

**Initiatives for Peace and Human Rights (iPeace)**  
**MOOT COURT CASE**  
PROPERTY AND LAND LAW

**MOOT COURT CASE - PROPERTY & LAND LAW**

***KIMANUKA Lucky & another v. LOIKO Rwanda Ltd***

**1) Facts of the case**

1. Mr. KALISA was a famous and flourishing farmer in Kinyinya, Gikomero commune. He died on 1 August 1987 reportedly from witchcraft practices inflicted by unknown neighbours who were jealous of him. He was survived by his wife MUGENI and five young children: two girls and three boys born from the cohabitation of KALISA and MUGENI for 7 years.
2. During his lifetime, Mr. KALISA was the sole breadwinner and financial provider of the entire family. His wife had only to stay home and take care of the children. Following the death of her husband, Mrs MUGENI became desperate for the future of her children; their future was indeed uncertain.
3. To ensure their survival, six months after the death of KALISA, MUGENI decided to take her children to their uncle Mr. MUTARE, a well off businessman living in Kibungo where they could get food and go to school among other things. MUGENI never returned to Kinyinya fearing to undergo the same fate as her late husband leaving behind their property including their 12,000 m<sup>2</sup> farming land. Instead, she decided to live in Kicukiro where she started a small business.
4. In the meantime, she joined 'Salvation', a vibrant born-again church in the area and became an active worshiper. Three years later after the death of her husband, MUGENI fell in love with MATABARO, the choir leader in Salvation, with whom she got married under the community of property regime and got two twin boys.
5. Realizing that Kalisa's land had been left unexploited, Mr. MAHIRWE Karim, a resident of Kinyinya, stepped in and started cultivating it in April 1988.

Unfortunately, MAHIRWE also died in 2000 in a car accident while returning from the wedding of his old classmate. His three children HASSAN, CASSIM and MARIAM and their mother MUTESI Assiah continued the business of the deceased parent/husband over the entire land without being questioned by anyone.

6. In March 2009 MUTESI went to register the land in compliance with the law in force. Only three-quarter ( $\frac{3}{4}$ ) of the land were registered on "MAHIRWE Karim Family" represented by MUTESI Assiah. The land was registered under the category of lands meant for agriculture and farming.
7. In July of the same year, HASSAN and MARIAM each decided to get married and requested to get their shares over the land as part of their ascending partitions. Each of the two received 3,000 m<sup>2</sup> of the registered land and the related land titles issued by the land administration. With the expansion of Kigali and the booming of the construction industry therein, Kinyinya area became very attractive due to its wonderful topography which made the land in the area to be sold at gold price.
8. Given the huge amount of money that they would get from their lands, on 2 April 2018 HASSAN and MARIAM approached LOIKO Rwanda Ltd, a subsidiary of a South African company operating in Rwanda which was looking for a big plot of land where to construct a modern commercial mall. The Chief Executive Officer and the Operation Manager of LOIKO Rwanda Ltd together with three junior staff of the company paid a visit to the place and found it attractive and appropriate for their intended business project.
9. In their negotiations with LOIKO, HASSAN and MARIAM accepted to merge their respective lands and sell them as a single piece to LOIKO at the price of Frw 300,000,000. Before buying the pieces of land, the management of LOIKO Rwanda Ltd inquired from the local authorities in Kinyinya whether HASSAN and MARIAM were the rightful holders of the lands they were intending to sell, a fact which was confirmed by local authorities. They also found that the land titles in their possession were authentic and genuine.
10. Assured of these two facts, on 20 April 2018 LOIKO Rwanda Ltd concluded a sale contract with HASSAN and MARIAM over their pieces of land in the presence

of other family members and local authorities. LOIKO paid cash the agreed amount of Frw 300,000,000. Three days later, the buyer and sellers brought their sale contract before the land notary of Kinyinya Sector who authenticated it and subsequently in one-month time a new land title with UPI:1/03/01/02/1433 was issued on the name of LOIKO Rwanda Ltd.

11. LOIKO went further and bought from CASSIM and MUTESI Assiah the unregistered 3,000 m<sup>2</sup> as well as the remaining piece of the registered land despite being warned by the local residents and authorities that there was doubt on the rights of sellers over the land. With the last two sellers, it was agreed that LOIKO would pay the last installment of the agreed amount of sale after the formal transfer of land rights ('Mutation').

12. Pending the conclusive formal transfer of land rights, LOIKO Rwanda Ltd in May 2018 undertook the construction of the commercial mall over the land it acquired from MAHIRWE's family members. In three months' time of intensive work, a six storey building was elevated at an estimated cost of USD 1,000,000.

13. While the constructions were advancing and the official opening of the mall planned in end February 2019, LOIKO was surprised on 22 November 2018 to receive a letter from KIMANUKA Lucky claiming to be the first born of KALISA and that LOIKO was building on his family's land. In his letter, the writer advised LOIKO to suspend the construction works and seek together an amicable solution to the matter. The management of LOIKO disregarded the claim and offer from KIMANUKA.

14. In January 2019, KIMANUKA took the matter before the City of Kigali which in its letter dated on 31 January 2019 instructed LOIKO Rwanda Ltd to suspend for two weeks the construction works pending that the City authorities look into the matter. LOIKO vehemently ignored the instruction on the ground that it was in possession of a valid land title as well as a valid construction permit issued by competent authorities from the City of Kigali.

15. Realizing that the instruction of the City of Kigali had not been respected by LOIKO and that the Kigali City authorities were not taking any further step in

addressing his claim, on 20 March 2019 KIMANUKA lodged a claim against LOIKO Rwanda Ltd with the Intermediate Court of Gasabo requesting the following:

- a) The restitution of the entire land occupied by LOIKO Rwanda Ltd to KALISA's family;
- b) The demolition of all constructions put on the disputed land by LOIKO;
- c) The cancellation of the land title of LOIKO;
- d) The compensation for the lost (*lucrum cessans*) of Frw 30,000,000;
- e) One million Rwandan francs (Frw 1,000,000) for the advocate fees.

16. Aware of KIMANUKA's court suit, NDABATEZE Marc, the son of MATABARO and MUGENI also lodged a claim before the same court in his own capacity and on behalf of his twin brother and mother claiming also their shares in the piece of land occupied by LOIKO. Considering the nature of the claims, the Court decided to join the claims and summoned the parties for a hearing on 27 June 2019 at 08 O'clock am.

## **2) Instruction**

- a) Each team is required to prepare **two (2) memorials** for (1) the applicants (KIMANUKA Lucky and MATABARO Marc) and (2) the respondent (LOIKO Rwanda Ltd) addressing, in respect of each of the claims, legal standing, admissibility, the merits and remedies sought. Each of the memorials should clearly identify all relevant legal issues and reference to adequate legal provisions, and appropriate case-law must be provided to support each party's arguments. The size of the memorials should not less than 3,000 words and not exceeding 6,000 words. The following format must be observed *Line-spacing: 1,5; Font: Times New Roman; Font Size: 12; Alignment: Justified.*
- b) Each team should be prepared to plead before the Court on behalf of the parties to the case. Each team will appear once in the position of the **claimant** and once as the **respondent**.