

RWANDA / JUDGMENT

FAIDA V. MUJEJENDE ET AL

RCOMAA 0032/14/CS

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Text

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FAIDA V. MUJEJENDE ET AL [Rwanda SUPREME COURT – RCOMAA 0032/14/CS – (Mukanyundo, P.J., Rugabirwa and Hitiyaremye, J.) November 14, 2014] Property laws – Property right –Every person has a right to private property, whether personal or owned in association with others– Property violation –The right to property may not be interfered with except in public interest – Damages for property violation – The one who took party to property violation is liable and shall pay damages – The constitution of the republic of Rwanda of 04/06/2003 as amended up today, article 29 paragraph one and 3 – Law of 30/07/1888 relating to contracts or obligations, article 258. Commercial procedure – To take back merchandise that were seized or to receive payment amounting to their value– When there is no evidence showing the list and characteristic of merchandise or any evidence showing that they are still in good condition, the one who made the seizure has to pay to their owner the value their merchandise. Contracts or obligations law – Lease contract for a shop–being pulled out of the shop before contract expires– Lessee has to get back a payment amounting to the remaining days of the lease–Effects of contracts –Contracts shall have effect only on contracting parties –Law no 25/2011 of 25/11/2011 governing contracts in Rwanda, article 113. Commercial Procedure–advocate’s fees – Advocate’s fees are not granted to a

requesting party that has lost in part in the trial–Request for an increasing of damages for having lost customers– When there is no proof that damages that were granted were not enough,the court cannot grant more – Moral Damages – When moral damages that have been previously determined are reasonable, others shall be granted. Contracts or obligations law – The quality of lessees to plead the lease contract – In case the lease contract has expired, their quality of pleading that contract cease to exist. Commercial Procedure –Proving the claim – When the plaintiff does not prove the claim, the defendant wins– Burden of proof –Each party has the burden of proving the facts it alleges– The Court shall not order creditor to pay while the debtor does not unequivocally prove what is claiming – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9 –12/06/2004 - Law N ° 15/2004 Relating to Evidence and its production, article 3. Commercial Procedure – Interest on bank loan – Order another person to pay for another person interest on an loan that he took from a bank – The Court shall not order another person to pay interests on a loan that has been taken to the bank by another person. Commercial Procedure – To reimburse procedural and advocate fees to the appellant– The one who won in part in a trial shall not reimburse procedural and advocate fees. Commercial Procedure – Penalty forcing the execution – Penalty forcing the execution shall not be given when there is no evidence that the case will not be executed voluntary. Facts: Rwasibo Jean Baptiste sold a part of plot no 3641 which contains a commercial house . After his death. its three sons namely: Rwasibo Louis, Rwasibo Jean Bosco and Rwasibo Joseph

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sold the remaining part of the said plot. Their sisters namely Kayitesi Francoise and Kayirere Marie Grace sued them together with Faida in the Nyarugenge Commercial Court requesting for nullification of the contract concluded between them as it was concluded without informing them and therefore claimed for different damages,The Court decided that the Contract is Cancelled,and ordered defendants to jointly pay moral damages and procedural fees to Kayitesi and Kayirere.Then after Kayitesi and Kayirere rent that small party of plot that they won to Mujejende Béata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman, and received 8.000.000 Frw as anuual rental fees. Amur Sultan took Kayitesi Francoise and Kayirerere Marie Grace to commercial court of Nyarugenge claiming to it to solve problems related to the execution of the judgement said above , and the court decided , that the part bought is for that nulled contract by commercial court of Nyarugenge and should be considered in the plot no 3641 as it is clearly shown by the experts in construction. Faida Amur Sultan wrote to Mujejende Beata and her colleagues (business mates) requesting them to pay him the arrears of rent they owe to him. As reaction on their behalf, they told him that they could not pay him that money as the rent contract they are basing on was not concluded with him. He immediately confiscated their goods and they sued him together with Kayitesi in the commercial court of Nyarugenge requesting to be given bac k their goods as well as the shop in which they carried out their business, various damages including the loss they encountered . Mujejende Beata personnally claimed the money which she had left in the shop plus its interest. She also requested the court to order the fine of the enforcement of judgement. That court ordered Faida Amur Sultan to give back to Mujejende

Beata and her business mates the amount related to the value of their goods and give them the morratory interst .If he does not do it a ggod way he woul give everyone 1.000.000 rwf as late damages. Faida appealed in the Commercial High Court which ordered him to pay Mujejende and her colleagues the amount equivalent to the value of their goods, value of damages of their loss, value of having lost the customers, morratory damages and those of case expenses. It also ordered him to pay them the rent fees already paid because he had stopped them from working. In case he does not do it in a good way, he will be paying each one and on monthly basis the money as a fine enforcing him to the judgement execution stating by the time the judgement is an order. He also had to pay Kayitesi and Kayirere 500.000 rfw as a cost of a Lawyer. Faida Amur Sultan appealed in the supreme court claiming that the High commercial court did not consider that (1) he was not the one who removed their goods from the shop to keep them in the “store”, and if it was a mistake this should be paid by the Bailiff (2) and again the Court had ordered him to pay back the money related to their value,instead of ordering them to take back their merchandise..(3) It ordered him to give back the rent fees instead of ordering it to Kayitesi and Kayirere. (4) It ordered him to give Kayitesi and Kayirere the Lawyer’s fees while he is not the one who took them in court. As reaction, Mujejende Beata and her colleagues together with Kayitesi and Kayisire replied that(1) Faida is the one who decided to confiscate the goods in the shop in which they carried out the business; after he took the in unknown place(2) He has to give them the money related to the value of their goods as he did not show the list of the confiscated ones and he did not show if they were not damaged.(3) He must pay them the rent fees as he failed to defend it in the court as he is the one who stopped them from doing their business. Kayitesi and Kayirere also

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supported that idea (4) He also has to pay the fees of Lawyer because he made Mujejende and her colleagues move out of the shop by force. Mujejende Beata and her colleagues cross appealed requesting (1) the court to order Faida Amur Sultan to pay them more damages for losing the customers addition to those they had to be given as they are being more chocked for having spent 12 months without making business and are not sure if they will recuperate their customers.(2) They claimed more morratory interest choked as being out their shop is still chocking them(3) they cross appealed against the decision of High Commercial that they must not get back to the shop as the rent contract took its end , and did not consider the fact that Faida Amur Sultan deprived them from the right to work in it, yet both contracted sides are still willing to extend and continue to use that shop(4) they cross appealed so as Faida pays 5.000.000 rwf for Lawyer instead of 2.800.000 rwf which was decided before because he appealed and they had to report with their Lawyer(5) the they cross appealed so as Faida Amur Sultan gives each 1.000.000 rwf as a fine enforcing him the execution as it has been noticed that he delays in the execution. Faida replied that (1) he cannot pay the damages related to the loss of customers because that resulted from their mistakes to contract with the persons who are not owners of the shop.(2) he cannot pay morratory damages as he did nothing to affect their business(3) as for returning into the shop, this is impossible because the shop belongs to him(4) he cannot pay the Lawyer fees as well

as case expenses because he is not the one who introduced them to the court (5) he said he must not be charged that fine because he did not do any mistake to Mujejende and her colleagues . Mujejende cross appealed requesting that Faida should be forced to give her back the money she had left in the shop plus the interest of the loss she encountered. Faida replied that he could give her neither that money nor its interest because nothing proves that she had left that money Kayitesi and Kayirere cross appealed requesting the court to force Faida to give them 3.000.000 rwf as moratory damages which was not decided by the High Commercial Court while it had decided that they were not involved in removing the tenants from the shop, plus 3.000.000 rwf of case expenses, Lawyer fees , court fees in supreme court which is added to those they had to be given before .Faida replied that he cannot give the moratory interests because he did not do anything that could harm their business as they were not the owners of the rented shop. In addition those damages cannot be given as he is not the one who took them to court as they were all sued together in the first instance. Held: 1. Each person has the right to his/her property, whether his/her own or one he/she shares with others. It cannot be affected unless it is for general interest in periods and in way provided by the law prior the proper payment. Therefore the fact that Faida is one who removed the goods of Mujejende and her colleagues from the shop in which they illegally rented , he must be held responsible because any act that harms others business leads to the actor to pay damages .

2. When there is no statement made by any Baillif , or any other evidence that shows the list and characteristics of merchandises of each lessee; and there is no even any evidenc which show that those goods are still safe ; the court remains in a position of obliging Faida Amur Sultan to give them the money equivalent to their value as he confisticated them in illigal way.
3. When the rent contract was concluded between two persons, and in case the lessee is removed from the shop before the end of the convened term he must be refunded the remaining amount by

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the leaser not anyone who is not concerned by that contract . Therefore the fact that that contract was concluded between Mujejende and Kayitesi togather with Kayirere, and after Mujejende and her colleagues were removed from the shop before the term, it remains in the responsibility of Kayitesi and Kayirere to refund them the amount remaining. And one who did not take part in that contract is not concerned with any responsibility because “the contract affects those who concluded it only, it does not negatively affect another person and it brings benefits according to the provisions related to the other one’s benefits. 4..The court cannot determines the Lawyers fees when the claimant failed to some points, therefore the fact that Kayirere and Kayitesi lost on the issue of refunding Mujejende and her colleagues the rent fees, leads the court not to decide on Lawyer fees

5. In case one who cross appealed claims the increase of the damages related to the loss of customers but fails to provide evidence that damages decided by the court are less ,the court does not give him /her those claimed damages.
6. In case the moral damages decided by the court are fair, the court cannot decide more damages, therefore Faida must not pay other damages in case those decided before are fair.
7. In case the rent contract has taken its end, the lessee has no longer right to claim for going ahead. So Mujejende and her colleagues can not get back in the shop because the concluded contract between Kayirere and kayitesi ended up. 8.”It is up to plaintiff to prove of what he is claiming for otherwise the defendant profits”. And each part must show the evidence of what he/she is claiming for. Therefore the court cannot decide that Mujejende would be given 1.750.000 rwf with its interest in case she did not show a doubtless proof as she left that money in the shop.
9. The court cannot order a person to pay for another one the interests related to the loan taken from the Bank. Therefore it cannot order Faida to pay for Hatibu the interests of a loan taken from AGASEKE.
10. In case you won some of the points contained in the case, you do not pay the case expenses as well as the Lawyer cost. So Faida must not pay Mujejende and her colleagues because he won some points of the case.
11. In case there is no evidence confirming that the execution of judgement will not be properly performed, the court does not grant Penalty forcing the execution.
12. In case Kayitesi and Kayirebe do not show any unequivocally evidence confirming that the day they were removed from the shop they had the full right to hire it in such situation no moral damages should be granted to them.
13. The court shall not grant procedural fees and advocates in case each part has lost on some points .It cannot even grant fees for the execution of the judgment when there is no judgement to be executed, meaning that Faida must not give to Kayitesi and Kayirere the fees for the execution of judgement because there is no any trial between him and them. Appeal has merit in part; Cross appeal of first defendants lack merit; Cross appeal of second defendants lack merit; The appealed change in part;

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Order second defendants to reimburse to the first defendant the rental fees; Court fees charged to the appellant and the the second defendants. Statutes and statutory instruments referred to: The constitution of the republic of Rwanda of 04/06/2003 as amended up today, article 29 paragraph one and 3; The Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9; Law n° 25/2011 of 25/11/2011 governing contracts in Rwanda, article 113; Law N ° 15/2004 Relating to Evidence and its production, article 3; Law of 30/07/1888 relating to contracts or obligations, article 258. No case was referred to.

Judgment

I. BACKGROUND OF THE CASE [1] Rwasibo Jean Baptiste sold a part of plot no 3641 which contains a commercial house located in Quartier Commercial, Nyarugenge District , Kigali City to Amur Sultan . After the death of Rwasibo Jean Baptiste, his three sons namely: Rwasibo Louis, Rwasibo Jean Bosco and Rwasibo Joseph sold the remaining part of the said plot which was used as a “corridor”. [2] The daughters of late Rwasibo Jean Baptiste who are at the same time his successors namely Kayitesi Francoise and Kayirere Marie Grace submitted a claim in the Nyarugenge Commercial Court requesting for nullification of the contract concluded between Rwasibo Louis , Rwasibo Jean Bosco and Amur Sultan on 23/05/1999, as it was concluded without informing them and therefore claimed for several damages. [3] That court made a judgment n° RCOM 0043/09/TC/Nyge-RCOM 0044/09/TC/ Nyge and ordered Rwasibo Louis,Rwasibo Joseph Rwasibo Jean Bosco to jointly pay Kayirere Marie Grace and Kayitesi Farancoise the amount of 4.000.000 rwf as damages and case expense fees. [4] Afterwards, Kayitesi Francoise and Kayirere Marie Grace made a lease contract of that small part of the plot given back to them by a court with Mujejende Beata , Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman who paid an annual rent totalling 8.000.000 frw i.e from 17/04/2013 to 17/04/2014. [5] Amur Sultan took Kayitesi Francoise and Kayirerere Marie Grace to commercial court of Nyarugenge claiming to it to solve problems related to the execution of the judgement said above , and the court decided , in the judgement no RCOM 0433/13/TC/Nyge, that the part bought by Amur Sultan mentioned in the contract nullified in the judgement no RCOM 0043/09/TC/Nyge – RCOM0044/09/TC Nyge measuring 2m of width and 23m of length on the limitations of the plot no 3642, should be considered in the plot no 3641 as it is clearly shown by the experts in construction.

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[6] Faïda Amur Sultan wrote to Mujejende Beata and her colleagues (business mates) requesting them to pay him the arrears of rent they owe to him otherwise they will move out of his house. As reaction on their behalf, they told him that they could not pay him that money as the rent contract they are basing on was not concluded with him but rather with Kayitesi Francoise and Kayirere Marie Grace as they are the owners of the shop house. [7] Mujejende Beata and her business mates called the National Police so that the later gives them back their confiscated goods and that could not be possible. Faïda Amur Sultan on his side requested the local authorities to order Mujejende Beata and her business mates to pay him the rent arrears and get out of his house shop and this could not be possible. Faïda Amur Sultan goes on saying that the Bailiff Kazigaba Andre, while executing the judgement n° RCOM 0433/13/TC/Nyge, took his goods to his “store” where they are still kept up to now. [8] Mujejende Béata, Hatibu Sani, Umutesi Mariam and Rukundo sued Kayitesi Françoise and Kayirere Marie Grâce as well as Amur Sultan in the commercial court of Nyarugenge requesting to be given back their confiscated goods valuable to 38.873.500 frw and get a permission to get back in the shop house in which they exercised their business. They also claimed for various damages including the loss related to the above said incident. Mujejende Beata also claims 1.750.000 rwf which she had left in the shop plus its interest. She also

requested the court to order the fine of the enforcement of judgement. [9] That court ordered Faida Amur Sultan to give back to Mujejende Beata and her business mates the amount related to the value of their goods because he illegally confiscated them as it was decided in the judgement RC 0541/13/TB/NYGE which was an order , not the Bailiff KAZIGABA Andre, and that value should be divided as follow : Mujejende Béata to be given 7.263.000 rwf, Hatibu Sani 5.786.500 rwf, Rukundo Abdoulahman 10.492.000 rwf, Umutesi Mariam 15.332.000 rwf. The court also ordered to Faida to pay the loss as follow: Mujejende Béata 2.000.000 rwf, Umutesi Mariam 2.000.000 rwf, Rukundo 2.600.000 rwf, and Hatibu Sani 1.800.000 rwf. It also ordered the amount of 1.000.000 frw as damages to everyone. He was also ordered to give them back the house shop and if he does not willingly respect this he will give everyone 1.000.000 frw as fine of lateness [10] Faida Amur Sultan appealed to High commercial court which ordered him to give Mujejende Beata and her business mates the damages as follow: -To Mujejende Béata: 7.263.000 rwf as the value of her goods, 1.452.600 rwf as damages of her loss, 500.000 rwf as damages of having lost the customers , 700.000 rwf of a Lawyer and case expenses , 1000.000 rwf as damages , and the total is 10.915.600 rwf

- To Hatibu Sani: : 5.786.500 rwf as the value of her goods, 1.57.300 rwf as damages of her loss, 500.000 rwf as damages of having lost the customers , 700.000 rwf of a Lawyer and case expenses , 1000.000 rwf as damages , and the total is 9.143.800 rwf.
- To Rukundo Abdoulahman : 10.492.000 rwf as the value of her goods, 2.098.400 rwf as damages of her loss, 500.000 rwf as damages of having lost the customers , 700.000 rwf of a Lawyer and case expenses , 1000.000 rwf as damages , and the total is 14.790.400 rwf.

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- To Umutesi Mariam : 15.332.000 rwf as the value of her goods, 3.066.400 rwf as damages of her loss, 500.000 rwf as damages of having lost the customers , 700.000 rwf of a Lawyer and case expenses , 1000.000 rwf as damages , and the total is 20.598.400 rwf. The Court also ordered Faida Amur Sultan to pay them the amount of 5.333.336 rwf for rent as he stopped them from working and he does not do it willingly he will be paying 1.000.000 rwf to everyone and at monthly basis as a fine enforcing him to execute the judgement and the calculations start by the time the judgement becomes an order . He has also to pay Kayitesi Francoise and Kayirere Marie Grace 500.000 rwf for the Lawyer. [11] Faida Amur Sultan appealed in the supreme court claiming that the High commercial court had not to order him to pay Mujejende Beata and her business mates the damages totalling 65.281.536 rwf because Bailiff Kazigaba Andre is the one who took their goods from their house shop while executing the judgement RCOM 0433/13/TC/Nyge to his store where they are still kept up to now. Therefore Kazigaba is the one to pay all those damages. He also says that he is not to pay Kayitesi Francoise and Kayitare Marie Grace the Lawyer fee because he is not the one who made them join the court but Mujejende Beata and her business mates as they are the ones who sued them in the first instances. [12] Mujejende Beata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahama cross appealed requesting the court to order Faida

Amur Sultan to pay them more damages to those he had to pay them before because the more he goes on appealing the more loss on their side increases. [13] As for Kayitesi Françoise and Kayirere Marie, they also cross appealed requesting the court to order Faida Amur Sultan to pay them damages and the court fees as well as the Lawyer fees which was not given to them while they had requested it before. [14] The judgement took place in public on 7/10/2014; the Lawyer of Faida Amur Sultan was Me. Kayitare Serge together with Me. Uwamungu JMV, the Lawyer of Kayitesi Françoise and Kayirere Marie wa Me Mukabibi Fatuma while the Lawyer of Kayitesi Françoise and Kayirere Marie Grâce was Me Nzirabatinyi Fidèle. II. ISSUES TO BE EXAMINED IN THE CASE AND ITS

ANALYSIS

A. Concerning Faida Amur Sultan's appeal

1. Whether Faida Amur Sultan illegally confiscated the goods of Mujejende Beata and her business mates so that he can be responsible of that. [15] Faida Amur Sultan and his Lawyers say that the High Commercial Court ordered him to pay Mujejende Béata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman the damages as if he is the one who took their goods from their house shop to his store. The court ignored that Nyarugenge Sector authorities ordered them to remove the goods and properly in the boxes and keep them in his store and handed him the keys. The bailiff accepted it himself in the court; however this remained unconsidered.

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- [16] His Lawyer Me. Kayitare says that the bailiff did not do any mistake because removing the goods in that shop was in a way of executing the decisions of the court RCOM 0433/13/TC/Nyge which was an order. It decided that a part of the plot n° 3641 containing that house shop belongs to Amur Sultan because he bought it in 1981 and if there is any mistake done by the Bailiff during that time in his job he might be responsible of it basing on article 42 of Law n° 12/2013 of 22/03/2013 related to the job of Bailiffs. This article stipulates that the Bailiff is responsible of mistakes done while exercising his job. So from this article Faida Amur Sultan is not responsible of any mistake committed in this case. [17] Lawyer Uwamungu JMV who also assists Faida Amur Sultan says that high commercial court did not consider to ask witnesses Biberabagabo Jean Bosco and Dushimiyimana Nasaléen who should have witnessed that Mr. Biberabagabo had concluded the rent contract with Mujejende and her business mates, but Kayitesi and Kayirere forbade them to pay him and as result he gave them a notice period to move out from the house shop in which their business was carried out and pay Faida Amur Sultan all the rent arrears they owed him. As for Kadja David he could witness that, as the keys keeper, he was the one who opened that shop for a bailiff who took the goods of Mujejende and her business mates. Masumbuko Jean Bosco and Binama Jean Paul could witness that while the bailiff was moving the goods out they were there, and Binama Jean Paul could witness of where the bailiff kept them. [18] Faida Amur Sultan

explains that Kayitesi and Kayirere sent the bailiff named Nsengiyumva Jean Bosco to enforce the execution of the judgement n° RCOM 0043/09/TC/Nyge - RCOM 0044/09/TC/Nyge whereby he told the tenants would no longer pay him , but they would rather pay the Rwasibo Jean Baptiste's Family because it won the small part of the plot containing the house shop in the jurisdictions. And in those circumstances he asked Me.Kazungu Jean Bosco to assist him together with local authorities who held a meeting with the tenants. In that meeting they obliged Faida to breach the contract concluded with Biberabagabo and give him back 6.000.000 rwf for the rent he had paid , and Faida executed. They also abliged Mujejende and and her colleagues who had a rent contract with Kayirere and Kayitesi to start paying him with immediate effect and they refused. That is why he hired Bailiff Kazigaba Andre who forced them to move out from that house shop in the absence of Faida Amur Sultan and keep their goods his store, and kept the keys. He concludes saying he can not be held accountable of the goods which he did not recieve. [19] Mujejende Béata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman with their Lawyer declare that there is no mistake on the side of the High Commercial Court when it decided that Faida Amur Sultan was responsable of their goods because he gave himself the authority to confiscate them from the shop house in which they were selling them during more than 5 days , after he hid them in unknown area . And instead of giving them back in a peaceful way, he introduced the case n° RC 0541/13/TB/Nyge in low court of Nyarugenge targetting to make them confiscated so that they, in return, could compassate the payment of the arrears he thought they owed him. That court decided that his case was baseless because he claimed for what he had already done with no permission. The court also decided that Bailiff Kazigaba had no mistake from what he did (so called illegal) as he came to confirm what Faida had already accomplished as he himself wrote in his hand written statement of 14/09/2013. He also accepted that in the high court while he was witnessing on 22/05/2014, and that led the court to not consider his position as there was a contradiction in as far as giving the keys is concerned.

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On one side he said that the tenants gave the keys to Faida Amur Sultan, on the other side he said that they gave them to Kazigaba who in return handed them to Faida. [20] Mujejende and her colleagues explain that they concluded the rent contract with Kayitesi Françoise and Kayirere Marie Grâce because the Bailiff Nsengiyumva Jean told them that Kayitesi and Kayirere are the ones who won the case n° RCOM 0043/09/TC/Nyge - RCOM 0044/09/TC/Nyge precisely where the house shop is located. But Faida Amur Sultan sued them to the Executif Secretary of Nyarugenge Sector who conluded that, waiting the decision of the court, they should go on carrying out their business in that shop and pay the rent to Rwasibo Jean Baptiste's family. Instead of respecting that decision Faida closed that shop and took away their goods without any permission. So basing on article 258 CCLIII, Faida is held responsable of any damages that may have resulted from unsafe keeping and this because he did not want to hand them but he rather kept them to push the tenants to pay him the rent fees. [21] Lawyer Nzirabatinyi Fidele who assists Kayitesi

Françoise and Kayirere Marie Grâce declares that the High court did not do any mistake by the time it decided that Faida must be held accountable of the goods of Mujejende Beata and her colleagues because he is the one who took them from the shop to his house. Moreover he is the one who instructed the Bailiff to honor what he had already done as it is said in his handwritten statement of 17/09/2013 whereby he declared : « from 10th /09/2013 to 14/09/2013 the doors of that shop were closed because its keys were kept by Faida Amur Sultan », Faida also knows very well that the statement of the judgement execution was signed afterwards on 17/09/2013. [22] He goes on saying that other proof testifying that the Bailiff is not the one who took the goods from house shop, is that he was not executing any judgement by that time because the judgement n° RCOM 0433/13/TC/Nyge did not conclude that the part of plot in question belongs to Faida Amur Sultan. And the experts in construction who demonstrated that 2m by 23m must remain in Faida's plot are not the Judges. So only court has the right to decide on that. And the judges who received the case related to the dispute resulting from the judgement execution could not go beyond the decisions taken from the first judgement n° RCOM 0043/09/TC/Nyge - RCOM 0044/09/TC/Nyge which decided that that part of the plot belongs to Kayitesi Françoise na Kayirere Marie Grâce.

THE VIEW OF THE COURT [23] The main issue to analyse in this case is to know whether Faida Amur Sultan contributed to illegal confiscation made to the goods of Mujejende Beata and her business mates so that he can be held accountable of them. [24] Article 29 of the first and the third parts of the Rwandan constitution of 04/06/2003 as was amended upto date stipulates that “each person has the right on his property, whether his own or one he shares with the others . That property is to be protected unless in case of general interest in periods and in the way provided by the law prior to the proper damages“ [25] And the article 258 CCLIII stipulates that “any act that causes damages to other's assets obliges one who makes that mistake to pay the damages:

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[26] The statement shows well that ,by the time the goods of Mujejende and her business mates were taken from the shop on 14/09/2013, the Bailiff Kazigaba made a handwritten statement confirming that David Kadja handed the keys of the shop on 10/09/2013, and from that time to 14/09/2013 that shop was closed and the goods were taken to the store of Amur Sultan so that the owners could take them back after having paid Faida who asked the Bailiff to keep those keys and make the tenants pay him. [27] However in the other statement which Kazigaba typed on 14/09/2013 he declared that from 10/09/2013 to 14/09/2013 the shop said above was closed as Kadja David kept its keys , and after handing them to Faida Amur Sultan they immediately opened it and found there the goods Biberabagabo tenants. The later asked them to come to take their goods and they refused. So Faida asked him to keep those keys until the tenants will recuperate them after paying him the rent fees they owe him [28] The statement also shows that on 17/09/2013, the Bailiff Kazigaba Andre came to enforce the execution of the judgement n° RCOM 0433/13/TC/Nyge and made the statement which he called” it is for the execution of the judgement”.He explained that he hands to Faida Amur Sultan the keys of the shop in question and no tenant is still inside as their goods were taken

away 14/09/2013 [29] In the same file , there is also the statement made by the prosecution on 26/09/2013 whereby Kazigaba Andre said that he went to the above said shop on Saturday 14th /09/2013 to confirm the decision taken by Faida Amur Sultan to remove the goods fromt he shop because the owners had spent five days without reaching there [30] The court finds that the typed statement of Kazigaba whereby he declared that Kadja David is the one who kept the keys of the house shop from 10/09/2013 to 14/09/2013 can not be taken into consideration because there is a contradiction compared to what he handwrote immediately after the action on 14/09/2013 where he explained that “ David Kadja handed the keys to Faida Amur Sultan on 10/09/2013 who still keeps them” [31] Moreover , the fact that in the statement of the execution of judgement n° RCOM 0433/13/TC/Nyge established on 17/04/2013 while those goods were removed from tha shop on 14/04/2013shows that Kazigaba is not the one who conducted that action of removing the goods of Mujejende and her colleagues, but Faida Amur Sultan. And this shows clearly that Faida asked the assistance to Bailiff Kazigaba to help him to cover the mistakes already done. [32] Basing on the above explanations , the court finds that Faida is the one who illegally removed the goods of Mujejende and her colleagues from the shop instead of Bailiff Kazigaba Andre who emphasises that he is the one. Hense Faida is held responsable of that mistake and has to pay the damages basing on article 258 of the book mentioned above as it was decided by the High Commercial Court

2. To know the quantity of damages that Faida owes to Mujejende and her colleagues
1. To know whether Mujejende and her colleagues will recuperate their goods or if they will be given the money equivalent to the value of the goods.

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[33] Faida Amur Sultan and his assistants say that the court could not have obliged him to pay Mujejende Béata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman the money equivalent to the value of the goods rather than to give them back their goods as they claimed it in the first instance, and they are safely kept in his store. [34] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that Faida Amur Sultan must pay the money equivalent to their goods as it was decided by the High Commercial Court because he did not show the list of the illegally confiscated goods yet did not proof that they were not damaged. [35] Lawyer Nzirabatinyi Fidele who assists Kayitesi Francoise and Kayirere Marie Grace says that Faida Amur Sultan must pay Mujejende Beata and her colleagues the money equivelent to their goods as the High Commercial Court decided , because he did not contradict the proof presented by them showing the value of the goods , yet did not proof that they were not damaged. THE VIEW OF THE COURT [36] The article 258 CCLIII stipulates that “ any act that couses damages to other’s assets oblige one who makes that mistake to pay the damages” [37] Concerning this case, there are evidences composed of the documents given by Mujejende Beata and her colleagues containing the list of the goods they had in the shop, and were illegally confiscated by Faida Amur Sultan . The goods

of Mujejende were valued at 7.263.000 rwf, those of Hatibu Sani were valued at 5.786.500 rwf, ones of Umutesi Mariam were valued at 15.332.000rwf , while those of Rukundo Abdoulahman were valued at 10.492.000 rwf. [38] The court finds that the fact that there is no evidence in writting presented by any Baillif , or any other evidence that Sultan should have presented to court showing the list and kind of goods of each tenant; and the fact that he did not evidence that those goods are still safe given that he has been keeping them in more than one year and two months; it remains in a position of obliging Faida Amur Sultan to give them the money equivalent to thier value as it was decided by the previous courts. And this is also decided so because he did not make any contradiction towards what Mujejende and her colleagues showed as evidences. [39] As it has been explained above, the court decides that Faida Amur Sultan must payMujejende the amount of 7.263.000 rwf, Hatibu Sani the amount of 5.786.500 rwf, Umutesi Mariam the amount of 15.332.000rwf , and Rukundo Abdoulahman the amount of 10.492.000 rwf.

2. To know whether Faida must pay Mujejende and her colleagues the money for rent [40] Lawyer Kayitare Serge and Lawyer Uwamungu JMV who assist Faida Amur Sultan say that the High commercial Court should not have obliged their client to pay back Mujejende Beata and her colleagues the money of the rent which he did not recieve, the court should rather

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oblige Kayitesi Francoise and Kayirere Marie Grace who received that money to pay them back. [41] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that Faida Amur Sultan must pay them the money decided by the the court because he is the one who stopped them from going ahead with their business in the above mentioned shop [42] Lawyer Nzirabatinyi Fidele who assists Kayitesi Francoise and Kayirere Marie Grace says thta Faida Amur Sultan must pay Mujejende Beatha and her colleagues the money for rent as it was decided by the High Commercial Court as he is the one who stopped them from going ahead with their business. THE VIEW OF THE COURT [43] Article 113 of law n° 45/2011 of 25/11/2011 related to the contracts in Rwanda stipulates that” the contract affects those who concluded them only, it does not disturb any other person and it brings advantages in the provisions related to the advantages to each other” [44] It is clearly indicated, in this case, that Mujejende Beata and Rukundo Abdoulahman who were representing Umutesi Mariam and Hatibu Sani paid 8.000.000 rwf to Kayitesi Francoise and Kayirere Marie Grace as a rent of the whole year effective from 17/04/2013 to 17/04/2014 [45] The court finds that Faida Amur Sultan can not reimburse Mujejende Beata and her colleagues the rent fees mentioned above basing on the article 113 of the law n° 45/2011. Meaning that the money must be paid by Kayitesi Francoise and Kayirere Marie Grace because the contract was concluded between the laters and the side of Mujejende [46] As for the amount to pay and basing on the statement numbered 45 which is in the file and made by the Bailiff Nsengiyumva Jean Bosco, that statement shows that the shop in which Mujejende and colleagues carried out their business was closed from 09/09/2013 and they did no longer make any business there till 17/04/2014, the day on which that contract could take its end. This means that they stopped their business during 218 days. So the court finds that Kayitesi Francoise and Kayirere Marie Grace

must pay them the remaining rent fees calculated as follow: 8.000.000 rwf: 360 days of the year x 218 days in which they stopped their business = 4.844.444 rwf, and they will share that amount basing on each one's contribution when payin the rent fee.

3. To know whether Faida must pay back Kayitesi and Kayirere 500.000 rwf as the payment of a Lawyer decided by the High Commercial Court [47] Me Karitare Serge and Me Uwamungu JMV who assist Faida say that the High Commercial Court should not have obliged their client to pay Kayitesi Francoise and Kayirere Marie Grace 500.000 rwf for the payment of a Lawyer, but this would rather be paid by Kayitesi Francoise and Kayirere Marie Grace because they are the ones who sued them in the first instance. [48] Lawyer Nzirabatinyi Fidele who represents Kayitesi Francoise and Kayirere Marie Grace says that Faida Amur Sultan must pay Kayitesi Francoise and Kayirere Marie Grace

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500.000 rwf as a payment of a Lawyer as it was decided by the High Commercial Court; because he is the one who deprived them from their right when he removed the goods of Mujejende Beata and her colleagues from the shop which led them to hiring a Lawyer to assist them in the court. [49] Lawyer Mukaklibibi Fatuma who assists Mujejende Beata and her colleagues says that the High Commercial Court did not do any mistake by the time it decided that Faida Amur Sultan had to pay Kayitesi Francoise and Kayirere Marie Grace the amount of 500.000 rwf of a payment of Lawyer because it is from his bad acts that they took the case to court. THE VIEW OF THE COURT [50] The court finds that Faida Amur Sultan must not pay back the amount of 500.000 rwf to Francoise and Marie Grace for a Lawyer because they failed to some of the points in this court from which they were obliged to pay back Mujejende and her colleagues the rent fees. B Knowing whether the cross appeal introduced by Mujejende Beata and her colleagues is valid.

1. Knowing whether Mujejende and her colleagues must be paid damages related to their customers who found them incredible and went away [51] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that they cross appealed so as Faida to pay 2.000.000 rwf to each one as damages to have lost customers during 12 months, because they will not easily recuperate them. And the total is 8.000.000 rwf instead of 500.000 rwf which was decided by the court to everyone related to 8 months for losing the customers. [52] Lawyer Kayitare and Lawyer Uwamungu who assist Faida Amur Sultan say that his client must not pay Mujejende Beata and her colleagues the requested damages related to the loss of customers because they are the ones who made mistakes to contract with Kayitesi Francoise and Kayirere Marie Grace who were not the owners of the shop. THE VIEW OF THE COURT [53] As for the appeal in this court, the file shows Mujejende Beata and her colleagues that they were all to be given 2.000.000 rwf as damages to have lost customers which means that each one had to take 500.000 rwf. So the court finds that they are not to be given 8.000.000 rfwf as damages related to the loss of customers and which is requested in the cross appealing because they did not proof that 2.000.000 rwf are less.

2. Knowing whether Mujejende and her colleagues must be given the damages. [54] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that they cross appealed so as Faida Faida Amur Sultan pays everyone 5.000.000 rwf as damages instead of 1.000.000 rwf which was decided in the first instance because removing them from the shop choked them progressively.

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- [55] Lawyer Kayitare Serge and Lawyer Uwamungu who assists Faida Amur Sultan say that their client must not pay Mujejende Beata and her colleagues the damages they request because none of his activities affected their business. THE VIEW OF THE COURT [56] The High Commercial Court decided that Faida Amur Sultan must pay Mujejende Beata and her colleagues the amount of 1.000.000 rwf to each for damages, therefore the court finds that the damages they are claiming must not be given as those of High Commercial Court are enough.
3. Knowing whether Mujejende and her colleagues can get back to the shop they used to carry their business. [57] Lawyer Mukakibibi who assists Mujejende and her colleagues says that the High Commercial Court decided that they must not get back to the shop as the rent contract took its end on 17/04/2014, and did not consider the fact that Faida Amur Sultan deprived them from the right to work in it, and both contracted sides are still willing to extend and continue to use that shop. [58] Lawyer Kayitare Serge and Lawyer Uwamungu JMV who assists Faida Amur Sultan says that the Supreme court can not decide that Mujejende Beata and her colleagues are to get back to the shop because it does not belong to Rwasibo's family . It belongs to him as it has been said above. THE VIEW OF THE COURT [59] As it was decided by the High Commercial Court, the court finds that Mujejende Beata and her colleagues must not return to the shop as the contract concluded with Kayitesi Francoise and Kayirere Marie Grace took its end on 17/04/2014; which means that from that date they had no longer the right to claim that shop.
 4. Knowing whether Faida is to give Mujejende 1.750.000 rwf and its interest. [60] Lawyer Mukakibibi Fatuma who assists Mujejende Beata says that she cross appealing was done so as Faida Amur Sultan be forced to pay Mujejende 1.750.000 rwf which she had left in the shop plus its interest calculated at 75% , because Faida took that money which caused the big loss on the side of Mujejende. The total is 2.887.500 rwf. [61] Lawyer Kayitare Serge says that Faida must not pay that money to Mujejende because nothing proves that she had left that money in the shop. THE VIEW OF THE COURT [62] Article 9 part one of the law n° 21/2012 of 14/06/2012 related to civil, commercial and administrative proceedings stipulates that "it is up to plaintiff to prove of what he is claiming for otherwise the defendant profits".

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- [63] Article 3 of law 15/2004 of 12/06/2004 related to the evidences in courts and how to give them stipulates that each side in court must show the truth of what he is claiming for. [64] As for this case, in the file number 98, there is a document of 07/09/ 2013 showing that Nshonga Mediatrix paid Mujejende Beatrice the amount of 1.750.000 rwf. [65] Basing on the articles mentioned above , the courts finds that Faida Amour Sultan must not pay Mujejende that money and its interest because the evidence she showed is made of the document of 7/09/2013 and does not show clearly that Mujejende left that money in the shop as it was decided by the High Commercial Court.
5. To know whether Faida has to be ordered to pay the arrears related to the loan Hatibu Sani took from AGASEKE Bank. [66] Lawyer Mukakibibi Fatuma who assists Hatibu Sani says that she cross appeals so as Faida pays for him 298.392 rwf of the interests related to the loan took in AGASEKE Bank because he closed the shop where he used to make his business and this affected to pay without using the money of the business. He tried to pay it using the others money he borrows here and there which led to the action of his house. The real amount he owes to that Bank will be presented after the calculation of the Bank. [67] Lawyer Kayitare Serge and Lawyer Uwamungu JMV who assists Faida Amur Sultan says that he can not pay the debt Sani has for AGASEKE because he is not involved in anything that caused the non payment. THE VIEW OF THE COURT [68] The file of Hatibu shows Hatibu is to have damages including the loss related his goods. So the court finds that it can not force Faida to pay the interest on the loan Hatibu took from AGASEKE.
6. To know whether Faida is to reimburse Mujejende and her colleagues the fees for Lawyer. [69] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that they cross appealed so as Faida pays 5.000.000 rwf for Lawyer instead of 2.800.000 rwf which was decided before because he appealed and they had to report with their Lawyer. [70] Lawyer Kayitare Serge and Lawyer Uwamungu JMV who assists Faida Amur Sultan say that their client must not pay Mujejende Beata and her colleagues the fees for Lawyer and other case expenses because he is not the one who sued them in the court, they are the ones who sued him in the first instance. THE VIEW OF THE COURT [71] The court finds that Faida Amur Sultan must not pay Mujejende Beata and her colleagues the case expenses as well as the fees of Lawyer at this stage because there are some points he won in this judgement.

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7. To know whether Faida must have a fine enforcing him the judgement execution. [72] Lawyer Mukakibibi Fatuma who assists Mujejende Beata and her colleagues says that they cross appealed so as Faida Amur Sultan gives each and on monthly basis 1.000.000 rwf as a fine enforcing him the execution as it has been noticed that he delays in the execution. [73] Lawyer Kayitare Serge and Lawyer Uwamungu JMV who assist Faida Amur Sultan say that their client must not be charged that fine because there is no mistake done by him to Mujejende and her colleagues. THE VIEW OF THE COURT [74] The court finds that Faida

must not be charged the fine enforcing him the execution of the judgement because nothing proves that he will not execute in good faith. C. To know if the cross appeal filed by Kayitesi and Kayirere is valid.

1. To know whether Faida is to give Kayitesi and Kayirere the damages they are claiming. [75] Lawyer Nzirabatinyi Fidele who assists Kayitesi Francoise and Kayirere Marie Grace says that they cross appealed so as the Supreme Court forces Faida Amur Sultan to give them 3.000.000 rwf as damages which was not decided by the High Commercial Court while it had decided that they had no any involvement in Faida's act of removing the tenants from the shop. [76] Faida Amur Sultan and his assistants say that he can not pay Kayirere Marie Grace and Kayitesi Francoise the damages because he was not involved with any act which could negatively affect their activities as they are not the shop owners rent by Mujejende and her colleagues. THE VIEW OF THE COURT [77] The court finds that Faida Amur Sultan must pay damages to Kayitesi Françoise and Kayirere Marie Grâce claimed in the cross appealing because nothing shows that by the time Mujejende and her colleagues were removed from the shop, Kayitesi Françoise and Kayirere Marie Grâce had won it completely.
2. To know whether Faida must pay Kayitesi Françoise and Kayirere Marie Grâce the case expenses fees, Lawyer fees as well as one of the execution. [78] Lawyer Nzirabatinyi who assists Kayitesi Francoise and Kayirere Marie Grace says that they cross appealed so as the Supreme Court forces Faida Amur Sultan to pay them 3.000.000 rwf which includes one of case expenses , cost of Lawyer as well as one of the execution of the Supreme court which is added to one decided in the previous court

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- [79] Faida Amur Sultan and his assistants say that he must not pay Kayitesi Françoise and Kayirere Marie Grâce the claimed damages because he is not the one who sued them as they were all sued together in the first instace. THE VIEW OF THE COURT [80] As for the case expense and the cost of Lawyer, the court finds that Faida must not pay them to Kayitesi Françoise and Kayirere Marie Grâce as both side lost some cases in this

judgement.

- [81] As for the execution fees, the court finds that Amur Sultan must not pay Kayitesi Françoise and Kayirere Marie Grâce because there is no judgement he has to execute with them. III. THE DECISION OF THE COURT [82] Decides that the appeal introduced by Amur is valid has merit in part; [83] Decides that the cross appeal introduiced by Mujejende Béata and al, is not valid ; [84] Decides that the cross appeal introduiced by Kayitesi Françoise and Kayirere Marie Grâce is not valid; [85] Declares that the judgement RCOMA 0183/14/HCC decided by the High Court of Commerce on 03/06/2014 changes on some points; [86] Ordres Faida Amur Sultan to pay Mujejende and her colleagues the damages in the following way :

- Mujejende Beata is to receive 7.263.000rwf as value of her goods, 1.452.600 rwf as damages of the loss she encountered, 500.000 rwf as damages to lose customers, 700.000rwf as case expenses and Lawyer fees, 1.000.000 rwf as damages and the total raises at 10.915.600 rwf. - Hatibu Sani is to receive 7.263.000rwf as value of her goods, 1157.300 rwf as damages of the loss she encountered, 500.000 rwf as damages to lose customers, 700.000rwf as case expenses and Lawyer fees, 1.000.000 rwf as damages and the total raises at 9.143.800 rwf. - Rukundo Abdoulahman is to receive 10.492.200rwf as value of her goods, 2.098.400 rwf as damages of the loss she encountered, 500.000 rwf as damages to lose customers, 700.000rwf as case expenses and Lawyer fees, 1.000.000 rwf as damages and the total raises at 14.790.400 rwf. - Umutesi Mariam is to receive 15.332.000 as value of her goods, 3.066.400 rwf as damages of the loss she encountered, 500.000 rwf as damages to lose customers, 700.000rwf as case expenses and Lawyer fees, 1.000.000 rwf as damages and the total raises at 20.598.400 rwf. [87] It orders Kayitesi Francoise and Kayirere Marie Grace to give Mujejende Beata, Hatibu Sani, Umutesi Mariam and Rukundo Abdoulahman 4.844.444 rwf for the rent and they will share according to each one's contribution.

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- [88] It orders Faida Amur Sultan to give ½ of the the court fees equivalent to 50.000 rwf and the rest will be paid by Kayitesi Francoise and Kayirere Marie Grace.

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