

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 procedure- the contract of agency is a contract by which one person (the principal/mandator) mandates another person (agent /representative) to carry out legal transactions on the behalf and account of the Principal as if the latter carried them out him/herself- 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 meant for conducting the execution of the court's judgement. (contract de prestation de services d'exécution de jugement) Commercial procedure- third party opposition- a person who can be accepted in a third party opposition is this person who has never been a party in the initial case whether as a plaintiff or defendant yet he/she has thereof has a personal or a proxy interest. Commercial procedure-Judgement execution disputes-Seizure formalities – Revocation of the auctioning owing to violation of seizure formalities has nothing to do with judgement execution disputes – the difference between judgement execution disputes

and seizure related disputes - Judgement execution disputes are disputes resulting from disagreements between parties themselves or between the latter and the court bailiff over the interpretation of the court's ruling and the related implementation- while seizure related disputes are disputes that seek for the invalidation or revocation of the auctioning due to the alleged violation of the pre-auction formalities whether in the course or post the auctioning. Disputes in relation to judgement execution are settled by the Court that heard the concerned case. Summary of facts: HOME BASKET SACCO Kimironko Company lent money 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 live up to the agreement and HOME BASKET SACCO Kimironko sued him before Nyarugenge Commercial Court praying to be repaid the principal debt together with the related interests; the Court held that UBURIYEMUYE has to repay the principal 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 lamented that the delay interests were highly exorbitant. The Court held that his appeal has not substance, and moved to maintain the appealed judgement. Uburiyemuye Jean Damascène applied for case review but the Court held not admit his application. Later on, Uburiyemuye Jean Damascène seized the Commercial Court and prayed to be refunded with the interest-amount that was deducted from his loan, but the court moved not to admits his claim due to the fact the interest issue had been litigated in the previous instances and the related cases had already gotten the res judicata. For the execution of the loan case that Uburiyemuye lost, Rugema Ziga, a professional court bailiff, auctioned the mortgage and it was acquired by HOME BASKET SACCO Kimironko.

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Uburiyemuye Jean Damascène seized the Commercial High Court, sued Rugema Ziga Jean Claude, the Court bailiff and sought for the revocation of the auction alleging 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, the disclosing 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 moved that the claim by Uburiyemuye Jean Damascène has merit, the Court held that the auction by the court bailiff was illegal and it therefore revoked. HOME BASKET SACCO Kimironko came to oppose the ruling on the case, alleging that the Commercial High Court had no jurisdiction to hear the merit of Uburiyemuye's claim and they prayed the Court not to revoke the auction. The Commercial High Court heard the case on the opposition and 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 nullified. The Court of Appeal heard the case and held that the objection of jurisdiction by Rugema Ziga has no justification since the appeal was on the 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 they had capacity to oppose the case since they had never been a party in the very opposed case. 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 not in the jurisdiction of the Commercial High Court; the seized Court thus held that the appeal by Uburiyemuye lacks justification. Uburiyemuye petitioned the President of the Supreme Court and prayed to have his case reviewed for injustice-related grounds, he lamented 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 for grounds of injustice. Uburiyemuye argued requesting the Court to nullify the judgement by the Commercial High Court lamenting that HOME BASKET SACCO Kimironko was not supposed to oppose a case for which Rugema Ziga, their contractual Court bailiff was a party, as he had a contract to help them have the judgement executed; he therefore conducted the auction for their interests as he already knew about the case since he litigated it. HOME BASKET SACCO Kimironko said they had an interest to oppose the case and have it reviewed since the case prejudiced them as they were not summoned to the case yet they had an interest to protect their right as bidders who had won the concerned auction. Rugema Ziga Jean Claude corroborates that HOME BASKET SACCO Kimironko had a right to oppose the case as they thereof had an interest to protect as people who had won the auction of the disputed property. For the concern that Rugema Ziga Jean Claude was working for the account of

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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 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 whose judgement execution is disputed. The Court bailiff submits that it is Musanze Commercial Court that had the exact jurisdiction, as it the very court that drew up the auction writ. Held: 1. The contract of agency is a contract by which the Principal (mandator) mandates an agent (representative) to carry out legal relations on the behalf and account of the Principal as if the latter carried them out him/herself 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 meant for conducting the execution of the court's judgement. (contract de prestation de services d'exécution de jugement A person who can be accepted in a third party opposition is this person who has never been a party in the initial case whether as a plaintiff or defendant yet he/she thereof has a personal or a proxy interest.

Judgement execution disputes are disputes resulting from misunderstandings between parties themselves or between the latter and the court bailiff over the interpretation of the court's ruling and the related implementation. Judgement execution disputes shall be settled by the Court that heard the concerned judgement. Seizure related disputes are disputes that seek for the invalidation or revocation of the auctioning due to a violation of the pre-auction formalities whether in the course or post the auctioning. The claim lacks justification.

Statutes referred to: Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 161; Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 208 and 309. Cases referred to: Case RCAA 00015/2017/SC, between COOPILAC, Sebahire Roger David v. Nesongane Marina of 27/04/2018 by the Supreme Court;

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Case RSOC 0001/CS between Mutuyubutatu Josephine v. MINERALS SUPPLY AFRICA Ltd (MSA) of 07/07/2017 by the Supreme Court.

Judgement

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; it was thereby agreed that the loan will be repaid back within one-month period with an ordinary interest of 750,000 Frw that are (immediately deducted from the loan that Uburiyemuye is granted with) 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 did not abide by the agreement, and this made HOME BASKET SACCO Kimironko to sue him before Nyarugenge Commercial Court requesting him to repay the principal debt together with the related interests, and the case was registered as RCOM 0987/13/TC/NYGE. The case was heard with Uburiyemuye in absentia and 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 registered as RCOMA 0164/14/HCC lamenting 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 as well lamented that the 21,000,000 Frw he was charged for delay interests were overly excessive, the Court held that his appeal lacks justification and moved to maintain the ruling of the appealed judgement. Uburiyemuye applied for case review and his application was registered as RCOM 00342/2017/CHC/HCC but the Court declared it not admissible.

- [4] Later on, Uburiyemuye Jean Damascène again seized the Commercial High Court and prayed to be refunded with the 750,000 Frw as ordinary interests that were directly deducted from the loan he received. The claim was registered as RCOM 003582019/TC but the Court held not to admit his claim due to a fact that the interest had already been litigated in cases RCOM 0987/13/NYAGE and RCOMA 0164/14/HCC that have already turned into laws .
- [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 on Uburiyemuye Jean Damascène and it was acquired by HOME BASKET SACCO Kimironko on 4, 000,000 Frw.
- [6] Uburiyemuye Jean Damascène seized the Commercial High Court, sued Rugema Ziga Jean Claude, the Court bailiff and sought for the revocation of the auction alleging that it violated the content of the Court's auction writ, such as the observance of 15 days of the auction publicity in

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the determined places, the disclosing of 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 by Uburiyemuye Jean Damascène has merit, the Court has also moved that the auction by Rugema Ziga Jean Claude, the Court bailiff, for the execution of the case RCOMA 164/14/CHC was unlawful, and therefore nullified the auctioning of the property in UPI : 3/03/08/02/7451 and 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 opposed the above ruling before the Commercial High Court, the opposition was registered as RCOM 00001/2018/CHC/HCC they alleged that the Commercial High Court had no jurisdiction to hear the merit of the claim by Uburiyemuye Jean Damascène and they prayed the Court not to revoke the auction. The Commercial High Court heard the case on the 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 nullified 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 a right to oppose the case 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 judgement of case RCOMA 0164/HCC, and they reminded that such cases are appealable once. The court closed the hearing by announcing that the ruling on the objection will be pronounced on the 20/03/2020.

- [1] The Court of Appeal heard the case and held that the objection of jurisdiction by Rugema Ziga has no justification since the appeal was on the 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 they had capacity to oppose the case since they had never been a party in the very opposed case
- [12] The Court has also 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 seizure formalities are reserved to either the President of the Primary Court or to the President of Commercial Court for cases the latter heard. The Court of Appeal has therefore held that the Commercial High Court had no jurisdiction to hear such a case and moved that the appeal by Uburiyemuye Jean Damascène has no justification. The Court held to maintain case RCOM 0001/2018/CHC/HCC unchanged.

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- [13] Uburiyemuye petitioned the President of the Supreme Court and prayed to have case RCOMA 00004/2019/CA reviewed for injustice-related grounds, he lamented 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.
- [14] 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.
- [15] The case was heard in public on 13/04/2021 with Uburiyemuye 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.

- [16] After the Court has heard from the parties, it closed the hearing and scheduled the pronouncement on 30/04/2021. Come this date, the ruling was not pronounced owing to a fact that one of the judges who heard the case had been called for different 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 closed and the pronouncement was scheduled on 08/10/2021.
- [17] That date came, and the Court pronounced its ruling on the sole interlocutory judgement and held the Court of Appeal heard the case on the objection but then ruled even on the substance of the case with no litigations thereof; the Court nullified the case 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 filed 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.
- [18] 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. Uburiyemuye Jean Damascène together with his legal advisor came in late, joined and went on with the hearing .

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 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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- [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.

[20] 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

- a) Whether HOME BASKET SACCO Kimironko had a right to oppose the case 00021/2017 of 21/11/2017 rendered by the Commercial High Court.

[21] Uburiyemuye Jean Damascène argued that HOME BASKET SACCO Kimironko was not supposed to oppose the case RCOM 00021/2017/CHC/HCC for which Rugema Ziga Jean Claude, their Court bailiff was a party, as he had a contract to help them have the judgement executed; he therefore conducted the auction for their interests as he already knew about the case since he litigated it; they therefore prayed the Court to nullify the case n0 RCOM 00001/2018/CHC/HCC that opposed case RCOM 00021/2017/CHC/HCC.

[22] Counsel Rukarishya Ngenda Philemon representing HOME BASKET SACCO Kimironko submits that his client had an interest to oppose the case and have it reviewed since the case prejudiced them. He says that nothing was to stop them from opposing that case since Uburiyemuye Jean Damascène owed them a debt and they are they are the bidder who won the auction. Now that Uburiyemuye Jean Damascène had attacked the auction, they all all reasons to oppose the case in a bid to protect their interests more so that they had not been summoned to it. Counsel Kagame KImonyo Alexis representing Rugema Ziga Jean ClaudeRugema Ziga Jean Claude corroborates that HOME BASKET SACCO Kimironko had a right to oppose the case as they thereof had an interest to protect as people who had won the auction of the disputed property. 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. DETERMINATION OF THE COURT

[24] 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

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prejudicial to his or her rights and if neither that person nor the person he or she represents were called at the trial.

- [25] 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.
- [2] 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 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.
- [28] 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

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

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

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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.

[29] The Court found that neither HOME BASKET SACCO Kimironko, nor people it represents has ever been party to case RCOM 00021/2017/CHC/HCC as it is above highlighted, yet they had an interest to protect as the winners of the case whose execution is alleged to be unlawful by Uwiringiye Jean Damascène. They therefore had nothing to bar them from opposing the case as per the provisions of articles 161 and 162 of the above mentioned law n0 22/2018 of 29/04/2019. To arguments by Uburiyemuye Jean Damascène who claims that HOME BASKET SACCO Kimironko had no right to oppose the case for which Rugema Ziga Jean Claude, their contractual court bailiff, was a party, the Court found it pointless since Rugema Ziga Jean Claude, just as it above explained, can neither be taken HOME BASKET SACCO Kimironko or people it represents. More so, their contract was not a contract for representation (a mandate contract), it was rather an employment contract that was purposely meant for the execution of the court's judgement. (contrat de prestation de serves d'exécution de jugement)⁴

[32] With reference to the above provided elucidations, the Court finds that HOME BASKET SACCO Kimironko had a right to oppose the case RCOM 00021/2017/CHC/HCC of 21/11/2017 by the Commercial High Court.

2. Whether the Commercial High Court had no jurisdiction to hear case RCOM 00021/2017/CHC/HCC

[33] Uburiyemuye Jean Damascène together with his legal advisor 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

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.

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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article concerns seizure related formalities. They submit that the disputes arose on 04/05/2017 when the Court bailiff affirmed that an auction has thereby conducted but failed to account for bidders who attended and their respective proposed prices. Claimant were contesting about the mortgage auction price.

[34] 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 non- observance of auction related formalities, and such issues normally go to a Primary Court or to a Commercial Court for cases heard by a Commercial Court.

[3] He says that by looking at article 260 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, the Court's decision was not subject to an appeal, it was instead supposed to be entirely implemented, he therefore finds no injustice in the judgement rendered by the Court of Appeal.

[37] 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 issue was about the unlawful execution of the Court's judgement and a

revocation of the auctioning of 04/05/2017. He also pointed out that Uburiyemuye Jean Damascène changed the subject matter of the case, since in the course of his presentations, he pleaded of the disputes that arose from the execution of the judgement, yet the actual claim seemed to stem from article 309 of the then above mentioned law n° 21/2012 of 14/06/2012, that provided for seizure related formalities. He then adds that it is Musanze Commercial Court that had jurisdiction to hear the case, since it is this very Court that had drawn the concerned auction writ. DETERMINATION OF THE COURT

- [38] In this case, parties disagreement point is to determine whether the claim by Uburiyemuye Jean Damascène in the case RCOM 00021/2017/CHC/HCC concerns judgement execution disputes as per the going of 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 procedures to do with handling seizure related disputes that arise during the auctioning just as per the reading of article 309 of the aforementioned law.
- [39] 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.
- [40] Issues to do with differences between judgement execution disputes and seizure procedural difficulties were once elucidated by this very Court in a certain case whereby COOP ILAK sued Sebahire Roger David together with Nesongane Marina. In the that case the Court moved that disputes depicted by article 208 of the Law n° 21/2012 of 14/06/2012 that related to civil,

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commercial, labour and administrative procedure are those disputes resulting from misunderstandings between parties themselves or between the latter and the court bailiff over the interpretation of the court's decision (the ruling) and the related implementation which means such disputes come about as misunderstandings over the actual court decision and its execution modalities⁷. While seizure related disputes are disputes that seek for the invalidation or revocation of the auctioning due to the alleged violation of the pre-auction formalities whether in the course or post the auctioning⁸.

- [41] 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 portrayed disputes are those disputes that result from a disagreement on the execution of the court's judgement ; hence a need for the Court that rendered the disputed execution to clarify its decision for a peaceful execution⁹. The very

explanations are again given by Gasasira Ephrem in his book on civil and commercial procedure¹⁰.

[42] With regard to this case, the dossier 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 revocation of an auctioning that he alleged to be unlawful. He lamented that Rugema Ziga Jean Claude unlawfully auctioned his immovable property registered as UPI : 3/03/08/02/7451, and he did so in disregard of the auction writ by the President of the Commercial Court by the following violations :

- 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.

[43] The Court finds the claim by Uburiyemuye Jean Damascène seeking for the revocation of the auction due to violation of auction related formalities in a perfect match with the provision of article 309 of the above mentioned law n° 21/2012 of 14/06/2012 as explained. However, the Court thereof found nothing relating to judgement execution disputes as highlighted under article 208 of the same Law, which can serve in a case of a disagreement on actual court decision and its subsequent implementation.

[44] 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.

7 Case RCAA 00015/2017/SC of 27/04/2018 between COOPILAC 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 the court that rendered such a decision for more clarification; Gasasira Ephrem, Manuel de Droit Rwandais, Procedure civile et commerciale, Printerset 1993, P. 294.

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Weather damages requested for by parties are worthy awarding Damages claimed for before the Court of Appeal

[45] Before the Court of Appeal, Uburiyemuye Jean Samascène requested for 1,000,000 Frw for Counsel fee, 1,000,000 Frw for the undergone damage, and 500,000 Frw for both the incurred case related expenses and refund of the deposited court fees.

- [46] Counsel Rukarishya Ngenda Philemon representing HOME BASKET SACCO Kimirondo submitted that Uburiyemuye Jean Damascène deserves no damages since allowing him damages would be awarding him for delaying the judgement execution. He adds that since 2014 up to now, the complainant has been complicating the judgement execution, and till to date, he is still keeping Frw 50 million of SACCO's clients, he therefore has no damages to claim for.
- [47] Counsel Rukarishya Ngenda Philemon prayed the Court to order Uburiyemuye Jean Damascène to pay HOME BASKET SACCO Kimironko 200,000 Frw for economic loss 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 judgement execution by filing a non-appealable lawsuit.
- [48] Counsel Kagame Kimonyo Alexis who represents Rugema Ziga Jean Claude submits that the damage claim by Uburiyemuye Jean Damascène is unworthy, since it is him who brought the whole mess and dragged himself into unnecessary lawsuit. And he adds that once the Court finds his claim void, he should be ordered to pay his client 500,000 Frw for the incurred pecuniary loss and 1,000,000 Frw for Counsel fee.
- [49] Uburiyemuye Jean Damascène together with his legal advisor advance that he has a right to appeal, therefore he should thereof not be charged with damages . Damages claimed for before the Supreme Court
- [50] Uburiyemuye Jean Damascène together with his legal advisor requested for 10,000,000 Frw for the undegone damage, and 5,000,000 Frw for both Counsel fee and the incurred case related costs, he laments that his opponents dragged him in lawsuits for no good reasons, and this made him waste his time looking for a lawyer to help him follow up the case.
- [51] Counsel Rukarishya Ngenda Philemon HOME BASKET SACCO Kimironko says that the complainant should be charged with 4,000,000 Frw as damages for deliberately delaying the judgement 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.
- [52] 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 lawsuit, he again requested 1,000,000 Frw for the incurred case related expenses and 1,000,000 Frw for Counsel fee.
- [53] Uburiyemuye Jean Damascène argues that defendants deserves no compensations since, they are the ones who brought the whole mess that ended up in to this case.

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DETERMINATION OF THE COURT Damages claimed for before the Court of Appeal.

- [54] 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.
- [55] In his appeal, Uburiyemuye Jean Damascène requested the Court to allow him damages for both the incurred case related expenses and for Counsel fee. With reference to the above mentioned article, the Court has moved not to allow him any damages since he has lost the present case.
- [56] The Court found that HOME BASKET SACCO Kimirindo deserves damages for both Counsel fee and for case related expenses requested for in their cross-appeal since they had to hire a lawyer and had to make a follow up on the case, the Court awarded them 500,000 Frw for Counsel fee and 200,000 Frw for case related expenses since it found them appropriate. The Court has however moved not to allow them compensation for the economic loss since they could not account for it. The Court has as well declined their plea to fine Uburiyemuye Jean Damascène for deliberately appealing to delay the judgement execution, since nothing proves that he really intended to delay the case.
- [57] With regard to the Counsel fee requested by Rugema Ziga Jean Claude in the cross-appeal; the Court, in its own discretion deemed to award him 500,000 Frw and for the sole appeal level. The Court has however found that he deserves no compensation for the pecuniary loss since he could not account for its rationale. Damages claimed for before the Supreme Court. The Court moved not to award neither compensation nor Counsel fee to Uburiyemuye Jean Damascène since he lost this very case.
- [59] The Court has however held to award no damages to HOME BASKET SACCO Kimironko for the alleged unnecessary delay of the judgement execution, together with the damages requested by Rugema Ziga Jean Claude for being dragged into unnecessarily lawsuits ; the Court denied them the requested damages since they are not the ones who applied for the injustice related review as it has always been highlighted by this very Court in its various previous rulings¹¹. But the Court has, and on its own discretion, decided to award them 300,000 Frw for the incurred case related expenses and 500,000 Frw each to compensate them for Counsel fee and for the incurred related case expenses; The Court therefore did not honour their requested amounts since they could not justify them.

11 Case RS/INJUST/RC 00024/2018 of 21/02/2020 between Ngizweninshuti Albert v. Muhima Giovani; 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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III. DECISION OF THE COURT

- [60] Holds that the claim by Uburiyemuye Jean Damascène appealing the ruling of case RCOM 00001/2018/CHC/HCC of 05/02/2019 by the Commercial High Court is void of merit;
- [61] Holds that case RCOM 00001/2018/CHC/HCC of 05/02/2019 by the Commercial High Court stays;
- [62] Holds that the Commercial High Court had no jurisdiction to hear case RCOM 00021/2017/CHC/HCC;
- [63] Orders Uburiyemuye Jean Damascène to pay HOME BASKET SACCO Kimironko 200,000 Frw for the incurred case related costs and 500,000 Frw for Counsel fee for up to the appeal case, the Court also orders him to pay them 300,000 Frw for the incurred case related costs and 500,000 Frw for Counsel fee for litigations at the Supreme Court level, and this bring the whole amount to a total of 1,500,000 Frw.
- [64] Orders Uburiyemuye Jean Damascène to pay Rugema Ziga Jean Claude 500,000 Frw for Counsel fee and 300,000 Frw for the incurred case related expenses for exclusively this level, and the total due amounts to 1,300,000 Frw.
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