damages claimed by each party, and the Court notified all the litigants that the judgment will be pronounced on 18/02/2022.

During the deliberations, the Court found that it was necessary to summon some of the litigants for collecting further information on the diverging elements of evidence contained in the case file. Basing on the article 60 of the Law N0 22/2018/ of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which provides that the court may order the personal appearance of the parties before it, the Court ordered to Sakina Hashim, Mukuralinda Alain Bernard and Famida Hashim to appear before it in person.

The hearing was reopened on 13/04/2022, Kamugwiza Phoebe was represented by Counsel Nizeyimana Boniface, Sakina Hashim assisted by Counsel Nsabimana Jean-Baptiste, Mukuralinda

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Alain Bernard assisted by Counsel Niyitegeka Eraste while Famida Hashim was assisted by Counsel Nsabayeze Evariste.

At the opening of the hearing, Counsel Nsabimana Jean-Baptiste who represented Sakina Hashim, argued that for the interest of the justice, the hearing should be suspended, pending the ruling of the case RPA 00360/2020/HC/KIG-RPA 00419/2020/HC/KIG before the High Court. He averred that he based his statement on the principle by which a criminal action takes precedence over a civil action. He submits that in the criminal case, Sakina Hashim is prosecuted for forgery and falsification of emphyteutic land lease title that has been submitted in the case file. Counsel Nsabayeze Evariste also supports the suspension basing on the fact that the judgment under review on grounds of injustice are not appealable.

Counsel Nzeyimana Boniface states that there is no connexity between those cases, and that the Supreme Court cannot wait for the case before the High Court; he adds that this issue had been raised in the previous instances, a related decision was taken and it was not appealed nor submitted for review on grounds of injustice, he notes that Sakina Hashim only intends to delay the judgment.

Following the above debates, the Court decided on the bench and found that the request of Counsel Nsabimana Jean-Baptiste was submitted too late because the case had already been closed, it was reopened in the Court's discretion as it sought to collect further information from litigants. Besides, the Court found that Sakina Hashim in the case RPA 00360/2020/HC/KIG-RPA 00419/2020/HC/KIG is prosecuted for forgery or falsification of a document and it use, while the underlying issue of this case is to determine whether Sakina Hashim has or has not mandated

Mukuralinda Alain Bernard for the selling of the plot of land. The Court found that there is no material reason for the hearing suspension and it ordered that the case should proceed by hearing the parties as planned.

In this case, the Court will examine whether Sakina Hashim had mandated Mukuralinda Alain Bernard for selling the plot UPI: 5/07/09/02/984 and whether the damages claimed by each party are grounded. II. ANALYSIS OF LEGAL ISSUES II.1. Whether Mukuralinda Alain Bernard was mandated to sell Sakina Hashim's plot registered under UPI: 5/07/09/02/984 as representative

Counsel Nizeyimana Boniface, assisting Kamugwiza Phoebe, submits that the injustice resides in the fact that the previous court disregarded the power of attorney issued on 09/05/2014 by Sakina Hashim to Mukuralinda Alain Bernard to mandate him to sell the disputed property on his behalf, it was legally signed before the Notary. He explains that disregarding such evidence led the Court to nullify the sale agreement of 21/03/2015 concluded by Mukuralinda Alain Bernard and Kamugwiza Phoebe and the land title registered to Kamugwiza secured on 13/07/2015, but the defects of the sale agreement were not legally pointed out, as it was concluded by the persons having the capacity to do so. Concerning the land title, he submits that Rwanda Land Management and Use Authority asserted by a letter of 11/07/2018, written upon the request of the High Court together with the letter of 29/11/2017 sent to Counsel Nizeyimana Boniface, that the land was

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registered on Kamugwiza Phoebe on 12/07/2015 on basis of the sale agreement of 30/06/2015 signed before the registrar of land titles, the title was issued to her on 13/07/2015.

He submits that the Land Use and Management Authority explained that the title Sakina claims to have secured on 20/02/2015, together with a title allegedly issued to Kamugwiza Phoebe on the same date, have never existed. The National Land Use and Management Authority goes on to clarify that Sakina Hashim's statement by which she claims to have signed a single power of attorney of 09/05/2014, adding they later tricked her and made her sign a different mandate that permits Mukuralinda Alain Bernard to sell out her property, such a statement is not true since the Land Authority testifies that on 09/05/2014, only one power of attorney was signed. He goes further to add that the elements of evidence contained in the case file sufficiently prove that Kamugwiza Phoebe has legally acquired the disputed property; and so lawfully that the Court of Appeal should not resort to the presumptions to the extent of referring its ruling on the articles 104 and 108 of the Law N0 15/2004 of 12/06/2004 relating to Evidence¹ and its production ; arguing that the Court should instead base its ruling on the article 13 of the same Law, and should decided that Mukuralinda Alain Bernard was issued with a lawful power of attorney as witnessed by the Notary on 09/05/2014, he therefore prays the Court to decide that such power of attorney together with the related land title issued to Kamugwiza Phoebe on 13/07/2014, are authentic deeds that cannot easily be revoked, unless first proved forged.

Sakina Hashim submits that she considered Mukuralinda Alain Bernard as her own brother since they grew up together; she adds that from 2000 she got a challenge of short-sightedness owing to diabetes, and that from 2001, she started resorting to people who could help her every time she wanted to travel; and it is under this circumstance that in 2009 she approached Mukuralinda Alain Bernard and requested him to help buying some plots of land since she knew him not only as a trustworthy person but also as a lawyer. She submits that he was never mandated to sell out her property, instead he was mandated to buy property on her behalf. Shee adds that in 2014, Mukuralinda Alain Bernard came to pick her from her home, telling her that a certain detail of his power of attorney needs to be updated since it no longer matches with his new identity card number as his former identity card got lost. Sakina states that such a reason made sense, but when she told him as she looked for a person to accompany her, Mukuralinda Alain Bernard eased her the worry, and promised to come and pick her up by himself and it so happened. When they reached the Notary's office, they read to her a text, and they told her the duplicate was exactly identical, and she so believed since she had been working with him for so long and she trusted him.

Counsel Nsabimana Jean-Baptiste who assists Sakina Hshim in this case adds that it is actually the power of attorney of 09/05/2014 that was handed to National Land Use and Management Authority, as a proof indicating that Mukuralinda Alain Bernard was mandated to sell out such plot. However, such power of attorney was not based on by Mukuralinda Alain Bernard for purchasing the plot on 14/07/2009 from Nzamwita Alphonse, and on 27/06/2009 from Umutesi Assia and Umuhoza Zamda, those plots were later combined to make the plot under UPI 5/07/09/02/984, if the National Land Use and Management Authority had been careful enough, it could have detected that the submitted power of attorney was not to be used retroactively. Another

1 Article 104 provides that "Presumptions are made of inferences that the law or the Court makes from a known fact to discern unknown fact. Whereas article 108 provides that presumptions that have not been established by the law are left to the discretion and wisdom of the Court, the latter shall only admit such presumptions if they are important, precise and consistent.

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fact that indicates that the power of attorney of 09/05/2014 cannot be considered as conferring the mandate to Mukuralinda Alain Bernard for selling the disputed property, but there is no proof that it served for concluding the sale agreement of 21/03/2015, neither did it mention that it permits the selling of plot registered under UPI: 5/07/09/02/984, Mukuralinda Alain Bernard has no single evidence that proves that he sold the concerned land in the best interest of Sakina Hashim, more so that he states that it was sold upon request by Famida Hashim, this is not understandable.

He also adds that the annulment of sale agreement of 21/03/2015 did not cause any injustice to Kamugwiza Phoebe, especially due to the following reasons: i. The property was sold out by Mukuralinda Alain Bernard instead of Sakina Hashim; ii. The land with the surface area of 36,433

m2 was sold, while the plot with UPI 5/07/09/02/984 should be disclosed, non-disclosure of such plot was due to the fact that Mukuralinda Alain Bernard it was not mandated to sell the property; iii. Kamugwiza Phoebe submitted that after touring the concerned plot, they proceeded with the conclusion of the sale agreement and she immediately paid 45,000,000 Frw as a price. However, Mugwiza Aimable and Tambwe Obed who had been witnesses for the sale agreement testified that they signed on the agreement in the office of Kamugwiza Phoebe, they did not go to the plot, and neither did they witness any handing of money between both parties. iv. Mukuralinda Alain Bernard stated that, on the behalf of Sakina Hashim, he handed to Kamugwiza Phoebe the title for the sold property; while when the sale agreement was concluded on 21/03/2015, Kamugwiza Phoebe already possessed the related land title from 20/02/2015.

Counsel Nsabimana Jean-Baptiste further submits that the letter of 29/11/2017 by the Land Registrar indicated that the disputed land was first registered under the names of Mukuralinda Alain Bernard and Gatabazi Martine, denoting that Mukuralinda Alain Bernard had already grabbed the property of Sakina Hashim and mischievously registered it on his family. He states that such information was not provided in the of the Land Use and Management Authority of 11/07/2018, such letter is not trustworthy on a number of details that include the following: i. The fact that it indicates that Mukuralinda Allain Bernard has submitted to the National Land Use and Management Authority the original land titles registered to Sakina Hashim while these titles were submitted by Sakina Hashim herself on 16/04/2019 when she applied for a new land title; ii. The fact that on 24/06/2015, Mukuralinda Alain Bernard requested to the Mayor of Bugesera District to register the disputed land under the names of Kamugwiza Phoebe, the application was received by the office of the Land Registrar on 30/06/2015, and this application was examined, and the title was generated under Folio number 160/VOL IV; but the Land Use and Management Authority states that the application of Mukuralinda Alain Bernard was submitted on 07/07/2015. iii. The fact that the letter is silent about the information contained in the report of 10/04/2018 presented by Land Use and Management Authority legal officer who highlighted that up the above date, six transactions have been made on the disputed land, and four of the six generated land titles, the report indicated that the tile of 13/07/2015 was issued before the one of 18/02/2015 and the one generated on

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20/02/2015, such information is confirmed by the report of 29/03/2019 from the Prosecution Authority which indicates that Mukuralinda Alain Bernard had no mandate to sell a land that belongs to Sakina Hashim.

Counsel Nsabimana Jean- Baptiste further submits that from the opening of this case before the Intermediate Court of Gasabo till the ruling of 29/06/2017, Kamugwiza Phoebe kept producing the title of 20/02/2015, which means that the title of 13/07/2015 was issued to her later. The Counsel also wonders about why, before the High Court, in the hearing of 23/04/2018, Mukuralinda Alain Bernard submitted that he sold the disputed plot upon the request of Famida Hashim while the power of attorney was issued by Sakina Hashim. He still wonders why Famida Hashim should

confer to him such mandate while the latter filed a claim against Mukuralinda Alain Bernard for having extorted her 10,000,000 Frw that she lent to them on 15/10/2013 as it was held under the case RCA 00056/2019/TGI/NYGE rendered by the Intermediate Court of Nyarugenge on 27/09/2019.

Counsel Nsabimana Jean-Batiste concludes by maintaining that the Court of Appeal did not err by thoroughly examined the elements of evidence submitted to it because there is confusion within the power of attorney produced by Mukuralinda Alain Bernard for his defence and the titles on which rely Kamugwiza Phoebe are not clear. The nullification of the land titles possessed by Kamugwiza was due to the fact that the Court has found that the disputed property was unlawfully registered on under her names, and such annulment is in line with the position set by this very Court in the case Harerimana Emmanuel v. Sebukayire Tharcisse.

Famida Hashim also states that Mukuralinda Alain Bernard is like a family member, they are familiar since their childhood. She adds that, in consideration of their dealings, she disclosed to him Sakina Hashim accounts from the Bank of Kigali. She explains that she is actually the one who signs for funds disbursement on the behalf of Sakina Hashim since the latter is blind, in that context, she accompanied Sakina Hashim as they went to sign on the first power of attorney, but when it came to the second power of attorney, Mukuralinda Alain Bernard kept it secret and took Sakina Hashim alone for the signing in his house. She states that she never requested Mukuralinda Alain Bernard to sell Sakina Hashim's plot for the payment of the fine of 7,300,000 Frw imposed by Rwanda Revenue Authority as he alleges, rather, by the time of selling the disputed plot, she did not interact with Mukuralinda Alain Bernard who had extorted her the money. She submits that the fraud of Mukuralinda Alain Bernard is reflected by the fact that he sold the disputed plot to his mother-in-law and the sale contract was only signed by his brother-in-law and his driver; she then wonders why she was not invited for the signing of the second power of attorney and the sale agreement while she allegedly gave the permission to sell her sister's property.

Counsel Nsabayezu Evariste representing Famida Hashim in this case submits that it is not understandable how Mukuralinda Alain Bernard sold out the disputed plot for paying the fine imposed to Famida Hashim and he did not immediately hand over to her the sale proceeds; the fact that Mukuralinda Alain Bernard gave to her the money in instalments indicates that there was no emergency. She explains that Mukuralinda Alain Bernard has so far produced no evidence that proves that he was mandated to sell out the disputed plot.

Counsel Nsabayezu Evariste submits that the two power of attorney produced by Mukuralinda Alain Bernard for his defence point out the fraud because the power of attorney of

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09/05/2014 should be replaced by the one of 12/01/2009 but that was not the case and the third power of attorney he rejects, is included in the case file from the start of this case, he did not challenge it as forged document. He submits that it is not understandable how the plot transfer

was made for Kamugwiza Phoebe while the original documents were still kept by Sakina Hashim, it means that Kamugwiza Phoebe cannot still account for the origin of the property under litigation. Basing on the articles 104 and 108 of the Law relating to Evidence and its Production, together with article 34 of the Ministerial Order N0 01/04/2008 relating to Land Registration Procedures in Rwanda and the position set by this Court in the case Harerimana Emmanuel v. Sebukayire Tharcisse, there is no evidence of injustice in the judgment rendered by the Court of Appeal, he requests to this Court to declare unfounded the claim filed by Kamugwiza Phoebe.

Mukuralinda Alain Bernard submits that he is familiar with Sakina Hashim for a long time since they grew up in the same neighbourhood and their parents worked together. He adds that Sakina Hashim has first given him the first power of attorney on 15/01/2009 which served for buying the five plots, but he was provided with the money by Famida Hashim without any written document as they mutually trusted in their dealings. He avers in 2014, Famida Hashim told him that Rwanda Revenue Authority has charged her with a fine, for paying such fine, she should sell the plot located in Bugesera District, he prepared the power of attorney of 09/05/2014 signed by Sakina Hashim before the Notary after reading it to her, there are no two power of attorney signed on the same day. With regard to the issue of determining why she did not capture the full specifications of the concerned property which she knew it very well, she states that she forgot the details but they all know them, he exclusively used such power of attorney on the property registered under UPI 5/07/09/02/984.

He rejects the arguments by Sakina Hashim who alleges that she got visually impaired in 2001, because they both went to meet the Notary in 2009 while she had no problem. The reason of the issuance of the second power of attorney on 09/05/2014 is not that he told her that his identity card was lost. The fact that there are different identity card numbers on the power of attorney issued in 2009 and 2014 did not lead to the issuance of the second power of attorney because in 2014 he was no longer buying plots for Sakina Hashim. He also states that the fact that the disputed plot was registered under his own names and of his wife does not mean that the intended to fraudulently appropriate it themselves, rather it was an error resulting from the fact that it is himself who bought it but the error was later corrected and the plot got registered under the names of Sakina Hashim.

He further submits that the reason for selling the property of Sakina Hashim to pay the fine charged to Famida Hashim who worked together with him is that she had told him that she co-owns the property with Sakina Hashim, the evidence is that they had a joint account in Bank of Kigali. He avers that the reason why he trusted Famida Hashim is that she was always the one who disbursed all the needed funds for daily transactions; therefore, he could not refuse to sell the plot when she told him that they intended to sell the plot located in Bugesera District, and provided him with Sakina Hashim's identity card together with the original land titles, as he thought that they co-owned the concerned plot. He maintains that he sold the plot to Kamugwiza Phoebe on 45,000,000 Frw, she paid it by the money she owed to her, also the money was not given to Sakina Hashim, rather it was given to Famida Hashim in instalments until it was completely provided.

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Counsel Niyitegeka Eraste assisting Mukuralinda Alain Bernard submits that Sakina Hashim and Famida Hashim worked together, that is why Famida Hashim handed to him Sakina Hashim's documents for processing the second power of attorney. He explains that Sakina Hashim does not indicate the act of Mukuralinda Alain Bernard that is out of his mandate, because she first issued to him the power of attorney of 15/01/2009 and when it got expired, she again issued to him the second power of attorney signed before the Notary on 09/05/2014, it extended the mandate and he based on it to enter into the sale agreement with Kamugwiza Phoebe on 21/03/2015. He also adds that Rwanda Land Use and Management Authority has confirmed that no land title has been issued on 20/02/2015; it recognized the title issued to Kamugwiza Phoebe on 13/07/2017, this means that the land titles produced by Sakina Hashim for her defence are forged. He adds that they concur with Kamugwiza Phoebe that the elements of evidence proving that she bought and lawfully acquired the disputed property are not confusing so that the Court of Appeal base its ruling on presumptions, and that is the basis of injustice. DETERMINATION OF THE COURT

Paragraph one of article 9 of the Law N0 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that a judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.

The casefile contains the power of attorney of 09/05/2014 on which Mukuralinda Alain Bernard allegedly relied for selling the plot of Sakina Hashim registered under UPI: 5/07/09/02/984 as her representative. It stipulates that "Mr. Mukuralinda Alain Bernard has the full mandate to carry out on my behalf all the transactions that intend to expand and develop such property by purchasing the assets increasing the assets or selling its parts as he deems it necessary, but, at all the time, he shall so act for the purpose of the property expansion and in observance of applicable Rwandan laws. All property developments shall be registered under my names".

Both parties do not concur on the content of the above power of attorney because Mukuralinda Alain Bernard argues that Sakina Hashim lawfully issued it to him, she mandated him to sell out the disputed plot; whereas Sakina Hashim argues that Mukuralinda Hashim has tricked her with the word "sell" and he mischievously made her sign the document, the sale resulting from such power of attorney is null and void. Nonetheless, before examining the fraud alleged by Sakina Hashim occurred or not, it is important to first determine whether the nature of the power of attorney issued to Mukuralinda Alain Bernard makes him to be considered as mandated to sell out a plot that belongs to Sakina Hashim.

Paragraph one of article 530 of the Law of 30 July 1888 instituting the Civil code Book III, then in force when the power of attorney was issued, provided that “a general mandate on the property limits to the sole management acts while the second paragraph of the same article provides that “when it comes to dispose off, mortgage the property or to any other related act, the mandate must be explicit”.

The Court finds that the second paragraph of article 530 of Civil code Book III, then in force when Sakina Hashim issued to Mukuralinda Alain Bernard the power of attorney of

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09/05/2014 denotes when the mandate is related to the acts of disposing off or mortgaging an immovable property, or any other act that is exclusively reserved to the property owner, such mandate has to be so explicit. An explicit mandate, whether verbal or in written, gives authority to the mandatary in a clear, detailed manner and without confusion.²

The Court finds that Philippe Malaurie et al. affirm that an explicit mandate indicates the specific acts or property They explain that the explicit mandate protects the mandator for avoiding its negative effect, while a general mandate limits to the sole acts of property management. A person with general mandate is considered as in charge of protecting the interests of a minor or an adult unable to decide himself/herself. They also state that the serious acts such disposing off or mortgaging property require explicit mandate³. François Collart Dutilleul and Philippe Delebecque write that a mandate that assigns for disposing off, mortgaging or leasing the property requires the mandatary to prove that he/she was issued with an explicit mandate.⁴

The Court finds that the foregoing statements are highlighted by Jacques Raynard and Jean-Baptiste Seube who write that the purpose of the mandate lies in the legal act to be performed, this act must be sufficiently determined or determinable. Thus, a mandate to sell property that is not specified and impossible to identify would certainly be null and void due to the indeterminacy of its object⁵. Specifically, the mandate to dispose off a property cannot be inferred from a document that does not clearly and precisely mention it.⁶

The Court finds that the foregoing explanations denote that a person assigned with a general mandate has authority limits to the sole acts of the property management and development while serious act such as selling the property, which is the issue of this case, requires an explicit mandate that defines to the mandatary at least the specifications about the property to be sold. Otherwise, the mandator will thereof be reduced to the sole mercy of the mandatary, or else considered non-existent. That is why the power of attorney issued in general terms must be construed as meant for the property management and thus, for the protection of the mandatory

² Authority given to the agent by explicit agreement, either orally or in writing. B.A. Garner, Black's law dictionary, ST. PAUL, MINN., WEST PUBLISHING CO., 2019, 11th ed., p.128. ³ “Le pouvoir peut être spécial, c'est-à-dire n'avoir pour objet que des actes limitativement énumérés, par exemple un acte déterminé ou un bien déterminé... Lorsque le mandat est conçu en termes généraux, le Code civil précise qu'il n'embrasse que les actes d'administration... sous couvert

d'interprétation, la loi impose une règle de fond, non parce que la volonté du mandant serait obscure mais afin de le protéger contre lui-même. Le mandataire a alors les mêmes pouvoirs que ceux que la loi donne au tuteur d'un majeur protégé et à l'administrateur légal d'un mineur, c'est-à-dire qu'il a le pouvoir de faire les actes normaux et courants. Les actes les plus graves (aliénation définitive et hypothèque) impliquent un mandat exprès." See Philippe Malaurie, Laurent Aynès na Pierre Yves Gautier, *Droit des contrats spéciaux*, Paris, L.G.D.J., 2018, pp.345-346. 4 "Si les actes qu'on lui demande de faire sont des actes de disposition (aliénation, constitution d'hypothèque, bail de longue durée, il doit justifier d'un mandat exprès." See Francois Collart Dutilleul et Philippe Delebecque, *Contrats civils et commerciaux*, Paris, Dalloz, 2019, p.548.

5 "L'objet du mandat résidant dans l'acte juridique à accomplir, cet acte doit être suffisamment déterminé ou déterminable. Ainsi le mandat de vendre un bien non précisé et impossible à identifier serait certainement nul en raison de l'indétermination de son objet." See Jacques Raynard et Jean-Baptiste Seube, *Droit des contrats spéciaux*, Lexis- Nexis, Paris, 2019, p.397. 6 "le mandat d'aliéner un immeuble ne peut se voir déduit d'une correspondance qui ne le mentionne pas de manière nette et précise." See Jacques Raynard et Jean-Baptiste Seube, *Droit des contrats spéciaux*, Lexis-Nexis, Paris, 2019, p.398.

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since it is actually inexplicable to think that a legally capable living person can entrust all her current and future property into the hands of another person. This simply implies that any mandate that intends for disposing off the property in any manner must explicitly specify the property, without confusion.

This Court concurs with the position set by the Court of Cassation of France⁷ and the Supreme Court of India⁸ whereby the precedent prohibits resorting to analogy for the interpretation of the content of a mandate, the courts held that terms of the mandate should be strictly interpreted in their right meanings. Therefore, for a sale mandate, the mandatary should be issued with a specific mandate that explicitly allows them to conclude the sale agreement together with a permission to process related documents and having them approved by relevant competent authorities; highlighting that a mandate of management differs from the mandate of negotiation, while that of negotiating differs from the mandate of selling, which is as well different from that of receiving the price.

The Court found the mandate of 9/05/2014 which Mukuralinda Alain Bernard used for selling Sakina Hashim's plot with one main defect of not providing specifications of the concerned plot on sale. The mandate said nothing neither about the plot registration number, its geographical location, nor its surface area. Besides, though Mukuralinda Alain Bernard argues that the plot well known to him and to Sakina as well, the mandate contained nothing of the price estimates, neither did it mention anything about who will receive the price payment, and no clause about the procedure for ownership transfer was made thereof.

Factoring all that has been above mentioned, the Court found that the mandate of 09/05/2014 was not lawful for the selling of any property that belongs to Sakina Hashim since it was unlawfully drawn; and consequently, Mukuralinda Alain Bernard had no authority whatsoever to sell a plot registered under UPI 5/07/09/02/984 that belongs to Sakina Hashim since the mandate he brings is not lawfully acceptable.

For that matter, the Court held that all the transactions that resulted for the above mandate, including the sale agreement that Mukuralinda Alain Bernard has concluded with Kamugwiza Phoebe on the 21/03/2015 together with a related land title that was issued to Kamugwiza Phoebe on the 13/07/2015, all to be null and void. And the Court moved that it is therefore not necessary to examine any other issue relating to Sakina Hashim's plot. II. 2. The damages requested.

Counsel Nizeyimana Boniface who assists Kamugwiza Phoebe argues that his client has unfairly deprived the enjoyment of a property that she has lawfully acquired, and he requested the

7 See cases of Cass. Civ. 1ère, 21 décembre 1976, Bull.Civ. I, N° 421 8 ... "It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. See case: The Church of Christ Charitable Trust & Educational Charitable Society v. M/s Ponniamman Educational Trust, rendered by the Supreme Court of India on the 03/07/2012, para 14. See case between Mrs. Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese Rep by Its Procurator Devssia's Son Rev. Father Joseph Kappil, rendered by the Supreme Court of India on the 01/04/2022, para 09, 17-18.

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Supreme Court to order Sakina Hashim to pay his client 1,500,000 Frw that she spent while executing the ruling of case RCA n0 00265/2017/HC/KIG and case n0 RCAA 00001/2019/CA; he also requested for 10,000,000 Rwf for having been dragged into unnecessary lawsuits, and he requested for 5,000,000 R wf for both Counsel fee and the the incurred case-related expenses.

Mukuralinda Alain Bernard has prayed the Court to order Sakina Hashim to give him 3,000,000 Rwf for moral damage-compensation and 2,000,000 Rwf for both the Counsel fee and the incurred case-related costs.

Counsel Nsabimana Jean-Batiste who represents Sakina Hashim in this case, argues that the damage-compensations that Kamugwiza Phoebe and Mukuralinda Alain Bernard have asked for have no justification; adding that it is Kamugwiza Phoebe who initiated the lawsuits, instigated by Mukuralinda Alain Bernard, his son-in-law who help her to obtain titles for a land she did not buy. And he requested the Court to order Kamugwiza Phoebe to give Sakina Hashim a sum of 20,000,000 Rwf as damage-compensation from dragging her into unnecessary law cases and for attempting to have her jailed, and he also asked for 1,500,000 Rwf for both the Counsel fee and the incurred case-related expenses.

Counsel Nsabayezu Evariste who assists Famida Hashim requests the Court to order Kamugwiza Phoebe to give his client 3,000,000 Rwf for moral damage-compensation over dragging her into unnecessary lawsuits, and 2,000,000 Rwf for the counsel fee and 500,000 Rwf for the incurred case-related costs.

With regard to damage-compensation that Sakina Hashim has requested for, Kamugwiza Phoebe's representative argues that Sakina Hashim deserves no damage-compensation since she is the one who unnecessarily initiated the case yet she knew very well that she had lawfully sold out her property, adding that she therefore has to bear all the case-related consequences.

DETERMINATION OF THE COURT

Article 111 of the Law n0 22/2018 of the 29/04/2018 relating to civil, commercial, labour and administrative procedure stipulates that "the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted"

The Court found that Kamugwiza Phoebe and Mukaralinda Alain Bernard deserve no damage-compensation since they won nothing in this case.

The Court has a well found that Sakina Hashim and Famida Hashim, they too, deserve no moral damage-compensation over the case-review since Kamugwiza Phoebe who sought for the case-review has a legal right for such a review, moving that the defendants cannot prove for the undergone moral damage to an extent of deserving a related compensation.

With regard to compensation for both the Counsel fee and the incurred case-related expenses, the Court referred to article 111 of the above mentioned Law n0 22/2018 of the 29/04/2018, and held to allow such a compensating owing to a fact they were dragged into a case

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and they ended up hiring a lawyer to stand with them in the case. However, since they could not account for it and neither could provide a related payment proof, the court has held to allow them a compensation on its own discretion. And it therefore allowed Sakina Hashim and Famida Hashim a compensation of 800,000 Frw for each, which includes 500,000 Rwf for the Counsel fee and 300,000 Rwf for the incurred case-related costs, and the sum will be borne and paid by Kamugwiza Phoebe. III. DECISION OF THE COURT

Holds that the application by Kamugwiza Phoebe for injustice-related review of case n0 RCAA 0001/2019/CA rendered by the Court of Appeal on the 06/05/2020, has no justification.

Orders Kamugwiza Phoebe to give Sakina Hashim and Famida Hashim a sum of 800,000 Rwf each, a compensation for both the Counsel fee and the incurred case-related costs.

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Prepared on 12 October 2026 · Esheria