

RWANDA / JUDGMENT

MBERABAGABO ET AL v. FIAT AMELIE ET AL

RS/REV/INJUST/COM 0001/13/SC

COURT

Supreme Court

DECIDED

28 March 2014

CASE / FILE NUMBER

RS/REV/INJUST/COM 0001/13/SC

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-03-28
- Case/document no.: RS/REV/INJUST/COM 0001/13/SC
- Collection: Supreme Court

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MBERABAGABO ET AL v. FIAT AMELIE ET AL [Rwanda SUPREME COURT – RS/REV/INJUST/COM 0001/13/SC (Kayitesi, P.J., Hatangimbabazi, Mukandamage, Rugabirwa and Gakwaya J.) March 28,2014] Law regulating the commercial procedure – The review of the judgment for the extreme injustice –The application for the review of the judgment which was finally decided it is lodged within the court that decided that judgment. The party may not argue that the court which decided the case was not competent in case within the decided case there appeared the substantial evidences which clearly prove the injustice caused by the judgment to which the review is sought, Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure article 186 paragraph 3and 6. Law regulating the commercial procedure – Seizing two ways of appeal at the same time – Inadmissibility of the claim requested by a party who resorted to two different judicial remedies cannot considered in case application for review was filed after withdrawal of appeal – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 12. Law regulating the commercial

procedure –The valued of the sale of the house – Any person shall have the right to redeem the seized property by satisfying the debt in the interests and with the consent of the debtor –The sale contract has to be considered as valid in case that sale was made for redeeming the house which was seized by the bank, and it is made before the auction is performed, the bank was paid and it notified to the notary – The Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 293. Law regulating the contracts or contractual obligations – The damages – Any act of individual that causes damage to a person, obliges the one whose fault caused damage to repair it. The notary has to be held liable for the faults she committed since the bank notified her that it has been paid before the auction is performed, and it requested her to stay the auction, and she ignored it and sell it. The one who bought that house he has to be held liable for the faults he committed since he was notified that that house is in litigation and that it was bought by another person –The law of 30/07/1888 relating to contracts or contractual obligations, article 258. Fact: Dunia Bakarani seized the Commercial High Court requesting the suspension of auction on his house. The auction was performed by the notary Kayitesi while it has notified her that it has been already paid the debt he owed to I & M BANK. Fiat Amelie voluntarily intervened in that case since he has made a sale contract on the house with Dunia before it was auctioned. The Commercial High Court has decided that the auction was legal and that Dunia's claim has not to be admitted since he has no quality and interests of lodging a claim. Dunia Bakarani and FIAT Amélie seized again the Commercial High Court applying for the review of the judgment. The Court declared that claim to be valid and declared that the auction is nullified, and condemned the notary and her co-defendants to pay to Fiat Amelie the total amount of 30,575,000 Frw for the rent of the house. Kayitesi, Mberabagabo and Butera wrote to the Chief Ombudsman requesting her to request for the review of RCOM 0306/12/HCC on the grounds of injustice. The Ombudsman wrote to the

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President of Supreme Court requesting that RCOM 0306/12/HCC rendered by the Commercial High Court be reviewed on the grounds of injustice resulting from the fact that there have been the laws and the evidences which were ignored for it to be heard. Mberabagabo Innocent, Butera Jean-Pierre and Kayitesi Judith, say that the Commercial High Court was not competent to hear that case since the Supreme Court was the only one which was competent to analyse the claims which seeks to the review of the judgment on the grounds of extreme injustice. Fiat and Dunia say that in case there are provisions which have been stated in the judgment which gave the competence to the court which finally decided the case to review the judgment, the Commercial High Court committed no fault since it is this court which decided it at the last level. Mberabagabo says that Fiat and Dunia had no right of applying for the review of the judgment in case they have lodged an appeal before the Supreme Court, and thereafter lodged another claim before the Commercial High Court. He says that the sale of the house between Fiat and Dunia has not to be considered as valid since Fiat has taken the money got from the sale and deliver it to I&M BANK instead of delivering it to the State Treasurer which made the notary to continue with the procedures of the auction. FIAT on his side says that he bought the house, and then after he

paid to the bank, which has given later the non-clearance certificate and notified to the notary requesting her to stay the auction, and she ignored it and went on with the procedures of the auction, she has to pay damages for it. The notary Kayitesi too, says that condemning her to pay to Fiat and Dunia the damages amounting to 30,000,000 Frw is too excessive. The one who pleads for I&M BANK says that this Bank wrote to the notary Kayitesi requesting her to stay the auction since Dunia owed no debt yet to the bank, the notary ignored it and auctioned the house, Butera and Mberabagabo bought it knowing that it has been already sold, he realizes it as a serious fault to which they have to be held liable. Fiat Amelie and Dunia request the Supreme Court to condemn the notary Kayitesi, Mberabagabo and Butera to pay to Fiat and Dunia the damages for involving them in the court proceedings for no ground. Held: 1. The party which has the right for petitioning for review may do it on the ground that after the case has been decided, there has been the substantial evidence clearly proving that there has been an extreme injustice resulting from the judgment for which the review is sought, thus the Commercial High Court was competent to hear the claim for reviewing the judgment.

2. Fiat Amélie and Dunia Bakarani did not seize two ways of appeal at the same time since they lodged ordinary appeals, and after some days they lodged an extraordinary claim for reviewing the judgment, and they afterwards withdraw the claim for appeal they have lodged before the Supreme Court, thus the arguments of the appellants for the grounds of injustice may not be considered since the Commercial High Court committed no fault.
3. In case any person or the debtor has the right to redeem the seized property by satisfying the damages and the costs of the seizure, as long as it is made before the end of the sale, in the interests and with the consent of the debtor, it is not necessary to request Court decision staying the auction before redeeming the seized property. Thus the sale of the house has to be considered as valid since it was performed in the way of redeeming the house which was seized by the bank before the auction.
4. The notary Kayitesi Judith and Mberabagabo Innocent alone have to pay to Fiat Amélie 29,575,000 Frw for the rent of the house which has been bought before the auction amounting to

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3,500 USD per each month for the period of 13 months, thus the judgment RCOM 0306/12/HCC has to be changed with regard to Butera Jean-Pierre since it has condemned him together with others to pay to Fiat Amélie that amount. The claim by Kayitesi and Mberabagabo has no merit. Butera's claim has merit. Court fees to Mberabagabo and Kayitesi. The Statute and Statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure article 186, paragraph 3 and 6 and that of 293, Law of 30/07/1888 relating to the contracts or contractual obligations, article 258 No case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Banque Commercial du Rwanda (BCR) which became I&M Bank has given the loan to DUNIA BAKARANI which failed to reimburse it as agreed upon, at the extent that there started the procedures of executing the judgment RCOM 0005/09/HCC which became executable since it has won the judgment RCOMA 0013/10/CS. DUNIA BAKARANI lodged a claim before the Commercial High Court for staying the auction on his house which is located in the plot n o 339 in Rubavu Town, due to the auction effected by the notary KAYITESI Judith while on 15/12/2011 he was notified that Banque Commercial du Rwanda was already paid on 13/12/2011. FIAT Amélie for him voluntarily intervened in that case since he has made a sale contract on the house with DUNIA BAKARINI before the auction. [2] On 18/10/2012 the Commercial High Court decided the judgment RCOM 0070/12/HCC it was seized with and decided that the auction was legal, and that the claim of DUNIA BAKARINI, who voluntarily intervened, had not to be admitted since he had no capacity and interests of claiming, more importantly that the sold house was not his yet. [3] DUNIA BAKARANI and FIAT Amélie seized again the Commercial High Court applying for the review of the case RCOM 0070/12/HCC basing on the article 186 in its paragraph 3 and 6 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure. [4] The Commercial High Court decided the judgment RCOM 0306/12/HCC on 21/01/2013 and decided that Fiat Amélie and DUNIA BAKARANI's claim has basis, and declared that KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre loss the case, and nullified the auction of 15/12/2011 on the house which is located in the plot no 339 in Rubavu Town. [5] The court also condemned KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre all together to pay to FIAT Amélie the money amounting to 29.575.000

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Frw for the rent of the house and 500,000 Frw for the lawyer's fees, which make in total 30.575.000 Frw, after the pronunciation of the court decision they started with the money that the notary KAYITESI Judith has deposited in the National Bank after the auction, and condemned them to pay all together to pay the court fees amounting to 9,000 Frw. [6] On 6/2/2013, the Ombudsman wrote to the Supreme Court requesting that RCOM 0306/12/HCC rendered by the Commercial High Court be reviewed for the injustice grounds resulting from the fact that there have been the laws and the evidences which were ignored. [7] After analysing the report of the Chief Inspector of courts on this judgment, the Chief Justice in the Supreme Court, basing on the article 80 of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, on 27/3/2013 decided that the judgment to be submitted in the registrar of the Supreme Court to be heard again. [8] KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre applied for the review of the judgment RCOM 0306/12/HCC on the following injustice grounds:

- a. To ignore the evidences and laws that are obvious to everyone, they claim the judge to have ignored article 78 and 79 of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.
- b. To admit and analyze the claim while the law provides it otherwise, they argue that even if he could have the capacity, the judge could not have admitted the claim and analyze it basing on the article 12 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.
- c. To have supported the fraud and faults of the plaintiffs, arguing that the claim of the plaintiffs was based on the fraud and violating the law for staying the auction, arguing basing on the sale contract on the house which was seized which was not in the possession of its owner which is supported by the article no 295 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at that time. [9] FIAT Amélie requests the Supreme Court to condemn the plaintiffs to pay to him 3.500 USD each month for the period of 13 months for the rent of the house he bought before the auction, together with DUNIA BAKARANI request to condemn the plaintiff to give then 2.000.000 Frw for having involved them in the court proceedings for no ground and 2.000.000 Frw for the lawyer's fees. I&M Bank (the former Banque Commerciale du Rwanda) also lodged a cross appeal upon that of the plaintiffs requesting the Supreme Court to condemn them to pay to it the procedural damages amounting to 500,000 Frw and the lawyer's fees amounting to 500,000 Frw. [10] The public hearing was held on 4/2/2014, MBERABAGABO Innocent, BUTERA Jean- Pierre and KAYITESI Judith represented by Me NZAMWITA Toy and Me TWAGIRAYEZU Christophe, Fiat Amélie and DUNIA BAKARANI were represented by Me SHEMA GAKUBA

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Charles and Me BUHURU Pierre-Célestin while I&M Bank (the former Banque Commerciale du Rwanda) was represented by Me BATWARE Jean-Claude. II. ANALYSIS OF THE LEGAL ISSUES To know whether the Commercial High Court was not competent to hear the judgment RCOM 0306/12/HCC [11] NZAMWITA Toy, the counsel, who pleads for MBERABAGABO Innocent, BUTERA Jean-Pierre and KAYITESI Judith, says that the Commercial High Court was not competent to hear the judgment RCOM 0306/12/HCC since FIAT Amélie and DUNIA BAKARANI have lodged an application for reviewing the judgement RCOM 0070/12/HCC for the extreme injustice which was finally rendered by that court, but basing on the article 78 and 79 of the NZAMWITA Toy, the counsel, who pleads for MBERABAGABO Innocent, BUTERA Jean- Pierre and KAYITESI Judith, says that the Commercial High Court was not competent to hear the judgment RCOM 0306/12/HCC since FIAT Amélie and DUNIA BAKARANI have lodged an application for reviewing the judgement RCOM 0070/12/HCC for the extreme injustice which was finally rendered by that court, but basing on the article 78 and 79 of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, that claim would not have been seized with that court since the Supreme Court is the only

competent court to analyze the applications for reviewing the judgments for the grounds of extreme injustice, thus he realizes that in case the Commercial High Court has itself given the competence it has not, this ground reveals the injustice which occurred in this case. [12] NZAMWITA Toy, the counsel, explains that FIAT Amélie and DUNIA BAKARANI when they filed the claim before the Commercial High Court, they could not base on the article 186 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure since the application for reviewing the judgment on the injustice grounds is filed basing on the article 78 and 79 of the Organic Law n° 03/2012 above mentioned. TWAGIRAYEZU Christophe, the counsel, who pleads for MBERABAGABO Innocent, BUTERA Jean-Pierre and KAYITESI Judith, explains that in the paragraph 8 of the judgment RCOM 0306/12/HCC, the Commercial High Court based on the article 189 of the Law n° 21/2012 of 14/06/2012 mentioned above, and decides that it is competent to admit the application for reviewing the case, while that court ignored that there was the Organic Law which gives the Supreme Court the competence to analyse the application for reviewing the judgment for the injustice grounds. [13] Me BUHURU Pierre Célestin, who pleads for Fiat Amélie and DUNIA BAKARANI, says that in the judgment RCOM 0306/12/HCC the plaintiffs who applied for reviewing the judgment RCOM 0070/12/HCC on the grounds of injustice, that the court which decided the judgment applying for reviewing the judgment, is the one which is competent to hear it basing on what is provided for by the article 186 and 189 of the law n° 21/2012 of 14/06/2012 above mentioned, thus he releases that in case these articles which gives competence to the court which finally decided that case which review the judgment, the Commercial High Court which finally decided the judgment RCOM 0070/12/HCC committed no fault.

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[14] SHEMA GAKUBA Charles, the counsel who pleads for Fiat Amélie and DUNIA BAKARANI, says that the plaintiffs before the Commercial High Court they applied for the review of the judgment RCOM 0070/12/HCC on the grounds of extreme injustice caused by the serious faults of confusing the facts, basing on the article 186, paragraph 3 and 6 of the law n° 21/2012 of 14/06/2012 above mentioned, while the article 78 and 79 of the Organic Law n° 03/2012 above mentioned provide for that “confusing the facts” is among the grounds for applying for the review of the judgment on the grounds of injustice which was finally decided, thus he realises that argument has not to be considered. [15] BATWARE Jean-Claude, the counsel, who pleads for I&M BANK (the former Banque Commerciale du Rwanda) says that the judgment RCOM 0306/12/HCC which has petitioned to review the judgment RCOM 0070/12/HCC based on the extreme injustice and serious errors committed based on confusion about the situation of facts as provided for by the article 186 paragraph 3 and 6 of the law n° 21/2012 of 14/06/2012 mentioned above, and that this is evident in the subject matter of the judgment RCOM 0306/12/HCC, thus he realizes that nowhere else could FIAT Amélie and DUNIA BAKARANI refer that petition except to refer it to the Commercial High Court which decided the judgment RCOM 0070/12/HCC which became executable. THE VIEW OF THE COURT [16] The Supreme Court realises the subject matter in the judgment

RCOM 0306/12/HCC is “application for reviewing the judgment RCOM 0070/12/HCC on the grounds of extreme injustice that resulted from the serious errors committed based on confusion about the situation of facts (the article 186 paragraph 3 and 6 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure). [17] When you read the paragraph 8 of the judgment RCOM 0306/12/HCC, it is evident that the Commercial High Court decided that it is competent to hear the case since the article 189 of the law n° 21/2012 of 14/06/2012 mentioned above provides for that the petition for the review of the judgment finally decided is filed before the court which decided that case, and that the judgment RCOM 0070/12/HCC which sought to be reviewed was decided by that court and that when they lodged their petition , the plaintiffs based on the article 186 paragraph 3 and 6 of the law n° 21/2012 of 14/06/2012 mentioned above. [18] The the article 186 paragraph 3 of the law n° 21/2012 of 14/06/2012 mentioned above provides for that “an application for review can be made if, since the time of rendering the judgment, it was evident that there was injustice due to the judgment for which the review is sought, whether an element of evidence was in the file but was not noticed by the court or was revealed later”. And the paragraph 6 of the article 186 provides for that “an application for review can be made if, during the hearing, there were errors committed based on confusion about the situation of facts or basing on a non-existing law”. [19] The article 189 paragraph 1 of the Law n°21/2012 of 14/06/2012 mentioned above provides for that “the application for review of a final judgment shall be brought before the same court that rendered it but with a judge or judges that did not preside over the hearing”.

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[20] The article 78 of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides for that “the Supreme Court shall have exclusive jurisdiction over applications for review of final decisions due to injustice upon approval of the President of the Supreme Court”. While the article 79 of the Organic Law mentioned above provides for that the way of seizing the Supreme Court for the petition for reviewing the judgment finally decided on the ground of injustice. [21] When you analyze the provisions of those articles and the subject matter of the judgment RCOM 0306/12/HCC, it is undoubtedly clear that before the Commercial High Court, FIAT Amélie and DUNIA BAKARANI had filed the petition for reviewing the judgment RCOM 0070/12/HCC basing on the article 186 paragraph 3 and 6 of the law ° 21/2012 of 14/6/2012 mentioned above, which is demonstrated in the paragraph 10 of the court submissions of FIAT Amélie and DUNIA BAKARANI that they submitted to the Commercial High Court, that their petition is based on the article 186,187, 1888 and 189 of law ° 21/2012 of 14/6/2012 mentioned above, thus that court was competent to hear it since it is that one which has finally decided the judgment RCOM 0070/12/HCC. [22] With regard to what are said by the plaintiffs that FIAT Amélie and DUNIA BAKARANI when they file the claim before the Commercial High Court, they petitioned for reviewing the judgment RCOM 0070/12/HCC on the grounds of extreme injustice, that due to this they would have filed the petition before the Supreme

Court, they court realises that it is not right since it is clear in the article 186 paragraph 3 of the law n° 21/2012 of 14/06/2012 mentioned above that the party who has the right for petitioning for review may do it on the ground that if, since the time of rendering the judgment, it was evident that there was extreme injustice due to the judgment for which the review is sought, thus the word “extreme” that was used in the subject matter cannot affect about knowing the court which is competent to analyse the judgment RCOM 0306/12/HCC in case it is clear that the petition filed in this case is based on the provisions mentioned above of the law n°21/2012 of 14/06/2012. [23] Basing on all those above mentioned, the Supreme Court realises the argument of the plaintiffs unfounded since the Commercial High Court was competent of hearing FIAT Amélie and DUNIA BAKARANI’s petition for reviewing the judgment RCOM 0070/12/HCC.

- b. Knowing whether FIAT Amélie and DUNIA BAKARANI have concurrently used both ways of appeal. [24] Me NZAMWITA Toy says that basing on the provisions of the article 12 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, the Commercial High Court could not admit the petition for the review of the judgment, and analyze it because on 26/10/2012 FIAT Amélie and DUNIA BAKARANI have lodged a claim for appeal before the Supreme Court against the judgment RCOM 0070/12/HCC, and later on 6/11/2012 they made a petition for reviewing the judgment, thus he realizes that in case it is related to two ways of appeal: ordinary appeal and review, while the first way made a party to the case lose the right to use the second, FIAT Amélie and DUNIA BAKARANI had no

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right of making a petition for reviewing the judgment RCOM 0070/12/HCC in case they have refused to make an appeal before the Supreme Court. [25] Me BUHURU Pierre Célestin says that the provisions of the article 12 of the law n° 21/2012 of 14/6/2012 mentioned above, is related to ordinary ways of appeal, opposition and appeal, that the review is an extraordinary way of appeal. He explains that the fact that the judgment RCOM 0070/12/HCC was decided on the execution of the judgment and it could not be appealed against, FIAT Amélie and DUNIA BAKARANI, have based on the article 26 of the of the law n° 21/2012 of 14/6/2012 mentioned above provides for that in case self-deprivation of the right to action, the acceptance of another party is not necessary. [26] Me BATWARE Jean-Claude says that the review of the case is an extraordinary way of appeal, and that in case they pleaded before the Commercial High Court FIAT Amélie and DUNIA BAKARANI have revealed that they withdrew their claim of appeal which was before the Supreme Court, thus he realizes that the self-deprivation of the right of appeal was enough that the other party gives its opinion. THE VIEW OF THE COURT [27] With regard to the objection which was raised before the Commercial High Court by MBERABAGABO Innocent, BUTERA Jean-Pierre and KAYITESI Judith of not admitting FIAT Amélie and DUNIA BAKARANI’s petition due to the fact that they concurrently intended to two ways of appeal, the Supreme Court realizes that in the paragraph 6 of the judgment RCOM 0306/12/HCC, that court decided that they did not refer to two ways of appeal since the petition for review was lodged

when they have withdrawn the claim for appeal before the Supreme Court. [28] The article 12 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that “a party shall not choose both ways of appeal for the same case. The first appeal shall be only considered and he/she shall for the same case lose the right to exercise the second way of appeal”. [29] Notwithstanding with the provisions of that article, the Supreme Court realizes that it is clear that the ways of appeal mentioned are the ordinary ways of appeal, that’s to mean that the opposition and appeal, however without contravening with what have been said, nothing prohibits concurrently to refer to ordinary ways of appeal. It realizes that what the legislator prohibits it is to concurrently refer to two ways of appeal¹, while in this case it is clear that Fiat Amélie and DUNIA BAKARANI made an appeal before the Supreme Court on 26/10/2012, later they lodged a petition for review before the Commercial High Court on 6/11/2012 and they 1 “What the rule «Electa una via non datur recursus ad alteram» prohibits, is the simultaneous referral to two ways of appeal against the same decision” Albert FETTWEIS, Manuel de procédure civile, deuxième édition, Faculté de droit de Liège, 1987, PP 479-480. It has been decided that the appeal of the judgment in absentia, lodged after the opposition, but which is important, has to be admitted if the opposition itself is inadmissible”, in Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P. 927. In case the opposition was made after the appeal, if the appeal is inadmissible, there will be no hinderance on the admissibility of a regular opposition, made for the first time. Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P. 927.

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withdrew the appeal on 11/12/2012, thus it is evident that they did not referred simultaneously to two ways of appeal since they made ordinary appeal on 26/10/2012 after 12 days that’s to mean that on 6/11/2012 they lodged the extraordinary claim for the review, and they later withdrew their claim that they have lodged before the Supreme Court. [30] Basing on what have been said above, the Supreme Court realises that the arguments of the plaintiffs on the ground of injustice has been considered baseless since the Commercial High Court committed no error. C. Knowing whether the sale agreement made between FIAT Amélie and DUNIA BAKARANI may not be taken as valid. [31] NZAMWITA Toy, the counsel, says that basing on the provisions of the article 295 of the law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force when the sale contract of the house between FIAT Amélie and DUNIA BAKARANI was made, that sale may not be taken as valid since FIAT Amélie has taken the money got from the sale and deliver it to I&M BANK (the former Banque Commercial du Rwanda) instead of delivering it to the State Treasurer, thus he realizes that the non-clearance certificate that I&M BANK (the former Banque Commercial du Rwanda) issued to DUNIA BAKARANI itself was not enough to stay the auction. He says again that the notary had no obligation of staying the auction basing on that certificate since it required another decision of the President of Rubavu Intermediate Court ordering him to stay the auction. He concludes saying that the provisions of the article 318 of the law n° 18/2004 of 20/06/2004 mentioned above which was in force at that

time may not be based on in this case, in case the provisions of the article 295 of the law n° 18/2004 of 20/06/2004 mentioned above are not fulfilled. [32] SHEMA GAKUBA Charles, the counsel says that the fact that FIAT Amélie bought that house and later pays to I&M BANK (the former Banque Commercial du Rwanda), it is clear that there has been the voluntary execution of the judgment on side of DUNIA BAKARANI, he realizes that in case I&M BANK (the former Banque Commercial du Rwanda) issued the non- clearance certificate to DUNIA BAKARANI and notified to the notary KAYITESI Judith requesting her to stay the auction, the Commercial High Court committed no fault since the sale contract was made before the auction was performed and the cost was given to I&M BANK (the former Banque Commercial du Rwanda), thus he realizes that giving the money of the cost to the State Treasurer was not necessary since the seizure of the house of DUNIA BAKARANI was effected in the interests of I&M BANK (the former Banque Commercial du Rwanda). [33] BATWARE Jean-Claude, the counsel, says that basing on the article 314 of the law N° 21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, any person shall have the right to redeem the seized property by satisfying the in the interests and with the consent of the debtor. He explains that before the auction is performed, I&M BANK (the former Banque Commercial du Rwanda) has agreed with DUNIA BAKARANI since he voluntarily paid it and that it notified it to the notary, thus he realizes that the auction was illegally performed.

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THE VIEW OF THE COURT [34] The article 293 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure (which was the article 295 of the Law n° 18/2004 of 20/6/2004 which was in force that time of the sale agreement of the house made between FIAT Amélie and DUNIA BAKARANI provides for that “the alienation of immovable property and the establishment of any charges related to it by the debtor after being served with the order to pay or objection shall be automatically void unless the acquirer deposits in the hands of a government accountant an amount which is equal to the debt and costs which are supposed to be paid to the distrainer”. [35] The article 313 of the law n° 21/2012 of 14/6/2012 mentioned above (which was 317 of the law n° 18/2004 of 20/6/2004 mentioned above) provides for that any distrainee debtor may, at any time, redeem the seized property by paying to the court’s account, a sum sufficient to satisfy the principal debt which led to the seizure, interests and costs and specifying that the sum is meant to satisfy the debt of the distrainer, if the rights of the latter are subsequently recognized”. [36] The article 314 of the law n° 21/2012 of 14/6/2012 mentioned above (which was 318 of the law n° 18/2004 of 20/6/2004 mentioned above) provides for that “any person shall have the right to redeem the seized property by satisfying the damages and the costs of the seizure, as long as it is made before the end of the sale, in the interests and with the consent of the debtor. [37] Those articles of the law demonstrate that though there may be the seizure of the property of the debtor, any person or the debtor may as long as it is made before the end of the sale, redeem the seized property if it is made in the interests of the creditor and of the debtor, the sum is meant to satisfy the debt of the distrainer and the seizure expenses. [38] With regard to the article 293 of the law n° 21/2012 of 14/6/2012 mentioned above, the Supreme Court realizes that

depositing to the State Treasurer the sum of the debt and the distrainer deserved was not necessary or any necessary procedure since the necessary is to pay to the creditor, and that the article 293 of the above mentioned law is not of public order. [39] With regard to what is said by the plaintiffs that the sale of the house made between FIAT Amélie and DUNIA BAKARANI may not be considered that it was necessary that before that sale was made, that the President of the Intermediate Court has to take another decision staying the auction, the Supreme Court realizes that it is not true since no law regulates it, instead any person or the debtor has the right to redeem the seized property by satisfying the damages and the costs of the seizure, as long as it is made before the end of the sale, in the interests and with the consent of the debtor, thus it is not necessary to request the President of intermediate Court to take the decision staying the auction before redeeming the seized property. [40] For all those grounds, the Supreme Court realizes that the sale contract made between FIAT Amélie and DUNIA BAKARANI has to be considered as valid since it was made for

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redeeming the house which was seized by I&M BANK (the former Banque Commerciale du Rwanda), which was paid and it notified to the notary KAYITESI Judith before the auction.

- a. To know whether the rent of the house which was awarded by the Commercial High Court has basis. [41] NZAMWITA Toy, the counsel, says that condemning the notary KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre to pay to DUNIA BAKARANI 30.000.000 Frw for damages is the injustice since they committed no fault, and that the notary KAYITESI Judith was acquitted before two courts. He says that BUTERA Jean-Pierre could not commit any fault since he did not buy nor sell the house, which MBERABAGABO Innocent committed no fault in case he saw the notice and attended the auction and he bought the house, thus he realizes that the Commercial High Court based on nothing in determining those damages. [42] BUHURU Pierre Célestin, the counsel, says that the Commercial High Court decided that the auction performed by the notary KAYITESI Judith was illegal, it deprived FIAT Amélie and DUNIA BAKARANI with its rent since that house was leased at 3.500 USD per month, before it was sold, that those who bought that house in auction committed the fraud and that it is BUTERA Jean-Pierre who drafted that contract. He explains that before the auction MBERABAGABO Innocent, BUTERA Jean-Pierre and BISAMAZA were the shareholders of the company called “Prime Lodge“, and they immediately changed the destination of the business which was performed in the sold house, thus he realises in case the Commercial High Court has supported the decision taken on those explanations, it is clear that it explained the faults they committed. [43] GAKUBA SHEMA Charles, the counsel, says that on 13/12/2011, I&M Bank (the former Banque Commerciale du Rwanda) wrote to the notary KAYITESI Judith requesting her to stay the auction since DUNIA BAKARANI owed no debt, thus in case KAYITESI Judith refused all these and performed the auction, while MBERABAGABO Innocent and BUTERA Jean-Pierre bought that house knowing that it was fraud, he realizes it a serious fault to which they have to be held liable. THE VIEW OF THE COURT [44] The Supreme Court realises that in the

paragraph 14 of the judgment the review is sought, the Commercial High Court has decided that “the committed faults deprived FIAT Amélie who has bought the house before the auction from the rent of his house amounting to 3,500 USD per month for the period of all 13 months which make in total 45,000 USD which is equivalent to 29.575.000 Frw, at the time of the execution of this judgment has to be deducted from that which has been deposited in the BNR when the auction was performed (the article 258 CCB III)”, thus it has condemned the notary KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre altogether to pay to FIAT Amélie 30.575.000 Frw after the pronouncement of the

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judgment, departing from the amount that the notary KAYITESI Judith has deposited in BNR on 19/12/2011 after performing the auction. [45] With regard to the notary KAYITESI Judith, the Supreme Court realises that in case I&M Bank (former Banque Commercial du Rwanda) has notified, before the auction was performed, that DUNIA BAKARANI has already finished to pay to it, and requested her to stay the auction and neglected it and sold that house which is located in the plot n° 339 in RUBAVU (former Gisenyi), it is a fault to which she has to be held liable and pays the damages since this act caused damage to FIAT Amélie and deprived him with the rent of the house which has been bought before the auction amounting to 3.500 USD per each month for the period of 13 months which make in total 29.575.000 Frw of when which the Commercial High Court decided the case. The Supreme Court realises again that the fact that the notary KAYITESI Judith has been acquitted in criminal cases, cannot prevent to be held liable for the fault (tort liability) she committed against FIAT Amélie, thus the notary KAYITESI Judith has to repair the damages. [46] With regard to MBERABAGABO Innocent, the Supreme Court realises that in case he was notified that the house which was bought from the auction was in litigation since there was another person who has bought it before and continued to hold it and he changed the activities which were performed in that house, it is a fault to which he has to be held liable because he deprived FIAT Amélie with the rent of the house which has been bought before the auction amounting to 3.500 USD per each month for the period of 13 months which make in total 29.575.000 Frw of when which the Commercial High Court decided the case, thus MBERABAGABO Innocent has to repair the damages. [47] With regard to BUTERA Jean-Pierre, the Supreme Court realises that he made no act which caused damage to FIAT Amélie since he did not buy that house in the auction and the fact that he is among the shareholders of the company called “Prime Lodge” is not the ground to which he may be held liable for the faults that MBERABAGABO Innocent committed, thus BUTERA Jean-Pierre may not be held liable for damage caused by MBERABAGABO Innocent. [48] Basing on all those grounds, basing on the article 258 of the civil code provides for that « any act of individual that causes damage to a person, obliges the one whose fault caused damage to repair it», the Supreme Court realises that the notary KAYITESI Judith and MBERABAGABO Innocent alone have to pay to FIAT Amélie 29.575.000 Frw for the rent of the house which has been bought before the auction amounting to 3.500 USD per each month for the period of 13 months, thus the judgment RCOM 0306/12/HCC has to be changed with regard to BUTERA Jean-Pierre since it has condemned him together with

others to pay to FIAT Amélie that sum of amount.

- a. Knowing whether the defendants may be provide with the damages they claim [49] BUHURU Pierre Célestin and GAKUBA SHEMA Charles the counsels request the Supreme Court to condemn the notary KAYITESI Judith, MBERABAGABO Innocent and

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BUTERA Jean-Pierre to pay to FIAT Amélie and DUNIA BAKARANI 2.000.000 Frw for having involved them in the court proceedings for no ground and 2.000.000 Frw for the lawyer's fees. [50] BATWARE Jean-Claude, the counsel request the Supreme Court to condemn the notary KAYITESI Judith, MBERABAGABO Innocent and BUTERA Jean-Pierre to pay to I&M Bank (former Banque Commerciale du Rwanda) 500,000 Frw for the procedural damages and 500,000 Frw for the lawyer's fees. [51] NZAMWITA Toy, the counsel, says that the defendants have not to be provided with those damages since the plaintiffs committed no fault. THE VIEW OF THE COURT [52] The Supreme Court realises that 2,000,000 Frw that FIAT Amélie and DUNIA BAKARANI request for having been involved in the court proceedings for no ground, may not be provided with them since they have right to lodging a claim in case they realises that it is the injustice committed against them. [53] With regard to 2,000,000Frw for the lawyer's fees that FIAT Amélie and DUNIA BAKARANI request, the Supreme Court realises that they may be provided with them but they are too excessive, within its discretion, it provides them with 500,000 Rwf for the lawyer's fees. [54] With regard to 500,000 Frw for the procedural damages and lawyer's fees amounting to 500,000 Frw that I&M Bank (former Banque Commerciale du Rwanda) it request, the Supreme Court realises that it is excessive, within its discretion, it provides with them the money amounting to 500,000 Frw. [55] Basing on all those grounds, the Supreme Court has to condemn the notary KAYITESI Judith and MBERABAGABO Innocent to pay to FIAT Amélie and DUNIA BAKARANI 500.000 Frw for the lawyer's fees and pay to I & M Bank (former Banque Commercial du Rwanda) 500,000 Frw for the procedural and lawyer's fees. III. THE DECISION OF THE COURT [56] Decides that the claim lodged by the notary KAYITESI Judith and MBERABAGABO Innocent is baseless; [57] Decides that BUTERA Jean-Pierre's claim has merit; [58] Orders the notary the notary KAYITESI Judith and MBERABAGABO Innocent all together to pay to FIAT Amélie 29.575.000 Frw for the rent of the house; [59] Orders the notary KAYITESI Judith and MBERABAGABO Innocent all together to pay to FIAT Amélie and DUNIA BAKARANI the lawyer's fees amounting to 500,000 Frw added to 500,000 Frw which was provided with the Commercial High Court, which make in total 1,000,000 Frw;

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- [60] Orders the notary KAYITESI Judith and MBERABAGABO Innocent all together to pay to I&M Bank (former Banque Commerciale du Rwanda) 500,000 Frw for the advocate's and the procedural fees; [61] Orders the notary KAYITESI Judith and MBERABAGABO Innocent to pay the court fees equal to 14.500 Frw. .

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Prepared on 12 October 2026 · Esheria