

RWANDA / JUDGMENT

UBURIYEMUYE v HOME BASKET SACCO KIMIRONKO ET AL

RLR V. 1-2023

COURT

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UBURIYEMUYE v HOME BASKET SACCO KIMIRONKO ET AL [Rwanda Court of Appeal – RS/INJUST/RCOM 00006/2020/SC, (Cyanzayire, P.J., Nyirinkwaya and Hitiyaremye, J.) 18 March 2022]

Commercial law – The contract of agency is a contract whereby one person (the principal/represented) mandates another person (agent/representative) to carry out legal transactions on behalf and account of the principal as if the latter performs them him/herself – The contract between a party to a case and a professional court bailiff is not an agency contract, it is rather a contract meant for delivery of service for judgement execution. Commercial procedure – Third party opposition – A person can make a third party opposition while he/she has never been a party in the initial case whether himself/herself or those he/she represents have never been summoned, but he/she has personal interest thereof. Commercial procedure – Disputes arising from judgement execution – Issues related to the seizure procedure – Claim for invalidation of the auction owing to violation of seizure procedure has nothing to do with disputes arising from judgement execution – The difference between judgement execution related disputes and seizure

related disputes –Judgement execution related disputes are those resulting from disagreement between parties themselves or between the latter and the court bailiff over the interpretation of the court's ruling and its related implementation – While seizure related disputes are disputes that seek for the invalidation or revocation of the auction due to the alleged violation of the pre-auction formalities whether in the course or following the auction. Disputes in relation to judgement execution are settled by the Court that heard the concerned case. Facts: HOME BASKET SACCO Kimironko Company granted a loan to Uburiyemuye, they entered into a contract and agreed that the loan will be repaid back within one-month period, and the loan was secured with an immovable property that included a commercial house located in Rubavu District. Uburiyemuye did not fulfil the agreement and HOME BASKET SACCO Kimironko sued him before the Commercial Court of Nyarugenge praying to be repaid the principal debt together with the related interests; the Court held that Uburiyemuye has to repay the principal debt plus the related interest. Uburiyemuye Jean Damascène appealed the above ruling to the Commercial High Court alleging to have been charged with the ordinary interests yet the interests were immediately deducted from the loan, he also claimed that the delay interests were excessive. The Court held that his appeal lacks merit, and sustained the appealed judgement. Uburiyemuye Jean Damascène applied for case review but the Court held that his application was not admitted. Following all those cases, Uburiyemuye Jean Damascène seized again the Commercial Court and prayed to be refunded the interest that was deducted from his loan, but the Court held that his claim was not admitted due to the fact that the interest issue had been litigated in the previous final judgments.

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For the execution of the judgement related to the loan that Uburiyemuye lost, Rugema Ziga, a professional court bailiff, auctioned the mortgage and it was acquired by HOME BASKET SACCO Kimironko. Uburiyemuye Jean Damascène seized the Commercial High Court suing Rugema Ziga Jean Claude, the Court bailiff, seeking for the invalidation of the auction, alleging that the impugned judgment was illegally executed, that it violated the content of the Court's auction writ, such as the observance of 15 days of the auction publicity in the determined places, failure to disclose of the interested bidders with their respective price proposals and auctioning the mortgage on a derisory price. The Commercial High Court heard the case and held that the claim filed by Uburiyemuye Jean Damascène has merit, that the auction by the Court bailiff for the execution of the judgment was illegal, hence ordering that it be invalidated. HOME BASKET SACCO Kimironko made third party opposition against that judgement before the Commercial High Court, alleging that the Court had no jurisdiction to hear the merit of Uburiyemuye's claim, and stating that the impugned auction should have not been nullified. The Commercial High Court held that it had no jurisdiction to hear the case on the observance of auction formalities since such a hearing is reserved to the Commercial Court, and it therefore held that the ruling of the Commercial High Court on the case is thereby quashed. The Court of Appeal heard the case and held that the objection related to the lack of jurisdiction by Rugema Ziga has no merit since the appeal was on the third party opposition case and yet such cases are appealable once; and it

held that the appeal by Uburiyemuye falls well under the jurisdiction of the Court of Appeal. The Court has as well examined the capacity of HOME BASKET SACCO Kimironko to file third party opposition against the case, and it held that nothing precluded it to do so since it had never been a party to the judgement under the third party opposition. The Court examined whether the Commercial High Court had jurisdiction to hear the case in question, and it found that the Commercial High Court had no jurisdiction to hear the case since all seized related disputes are reserved to either the President of the Primary Court or the President of the Commercial Court, therefore it was not in the jurisdiction of the Commercial High Court; the seized Court thus held that the appeal filed by Uburiyemuye lacks merit. Uburiyemuye petitioned the President of the Supreme Court and prayed to have his case reviewed for being vitiated with injustice, he claimed that the Court of Appeal heard his case on the raised objection and then ruled on his appeal without allowing parties to litigate thereof. Following the analysis of his application, the President of the Supreme Court ordered his case to be reviewed due to injustice. Uburiyemuye states that he requests the Court to quash the judgement rendered by the Commercial High Court alleging that HOME BASKET SACCO Kimironko could not make third party opposition against the judgement to which Rugema Ziga was a party and they had concluded the contract for the judgement execution, therefore, he conducted the auction for its interests, meaning that he was aware of the case to which he is a party. HOME BASKET SACCO Kimironko submits that it had interest to make third party opposition against the case for it to be reviewed since the case prejudiced it as it bought the property through the auction, therefore it must protect its interests as it was not summoned to the case.

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Rugema Ziga Jean Claude submits that HOME BASKET SACCO Kimironko had a right to oppose the case as they had interest related to the fact that it bought the disputed property through the auction. For the concern that Rugema Ziga Jean Claude was working for the account of HOME BASKET SACCO Kimironko, he replied that their contractual deals ended with the auctioning. Uburiyemuye Jean Damascène argued that the Commercial High Court had jurisdiction to hear the case RCOM 00021/2017/CHC since it entailed disputes resulting from the auction and related seizure formalities. HOME BASKET SACCO Kimironko invoking a legal provision of the law that then governed civil, commercial, labour and administrative procedure finds that the Commercial High Court had no jurisdiction to hear the case, since the subject matter was about the non-observance of auction formalities yet such cases are solely reserved to the Primary Court or the Commercial Court whereas the judgement under execution is the one rendered by the Commercial Court. The Court bailiff submits that the Commercial Court of Musanze had the jurisdiction to hear the case, as it is the very Court that drew up the auction writ. Held: 1. The contract of agency is a contract whereby the Principal (represented) mandates an agent (representative) to carry out legal relations on behalf and account of the Principal as if the latter performs them him/herself.

2. The contract between a party to a case and a professional court bailiff is not a mandate contract (contract of agency) it is rather a contract of service of judgement execution.
3. A person who can make a third party opposition against a judgment is the one who has not been to the case as claimant or respondent, while himself/herself or those he/she represents have never been summoned to the case, but he/she has interest to the case.
4. Disputes arising from the judgement execution are those resulting from disagreement between parties themselves or between the latter and the court bailiff over the interpretation of the court's ruling and its related implementation.
5. Disputes arising from the judgement execution shall be settled by the Court that heard the concerned judgement.
6. Seizure-related disputes are those seeking for the invalidation or revocation of the auction due to a violation of the pre-auction formalities whether during and after the auction. The claim lacks merit Statutes referred to: Law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 161; Law no 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 208 and 309.

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Cases referred to: Case RCAA 00015/2017/SC, between COOPILAC, Sebahire Roger David v. Nesongane Marina of 27/04/2018 by the Supreme Court; Case RSOC 0001/CS between Mutuyubutatu Josephine v. MINERALS SUPPLY AFRICA Ltd (MSA) of 07/07/2017 by the Supreme Court.

Judgment

I. BACKGROUND OF THE CASE [1] On 15/06/2012 Uburiyemuye Jean Damascène and HOME BASKET SACCO Kimironko concluded a loan agreement of 15,000,000 Frw ; and they agreed that the loan will be repaid back within one-month period with an ordinary interest of 750,000 Frw (that is immediately deducted from the loan that Uburiyemuye granted to him). The loan was secured by a mortgage in the UPI : 3/03/02/7450 which had a commercial building located in Kitarimwa Village, Gikombe Cell, Nyakiriba Sector in Rubavu District. [2] Uburiyemuye Jean Damascène failed to abide by the agreement, and this made HOME BASKET SACCO Kimironko to sue him before the Commercial Court of Nyarugenge requesting him to repay the principal debt together with the related interests, and the case was recorded as RCOM 0987/13/TC/NYGE. The case was heard in absence of Uburiyemuye and the judgement was pronounced on 13/12/2013. The Court bound him to pay a principal debt of 15,000,000 Frw with ordinary interests amounting to 10,500,000 Frw; delay interests of 21,000,000 Frw and 700,000 Frw for Counsel fee. [3] Uburiyemuye Jean Damascène appealed the ruling to the Commercial High Court, and the appeal was recorded as RCOMA 0164/14/HCC claiming that he was unfairly charged with ordinary interests of 10,500,000 Frw yet he had already paid, as the interests were immediately deducted

from the loan he received. He is well alleged that 21,000,000 Frw he was charged for delay interests were overly excessive, the Court held that his appeal lacks merit and sustained the ruling of the appealed judgement. Uburiyemuye applied for the case review and his application was registered as RCOM 00342/2017/CHC/HCC but the Court declared it inadmissible. [4] Following all those cases, Uburiyemuye Jean Damascène again seized the Commercial High Court and prayed to be refunded 750,000 Frw as ordinary interests that were directly deducted from the loan he received. The claim was recorded as RCOM 003582019/TC but the Court declared inadmissible his claim due to the fact that the interest had already been litigated in cases RCOM 0987/13/NYAGE and RCOMA 0164/14/HCC that have already become final. [5] For the execution of the loan case that Uburiyemuye Jean Damascène lost, Rugema Ziga Jean Claude, a professional court bailiff, auctioned an immovable property in the UPI :3/03/08/02/7451 registered to Uburiyemuye Jean Damascène and it was won by HOME BASKET SACCO Kimironko on 4, 000,000 Frw. [6] Uburiyemuye Jean Damascène seized the Commercial High Court, suing Rugema Ziga Jean Claude, the Court bailiff, seeking for the invalidation of the auction alleging that the

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impugned judgment was illegally executed, that it violated the content of the Court's auction writ, such as the observance of 15 days of the auction publicity in the determined places, failure to disclose the interested bidders with their respective price proposals, and auctioning the mortgage on a derisory price. [7] On 21/11/2017, the Commercial High Court heard the case RCOM 00021/2017/CHC and held that the claim filed by Uburiyemuye Jean Damascène has merit, that the auction by Rugema Ziga Jean Claude, the Court bailiff, for the execution of the judgment RCOMA 164/14/CHC was unlawful, and therefore ordered that the impugned auction of the property in UPI : 3/03/08/02/7451 be invalidated. The very Court further ordered Rugema Ziga Jean Claude to pay Uburiyemuye Jean Damascène for Counsel fee and for the incurred case related expenses. [8] HOME BASKET SACCO Kimironko made a third party opposition against the above ruling before the Commercial High Court, the third party opposition was registered as RCOM 00001/2018/CHC/HCC, it alleged that the Commercial High Court had no jurisdiction to hear the merit of the claim by Uburiyemuye Jean Damascène and it prayed the Court not to invalidate the auction. The Commercial High Court heard the case on the third party opposition and held that it had no jurisdiction to hear the case on the observance of auction related formalities since such a hearing is reserved to the Commercial Court that heard the case, and it therefore held that the ruling of the Commercial High Court on the case is thereby quashed and ordered Uburiyemuye Jean Damascène to pay HOME BASKET SACCO Kimironko 575,000 Frw for Counsel and Court fees. [9] Uburiyemuye Jean Damascène appealed the above ruling before the Court of Appeal, the appeal was registered as RCOMA 00004/2019/CA and prayed the Court to examine whether HOME BASKET SACCO Kimironko had the capacity to oppose the judgment RCOM 00021/2017/CHC/HCC; he also requested the Court to examine whether the Commercial High Court had no jurisdiction to hear the very case, and he claimed for a variety of damages. Rugema Ziga Jean Claude together with HOME BASKET SACCO Kimironko objected the admissibility of the claimant's appeal arguing that the appeal had already been heard in the case

RCOM 00021/2017/CHC/HCC whereby the appellant invoked article 208 of the Law n0 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, and he prayed the Commercial High Court to help settle disputes that had resulted from the execution of the judgement RCOMA 0164/HCC, and they reminded that such cases are appealable once. The Court closed the hearing by deciding that the ruling on the objection will be pronounced on 20/03/2020. [10] The Court of Appeal heard the case and held that the objection of the lack of the jurisdiction raised by Rugema Ziga was unfounded since the appeal was on the third party opposition case and yet such cases are appealable once ; and it held that the appeal by Uburiyemuye is well in the jurisdiction of the Court of Appeal. The Court has as well examined the capacity of HOME BASKET SACCO Kimironko to oppose the case, and it held that it had capacity to oppose the case since it had never been a party in the very opposed case. [11] The Court further examined whether the Commercial High Court had no jurisdiction to hear the case RCOM 00021/2017/CHC/HCC, and it found that all issues to do with seizure formalities are reserved to either the President of the Primary Court or to the President of

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Commercial Court for cases heard by Commercial courts. The Court of Appeal has therefore held that the Commercial High Court had no jurisdiction to hear such case and held that the appeal by Uburiyemuye Jean Damascène lacks merit. The Court held to sustain the judgment RCOM 0001/2018/CHC/HCC. [12] Uburiyemuye Jean Damascène petitioned the President of the Supreme Court praying for the review of the judgment RCOMA 00004/2019/CA for being vitiated by injustice, he claimed that the Court of Appeal heard his case on the raised objection and then ruled on his appeal without allowing parties to litigate thereof. He also complained that the Court of Appeal charged him with unjustified damages. [13] Following the analysis of his application, the President of the Supreme Court ordered the case RCOMA 00004/2019/CA of 15/05/2020 by the Court of Appeal to be reviewed for injustice related grounds, and the case was registered as RS/ INJUST/ RCOM 00006/2020/SC. [14] The case was heard in public on 13/04/2021, Uburiyemuye was present and assisted by Counsel Nsabimana Jean Baptiste, HOME BASKET SACCO Kimironko represented by Counsel Rurishya Ngenda Philemon while Rugema Ziga Jean Claude was represented by Counsel Kagame Kimonyo Alexis. [15] After the Court has heard from the parties, it closed the hearing and scheduled the pronouncement on 30/04/2021. On this date, the ruling was not pronounced owing to the fact that one of the judges who heard the case had been appointed to other duties, and the case was again scheduled on 09/09/2021 to be reheard. All parties again appeared assisted or represented as before but they however said to add nothing on the plea of 13/04/2021. The hearing was closed and the pronouncement was scheduled on 08/10/2021. [16] On that date the Court pronounced its ruling on the sole interlocutory judgement and held that the Court of Appeal only heard the case on the objection but then ruled even on the substance of the case with no litigations thereof ; the Court quashed the judgment RCOMA 00004/2019/CA of 15/05/2020 rendered by the Court of Appeal, and it therefore invalidated all its related effects including the damages that Uburiyemuye Jean Damascène was charged with. The Court held that the hearing on the appeal that Uburiyemuye Jean Damascène had lodged before

the Court of Appeal was conducted on later date that the Court's Registry will announce, and this is the very date that the Court will examine issues to do with damages that parties claimed for. [17] The hearing was scheduled on 14/12/2021, and all parties were thereof notified but the case was not heard owing to a reason that Counsel Nsabimana Jean Baptiste assisting Uburiyemuye Jean Damascène informed the Court of his absence as he had to attend a certain burial; the case was adjourned to 08/02/2022 and all parties were thereby notified. The date came and the hearing opened with Uburiyemuye Jean Damascène together with his legal advisor in absentia ; but defendants invoked article 54 of the Law 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure¹ and prayed to have the case heard. 1 If the claimant fails to appear before the court without valid reason, the respondent may apply to the court for the removal of the case from the list of cases or for the hearing of the case on the merits, and the judgement is considered as having been rendered after hearing both parties, except when the court finds it necessary to adjourn

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Uburiyemuye Jean Damascène together with his legal advisor came in late, joined and went on with the hearing . [18]

- [19] The issues that were heard and decided by the Court are the issues to do with the appeal that Uburiyemuye Jean Damascène had filed before the Court of Appeal, and those issues included the following : a. Whether HOME BASKET SACCO Kimironko had a right to oppose the case RCOM 00021/2017/CHC/HCC;
- b. Whether the Commercial High Court had jurisdiction to hear the the very case. c. Issue of various damages. [19] After hearing for each party on the raised issues, the Court closed the hearing and informed parties that the ruling will be pronounced on 18/03/2022. II. ISSUES OF THE CASE AND THEIR ANALYSIS
1. Whether HOME BASKET SACCO Kimironko had a right to oppose the case 00021/2017 of 21/11/2017 rendered by the Commercial High Court. [20] Uburiyemuye Jean Damascène and his counsel argue that HOME BASKET SACCO Kimironko could not make a third party opposition against the judgment RCOM 00021/2017/CHC/HCC in which Rugema Ziga Jean Claude was a party, and they had concluded the contract for the judgement execution ; he therefore conducted the auction for its interests as he was aware of the case in which he is a party. They prayed the Court to declare null and void the judgement RCOM 00001/2018/CHC/HCC that opposed the judgement RCOM 00021/2017/CHC/HCC. [21] Counsel Rukarishya Ngenda Philemon representing HOME BASKET SACCO Kimironko submits that his client had interest to oppose the judgment and have it reviewed since the case prejudiced it. He states that there was no ground that precluded it from opposing that case because it intended to recover the loan and it bought the property through the auction; the fact that Uburiyemuye Jean Damascène had attacked the auction cannot preclude HOME BASKET SACCO Kimironko to oppose the case in a bid to protect its interests more so that it had not been summoned to it. the case in order to re-summon the claimant in the interests of the

administration of justice and in the manner provided under this law If the case is removed from the list of cases, proceedings are terminated and all court fees already incurred are borne by the claimant.

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- [22] Counsel Kagame Kimonyo Alexis representing Rugema Ziga Jean Claude corroborates that HOME BASKET SACCO Kimironko had a right to oppose the judgment as it had interest related to the fact that it bought the disputed property through the auction. For the concern that Rugema Ziga Jean Claude was working for the account of HOME BASKET SACCO Kimironko, he replied that their contractual deals ended with the auction. DETERMINATION OF THE COURT [23] Paragraph one of article 161 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, administrative and labour procedure provides that a third party opposition seeks to quash or change a judgement to the benefit of the third party appealing against it; whereas paragraph one of article 162 of the very law reads that a person who was not a party to a case but who has an interest in it may make a third party opposition to set aside a judgement which is prejudicial to his or her rights and if neither that person nor the person he or she represents were called at the trial. [24] The take of the above mentioned articles is that the opposing third party must be a person who has never been a party in the initial case whether as a plaintiff or a defendant yet he/she thereof has a personal or a proxy interest. [25] Representation is defined as an arrangement by which one person (principal/mandator) mandates another (agent/representative) to carry out legal transactions on the behalf and account of the Principal as if the latter carried them out him/herself. Representation can also be by law (legal representation); for instance, in a circumstance of representing a minor whose age is still under majority, or in a circumstance by which a company manager represents the company's shareholders. Representation can again be by a court's order such as in the circumstances of guardianship for incapable persons. Representation can as well be by ways of mandate agreement². This type of agreement is defined as a contract by which one person mandates ² La représentationest l'effet soit d'une convention, soit de la Loi, elle règle l'effet par lequel une personne, dite le représenté ou encore le mandant, engage une personne dite, le mandataire ou représentant, lequel reçoit de ce mandant la mission de traiter avec un ou plusieurs tiers comme s'il avait directement traité avec ce ou ces tiers, Serge Braudo, Dictionnaire du Droit privé, Définition de représentation, <https://www.dictionnaire-juridique.com/definition/representation.php>, 1996-2022, consulté le 9/03/2022. La représentation est le mécanisme par lequel une personne, le représentant, conclut un acte juridique pour le compte d'une autre, le représenté, en vertu d'un pouvoir que lui confère soit la loi (représentation légale), soit une décision de justice (représentation judiciaire), soit un contrat (représentation conventionnelle) ; le mécanisme de la représentation, définition, <https://www.labase-lextenso.fr/ouvrage/9782275097763-42>, consulté le 9/03/2022. Le pouvoir de représentation dont est investi un représentant peut lui avoir été conféré au titre d'un contrat. Le pouvoir de représentation sera ainsi le produit d'un accord de volontés. Cette hypothèse correspond à la

conclusion d'un contrat de mandat ; Aurélien Bamdé(Docteur en droit privé), in Droit des contrats, Droit des obligations, Effet relatif, Effets du contrat, <https://aurelienbamde.com/2017/07/14/la-representation-droit-commun/>, posted le 14/07/2017, consulté le 9/03/2022La représentation du mineur est assurée : soit par ses parents, soit par un tuteur ; ibidem ...tandis que les associés expriment en assemblée la volonté de la personne morale, les dirigeants sociaux représentent cette volonté qui a été exprimée par les associés, ibidem. Lorsqu'une personne est frappée d'une incapacité d'exercice générale ou spéciale, l'expression de sa volonté ne peut s'opérer que par l'entremise d'un représentant.....Le juge désigneraun représentant chargé d'agir au nom et pour le compte de la personne protégée ; ibidem d'une autre, le représenté, en vertu d'un pouvoir que lui confère soit la loi (représentation légale), soit une décision

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another person to undertake certain engagements and does so in the name and account of his mandator³, this type of contract is different from an employment contract whereby one person employs another for the latter to accomplish defined tasks. [26] Coming back to the case RCOM 00021/CHC/HCC of 21/11/2017 by the Commercial High Court, it looks that Uuriyemuye Jean Damascène sued Rugema Jean Claude, a court bailiff, for unlawful auction in the execution of case ROCOMA 164/14/HCC that he had lost against HOME BASKET SACCO Kimironko due to a debt that he owed them. It is also clear that HOME BASKET SACCO Kimironko has never been a party to case RCOM 00021/2017/CHC/HCC, since nobody sued them, or summoned them to it and neither HOME BASKET SACCO Kimironko nor people it represents, that is its shareholders, has never been a party to the case not even summoned for it. [27] The Court finds that neither HOME BASKET SACCO Kimironko, nor the persons it legally represents has never been party to case RCOM 00021/2017/CHC/HCC as it is above highlighted, yet it had an interest to protect as the winner of the case whose execution is alleged to be unlawful by Uburiyemuye Jean Damascène. Nothing precluded it from opposing the judgment as per the provisions of articles 161 and 162 of the aforementioned law n0 22/2018 of 29/04/2019. [28] Regarding the statements of Uburiyemuye Jean Damascène who claims that HOME BASKET SACCO Kimironko had no right to make a third party opposition against the judgement in which Rugema Ziga Jean Claude was a party and they had concluded the contract for the judgement execution, the Court finds them baseless since Rugema Ziga Jean Claude cannot be confused with HOME BASKET SACCO Kimironko or the persons it legally represents, as above expounded. More so, their contract was not a contract for representation (an agency contract), it was rather an employment contract meant for the execution of the court's judgment.⁴ [29] With reference to the above provided elucidations, the Court finds that HOME BASKET SACCO Kimironko had a right to make a third party opposition against the judgement RCOM 00021/2017/CHC/HCC of 21/11/2017 rendered by the Commercial High Court.

2. Whether the Commercial High Court had no jurisdiction to hear the case RCOM 00021/2017/CHC/HCC 3 Le mandat ou procuration est un acte par lequel une personne donne à une autre le pouvoir de faire quelque chose pour le mandant et en son nom ; ibidem 4 Le contrat

de prestation de services est défini à l'article 1710 du Code civil sous le nom de « louage d'ouvrage ». Il s'agit d'une convention généralement conclue à titre onéreux entre deux parties, un prestataire et son client, et qui fait naître entre eux des droits et obligations. D'aucuns diraient que le contrat de prestation de services matérialise une sorte de relation de travail où un professionnel se rend responsable de l'accomplissement d'une mission pour le compte d'un donneur d'ordre ; Contrat de prestation de services, par Avocats Picovschi, Avocats d'affaires, https://www.avocats-picovschi.com/contrat-de-prestation-de-services_article_267.html, mis à jour le 13/08/2021, consulté le 09/03/2022 Article 38 of the Law n0 12/2013 of 22/03/2013 governing the function of bailiffs provides that before executing any judgment, decisions or any other enforcement orders, the professional bailiff shall conclude a written contract with the client specifying the amount of his/her fees and the modalities of payment. That contract must take into account the scale referred to in Article 37 of this Law.

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[30] Uburiyemuye Jean Damascène together with his legal Counsel argue that the Commercial High Court had no jurisdiction to hear the case RCOM 00021/2017/CHC/HCC; they submit that the Court had no jurisdiction to invoke article 2085 of the Law n0 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure to hear the case since the auction of 04/05/2017 was contested; the Court still could not invoke article 3096 of the very law since this article concerns seizure-related formalities. They submit that the disputes arose on 04/05/2017 when the Court bailiff affirmed that the auction has thereby been conducted but failed to account for bidders who attended, the amount of money and who gave it, the price of the house on which they disagree. [31] Counsel Rukarishya Ngenda Philemon, representing HOME BASKET SACCO Kimironko made a reference to article 309 of the Law n0 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure by then in force, and argued that the Commercial High Court had no jurisdiction to hear the case since the issue at hand was about the non- observance of auction-related formalities, and such issues are normally filed to the Primary Court or to the Commercial Court for the execution of judgements rendered by the Commercial Court. [32] He avers that by basing on article 260 of the Law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, the Court's decision was not subject to appeal, it was instead supposed to be entirely implemented, he therefore finds no injustice in the judgement rendered by the Court of Appeal. [33] Counsel Kagame Kimonyo Alexis, who represents Rugema Ziga Jean Claude argues that the Commercial High Court had no jurisdiction to hear the case RCOM 00021/2017/CHC/HCC, since the subject matter was about the unlawful execution of the Court's judgement and the invalidation of the auction of 04/05/2017. He also pointed out that Uburiyemuye Jean Damascène changed the subject matter of the case by stating that it is the case of the disputes arising from the execution of the judgement, but the nature of the claim seems to stem from article 309 of the then above mentioned law n0 21/2012 of 14/06/2012, that provided for seizure- related formalities. He

then adds that it is the Commercial Court of Musanze that had jurisdiction to hear the case, since it is this very Court that had issued the concerned auction writ. DETERMINATION OF THE COURT 5 Disputes regarding the execution of judgement shall be brought before the court that rendered the final judgment or that made a foreign judgement enforceable in Rwanda. The court decides thereon within fifteen (15) of the date of receipt of application. Such judgements shall not be subjected to appeal. 6 All procedural difficulties that may occur in the course of seizure shall be resolved by the ruling of the President of the Primary Court or the president of the commercial court for the execution of judgment delivered by a commercial court. Such claims shall be following the procedure of *exparte* applications. However, that decision shall be appealable within a period of 15 days starting from the date on which parties were notified thereof.

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[34] The disputes of the parties on this issue are related to determine whether the claim filed by Uburiyemuye Jean Damascène in the case RCOM 00021/2017/CHC/HCC is the claim related to the disputes arising from the judgment execution as provided under article 208 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, then in force, or whether it is a claim that concerns the settlement of the issues related to seizure procedure that occurred in the course of the seizure as provided under article 309 of the aforementioned law. [35] Article 208 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provided that “Disputes regarding the execution of judgement shall be brought before the court that rendered the final judgment (...),” while paragraph one of article 309 of the same law provided that “all procedural difficulties that may occur in the course of seizure shall be resolved by the ruling of the President of the Primary Court or the president of the commercial court for the execution of judgment delivered by a commercial court”. [36] The issues related to the difference between the judgment execution disputes and the seizure procedural difficulties were elucidated by this very Court in the case whereby COOPILAK sued Sebahire Roger David together with Nesongane Marina. In that case, the Court expounded that the disputes related to the judgement execution provided under article 208 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure are the disputes resulting from the misunderstanding between the parties themselves or between the latter and the court bailiff over the interpretation of the court’s decision (the ruling) and its execution, which means that such disputes are related to the misunderstanding over the actual court decision and its execution modalities⁷, while the seizure related disputes are the disputes that seek for the invalidation or revocation of the auction due to the alleged violation of the pre- auction formalities whether in the course or after the auction⁸. . [37] Similarly, in another case whereby Mutuyubutatu Joséphine sued MINERALS SUPPLY AFRICA Ltd (MSA), the very Court analysed the provision of article 208 of the Law n° 21/2012 of 14/06/2012 and found that the disputes subject to litigation are those disputes resulting from the execution of the court’s judgment, and the parties found that there is disagreement

between them about the execution of the decision of the Court that rendered the judgment, so that the issues are settled by requesting the same Court to clarify its decision for fair execution⁹. These are the same elucidations given by Gasasira Ephrem in his book on civil and commercial procedure¹⁰. . [38] With regard to this case, the case file indicates that Uburiyemuye Jean Damascène lodged a claim to the Commercial High Court, the claim was registered as RCOM 00021/2017/CHC/HCC and he sought for the invalidation of auction that he alleged to be 7 Case RCAA 00015/2017/SC of 27/04/2018 between COOPILAK v. Sebahire Roger David and Nesongane Marina, paragraph 26. 8 Ibidem, paragraph 35 9 The interlocutory judgement case RSOC 0001/2017/CS rendered on 07/07/2017 between Mutuyubutatu Joséphine v MINERALS SUPPLY AFRICA Ltd (MSA), para 10 10 “..... It at times happens for a judgement execution to be difficult, especially when the court decision is unclear or ambiguous In such a scenario, it is always a good idea to seek for interpretation from the court that rendered such a decision for more clarification; Gasasira Ephrem, Manuel de Droit Rwandais, Procédure civile et commerciale, Printerset 1993, P. 294.

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unlawful. He claimed that Rugema Ziga Jean Claude unlawfully auctioned his immovable property registered on UPI : 3/03/08/02/7451, he disregarded the auction writ delivered by the President of the Commercial Court, on the following issues : a. Not advertising the auction for 15 days and in the determined places (that is on radio, in newspapers, and with public notice on the place of the auction);

- b. Not disclosing the bidders and their price proposals; c. Auctioning the property on a derisory price. [39] The Court finds that the claim filed by Uburiyemuye Jean Damascène seeking for the revocation of the auction due to the violation of auction-related formalities in accordance with the provision of article 309 of the above mentioned Law n° 21/2012 of 14/06/2012 as explained, it is not based on the judgment execution disputes as provided under article 208 of the same Law, applicable in case of disagreement on actual court decision and its subsequent execution. [40] Considering the provided explanation and the provisions of the aforementioned article 309, this Court finds that the Commercial High Court had no jurisdiction to hear case RCOM 00021/2017/CHC/HCC.
3. Whether damages requested for by parties are worthy awarding ages claimed for before the Court of Appeal [41] Before the Court of Appeal, Uburiyemuye Jean Damascène claimed 1,000,000 Frw for Counsel fee, 1,000,000 Frw for moral damages, and 500,000 Frw for the procedural fee and refund of the deposited court fee. [42] Counsel Rukarishya Ngenda Philemon representing HOME BASKET SACCO Kimironko submitted that the damages claimed by Uburiyemuye Jean Damascène cannot be examined because it can amount to charge him for delaying the judgement execution. He also adds that since 2014 up to now, the claimant has been complicating the judgement execution, and till to date, he is still keeping Frw 50 million of the clients, therefore he did not incur the loss that can justify the

damages. [43] Counsel Rukarishya Ngenda Philemon prayed the Court to order to Uburiyemuye Jean Damascène to pay HOME BASKET SACCO Kimironko 200,000 Frw for pecuniary damages, 500,000 Frw for Counsel fee and 200,000 Frw for the incurred case-related expenses. He also requested the Court to fine him with 200,000 Frw for deliberately delaying the judgment execution by filing a non-appealable lawsuit. [44] Counsel Kagame Kimonyo Alexis representing Rugema Ziga Jean Claude submits that the damages claimed by Uburiyemuye Jean Damascène is ungrounded, since it is him who initiated and dragged himself into unnecessary lawsuits. And he adds that once the Court finds his claim void, he should be ordered to pay to his client 500,000 Frw for pecuniary damages and 1,000,000 Frw for Counsel fee.

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[45] Uburiyemuye Jean Damascène together with his legal counsel submit that the damages claimed against him are unfounded because the appeal is the right entitled to him by the law. i. Damages claimed before the Supreme Court [46] Uburiyemuye Jean Damascène together with his legal counsel claimed 10,000,000 Frw for the moral damages, and 5,000,000 Frw for procedural fee and Counsel fee because the respondents dragged him in unnecessary lawsuits, and he spent time looking for a lawyer to help him follow up the case. [47] Counsel Rukarishya Ngenda Philemon representing HOME BASKET SACCO Kimironko submits that the claimant should be charged with 4,000,000 Frw as damages for deliberately delaying the judgment execution and for compensation for the incurred case-related expenses, he also requested for 3,000,000 Frw paid as Counsel fees for all the three instances. [48] Counsel Kagame Kimonyo Alexis representing Rugema Ziga Jean Claude filed a counter-claim against Uburiyemuye Jean Damascène and claimed for 2,000,000 Frw over dragging his client into unnecessary lawsuits, he again claimed 1,000,000 Frw for the procedural fee and 1,000,000 Frw for Counsel fee. [49] Uburiyemuye Jean Damascène argues that respondents deserve no damages since they initiated unnecessary lawsuits.

DETERMINATION OF THE COURT i. Damages claimed before the Court of Appeal [50] Paragraph one of article 111 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that “the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings”. [51] In his appeal, Uburiyemuye Jean Damascène requested the Court to award him damages for the procedural and Counsel fees. The Court finds that the procedural fee claimed on basis of the abovementioned article and other damages he claimed cannot be awarded to him since he has lost the case. [52] The Court finds that HOME BASKET SACCO Kimironko deserves the damages for the Counsel and procedural fees requested for in its cross-appeal since it had to hire a lawyer and had to make a follow up of the case, the Court awards to it 500,000 Frw for Counsel fee and 200,000 Frw for procedural fee since it finds them appropriate. However, the Court finds that it cannot be awarded the pecuniary damages since it does not justify it, as well as the pecuniary damages claimed against Uburiyemuye Jean Damascène for filing the appeal with

the intention of delaying the judgment are baseless because there is no element of evidence proving that the appeal was lodged with the intention of really delaying the judgment

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[53] With regard to the Counsel fee requested by Rugema Ziga Jean Claude in the cross- appeal, the Court, in its own discretion awards him 500,000 Frw at the appeal level. However, the Court finds that he deserves no compensation for the pecuniary loss since he did not justify it. ii. Damages claimed for before the Supreme Court [54] The Court finds that the moral damages, the procedural fee and the counsel fee claimed by Uburiyemuye Jean Damascène cannot be awarded to him as he lost this case. [55] [The Court finds that the damages for delaying the auction claimed by HOME BASKET SACCO Kimironko and the damages for being dragged in unnecessary lawsuits cannot be claimed by Rugema Ziga Jean Claude in his counter-claim and cannot be awarded to them because they are not the ones who applied for the injustice related review as it has been ruled by this very Court in its various previous rulings¹¹ . But the Court finds that they can be awarded the procedural fee and the court fee granted in the discretion of the Court as they claim excessive damages without any justification, each one is awarded 300,000 Frw for procedural fee and 500,000 Frw for Counsel fee at this instance. III. DECISION OF THE COURT [56] Holds that the claim filed by Uburiyemuye Jean Damascène appealing against the ruling of case RCOM 00001/2018/CHC/HCC of 05/02/2019 rendered by the Commercial High Court is void of merit ; [57] Holds that the judgment RCOM 00001/2018/CHC/HCC of 05/02/2019 rendered by the Commercial High Court is sustained ; [58] Holds that the Commercial High Court had no jurisdiction to hear the case RCOM 00021/2017/CHC/HCC ; [59] Orders to Uburiyemuye Jean Damascène to pay to HOME BASKET SACCO Kimironko 200,000 Frw for procedural fee and 500,000 Frw for Counsel fee at the appeal instance, the Court also orders to him to pay them 300,000 Frw for procedural fee and 500,000 Frw for Counsel fee at this instance, the total is 1,500,000 Frw. Orders to Uburiyemuye Jean Damascène to pay to Rugema Ziga Jean Claude 500,000 Frw for Counsel fee at the appeal instance and 300,000 Frw for procedural fee and 500,000 Frw for counsel fee at this instance the total due amounts to 1,300,000 Frw. 11 Case RS/INJUST/RC 00024/2018 of 21/02/2020 between Ngizweninshuti Albert v. Muhima Giovanni; Case RS/INJUST/RC 00007/2018/ SC of 13/03/2020 between Nditiribambwe Samuel and Gatera Jason v. Nyamaswa; Case RS/INJUST/RCOM 0000/2018/SC of 12/06/2020 between Prime Insurance Ltd v. Kansiime James; Case RS/INJUST/RSOC 00001/2018/SC of 25/09/2020, between Bank Populaire du Rwanda v. Ukwibishaka Alexis and many more.

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