

RWANDA / JUDGMENT

KABANGO v. MUKAMUSANA ET. AL.

RCOM 0002/15/CS

COURT

Supreme Court

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KABANGO v. MUKAMUSANA ET. AL. [Rwanda SUPREME COURT – RCOM 0002/15/CS (Mukanyundo, P.J., Gatete and Rugabirwa, J.) March 13, 2015] Commercial procedure – Summary procedure – Ruling on summary procedure – The Summary procedure judge rules on all urgent issues in the manner not prejudicing the merit of the main claim – Examining the main claim on merit – The main claim on merit is examined by the panel of judges of who heard the case on merit– Law n° 21/2012 of 14/06/2012 relating to civil commercial, labour and administrative procedure, article 320. Commercial procedure – Summary procedure claims – Interim ruling for summary procedure ruled at the first instance it is an interim decision and it is removed by the ruling on merit – When there is an appeal on the case on merit, nothing shall prevent the party to file for an urgent resolution based on the principal suits– Law n° 21/2012 of 14/06/2012 relating to civil commercial, labour and administrative procedure, article 316. Commercial procedure – Third part opposition – An opposition by a third party does not automatically suspend execution of the challenged judgement – Third party opposition requested by a party – In case third party opposition against a decided case is done by a party, the seized court may order its suspension if it finds there are plausible grounds that if the case is executed the third part may suffer

economically – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 180(4). Commercial procedure – Damages – A claim for damages and other expenses incurred during the hearing of the summary procedure – Damages and related expenses incurred by the party during the hearing of summary procedure are claimed together with the principal application. – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 320(4) Facts: Mbanda Chantal terminated the contract of lease of the commercial house that she had concluded with Mukamusana Henriette. The latter had subleased a part of that house with Runanira André. After that happened, Mukamusana immediately referred the claim against Mbanda to Musanze Commercial Court claiming that she breached the contract they concluded. The court ordered Mbanda to restitute to Mukamusana 8,760,000 Frw of the activities composed of that building, to pay the rent equivalent to the remaining period for the lease contract to come to an end adding moral damages and advocate fees. It ordered him as well to restitute to the plaintiff the money for the court fees. The court ordered Mukamusana to remove from Mbanda plot her materials within the period of one month. Both Mbanda and Mukamusana appealed to the Commercial High Court and their claim was recorded under RCOMA 0371/14/HCC-0388/14/HCC and Runanira voluntarily intervened. The court found without merit appeal of Mbanda and ordered her to pay 10, 000, 000, 00Frw for interests that she should have gained within the period of 26 months which were remaining for the contract to come to an end. Such amount was added to that she was granted on the first instance, adding procedural and advocate fees at appeal level and ordered in addition to pay Runanira 2, 227, 000, 00 Frw equivalent to the electrical and water installation in her house, 1, 000, 000, 00Frw for incurred loss fee resulting from losing the work place, 500, 000 Frw including damages for she had been dragged into litigations, procedural and advocate fees and that of court fees deposit for filing a claim.

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Kabango Mumporeze Bernadette filed a third party opposition in the Commercial High Court and the claim was recorded under RCOMA 0576/14/HCC. In the meanwhile the case was still pending, she files a summary procedure registered under RCOMA 0605/14/HCC requesting the stay of execution of the judgment against which she filed the stay of the third party opposition till her claim for third party opposition is finally decided. The court decided that the summary procedure filed by Kabango has no merit since the document he had submitted evidencing ownership of the house excluding Mbanda from ownership over the house that Kabango opposes the sale since it is registered under Kabango and her husband. In addition, no damages should be granted in the lawsuit; rather, they should be claimed in the main suit. The Court decided the case RCOMA 0576/14/HCC and held that the claim filed by Kabango is inadmissible because she had no interest in the case against which she lodged a third party opposition as it would not protect her with nothing given that the object of litigation in the judgment against which she filed third party opposition was not a house, rather the lease contract of the house that Mbanfa breached and led her to the payment of damages. Kabango appealed to the Supreme Court and the claim was recorded under RCOMAA 0011/15/CS and she filed a summary procedure

registered under RCOM 0002/15/CS requesting stay of execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC against which she lodged a third party opposition till the Supreme Court would decide the case since in case that judgment would be executed, it would inflict a fatal and irreparable loss. Mukamusana responded that the third party opposition is only intending the delay of execution of the judgment while Mbanda, as to her, stated that it would be worthy if the Supreme Court stayed the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC so that the property of Kabango and her husband could not to be sold at public auction. As to Runamira who intervened in this case the execution of the judgement would not have impact on the property of Mbanda since she produced no evidence that she is in co-ownership with Kabango. Mukamusana immediately raised an objection of inadmissibility of the a summary procedure since the main appeal is not in its jurisdiction as no damages amounting to 50, 000, 000, 00Frw which were granted by the Commercial High Court in the judgment RCOMA 0371/14/HCC-0388/14/HCC in the summary procdure which has the force of res judicata as it was not appealed. She concluded requesting procedural and advocate fees and damages equivalent to the time she spent dragged into litigations. Runanira as well requested 500, 000, 00 Frw of damages for he had been dragged into litigations. Kabango alongside Mbanda explained that Mukamusana and Runanira would not be granted damages they request in the claim relating to the summary procedure, rather they would claim them at the time of hearing of the case on merit. Kabango submitted that the summary procdure is worthy of being received since the main appeal he filed in this court would be received by the judge who would hear the case on merit by virtue of articel 28, 2° of Organic Law referred to above since the Commercial High Court decided the case against which he filed third paty oppostion basing on inexistant law because it ruled on the case basing on article 64 of the Law n° 45/2011 of 25/11/2011 govening the contract which does not pertaing the object of litigation, rather it would have based on Organic Law n° 08/2005 of 14/07/2005 governing land as repealed by the Organic Law of 2012 since it is the one pertaing the objcet of litigation relating to the rights Mukamusana has over the construction activities she performed on the land of Kabango whcih does not related to the contract of lease they concluded as referred to above. Therefore, the jurisdiction of the Supreme Court was not based on on the value of the object of litigation. The statement that the judgment RCOMA 0605/14/HCC had got the force of res judicata as it was not appealed , he explained that it did not, rather, an interim order which had been overturned by

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the judgment RCOMA 0576/14/HCC on its merit. He explained that he did not appeal against the order rendered by the Commercil High Court since the judgment against which he lodged third part opposition was rendered in avery short period of time. As to Mbanda, the summary procedure is worth of being reaceived because the Commercial High Court rendered the judgment against which third part opposition had been lodged based on inexistant law which does not pertain the object of litigation and explained that this claim is related to the one file in Commercial High Court whic have been ruled out by the ruling of the case on merit. Runanira who voluntarily intervened in this case states that the judge of summary procedure should

examine first whether the claim referred to him is in the jurisdiction of the court. He explained further that the claim filed would not be admissible because the appeal of the judgment RCOMA 0605/14/HCC should have respected the time limit prescribed by the law. Held: 1. The judge of summary procedure decides on all urgent claims. However, the order should not cause any prejudice to the merit of the main suit. In addition a judge of summary procedure is not bound to firstly examine whether or not the main claim is in the jurisdiction of the court seized. Thus, the issue related to the fact that the judgment was rendered based on inexistent law should not be examined by the judge of summary procedure; rather, by the panel of the judges who would hear the case on merit.

2. When there is a main suit while urgent interim resolution should be taken about the claim filed, the summary procedure should be submitted to the judge in charge of settling urgent conflict of the place where they should be settled based on the ordinary procedure of summoning. Therefore, the fact that Kabango had filed a main suit which was recorded under RCOMAA 0011/15/CS nothing can hump her from filing a summary procedure staying the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC which he feels it prejudices her in case the main claim is still pending.
3. Third party opposition does not stop the execution of the judgment except if it is suspended by the seized court upon the requests of a party who shows that if the ruling is executed he will suffer economically, therefore, the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC should be stayed until the case RCOMAA 0011/15/CS would be finally decided because in case it is executed, it can cause Kabango the fatal loss while it is very clear that she co-owned the leased house with Mbanda.
4. Damages and other monetary related expenses incurred by a party in summary procedure are claimed in the main suit. It implies that even though the judgment which was won by Mukamusana and Runanira against which third party was lodged, Kabango should not pay them, rather they may claim them at the time of the hearing of the case on merit. Summary procedure has merit Execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC is suspended No damages are granted. Court fees to the respondents. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to civil, commercial and administrative, procedure, article 180(4) 316, 320, and 340(4).

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No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Mbanda Chantal, the owner of the house concluded a contract of the leasing of the commercial house with Mukamusana Henriette. The latter also subleased a part of that house with Runanira André. Later on, Mbanda Chantal terminated the contract as Mukamusana Henriette was not paying the rent. [2] Mukamusana Henriette filed a

claim against Mbanda Chantal in the Commercial Court of Musanze lamenting that that she breached the contract thy had entred into in December 1, 2011. The court decided the case and and ordered Mbanda Chantal to pay Mukamusana Henriette 8,760,000, 00Frw of the activities of annexed houses, reparation of the house and the replacement of utility room as well as the shop and 8, 000, 000, 00Frw equivalent to the remaining months for the contract of lease of the house to take the end., 1,000, 000, 00 Frw for moral damages, 354, 000 , 00 Frw for advocate fees and 4, 000, 00Frw for the court fees deposited by the plaintiff, it further ordered Mukamusana Henriette to take off her materials from the land of Mbanda Chantal in the period of one month. [3] Mbanda Chantal alongside Mukansanga Henriette appealed against the judgment in the Commercial High Court and the claim was registered under RCOMA 0371/14/HCC- 0388/14/HCC, while Runanira André voluntarily intervened. The Court delivered the verdict and held that appeal filed by Mbanda Chantal lacks merit and ordered Mbanada Chantal to pay Mukamusana Henriette 10, 000, 000, 00 Frw of the interests she should have gained from the bar, the Mini Super Market and the rooms she used to lease in the period of 26 as a remaining period for the contract to take the end added 8,000, 000, 00 Frw that she had been granted before, 500, 000, 00 Frw for procedural and advocate fees at appeal level. The court further ordered Mbanda to pay Runanira André 2.227.000, 00Frw equivalent to electrical and water activities that he installed in her house, 1,000, 000, 00Frw equivalent to the loss occasioned by losing the workplace, 500, 000, 00 Frw including moral damages for being dragged into litigations, procedural and advocate fees and 75, 000, 00 for the deposited court fees. [4] Kabango Mumporeze Bernadette filed third party opposition against the judgment in Commercial High Court and the claim was registered under RCOMA 0576/14/HCC. While the case was still pending, Kabango Mumporeze Bernadette filed a summary procedure registered under RCOMA 0605/14/HCC requesting the stay of execution of the judgement against which she lodged third party opposition, RCOMA 0371/14/HCC-0388/14/HCC, till the time his claim for third part opposition would be finally decided, The court decided the case RCOMA 0605/14/HCC on December 15, 2014 and held that the summary procedure filed by Kabango Mumporeze Bernadette has no merit since the grounds on which she based her request for the stay of execution of the judgment RCOMA 0371/14/HCC-0388/14/ lacks merit as document proving ownership of the house she submitted proving that Mbanda Chantal had no right over the house he requests the suspension of the sale because it is registered under Kagabo Mumporeze Bernadette and her husband. The court decided further that no damages should be granted in the lawsuit; rather they may be claimed in the main claim.

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- [5] The court decided the case RCOMA 0576/14/HCC on January 13, 2015 and held that the claim filed by Kabango Mumporeze Bernadette is inadmissible because she has no interests in the case against which he lodged third party opposition since it would not prejudice him due to the fact that the object of litigation in the judgment against which he lodged third party opposition is not a house; rather the contract of lease contract that Mbanda Chantal has breached and led her to being charged damages. [6] Kabango Mumporeze Bernadette appealed against the judgement RCOMA 0576/14/HCC to the Supreme Court and the claim

was registered under RCOMAA 0011/15/CS. Furthermore she filed a summary procedure which was registered under RCOM 0002/15/CS requesting the stay of execution of the judgment RCOMA 0371/14/HCC- 0388/14/HCC which she filed third party opposition till when the Supreme Court would decide the case RCOMAA 0011/15/CS because in case it would be executed, it would cause her an extreme and irreparable loss. [7] Ntihemuka Albert, the counsel for Mukamusana Henriette raised objection inadmissibility of summary procedure filed by Kabango Mumporeze Bernadette in the Supreme Court since main appeal is not in its jurisdiction. She added that the summary procedure should not be admitted since the judgment RCOMA 0605/14/HCC decided as a summary procedure has a force of res judicata. [8] The case was heard in open session on March 10, 2015, Kabango Mumporeze Bernadette assisted by Jean Bosco Rusanganwa, the counsel while Mukamusana was assisted by Ntihemuka Albert, Mbanda Chantal assisted by Zitoni Pierre Claver while Runanira André was assisted by Jean Baptiste Serugo, the counsel. II. ANALYSIS OF LEGAL ISSUES 1. Whether the summary procedure filed by Kabango Mumporeze Bernadette is inadmissible because the main appeal is not in the jurisdiction of the Supreme Court. [9] Ntihemuka Albert, the counsel for Mukansanga Henriette states that basing on article 28, 7° of Organic Law n° 03/12/OL of 13/06/2012 determining organization, functioning and jurisdiction of the Supreme Court, the summary procedure filed by Kabango Mumporeze Bernadette is inadmissible since the main appeal she submitted before the Supreme Court under RCOMAA 0011/15/CS is not in its jurisdiction provided that no damages of 50, 000, 000, 00Frw were granted in the judgment RCOMA 0371/14/HCC-0388/14/HCC rendered on the second degree by Commercial High Court. [10] Rusanganwa Jean Bosco, the counsel for Kabango Mumporeze Bernadette states that the summary procedure she filed should be admitted because the main appeal she filed in the Supreme Court would be received by the judge who would hear the case on merit based on article 28, 2° of Organic Law referred to above because the Commercial High Court ruled on the case against which she filed a third opposition based on inexistence of law since it based on article 64 of the law n° 45/2011 of 25/11/2011 governing contracts while it does not pertain the object of litigation; rather, it would have based on Organic law n° 08/2005 of 14/07/2005 relating to land in Rwanda as repealed by Organic law of 2012 given that it is the one which related to the rights Mukagasana has over the construction activities she performed on land of Kabango Mumporeze Bernadette which does not relate to the lease contract they concluded as referred to above. He concluded that the jurisdiction of the Supreme Court was not based

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on the value of the object of litigation as the counsel for Mukamusana Henriette tends to make it understood. [11] Zitoni Pierre Claver, counsel for Mbanda Chantal states that the summary procedure filed by Kabango Mumporeze Bernadette in this court is worthy of being received since the Commercial High Court ruled on the case against which third party had been filed based on the law which is not related to the object of litigation which looking like the case had been adjudicated based on an inexistence as the counsel for Kabango Mumporeze Bernadette

pleads. Therefore, the principal appeal filed by by Kabango Mumporeze Bernadette is in the jurisdiction of the Supreme Court as provided for by article 28 2° of Organic law above stated.. [12] He precises that in case the Supreme Court rules inadmissilbe the summary procedure filed by Kabango Mumporeze Bernadette as a result of indmissibility of the main appea,, it will prejudice the case on its merit while it is against the law. [13] Serugo Jean Baptiste, counsel for Runanira André who voluntarily intervened in this case states that basing on article 320 paragraph 2 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, the summary procedure judge should first examine whether the claim submitted to him/her is in his jurisdiction. [14] He submits that with regard to this case, the Supreme Court would not receive the summary procedure which had been filed by Kabango Bernadette as long as the main appeal that she had lodged before this court would not be received as it is not in its jurisdiction provided that the Commercial High Court adjudicated the case against which third party had been filed based on article 64 of the Law n° 45/of 25/11/2011 governing contracts in Rwanda concerns the object of the litigation since damages Mbanda Chantal was ordered to pay arising from the litigious contract of lease. Therefore, the judge should not have based on the Organic Law determining the use and management of land in Rwanda since the object of litigation was not to know the owner of the leased house. THE VIEW OF THE COURT [15] Article 320 paragraph one of the Law n° 21/2012 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that the summary procedure judge decide by way of orders, but without prejudicing the merits of the principal suit. Paragraph three of the same article provides that, the summary procedure judge is not obliged to first examine whether the principal application falls within the jurisdiction of the court before which the summary procedure is lodged. [16] Basing on the provisions of that article, the court finds that the issue regarding that the court adjudicated the appealed judgment basing on inexistent law should not be heard by the judge of the summary procededure; rather, it would be examined by the panel of judges of the case on merit given that it has been explained by the order of the chief registrar of the Supreme Court as it is in the case file the time when he was assising whether appeal filed by Kabango Mumporeze Bernadette that he filed in this court under n° RCOMAA 0011/15/CS should be recorded in its books. It implies therefore, that the objection rose by Mukamusana Henriette lack merit on this point.

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2. Whether the summary procedure filed by Kabango Mumporeze Bernadette should not be received as judgment RCOMA 0605/14/HCC rendered as a summary procedure has the force of res judicata. [17] Ntihemuka Albert, counsel for Mukamusana Henriette states that the summary procedure that Kabango Mumporeze Bernadette filed in this court should not be received becuse ordere of the summary procedure RCOMA 0605/14/HCC rendered by Commercial High Court has force of res judicata as she did not appeal. [18] Rusanganwa Jean Bosco, claims that the summary procedure filed by Kabango Mumporeze Bernadette should be admitted because the judgment RCOMA 0605/14/HCC that had been rendered on a summary procedure has not yet the force of res judicata; rather it is a an interim resolution.

[19] He insisted that the reason which caused Kabango Mumporeze Bernadette not to appeal against the order taken by the Commercial High Court on the summary procedure was due to the fact that the judgment against which she lodged third party opposition was immediately decided on its merit in a very short time of period and that no execution was being carried out in a such a way that he should have appealed that order. [20] Zitoni Pierre Claver, the counsel for Mbanda Chantal states that the summary procedure filed by Kabango Mumporeze Bernadette in this Court as registered under RCOM 0002/15/CS is worthy of being received as long as it has nothing to do with the claim she had filed in the Commercial High Court as registered under RCOMA 0605/14/HCC because it had been overturned by the adjudication of the case RCOMA 0576/14/HCC on its merit on January 13, 2015 because it is an interim resolution as it is provided for by the law since it was subordinated to the main suit RCOMA 0576/14/HCC. [21] Serugo Jean Baptiste, counsel for Runanira André, states that the Supreme Court should not receive the summary procedure of Kabango Mumporeze Bernadette because she did not lodge an appeal against the judgment RCOMA 0605/14/HCC as rendered by the Commercial High Court on the summary procedure within 15 days as prescribed by article 322 paragraph two of the law n° 21/2012 of 14/06/2012 relating to the civil, commercial labour and administrative procedure. It implies that the order has the force of res judicata and it would be illogic for this court to rehear it because the object of litigation in this court is exactly the same as that heard by the Commercial High Court on the summary procedure that she did not appeal against. THE VIEW OF THE COURT [22] Article 316 paragraph one of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that when there is need to have a interim ruling on a matter which requires urgent resolution, an action shall be filed in accordance with the ordinary procedure regarding principal suits, before an urgent applications judge in the jurisdiction where the urgent measure is required in accordance with ordinary summons procedure. [23] Basing on the provisions of that article, the court is of the view that the fact that Kabango Mumporeze Bernadette had filed a main suit in this court and registered under n° RCOMAA 0011/15/CS, nothing can stop her from filing a summary procedure basing on the

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main suit requesting the stay of execution of the judgment RCOMA 0371/14/HCC- 0388/14/HCC which she feels it prejudice her while the main suit is still pending. [24] The court finds without merit the statements of Mukamusana Henriette alongside her counsel, Runanira André, that the summary procedure that Kabango Mumporeze Bernadette had filed in this Court would not be received since the order n° RCOMA 0605/14/HCC taken by the Commercial High Court on December 15, 2014 has the force of res judicata because it had not been appealed since , basing on the provisions of 316 of the law referred to above, it was an interim resolution in a such way that it had been overturned by the ruling of the judgment n° RCOMA 0576/14/HCC on its merit on which it was subordinated which took place on January 13, 2015. It implies therefore that the objection raised by Mukamusana Henriette has no merit on this point. [25] Basing on the

holdings above, the court finds therefore that the objections of irreceivability of the summary procedure of Kabango Mumporeze Bernadette in this court as raised by Mukamusana Henriette as listed above has no merit. Therefore, it should be received and examined.

3. Whether there are urgent grounds submitted by Kabango Mumporeze Bernadette which may occasion the stay of execution of the judgment [26] Rusanganwa Jean Bosco and Kabango Mumoporeze Bernadette, the client, state that the Supreme Court should order the stay of the judgment RCOMA 0371/14/HCC-0388/14/HCC rendered by the Commercial High Court on October 2, 2014 basing on article 180 of the law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which provides that the execution of the judgment susbjected to third party opposition is stayed by the court upon the request of the one who filed third party opposition, because, in case it is done and the house gets sold at public auction so as to compel Mbanda Chantal to pay the damages she was ordered before the Supreme Court examines the main appeal in ths court and recorded under RCOMAA 0011/15/CS, it can cause Kabngo Mumporeze Bernadette the extreme and irreplaceble loss since she is a co-owner with Mbanda Chantal as all of them contributed to its purchase, in addition to the fact that they also co-own the other buildings at Gisenyi as well as at Musanze. [27] The counsel Ntihemuka Alber and Mukamusana Henriette explains that Kabango Mumporeze Bernadette filed third party opposition against the judgment RCOMA 0371/14/HCC-0388/14/HCC with intention to delay its execution while Mukamusana Henriette holds plausible evidence that the house Kagabo Mumporeze Beradette requests the suspension of the sale at the public auction had been already sold in coolabotarion with her husband the time when they had been paid 90, 010,706 as its just compansation at the time of expropriation for public interest. [28] Zitoni Pierre Claver, the counsel for Mbanda Chantal states that the Supreme Court would order the stay of execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC so as not to let the property of Kabango Mumporeze Bernadette sold at public auction. [29] Serugo Jean Baptiste, counsel for Runanira André states that in case the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC would be carried out gaist the property of Mbanda Chantal, it would have no impact on the proprty of Kabango Mumporeze Bernadette since she produces no evidence that they are coowners of that property onlyapart

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from stating that ; rather, Kabango Mumporeze Bernadette voluntarily intervened in the case with the mere intent to delay its execution. THEVIEW OF THE COURT [30] Article 180 paragraph 4 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that an opposition by a third party shall not automatically suspend execution of the challenged judgement, unless the execution is suspended by the court upon request of one of the parties. [31] With regard to this case, in the case file, there is an order n° 010/15/TC/MUS/RP that had been taken by Commercial Court of Musanze on February 16, 2015 which list the immovable properties of Mbanda Chantal which would be sold at public auction on March 23, 2015 so as to pay damages she was ordered to pay in the judgment RCOMA 0371/14/HCC-0388/14/

HCC while in this court there was the pending principal appeal recorded under RCOMAA 0011/15/CS . [32] Basing on the law and the holdings above, the Court comes up with the finding that the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC should be stayed until the claim RCOMAA 0011/15/CS would be finally decided since, in case it is dine, it would cause Kabango Mumporeze Bernadette an extreme loss in case it would be found that she is a co-owner of Mbanda Chantal. over the leased house. [33] The court finds that the issue of whether Kabango Mumporeze Bernadette is a co- owner of Mbanda Chantal would be examined by the court which will examine the case on its merit as provided for by article 320 paragraph 1 of the law referred to above which prohibits the judge of summary procedure to prejudice the merit of the principal claim.

4. Whether Mukamusana Henriette and Runanira André would be granted the damages they request in this case. [34] Ntihemuka Albert, counsel for Mukamusana Henriette claims that Kabango Mumporeze Bernadette should pay her client 1, 000, 000, 00 Frw for procedural fees and 3, 000, 000, 00 for advocate fees based on articel 258 of CCBIII which provides that any act of aperson, which causes damage to another obliges the person by whose fault it happened to repair it. [35] He explains that the Supreme Court should allocate Mukamusana Henriette those damages she requests in this case which are based on article 20 of regulations of the President of the Supreme Court n° 002/2014 of 13/02/2014 regulating civil, commercial, labour and administrative procedure which provides that, when they request them, in case of irreceivability of the claim, the respondent and the the person forced to intervene may be allocated gamages concerning the expenses for the follow up of the case. He requested also the application of article 32 of the same regulations which provides that all the works of the court for the process of the case my imply the advocate fee. [36] Serugo Jean Baptiste, counsel for Runanira André laments that the Supreme Court should order Kabango Mumboreze Bernadette to pay Runanira André 500, 000, 00Frw for damages as she had dragged him into unfounded litigations based on article 258 of CCBIII stated above and 1, 000, 000, 00Frw for advocate fees.

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- [37] Rusanganwa Jean Bosco, counsel for Rubango Mumporeze Bernadette alongside Zitoni Pierre Claver, counsel for Mbanda Chantal states that based on article 320 paragraph 4 of the Law n° 21/2012 of 14/06/2012 related to the civil, commercil, labour and administrative provedure, Kabango Mumporeze Bernadette should not pay Mukamusana Henriette and Runanira André damages they request in the summary procedure; rather they would claim them at the time of the hearing of the case on merit. THE VIEW OF THE COURT [38] The court finds that Kabango Mumporeze Bernadette should not pay Mukamusana Henriette and Runanira André damges they claim in this case since she won it. However, they may apply for them at the time of the hearing of case on its merit based on article 320 paragraphparagraph 4 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that Damages and related expenses incurred by the party during the hearing of summary procedure are claimed together with

the principal application. THE DECISION OF THE COURT [39] The summary procedure filed by Kabango Mumporeze Bernadette in this court has merit in parts. [40] Orders the stay of the execution of the judgment RCOMA 0371/14/HCC-0388/14/HCC till the time when the case RCOMAA 0011/15/CS would be finally adjudicated. [41] Holds that Kabango Mumporeze Bernadette should pay damages both Mukamusana Henriette and Runanira André. [42] Orders both Mukamusana Henriette and Runanira André to pay court fees amounting 100,000, 00Frw each.

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