RWANDA / JUDGMENT

NSANZABERA v. BARIGANZA ET AL_en

RLR V.1-2018

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Text

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NSANZABERA v. BARIGANZA ET AL [Rwanda SUPREME COURT – RCAA0006/15/CS (Kanyange, P.J., Mukandamage and Ngagi, J.) February 10, 2017] Law determining the jurisdiction of courts – Jurisdiction of the Supreme Court – Determination of the value of the subject matter – The jurisdiction of the Court shall not be relied on the value of what are awarded to each party, rather, on the value of the subject matter – Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28(7). Family law – Succession – The applicable law for succession of a woman before the promulgation of the Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions – Even before the enactment of that law, no provision prevented a female child to inherit her parents because the Constitution of the Republic of Rwanda of 1962, the Constitution of the Republic of Rwanda of 20/12/1978 and that of 10/06/1991, provided that all persons are equal before the law without discrimination based on ethnic, race, origin, sex, religion(...). Family law – Succession – Descending partition – The fact that a female child was allocated a descending partition which was meant to be given to a daughter whose marriage failed; does not deprive her from the right to inherit her ascendants.

Facts: Bariganza and Muhawenimana sued their grandfather Nsanzabera at the Intermediate Court of Rubavu stating that he merged the property which he acquired together with their grandmother Bugenimana who passed away, with that of his new spouse Mukansoneye, before they succeed to their grandmother; because he should have taken ½ of the property he acquired together with their grandmother, another half being awarded to them. The intermediate Court held that their claim lacks merit since they are not entitled to inherit the property left by their grandmother Bugenimana who was married to Nsanzabera while they are not her only grandchildren and the fact that Nsanzabera is still alive, the plaintiffs do not have the right to inherit him because the succession becomes open at the death of the de cujus. In addition, it ordered them to pay counsel fees and moral damages. Bariganza and Muhawenimana appealed to the High Court, chamber of Musanze, which decided that their appeal has merit because Bugenimana left aside two children who are Uwamahoro and Mukangoboka, and that Nsanzabera also got remarried and there is no child of Bugenimana he still takes care of. This Court ordered that the respondents should inherit ¼ of the property of Nsanzabera and Bugenimanana on behalf of their parent Uwamahoro since they are the only ones who filed a claim. Nsanzabera appealed to the Supreme Court stating that the High Court, Chamber of Musanze confirmed the succession which does not base on the law that was into force at the death of Uwamahoro Béatrice in 19/09/1999; and that it disregarded the fact that she sold his property out of his consent, as well as the fact that he allocated to her a descending partition which was meant to be given to a daughter whose marriage failed and this was considered as a succession in the culture of that time. Before the hearing on merit, the Supreme Court examined the objection of lack of jurisdiction that was raised by Bariganza and Muhawenimana alleging that the value of the subject matter

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does not reach 50,000,000Frw which is provided by the law. However, it ruled that it has the jurisdiction to hear the case. Bariganza and Muhawenimana defend that it was not relied on inexistent law, because as it is clear in the case file Uwamahoro passed away on July 5, 2011 while the law which was relied on is that enacted in the year 1999. They further argue that the fact to have been allocated descending partition does not deprive her from the right to succession. Bariganza and Muhawenimana filed a cross appeal requesting to be paid compensation for procedural fees, the fees for being dragged into unnecessary lawsuits and counsel fees whereas Nsanzabera states that damages they request for are groundless, rather he should be awarded damages for being dragged into unnecessary lawsuits. Held: 1. The jurisdiction of the Court shall not be relied on the value of what are awarded to each party, rather, the value of the subject matter. Therefore, the fact that the value of the subject matter is worth 70,000,000Frw as it was confirmed by the High Court, the Supreme Court has the jurisdiction to hear the appeal of Nsanzabera because it exceeds 50,000,000Frw provided by the law.

2. Before the promulgation of the Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions, no provision prevented a female child to inherit her parents because the

Constitution of the Republic of Rwanda of 1962, the Constitution of the Republic of Rwanda of 20/12/1978 and also that of 10/06/1991, provided that all persons are equal before the law without considering ethnic, race, origin, sex, religion(...); therefore, declaring that Uwamahoro Béatrice did not have the right to inherit her mother on the basis that she is a girl, lacks merit.

3. The fact that the succession of Bugenimana was not conducted till the time her heirs Bariganza and Muhawenimana filed a claim in 2013, the Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions which was into force at the time of initiation of the claim should apply.

4. The fact that a female child was allocated a descending partition, which was meant to be given to a daughter whose marriage, failed; does not deprive her from the right to inherit her ascendants. Therefore, Bariganza and Muhawenimana are entitled to succeed in lieu of Uwamahoro, the share of her mother Bugenimana despite of a descending partition given to her by her father.

5. The respondents are awarded the counsel and the procedure fees in the discretion of the Court because they hired a lawyer to assist them and they incurred expenses for following up the case. Appeal has no merit. Appealed judgment sustained. Statutes and statutory instruments referred to: Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28(7). Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions, articles 50 and 70.

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No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Bariganza Evangile and Muhawenimana Jean de Dieu are grandchildren of Nsanzabera Vincent Ibrahim and Bugenimana Xavérine who passed away in 1986.They were begotten by their daughter Uwamahoro Béatrice who also passed away in 2001. After the death of Bugenimana Xavérine, Nsanzabera got married to another wife called Mukansoneye Amina CéciIe.

[2] Bariganza Evangile and Muhawenimana Jean de Dieu sued Nsanzabera Vincent Ibrahim at Intermediate Court of Rubavu stating that he intends to merge the property which he acquired together with Bugenimana Xavérine with that of his new spouse, before they succeed to their grandmother; whereashe should take ½ of the property he acquired together with Bugenimana Xavérine, and another ½ be awarded to Bariganza Evangile and Muhawenimana Jean de Dieu.

[3] On 06 March 2014, the Court rendered the judgment RC0164/013/TGI/RBV where it held that Bariganza Evangile and Muhawenimana Jean de Dieu's claim lacks merit, because they do not have the right to inherit the property left by their grandmother Bugenimama Xavérine who was married to Nsanzabera Vincent Ibrahim. It ordered them to pay 300,000Frw of the counsel fees and moral damages to Nsanzabera. This ruling is based on the ground that they are not the only grandchildren of Bugenimana Xavérine given that she had two daughters and grandchildren have equal right to inherit the property of their ascendants as it is provided for by article 50 of Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions. It further held that since Nsanzabera Vincent Ibrahim is still alive, the plaintiffs do not have the right to inherit him because the succession opens at the death of the de cujus.

[4] Bariganza Evangile and Muhawenimana Jean de Dieu appealed to the High Court, Musanze chamber which, on 20 November 2015, found their appeal with merit and entitled them to inherit ¼ of the property's value constituted by the house on plot N°666/RUB/GIS.

[5] The High Court based that decision on the fact that , Bugenimana Xavérine left aside two daughters (Uwamahoro and Mukangoboka), Nsanzabera Vincent Ibrahim remarried and no child of Bugenimana Xavérine he still takes care of; therefore consideration made of article 70 of the Law N°22/99 mentioned above, Bariganza Evangile and Muhawenimana Jean de Dieu are the ones to inherit ½ of the property's value constituted by the house on plot N°666/RUB/GIS in lieu of Uwamahoro Béatrice and Mukangoboka (because nothing proves that she is alive) especially that Nsanzabera Vincent Ibrahim revealed that it was built in 1965 when Bugenimana Xavérine was his wife.

[6] Furthermore, it explained that Bariganza Evangile and Muhawenimana Jean de Dieu, should equally share ½ of the property mentioned above in lieu of their mother Uwamahoro Béatrice and Mukangoboka, another ½ being awarded to Nsanzabera Vincent Ibrahim. However, since Bariganza Evangile and Muhawenimana Jean de Dieu

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are the only ones who filed a claim, they should inherit only ¼ of the value of the house mentioned above. It found in addition that the statements of Nsanzabera Vincent Ibrahim that they should not inherit twice because their mother (Uwamahoro Béatrice) sold his piece of land, lacks merit because apart from alleging it, he does not produce supporting evidence.

[7] Nsanzabera Vincent Ibrahim appealed to the Supreme Court alleging that the High Court, Musanze chamber confirmed the succession which did not base on the law into force at the death of Uwamahoro Béatrice on September 19, 1999 and that it disregarded that she sold the property of Nsanzabera Vincent Ibrahim while he was in exile in Uganda.

[8] On 10 January 2017, the judgment was conducted in public, Nsanzabera Vincent Ibrahim represented by his son Mupole Ahmed, who also is assisted by Counsel Habonimana Jean-Baptiste, Bariganza Evangile and Muhawenimana Jean de Dieu being represented by Counsel Ngabo Claude.

[9] First and foremost, it was examined the objection of lack of jurisdiction for this Court that was raised by the plaintiffs in appeal relying on article 28(7) of the Organic Law N°03/2012/ OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court because the property in litigation was valued at 70,000,000Frw while Bariganza Evangile and Muhawenimana Jean de Dieu were awarded ¼ of that value which was the subject matter in this Court and it does not reach 50,000,000Frw provided by the mentioned provision. [10] The counsel for Nsanzabera Vincent Ibrahim defended in arguing that the appeal falls into the jurisdiction of this court because their opponents are the ones who set the value of the subject matter to 70,000,000Frw which exceeds that amount; and that ¼ of its value should not be considered for determination of the jurisdiction of the Court because Nsanzabera Vincent Ibrahim appeal related to entire property since according to him, the respondents do not even deserve the ¼ of its value because they were not entitled to succession. [11] The Court deliberated on the bench about that objection, and found that basing on article 28(2) litera 7 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Courtprovidingthat “the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court(.....), if such cases involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000Frw), or when the value of the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (50,000,000Frw)”. The value of the subject matter should not be based on what was awarded to each party rather; it should be based on the subject matter which is the plot and the house with the value worth 70,000,000Frw as it was confirmed by the High Court. Therefore it held that the appeal of Nsanzabera Vincent Ibrahim falls into its jurisdiction. [12] The hearing continued by examining the grounds of appeal of Nsanzabera Vincent Ibrahim. II. ANALYSIS OF LEGAL ISSUES

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1. Whether the High Court, Musanze chamber relied on inexistent law at the time Uwamahoro Béatrice passed away and determining whether she has been given her part. [13] Counsel for Nsanzabera Vincent Ibrahim alleges that the judge rendered a judgment on basis of the Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions while Uwamahoro Béatrice

whose children wish to inherit Nsanzabera died on September 19, 1999; which implies that the law was not into force at that time; rather, in 1992 Nsanzabera Vincent Ibrahim, basing on culture, gave her the tenure of the land located at Cyuve/Musanze and he entitled her the usufruct of the remaining part of it but before her death she sold the whole land to Mukagatare. [14] They further state that Uwamahoro Béatrice received descending partition which was given to a daughter when her marriage failed, which is considered as succession according to the culture of that time whereby a father was allowed to give partitions on his property and Uwamahoro Béatrice was also given her partition. Therefore, the remaining part belongs to Nsanzabera Vincent Ibrahim and her wife. [15] Counsel Ngabo Jean-Baptiste and Bariganza Evangile allege that it was not relied on inexistent law at the time Uwamahoro Béatrice passed away as stated by their opponents because the death certificate which is in case file demonstrates that she died on 05 July 2011 while at that time, the Law N°22/99 of 12/11/1999 mentioned above was into force, which implies that the succession between female and male was allowed. [16] They explain in addition that even before the enactment of the law already mentioned, girls were entitled to inherit depending on their parents' wish, and therefore, Bariganza Evangile and Muhawenimana Jean de Dieu requested to succeeded after their grandfather got remarried and registered the entire assets in the names of her wife, thus they pray to be awarded their share which their grandmother Bugenimana Xavérine left because till it was not apportioned to heirs. [17] Concerning the plot for which Counsel for Nsanzabera Vincent Ibrahim states that he allocated to Uwamahoro Béatrice, they state that it is not true because he filed a case against her to the court alleging that she illegally occupied it but he lost the case because he declared himself that it was a gift granted to her daughter. He thereafter filed a case that she inherited him which he lost again because the succession would not be carried out in favor of one child. [18] They state in addition that even if Uwamahoro Béatrice was given descending partition as their opponents allege; this does not deprive her right to inherit her parent. OPINION OF THE COURT [19] As it was recalled above, the High Court, Musanze chamber relied on article 70 of Law N°22/99 of 12/11/1999 to supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions which was into force at the time of the trial provides for modalities of the succession for spouses married under the regime of community of property, whereby litera 7 provides that "the surviving spouse who no longer has any children under his/her care and wants to remarry shall

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obtain full ownership of the ½ of the patrimony and another half shall be given to the deceased's heirs". [20] The Court finds that Nsanzabera Vincent Ibrahim, in his pleadings, does not deny that he co-owned property with Bugenimana Xavérine on which Bariganza Evangile and Muhawenimana Jean de Dieu request to have right; also he does not deny that there is not still any child of Bugenimana Xavérine under his care; and furthermore, on 16/03/2013 he got remarried to Mukansoneye Amina Cécile as demonstrated by his certificate in the case file; therefore, no reason would prevent the judge to rely on the Law N°22/99 of 12/11/1999 mentioned

above, because even if the mother of Bariganza Evangile and Muhawenimana Jean de Dieu died before the promulgation of that law; given that she died on September 19, 1999 (except that the case file include another death certificate of July 5, 2011), this does not exclude the fact that her succession opened at her death in 1986 (ouverture de la succession) and was not enforced because Nsanzabera Vincent Ibrahim administered the property they co owned till now. [21] Given that Nsanzabera Vincent Ibrahim got remarried in 2013, the time Bariganza Evangile and Muhawenimana Jean de Dieu instituted a claim, it is clear that it should have been based on the law which was into force at the filing of the claim because the share of Bugenimana Xavérine on the property she co-owned with Nsanzabera Vincent Ibrahim was not inherited till that time. In addition to that, save that the Law N°22/99 of 12/11/1999 mentioned above provides clearly that male and female children inherit in equal parts without discrimination (article 50); even before, no provision prevented a female child to inherit her parents because from 1962, the Constitution of the Republic of Rwanda provided that all persons are equal before the law without discrimination based on ethnic, race, origin, sex, religion (...). This was also reiterated by the Constitution of the Republic of Rwanda of 20/12/1978 and that of 10/06/1991. Therefore, declaring that Uwamahoro Béatrice did not have the right to inherit her mother because she is a girl, lacks merit. [22] Regarding the allegation by the counsel for Nsanzabera Vincent Ibrahim that Uwamahoro Béatrice was given descending partition which was meant to be allocated to a daughter whose marriage failed, the Court finds that this does not deprive her from the right to inherit her parent as stated above, because what she was given does not relate to the share of Bugenimana Xavérine on the property she jointly own with Nsanzabera Vincent Ibrahim, in the capacity of a married couple. [23] Basing on stated reasons, the Court finds that the ground of appeal of Nsanzabera Vincent Ibrahim lacks merit; therefore it sustains the rulings of the appealed judgment.

2. Examination of the basis of the requested damages in cross appeal. [24] Through the cross appeal, Bariganza Evangile and Muhawenimana Jean de Dieu request 2,000,000Frw of counsel fees; 1,000,000Frw of the procedural fees and 1,000,000Frw for dragging them into unnecessary lawsuits. [25] The Counsel for Nsanzabera argues that the requested damages are groundless because respondents did not produce any evidence such as the contract which they concluded with their counsel; the evidence that they incurred expenses for lawsuits follow up and that 1,000,000Frw for being dragged into unnecessary lawsuits are excessive; rather, according to his estimate, this should be 100,000Frw. In contrast, he finds that

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they should be ordered to pay 2,000,000Frw to Nsanzabera Vincent Ibrahim for dragging him into lawsuits. OPINION OF THE COURT [26] The Court finds that the counsel and procedural fees for which the respondents request have merit because they hired advocates in order to assist them and they incurred expenses for following up their case but the amount they claim for is excessive. Rather, they are awarded 700,000Frw in discretion of the Court. However they should not be awarded the fees for being dragged into lawsuits because apart from the fact that

Nsanzabera Vincent Ibrahim exercised his right of appeal in accordance with the law, they do not demonstrate another way he dragged them into unnecessary lawsuits. [27] Concerning 2,000,000Frw requested by Nsanzabera Vincent Ibrahim for dragging him into lawsuits, the Court finds that he should not be awarded them since his appeal lacks merit. III. DECISION OF THE COURT [28] Decides that the appeal of Nsanzabera Vincent Ibrahim lacks merit; [29] Holds that the cross appeal of Bariganza Evangile and Muhawenimana Jean de Dieu has merit in part; [30] Orders Nsanzabera Vincent Ibrahim to pay 700,000Frw to Bariganza Evangile and Muhawenimana Jean de Dieu for the counsel and procedure fees on this instance; [31] Sustains the rulings of the judgment RCA0032/14/HC/MUS of 20/01/2015 rendered by the High Court, chamber of Musanze.

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