

## NZEYIMANA ET AL v MUHIRWA ET AL

[Rwanda SUPREME COURT – RADAA 00009/2018/CA – (Karimunda, P.J., Kanyange, Ngagi, J.) 17 January 2020]

*Administrative Procedure law – Connexity of cases – Appeal against decisions of connexity of cases – Decisions ordering or denying that the cases are combined are appealed in the same way as it is in the matters relating to the jurisdiction of Courts and should be resolved prior to resumption of cases' hearing.*

*Administrative Procedure law – Filing a case to the Court – Interest to sue – It is the value that the plaintiff gives to his/her request to the court, it must be direct and legitimate; in its absence, he/she has no right to sue. This interest is examined when there is a violation of the rights, although the judgment indicates if these rights have been violated or not.*

**Facts:** Nzeyimana and Mukayisenga sued Muhirwa and Muhorakeye to the Intermediate Court of Gasabo for requesting the annulment of ASPPEK statutes. They filed another claim in the same Court against RGB, ASPPEK, Muhirwa and Muhorakeye requested the cancellation of the document granting the legal personality to ASPPEK.

Muhirwa and Muhorakeye raised two objections. The one is about inadmissibility of the claim because the plaintiffs had to submit their claim to the organ of conflict resolution, the other one states that the plaintiffs and the defendants had no interest or authorization; and that ASPPEK should be sued instead of them. ASPPEK also raises the objection that it is not the one to be sued.

The Court decided to combine both cases and ruled that the plaintiffs should not have to submit their claim to the organ of conflict resolution as the statutes of 2001 that governed the association did not provide for the organ of conflict resolution. It also finds that all the objections raised by the parties lack merits. With regard to the hearing of the case on the merits, the Court ruled that the document granting to ASPPEK the legal personality was annulled and ordered that the statutes of 2013 done in its name was invalidated.

ASPPEK, Muhirwa and Muhorakeye lodged an appeal to the High Court stating that there are legal provisions disregarded by the Intermediate Court so that they lose the case, and RGB lodged a cross-appeal stating that it should not be held liable for damages because it did not err in granting the legal personality. The High Court decided that the appeal of ASPPEK, Muhorakeye and Muhirwa lacks merits while RGB's appeal has merits.

ASPPEK filed an appeal to the Supreme Court stating that the Intermediate Court of Gasabo had no jurisdiction to hear the case involving RGB and the decisions of the previous courts are in violation for the provisions of the law governing non-governmental organisations. After the Judiciary reform, ASPPEK's appeal was transferred to the Court of Appeal in conformity with the Law N° 30/2018 of 02/06/2018 determining the Jurisdiction of Courts.

In its appeal, ASPPEK states that the Intermediate Court had no jurisdiction to hear the administrative claim which was requesting the cancellation of the document granting to it the legal personality and that the High Court which decided the invalidation of the statutes had no jurisdiction too. It further states that RGB has its headquarters in Remera Sector within the jurisdiction of the Intermediate Court of Nyarugenge, which has the territorial jurisdiction. It also

states that the case should not be combined with the civil claim filed by Nzeyimana and Mukayisenga requesting the annulment of its statutes, meaning that the Court would not have combined two cases as one was not falling within its jurisdiction.

Muhirwa and Muhorakeye also declared that this case should have been heard by the Intermediate Court of Nyarugenge as the decision challenged was taken by an authority from Nyarugenge District and that the two cases should not be combined as they are different by nature; this has led to the modification of the civil case into the administrative one, while it is impossible.

Nzeyimana and Mukayisenga find that the Intermediate Court of Gasabo had jurisdiction as the subject matter is the invalidation of ASPPEK's statutes and it has its seat in Gasabo, therefore, there should not be raised any issue about the territorial jurisdiction of the Court. They also state that the fact that the two cases were combined although they are different by nature, was appropriate because they are linked with each other so that the trial of one should likely affect the other and no laws were violated in combining them.

In its appeal, RGB states that because the civil case should affect the administrative case, those cases had to be inevitably combined for the sake of justice interests because both Intermediate Courts of Nyarugenge and Gasabo have the same jurisdiction and it was not necessary to drag a party into lawsuits.

In respect of determination whether ASPPEK should have been sued in court by Nzeyimana and Mukayisenga for invalidation of its statutes and the document granting its legal personality as they are not its members, it states that the fact that they filed a claim in the Court against it without being its members, they had no interest to request for the invalidation of its marks and that if they were members they would have signed the statutes of 2013; but they preferred to make opposition and it was decided to suspend them, instead, it notes that they would have filed a claim against that decision.

Muhirwa stated that the members of that association are the signatories to its statutes, therefore, Nzeyimana and Mukayisenga had no possibility to file a claim against these bylaws without being members; they had no interest to file a petition.

In their appeal, Nzeyimana and Mukayisenga state that those who adduce that they had been expelled from ASPPEK did not provide a dismissal letter; they are on the list of members as it is provided for by the statutes of 2001 signed by the notary in 2009. They further state that the fact that they did not sign the statutes which were illegally drafted and jeopardized their interests does not deprive them of their membership.

RGB submits that the issue related to the analysis of interest in the case tried by the Intermediate Court does not greatly concern it. He states that due to the fact that the statutes of 2001 and 2013 indicated that Nzeyimana and Mukayisenga were members, it notes that they had the right to sue.

**Held:** 1. Decisions ordering or denying that the cases are combined are appealed in the same way as it is in the matters related to the jurisdiction of Courts and should be resolved prior to resumption of cases' hearing.

2. It is the value given by the plaintiff to his/her request to the court, which must be direct and legitimate; in its absence, he/she has no right to sue. This interest is determined when there is a violation of the right, although the judgment indicates that this right has been violated or not

**Appeal lacks merit.  
The cross-appeal has merits in parts.  
The ruling of the case tried by the High Court is sustained.**

**Statutes and statutory instruments referred to:**

Organic Law N° 51/2008 determining the Organisation, Functioning and Jurisdiction of Courts, articles 121, 122, 152, 156 and 178.

Law N°30/2018 of 02/06/2018 determining the Jurisdiction of Courts, article 105.

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 3 and 111.

Law N°04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organisations article 6, 24, 27 and 39.

Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 3.

**No cases referred to.**

**Notes of legal scholars:**

A. Benabent, Droit des obligations, 14e éd., Paris, LGDJ, 2014, p.167. G.

Cornu, Vocabulaire juridique, Association Henri Capitant, Paris, PUF, 1998, p. 456.

G. DE Leval et autres, Droit judiciaire, Manuel de procédure civile, tome 2, Larcier, p. 80.

Philippe Kint, Les associations sans but lucratif, Bruxelles, Larcier, 1999, p. 68).

Serge Guinchard, Droit et Pratique de la procédure civile, 8ème Ed., Paris, Dalloz,2014, p.290.

## **Judgment**

### **I. BACKGROUND OF THE CASE**

[1] The judgment started before the Intermediate Court of Gasabo where Bertin Nzeyimana and Cécile Mukayisenga filed a claim against Muhirwa Alexandre and Muhorakeye Grâce, requesting the Court to invalidate ASPPEK's statutes. Their claim was registered under the number RC 0427/14/TGI/GSBO-RC 0428/14/TGI/GSBO. They later filed another claim against RGB, ASPPEK, Muhirwa Alexandre and Muhorakeye Grâce requesting to annul the document No 121/2014 of 17/10/2014, granting to ASPPEK the legal legal personality and it was recorded under the number RAD 0009/15/TGI/GSBO-RAD 0010/15/TGI/GSBO. The Court decided to combine both cases.

[2] Muhirwa Alexandre and Muhorakeye Grâce raised two objections. The first one requests to the Court not to admit the claim because the plaintiffs would have submitted their claim to the organ of conflict resolution, the second one states that the plaintiffs and the defendants had no interest nor authorization they should not be sued, instead ASPPEK should be sued. ASPPEK also raised the objection that it is not the one to be sued. The Court declared that it would make decision on objections together with the case on the merits.

[3] On 04/03/2016, the Intermediate Court of Gasabo tried the case RAD 0009/15/TGI/GSBO –RAD 0010/15/TGI/GSBO - RC0427/14/TGI/GSBO - RC 0428/14/TGI/GSBO and ruled that the

plaintiffs should not have submitted their claim to the organ of conflict resolution, as this association's statutes of 2001 did not provide for such organ of conflict resolution and it was not relevant to refer to the general laws or the statutes of 2013 not recognized by the plaintiffs and in which they did not participate.

[4] The Court found that the objection according to which Nzeyimana Bertin and Mukayisenga Cécile filed a claim without interests and power lacks merits, as all the parties admitted that both the plaintiffs together with Muhirwa Alexandre and Muhorakeye Grâce were members of the Association that established ASPPEK. There is no indication that they had been expelled or they withdrew from it.

[5] The Court also found that the objection according to which defendants would not have been sued lacks merits too ; it declares that Nzeyimana Bertin and Mukayisenga Cécile had the right to sue Muhirwa Alexandre and Muhorakeye Grâce for their key role in the activities done as emphasized by various documents signed by Muhorakeye Grâce as the chairperson of the meetings held, sometimes as the President of the association or its spokesperson. In respect of ASPPEK, the Court found that there is nothing that precludes it from being sued, while some members thought that there had been some unfair acts ; whereas RGB was sued because it was the issuer of the certificate under litigation.

[6] With respect to the case on the merits, the Intermediate Court of Gasabo decided that the document No121/2014 of 17/10/2014 granting to ASPPEK the legal personality is annulled because it has been illegally issued, it ordered that the so-called statutes of 2013 be also cancelled. It ordered to ASPPEK, RGB, Muhirwa Alexandre and Muhorakeye Grâce to jointly pay to Nzeyimana Bertin and Mukayisenga Cécile the damages equivalent to 1,500,000 Frw and to repay court deposit fees deposited by the plaintiffs, equivalent to 200,000 Frw, except RGB.

[7] ASPPEK, Muhorakeye Grâce and Muhirwa Alexandre lodged an appeal to the High Court stating that there are legal provisions disregarded by the Intermediate Court of Gasabo so as they lose the case, RGB filed a cross-appeal stating that it should not be liable for damages because it did not err in granting the legal personality. Their appeal was recorded under RADA 00148/2016/HC/KIG.

[8] On 06/02/2017, the High Court rendered the judgment RADA 00148/2016/HC/KIG and decided that the appeal of Muhorakeye Grâce, Muhirwa Alexandre and ASPPEK lacks merits whereas RGB's appeal has merits. The Court upheld that document No 121/2014 of 17/10/2014 granting the legal personality to ASPPEK is hereby cancelled, and the so-called statutes established in 2013 are also invalidated. It ruled that RGB should not be liable for damages because there was no evidence proving that it was aware of false information received and ignored in granting the document, but Muhirwa Alexandre and Muhorakeye Grâce should be themselves held liable to jointly pay damages to Nzeyimana Bertin and Mukayisenga Cécile equivalent to 1,500,000 Frw in addition to 200,000 Frw sustained in the appealed judgment, plus 500,000 Frw as their two lawyers' fees

[9] ASPPEK was not satisfied with the ruling of the case and filed an appeal to the Supreme Court requesting to examine if the Intermediate Court of Gasabo had jurisdiction to hear the case

against RGB because this institution has its headquarters in Remera Sector within the jurisdiction of the Intermediate Court of Nyarugenge. It requests to rectify those mistakes so as to overturn the previous cases. Another ground for ASPPEK's appeal was to determine whether Nzeyimana Bertin and Mukayisenga Cécile had interests to file a claim in the Court requesting the invalidation of its statutes and the document granting the legal personality whereas they were not its members.

[10] In its appeal, ASPPEK also states that the previous courts took decisions by disregarding the provisions of law governing Non-Governmental Organisations. Its representative requests the appealed Court to examine whether a member of an association without the legal personality who refused to sign the statutes when the association decided to become non-governmental organisation may be allowed to invalidate what have been done on basis of the amended law. It also submits that the claim could not have been admitted before its analysis by the organ conflict resolution provided for in the law governing non-governmental organisations and the ASPPEK's statutes, and that there are elements of evidence produced, but not analysed by the previous courts. ASPPEK also requests for various damages.

[11] After Judiciary reforms, ASPPEK's appeal was transferred to the Court of Appeal according to the Article 105 of the Law N° 30/2018 of 02/06/2018 determining the Jurisdiction of Courts .

[12] The hearing was scheduled on 11/02/2019, on that date, it was adjourned due to the absence of ASPPEK's Counsel, Muhirwa Alexandre was sick and his counsel had not received the mandate to represent him; the judgement was adjourned on 20/02/2019.

[13] On 20/02/2019 the parties appeared before the Court, ASPPEK was represented by Counsel Bayingana Janvier, Nzeyimana Bertin and Mukayisenga Cécile were represented by Counsel Katushabe Mary, Muhirwa Alexandre and Muhorakeye Grâce were represented by Counsel Munyandamutsa Jean Pierre, RGB represented by Counsel Kayiranga Rukumbi Bernard, the nalysis was made on the objection regarding the lack of jurisdiction of the Court of Appeal filed by Bertin Nzeyimana and Cécile Mukayisenga, and the other objection filed by Counsel Kayiranga Rukumbi Bernard Rukumbi who requested that the ASPPEK's appeal should be admitted because it challenges the judgment tried by the Intermediate Court of Gasabo instead of challenging the judgment rendered by the High Court; and on 29/03/2019, the Court decided that the objections lack merits and it declared that the the hearing of the case on the merits would be resumed on 16/05/2019, on that date, the parties debated on the grounds for appeal, but the hearing was adjourned for conciliation between two parties, the hearing was adjourned on 11/06/2019.

[14] Following the failure to reach the conciliation, the case was heard again in public on 04/12/2019, ASPPEK was represented by Counsel Bayingana Janvier, RGB represented by Counsel Gahongayire Myriam, Nzeyimana Bertin and Mukayisenga Cécile were represented by Me Katushabe Mary, Muhirwa Alexandre and Muhorakeye Grâce were represented by Counsel Munyandamutsa Jean Pierre. On the same day, the hearing was adjourned due to the nightfall and scheduled on 09/12/2019.

[15] On that date, the parties appeared before the Court represented as before, except that Counsel Katushabe Mary was joined by Counsel Minani Sempinga Jean d'Amour to assist Nzeyimana Bertin and Mukayisenga Cécile.

## II. ANALYSIS OF THE LEGAL ISSUES

### A. APPEAL OF ASPPEK

#### **1. Determine whether the Court has disregarded the legal provisions by combining the judgments RC 0427/14/TGI/GSBO-RC0428/14/TGI/GSBO-RAD0009/15/TGI/GSBO- RAD0010/15/TGI/GSBO and it lacked the territorial jurisdiction**

[16] ASPPEK's Counsel Bayingana Janvier states that according to the Article 178 of Organic Law N° 51/2008 of 09/09/2008 which determined the organisation, functioning and jurisdiction of Courts, the Intermediate Court of Gasabo lacked the jurisdiction to hear an administrative decision which requested the cancellation of the document granting the legal personality to ASPPEK, to that effect, the High Court which declared later that ASPPEK's legal personality is invalidated also lacked the jurisdiction. He added that RGB has its headquarters in Remera Sector, one of the sectors within the jurisdiction of the Intermediate Court of Nyarugenge, it is the one which had jurisdiction. Thus, the objection raised at the first instance and in the appeal would not be considered. He further added that this case should not be combined with the civil case filed by Nzeyimana Bertin and Mukayisenga Cécile requesting the invalidation of the ASPPEK's statutes because RGB should not have been sued in the Intermediate Court of Gasabo, meaning that that Court should not have combined two cases as the one was not under its jurisdiction. He concludes by praying the appealed Court correct the errors as it is of public order so as to quash the previous judgments.

[17] Counsel Munyandamutsa Jean Pierre states that this case should have been heard by the Intermediate Court of Nyarugenge as the decision challenged was taken by an authority from Nyarugenge District and the two cases should not have been combined because of they are different by nature so as it has led to the modification of the civil case into the administrative one while such fact is impossible ; thus, the cases should be reinstated. He states that there is no reason for the those who initiated the case to declare that they seized the Intermediate Court of Gasabo basing on the fact that the subject of litigation is located there, because the document granting the legal personality has no residence and the administrative matters have their specialized judge.

[18] Counsel Katushabe Mary, assisting Nzeyimana Bertin and Mukayisenga Cécile states that according to the provisions of Article 122 of the Organic Law determining the organisation, functioning and jurisdiction of Courts into force at the time of filing the claim, notes that the Intermediate Court of Gasabo had jurisdiction as the subject-matter was to invalidate the statutes of ASPPEK which has the headquarters in Gasabo, therefore there is no issue about the territorial jurisdiction of the Court that could have been raised in consideration of the Articles 121 and 122 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts.

[19] With regard to the fact that the cases different by nature were combined, Counsel Katushabe Mary states that there was no legal provision providing that the cases different by nature could not combined and she notes that due to the fact that those cases were related, it was necessary to combine them because the ruling of one judgment would inevitably affect the other and that

there is no violated law in combining them as each case started before the separate Court. They were combined later in an administrative case ; and there is a letter for appeal as provided for in such cases. She requests that in deciding, the Court should rely on Articles 122 and 178 of the Organic Law determining the organisation, functioning and jurisdiction of Courts, into force at the time Nzeyimana Bertin and Mukayisenga Cécile filed a claim.

[20] The Counsel of RGB states that both cases should not have started in the same court because the Intermediate Court of Gasabo should not have admitted the claim against RGB ; but because the civil case had to affect the administrative case, they had to be inevitably combined for the sake of the interests of justice as the Intermediate Court of Nyarugenge and the Intermediate Court of Gasabo both have the same jurisdiction, it was not necessary to drag a party from one court to another. He concludes by submitting that since the interests of the justice are mainly based on the avoidance of unfairly dragging parties into courts, it was necessary to combine those cases.

## **DETERMINATION OF THE COURT**

### **With regard to the territorial jurisdiction of Intermediate Court of Gasabo**

[21] The Article 121 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts into force at the time Nzeyimana Bertin and Mukayisenga Cécile filed a claim, stipulates that “Unless the law provides otherwise, the Court situated where the defendant ordinarily resides shall have jurisdiction to try a case. When there are several defendants, the plaintiff shall choose the Court of one of the defendants’ ordinary domicile. When the domicile of the defendant is unknown, the case shall be heard in the Court situated where he/she resides”.

[22] The Article 122 of the Organic Law N° 51/2008 of 09/09/2008 above mentioned, stipulates that "Cases against the State, public enterprises and government agencies shall be filed in the Courts where their headquarters are located or where the subject matter of the suit is situated".

[23] The documents in the case file indicate that Nzeyimana Bertin and Mukayisenga Cécile filed a claim against Muhirwa Alexandre, Muhorakeye Grâce, ASPPEK and RGB in the Intermediate Court of Gasabo, the Chamber of Administrative cases requesting the invalidation of the document number 121/2014 granting to ASPPEK the legal personality, their claims were recorded under RAD 0009/15/TGI/GSBO- RAD 0010/15/TGI/GSB.

[24] The ruling of the appealed judgment indicates that the High Court declared that the Intermediate Court of Gasabo had territorial jurisdiction according to the Article 122 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, it declares that the fact that the plaintiffs explained that ASPPEK operates in Gasabo District, where the statutes relied on were drafted to grant the legal personality, this indicates that this Court had the jurisdiction.

[25] In this case, ASPPEK, Muhirwa Alexandre and Muhorakeye Grâce state that the Intermediate Court of Gasabo has no territorial jurisdiction over the case against RGB, that institution is located in Remera Sector, within the jurisdiction of the Intermediate Court of Nyarugenge.

[26] The Court finds that Remera Sector where RGB headquarters were located at the time of filing the claim was within the jurisdiction of Primary Court of Nyarugunga which was also within the jurisdiction of the Intermediate Court of Nyarugenge; but as the aforementioned legal provisions indicate, Nzeyimana Bertin and Mukayisenga Cécile had the right to choose to file a claim to the Intermediate Court of Gasabo where the other parties reside according to their identification, therefore, the Court did not err by hearing this case based on the general principle provided under the Article 121 of the Organic Law N° 51/2008 of 09/09/2008 mentioned above because RGB, as indicated, had been sued together with other parties residing within the jurisdiction of the Intermediate Court of Gasabo as indicated.

[27] The Court finds that the statements of Counsel Munyandamutsa Jean Pierre that the claimants did not prove that they filed the claim before the Intermediate Court of Gasabo on basis of the location of the subject matter because the document granting the legal personality does not have address, lacks merits ; as it has already been expounded, pleading in the Intermediate Court of Gasabo was based on the fact that some parties reside within its territorial jurisdiction.

**With respect to the decision to combine the judgments RC 0427/14/TGI/GSBO- RC 0428/14/TGI/GSBO-RAD 0009/15/TGI/GSBO-RAD 0010/15/TGI/GSBO**

[28] Article 152 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as amended, in force at the time the Intermediate Court of Gasabo was seized, provides that: There shall be connected offences if various cases are linked with each other so that the trial of one is likely to affect the outcome of the other or if separate trial of each may result into conflicting judgments. Article 156 of the Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts above-mentioned provides that judgments and written Court Orders concerning transfers or refusal to transfer cases, joining or disjoining cases in other Courts may be appealed against.

[29] The Legal Scholar Serge Guinchard states that in the absence of a precise definition in the law, connexity obviously supposes a wide margin of appreciation and anticipation from judges. It is considered as question as the fact that the Court of Cassation does not control and leaves to the deep sovereign appreciation of the judges.

[30] With regard to this judgement, the case file indicates that after Nzeyimana Bertin and Mukayisenga Cécile filed a civil and administrative claim to the Intermediate Court of Gasabo, on 08/04/2015 the Chief Registrar of the Intermediate Court of Gasabo decided to combine both cases to be tried by administrative cases' bench.

[31] The case file indicates that, in its decision on this issue, the High Court declared that the fact that it was requested, in one case, to invalidate the statutes of 05/04/2013 which was illegally enacted, in another case, it was requested to overturn the decision granting the legal personality made by RGB, this indicates that the cases have connexity so that the trial of one was likely to affect the outcome of the other.

[32] An analysis of Article 156 of Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts above-mentioned implies that the purpose of the legislator by providing for that judgments and claims ordering or refusing to transfer cases to



other courts as well as that those ordering to join or disjoin cases may be appealed against is that such claims are examined as special claims and must first be resolved before the hearing of the cases referred to the Court by the parties, the reason why the legislator provided that they may be separately appealed against without being heard together with other issues of the case. The aforementioned legal scholar, Serge Guinchard, also states that the decisions on the connexity, whether they order the transfer or refuse it, are subject to appeal as it is the case for the jurisdiction of the courts, which means that such issues must first be settled before resuming the hearing of cases.

[33] Based on the explanations provided and on the provisions of article 156 of Organic Law N° 51/2008 of 09/09/2008 mentioned above, the Court finds that ASPPEK, Muhirwa Alexandre and Muhorakeye Grâce would have firstly filed an appeal against this appeal ground and the decision should be separately taken about it, meaning that the High Court would not have admitted this appeal ground and heard it together with the case on the merits. Therefore, the fact that the procedure for appeal they chose together with the case on the merits is contrary to the provisions of Article 156 of Organic Law N° 51 / 2008 of 09/09/2008 mentioned above, the decision of the High Court on that issue should be overturned and the ruling shall remain as it was after the judgment of the Intermediate Court of Gasabo.

**Determine whether Nzeyimana Bertin and Mukayisenga Cécile had an interest in filing a lawsuit in court requesting invalidation of its statutes and decision granting legal personality whereas they were not its members.**

[34] Counsel Bayingana Janvier, representing ASPPEK, states that Bertin Nzeyimana and Mukayisenga Cécile sued ASPPEK in the Intermediate Court of Gasabo whereas they were not members, therefore, they had no interest in requesting invalidation of its symbols. If they were members they would have signed on statutes of 2013 ; but, that they chose to revolt themselves and a decision to suspend them was taken. He therefore finds that they should have filed a claim against this issue instead of filing a claim against the statutes of 2013, without knowing its content or in which they were not involved, because they recognize the statutes of 2001, which cannot serve as basis for granting the legal personality. He submits that this objection had been raised in the previous courts but was not considered, this is the reason why it is again raised.

[35] Muhirwa Alexandre submits that the statutes of ASPPEK state that the members of the association are its signatories ; and Nzeyimana Bertin and Mukayisenga Cécile are not included and they cannot file a claim against the statutes and the legal personality in which they were not involved and in 2014, the members decided that they no longer had the opportunity to be members of ASPPEK again because of their conduct, according to the minutes of the meeting submitted to the court. He avers that, according to these reasons, they have no interest in filing a claim and if there are other interests they need from ASPPEK, they have to sue in another procedure.

[36] Counsel Munyandamutsa Jean Pierre states that Nzeyimana Bertin and Mukayisenga Cécile should not have filed a claim against ASPPEK while they were no longer its members. Thus, they had no capacity to sue because they were dismissed and they did not specify why they only file a claim against Muhirwa Alexandre and Muhorakeye Grâce instead of all members.

[37] Nzeyimana Bertin and Mukayisenga Cécile support that those who submit that they have been dismissed from ASPPEK do not present a dismissal letter. They add that there are currently four (4) members in ASPPEK and Bertin Nzeyimana was the President, and they are on the list of members as indicated by the statutes of 2001 notarized in 2009 and signed by him, Nzeyimana Bertin, Muhirwa Alexandre and Muhorakeye Grâce. Those statutes should be considered as agreement between them. They also state that another proof of their membership is the documents published in the Official Gezette, including the document of 25/01/2012 appointing Nzeyimana Bertin as President and the other one related to a handover between him and Muhirwa Alexandre.

[38] They further submit that the fact that they did not put a signature to the illegal statutes and detrimental to their interests is not the reason for not being members of ASPPEK, and there was no evidence relied on by the appellants stating that the former members who didn't sign the bylaws are deprived of the membership rights.

[39] Counsel Katushabe Mary states that the bylaws of 2001 provided for the procedure for becoming member and being dismissed and it should be implemented by the General Assembly which was composed of Muhirwa Alexandre, Muhorakeye Grâce, Kalisa Mbanda, Nzeyimana Bertin and Mukayisenga Cécile. She further submits that the Article 11 of the bylaws of 2001 provides for a general meeting and objectives of ASPPEK, but both Muhirwa Alexandre and his wife Muhorakeye Grâce had secretly arrogated the power to appoint new members and established its objectives. She supports that the members of ASPPEK who allegedly dismissed Nzeyimana Bertin and Mukayisenga Cécile, had no capacity to do so, because they illegally became members; and the statement of appellants that the High Court did not decide about the capacity of Nzeyimana Bertin and Mukayisenga Cécile to file a claim is not true as it is stated on the page 4 to page 8 of the case ruling, the same Court analysed that issue and declared that Nzeyimana Bertin and Mukayisenga Cécile had the capacity to lodge a claim.

[40] With regard to the fact that the lawsuit was only filed against Muhirwa Alexandre and Muhorakeye Grâce, Counsel Katushabe Mary avers that they are the only known members of ASPPEK legally recognized and they legally performed activities.

[41] The representative of RGB states that the issue of interest analysis in the case tried by the Intermediate Court of Gasabo does not mainly concern RGB. He state that sue to the fact that bylaws of 2001 and 2013 indicated that Nzeyimana Bertin and Mukayisenga Cécile were ASPPEK members, he finds that they had the capacity to sue. He concludes by requesting the Court of Appeal to declare that Nzeyimana Bertin and Mukayisenga Cécile filed a claim having the capacity to sue because they are still members of ASPPEK due to the fact that they have been dismissed by unauthorized members.

[42] He further added that the debate over the capacity to sue of Nzeyimana Bertin and Mukayisenga Cécile does not concern RGB as both the 2001 and 2013 statutes indicates that they are members.

## **DETERMINATION OF THE COURT**

[43] The Article 3 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that” unless otherwise provided by law, a claim is admissible in court only if the claimant has standing, interest and capacity to sue”.

[44] The case file contains the statutes of the non profit making organization, ASPPEK, dated on 15/11/2001 which was signed by four (4) members namely Muhirwa Alexandre, Nzeyimana J. Bertin, Mukayisenga Cécile and Muhorakeye Grâce. The case file also indicates that they continued to work together until 2012 despite issues and disputes between them, but the main issue arose on 05/04/2013 when the new statutes of ASPPEK was published with the names and signatures of Muhorakeye Grâce and Mutsiri Elvanie, and approved during the meeting of 14/04/2013, the meeting minutes indicate the list of fourteen (14) new members of ASPPEK; but among them, Nzeyimana Bertin, Mukayisenga Cécile and Prof. Kalisa Mbanda did not sign it because, according to Nzeyimana Bertin and Mukayisenga Cécile, they did not sign it because they were not involved in its drafting so that they do not recognize it and do not understand how they were excluded from its drafting and the procedure in which the new members were admitted without admission by ASPPEK General Assembly legally held.

[45] The case file indicates that RGB, based on these statutes, decided to grant legal personality to ASPPEK. In addition, on 25/09/2014, ASPPEK General Assembly attended by ten (10) members also decided to distrust three persons namely Prof. Kalisa Mbanda, Nzeyimana Bertin and Mukayisenga Cécile for their misconduct towards ASPPEK members who wanted to work with them but refused to sign the statutes for enabling them to become the founding members of ASPPEK. After the decision to dismiss them from the association, Nzeyimana Bertin and Mukayisenga Cécile decided to file a claim to the courts requesting the invalidation of the decision N°. 121/2014 of 17/10/2014 granting legal personality and the nullification of the so called statutes of ASPPEK and the lawsuits started by that time.

[46] With respect to determine whether Nzeyimana Bertin and Mukayisenga Cécile had no interest in suing, the Court finds that it is necessary to firstly explain the meaning of the interest to sue before deciding on this issue. The Legal Scholar Gérard Cornu states that the interest to sue is the value given by the plaintiff to his/her request to the court, such value must be personal, direct and legal so that when it does not exist, the plaintiff has no standing to sue. The Legal Scholar Georges De Leval and his colleagues state that the interest is not considered in the outcome of the trial, but rather the fact that there may be a violation of the right, although, after examination, the judgment would indicate whether the right has been violated or not.

[47] With regard to this case, due to the fact that the ASPPEK was founded by four (4) members and invested in it, including the school (Ecole de l’Espoir de Gasogi); and two of them decided to amend the statutes and the objectives of ASPPEK and to admit new members without participation of other founding members until the decision to dismiss them from the association on 25/09/2014 alleging that they did not sign the statutes of 05/04/2013, the Court finds that Nzeyimana Bertin and Mukayisenga Cécile were deprived of their rights to ASPPEK. Therefore, they had interest to lodge a claim.

[48] The Court finds that the statements by ASPPEK and Muhirwa Alexandre that while Nzeyimana Bertin and Mukayisenga Cécile were no longer members of ASPPEK they had no standing to sue ASPPEK should not be taken into consideration, because the standing is not based

on membership, but it is based on their personal, direct and legal interest that they want to be protected. The Court finds that the claim for invalidation of the contract may be filed by any person who has an interest in it, meaning the person who would benefit from such invalidation. This standing may be raised by the parties to the contract as it can be raised by any other third party. For example: the creditors have an interest in claiming that the sale made by the debtors would be invalidated so that the property is remained to the debtor's asset, meaning that there is nothing that can preclude Nzeyimana Bertin and Mukayisenga Cécile from requesting invalidation of the statutes detrimental to their interests.

[49] The Court also finds that there is no law requiring a person to sign a contract or bylaws by force when it is deemed to be detrimental to his/her interests. Therefore, when Nzeyimana Bertin and Mukayisenga Cécile had already been excluded as ASPPEK members, they had the standing to request the invalidation of the bylaws they didn't sign for adopting the bylaws agreed on by all parties. This is to mean that they also had the standing to request the invalidation of the decision granting legal personality to ASPPEK granted on the basis of those statutes.

3. Determining the statutes on which Nzeyimana Bertin and Mukayisenga Cécile relied in filing the claim

[50] Counsel Bayingana Janvier states that, as provided for in the ASPPEK statutes of 2013 and in Articles 6 and 27 of the Law N° 04/2012 of 17/02/2012 governing the organization and the functioning of national non-governmental organisations, before filing a claim, the issue should be submitted to the organ of conflict resolution, the High Court declared that this ground of appeal lacks merits by upholding that the organ of conflict resolution did not exist whereas it existed together with its members, because the the issue arose while Mukayisenga Cécile and Nzeyimana Bertin had not been dismissed from organization yet. He requests that if the Court of Appeal finds that the organ of conflict resolution existed but the claimants didn't resort to such organ while it was provided for in the statutes, the appealed case should be reversed and the claimants should firstly resort to it and in case the issue is not settled, they should seize the courts.

[51] Muhirwa Alexandre states that such organ existed and was composed of Kamali Aimé Fabien, MUKASHYAKA Bernadette and others indicated in a document submitted to the Court; and it was mandatory to firstly resort to it before seizing the courts as provided for in the statutes of 2012 as the application was filed in 2014.

[52] Counsel Munyandamutsa Jean Pierre states that an agreement was needed before seizing the Court as provided for in the ASPPEK statutes.

[53] Mukayisenga Cécile and Nzeyimana Bertin submit that the organ was not provided for in the statutes of 2001 and there are other organs to which they resorted before seizing the courts, including the Office of the Ombudsman, RGB, the City of Kigali and the District of Gasabo. They also state that there is no way for the appellants to support that they would have resorted to the organ of conflict resolution while they did not recognize them as members of the ASPPEK because they were dismissed on 25/09/2014 and filed a claim in October 2014 and if they had resorted to it they would have been in violation of the statutes, especially, its members were illegally appointed.

[54] Counsel Minani Sempinga Jean d'Amour avers that the statutes of 2013 indicates that Nzeyimana Bertin and Mukayisenga Cécile were members, but they did not sign on the list, which is the reason for its invalidation by the courts, and they would not have resorted to the organ of conflict resolution while they did not participate in its establishment.

[55] Counsel Katushabe Mary sustains that the statutes of 2001 do not provide for the organ for conflict resolution, rather its Article 21 provides that the decision must be taken by  $\frac{3}{4}$  of members of the organization. She further maintains that even the organ for conflict resolution was not provided for in such statutes, they attempted to establish it as composed of RGB, City of Kigali, Gasabo District and the Office of the Ombudsman, but they finally failed to reach agreement, nothing precludes them from seizing the courts.

[56] Counsel Gahongayire Myriam, representing RGB, submits that the Court of Appeal should examine whether by the time of filing a claim, the organ for conflict resolution existed and if the Court finds that the organ existed but they did not resort to it, it should declare that the claim would not have been admitted as such procedure was disregarded.

## **DETERMINATION OF THE COURT**

[57] The Article 27 of Law N° 04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organisations provides that “any conflict that arises in the national non-governmental organisation or among its organs shall be first resolved by the organ charged with conflict resolution referred to in Article 6 of this Law. In case that procedure fails, the concerned party may file a case to the competent court of Rwanda”.

[58] The Article 3 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production stipulates that each party has the burden of proving his/her allegations.

[59] In order to determine whether Nzeyimana Bertin and Mukayisenga Cécile should firstly resort to the organ of conflict resolution, the Court finds that it is necessary to firstly determine the statutes which should be considered between the one of 15/11/2001 and the other of 05/04/2013.

[60] With regard to this issue, the Article 6 of ASPPEK statutes of 15/11/2001 stipulates that the founding members of the association are the signatories to these statutes; those who are latter admitted are adherent members who have applied for membership and approved by the General Assembly and agreed to abide by the statutes and objectives of the association. Article 11, paragraph one, subparagraph one of ASPPEK statutes abovementioned provides that the General Assembly has the power to enact and amend the statutes and internal rules and regulations of the association. The Article 14 of the same statutes provides that the quorum for the meeting of the General Assembly is more than  $\frac{1}{2}$  of effective members. If the quorum is not present, another meeting is convened within the next seven days and it takes decision if  $\frac{1}{3}$  of the members attended the meeting .

[61] The case file indicates that ASPPEK statutes signed on 15/11/2001 were still into force until 05/04/2013, when other statutes were signed for the purpose of harmonizing them with the provision of Article 39 of the Law N° 04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organisations which requires the national non-

governmental organisations to harmonize their functioning and statutes with this Law in a period not exceeding twelve (12) months from the date it is published in the Official Gazette of the Republic of Rwanda.

[62] The case file indicates that ASPPEK amended its statutes on 05/04/2013, before the expiration of time limit provided under the law because it should expire on 08/04/2013, meaning that by that date of 05/04/2013, the amendment of the statutes or the admission of new members should be done in accordance with the provisions of the statutes of 15/11/2001, because it was not a new association which was established, rather it was the existing one required to harmonize its functioning with the requirements of the new Law.

[63] The case file contains the statutes of 05/04/2013 signed by Muhorakeye Grâce as the President of the ASPPEK association, Mutsiri Elvanie as the Vice President of ASPPEK and the meeting minutes of the General Assembly which amended the statutes of the Parents Association for the Promotion of Education in Rwanda (ASPPEK) of 14/04/2014, it is obvious that it has been signed by 11 out of 14 members on the list, three of them did not sign.

[64] The Court finds that before ASPPEK statutes were amended on 05/04/2013, the one of 15/11/2001 was still into force according to the provision of Article 39 of Law N° 04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organisations as the one-year time limit provided for had not yet expired.

[65] In accordance with the provisions of the Statutes of 2001, the Court finds that it should be followed, especially in Articles 11 and 14 the ASPPEK General Assembly composed of four (4) founding members should be firstly convened, it had the power to amend the ASPPEK Statutes and admit new members, it should be held with the presence of at least more than 2 out of its 4 members, otherwise, the meeting would be convened for the second time and by such time, it would take decisions only if 1/3 of the members attended. Therefore, the fact that what was done is contrary to the provisions of the Statutes of ASPPEK implies that the Statutes of 05/04/2013 should be invalidated and the decision granting legal personality to ASPPEK should be overturned as ruled by the previous courts.

[66] The Court also finds that due to the fact that the Statutes were not amended for being harmonized with the provisions of Article 39 of Law N° 04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organisations, and the ASPPEK legal personality is invalidated, but the organization continued to operate until now, it means that, according to the legal scholars, ASPPEK exists as an organization but without legal personality (de facto association), the Statutes of 15/11/2001 remain enforceable by its members as an agreement between them, and neither the signatories nor the non-members must not claim that the organization has legal personality, rather it remains as organization between its members. The legal scholars further state that when the organization is granted legal personality, it approves the activities before undertaken on its behalf, but it does not preclude the individual liability of the members because the legal personality has not retroactive effect, however the organization which was granted the legal personality is legally established since the day it was granted legal personality

[67] The Court finds that while it is obvious that the Statutes of ASPPEK to be complied with was the that of 15/11/2001 and they do not provide that a claim over a conflict arising out of a national non-governmental organisation must first be settled by the organ of conflict resolution provided for by the law and Statutes of such organization, the statements by ASPPEK that Nzeyimana Bertin and Mukayisenga Cécile would first refer their claim to the organ of conflict resolution lack merits.

[68] Based on the aforementioned explanations, the Court finds that while it is clear that the activities of ASPPEK are contrary to the provisions of its Statutes, and that its Statutes of 05/04/2013 should be invalidated as well as the decision granting legal personality to ASPPEK be overturned as ruled by the previous courts, it is no longer necessary to examine the ground of appeal related to determination whether there are elements of evidence produced by ASPPEK indicating how Nzeyimana Bertin and Mukayisenga Cécile did not comply with their duties to remain in the organization with the intention of impairing its functioning for preventing it from operating legally.

### **Determine whether there is any damages to be awarded to ASPPEK**

[69] Counsel Bayingana Janvier states that ASPPEK requests that Nzeyimana Bertin and his wife Mukayisenga Cécile pay 10,000,000 Frw for being dragged into unnecessary lawsuits, 4,000,000 Frw for the case preparation and procedural fees, as well as 10,000,000 Frw for lawyer's fees.

[70] Nzeyimana Bertin, Mukayisenga Cécile and Counsel Katushabe Mary state that Muhorakeye Grâce and Muhirwa Alexandre are the ones who should pay damages claimed by ASPPEK as they are the cause of judicial proceedings and RGB should jointly pay because it was involved in granting legal personality, though it was forbidden to do so.

[71] Muhirwa Alexandre and Muhorakeye Grâce claim damages of 10,000,000 Frw of procedural fees, 7,000,000 Frw for lawyer's fees and 20,000,000 Frw for moral damages. Counsel Munyandamutsa Jean Pierre sustains that his clients request such damages because there are so many things they are not able to follow up about ASPPEK interests as they are always dragged into unnecessary lawsuits and the organisation loses its trust.

[72] Bertin Nzeyimana and Mukayisenga Cécile state that ASPPEK should not be awarded the claimed damages because it was involved in judgements by itself.

[73] Counsel Katushabe Mary submits that such damages are not appropriate because Muhirwa Alexandre and Muhorakeye Grâce are the ones who benefit from ASPPEK.

[74] Counsel Gahongayire Myriam, representing RGB, supports that the damages not claimed during pretrial conference would not be awarded to claimants.

## **DETERMINATION OF THE COURT**

[75] The Court finds that 10,000,000 Frw for being dragged into unnecessary lawsuits, 4,000,000 Frw for the case preparation and procedural fees, as well as 10,000,000 Frw for lawyer's

fees claimed by ASPPEK from Nzeyimana Bertin and Mukayisenga Cécile at this instance should not be awarded to it because it is obvious that its appeal lacks merits. It also finds that Muhirwa Alexandre and Muhorakeye Grâce should not be awarded 10.000.000 Frw for procedural fees, 7.000.000 Frw for lawyer's fees and 20.000.000 Frw for moral damages as they are the cause of all judgments by committing illegal acts.

## **B. CROSS-APPEAL**

[76] Nzeyimana Bertin and Mukayisenga Cécile claim 5,000,000 Frw for procedural fees and lawyer's fees, 33,000,000 Frw (28,000,000 Frw + 5,000,000 Frw) for moral damages in both cases, lawyer's fees equivalent to 2,000,000 Frw and 500,000 Frw for procedural fees at appeal instance. Counsel Katushabe Mary expounds that the reason for her clients to claim damages is the fact that they were excluded from drafting the new Statutes of ASPPEK and applying for the legal personality. They have been deprived of the right to benefits of organization, and they pay to their counsels the money that was not required to be paid.

[77] Counsel Bayingana Janvier, representing ASPPEK, smaintains that the claimed damages lack merits as it was the right of ASPPEK to lodge appeal.

## **DETERMINATION OF THE COURT**

[78] Article 111, paragraph 2 of Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that the claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted.

[79] The Court finds that Nzeyimana Bertin and Mukayisenga Cécile deserve the lawyer's fees and procedural fees they claimed because they resorted to two counsels for representation at this instance; but it finds that 2,000,000 Frw for lawyer's fees and 500,000 Frw for procedural fees are too much at this instance according to the expenses incurred during the judgment and the fact that there are some damages awarded to them in the previous courts (1,500,000 Frw + 200,000 Frw + 500,000 Frw), in its discretion the Court awards to them 1,000,000 Frw including 800,000 Frw for lawyer's fees and 200,000 Frw for procedural fees and in addition, ASPPEK, Muhirwa Alexandre and Muhorakeye Grâce should jointly bear the costs because, as upheld by the High Court, RGB has granted legal personality assuming that ASPPEK met all legal requirements.

[80] It also finds that Muhirwa Alexandre, Muhorakeye Grâce and RGB do not deserve 33,000,000 Frw (28,000,000 Frw + 5,000,000 Frw) for moral damages claimed from ASPPEK as the appeal is the right of the party who feels dissatisfied with the court decision, therefore, ASPPEK did not cause any harm to Nzeyimana Bertin and Mukayisenga Cécile as a result of appeal.

## **III. DECISION OF THE COURT**

[81] Hereby declares that ASPPEK appeal lacks merits.



[82] Hereby declares that the cross-appeal filed by Nzeyimana Bertin and Mukayisenga Cécile has merits in part.

[83] Hereby sustains the rulings of the judgment RADA 00148/2016/HC/KIG rendered by the High Court on 06/02/2017.

[84] Hereby orders ASPPEK, Muhirwa Alexandre and Muhorakeye Grâce to jointly pay to Nzeyimana Bertin and Mukayisenga Cécile, 2,200,000 Frw ordered by the previous courts (1,500,000 Frw + 200,000 Frw + 500,000 Frw), plus 800,000 Frw for lawyer's fees and 200,000 Frw for procedural fees at this instance.

[85] Hereby declares that the court fees deposited cover the expenses of the judgment proceedings.