

## UWAMAHORO v. HABIMANA ET AL.

[Rwanda COURT OF APPEAL-RS/INJUST/RAD 00002/2020/CA-(Nyirandabaruta, J.P, Mukandamage, Rugabirwa, J.) March 31, 2021]

*Procedure for application for review on the grounds of injustice – Objection that bars the hearing on merits – Regarding the application for judgment review on the grounds of injustice, the inadmissibility of application is not only limited to the error on the time limit for filing the claim, when such objection (of inadmissibility) is of public order, it can at any time be raised either by a party or by the court on its own initiative.*

*Law governing land – Immovable property – Requirements for being qualified as the property owner- Holding the property title is not enough to ascertain the owner of the property on basis of the fact that the property is registered on him/her, he/she must prove its acquisition mode.*

**Facts:** Nyirambabazi wrote to the Ministry of Public Works and Energy (MINITRAPE) requesting the passage where was the sewer no longer in use for accessing to her home, because the passage she used through the plot of her neighbour was blocked by the latter. The Ministry replied to her that the requested passage was granted but she had to develop the place without encroaching on the neighbours' plots nor damaging the existing tree boundaries.

Rwendeye also wrote to MINITRAPE requesting for the same place where was the sewer for annexing it to her plot and it was granted to her. MINITRAPE later noted that it was mistakenly granted and wrote to her nullifying the decision granting the place, it explained that the granting decision was mistakenly taken. By the same letter, it indicated that the boundaries of her plot should be corrected and her plot shall maintain the boundaries mentioned in the statement of the boundary measurement but it was not done until she sold the plot to Habimana and his wife, after selling it, they blocked the passage and it was not possible to Uwamahoro to enter or exit from her home as usual, even her car was locked in her home because she had no passage.

Uwamahoro resorted to different state organs for the passage reopening, and Gasabo District wrote to Habimana requesting him to apply for rectification of the ownership title n<sup>o</sup> 1120 (the former plot number was 5056) for demarcation of the passage, as it was not part of his property, and then the lawsuits were initiated.

Habimana lodged a claim before the Intermediate Court of Gasabo requesting the nullification of the decision of Gasabo District that ordered him to apply for rectification of the ownership title abovementioned. The Court ruled that there was no error that could lead to the nullification of the decision of Gasabo District. He then appealed to the High Court which ruled that the decision requesting him to apply for rectification of the ownership title was taken by incompetent officers, and invalidated it.

Uwamahoro also filed a claim before the Intermediate Court of Nyarugenge against Habimana requesting it to invalidate his property title n<sup>o</sup> 1120, which was n<sup>o</sup> 5056. The Court declared her claim inadmissible since it did not fall into the jurisdiction of the chamber hearing the civil matters, rather it was within the jurisdiction of the specialised chamber hearing the administrative matters. For that reason, she lodged another claim before the same Court against Habimana together with Rwanda Land Management and Use Authority, requesting for demarcation of the public passage

from Habimana's ownership title. The Court found that the objection raised by the respondent that the claimant has no capacity nor interest to this case is unfounded and on the merits of the case, it found that the claim was unfounded and there are final judgments previously rendered.

The claimant appealed to the High Court praying it to determine whether the previous judgments had really become final, whether those judgments ruled on the rectification of the registration certificate and whether the registration certificate Vol. RTXXXIV Folio 93 replaced by UPI 1/02/13/03/1120 should be rectified. The High Court declared her claim inadmissible since the decision concerning it has been taken by this Court on 16/01/2015. The Court found that there is no ground to rule on other issues because the principal claim was declared inadmissible.

The claimant petitioned to the President of the Court of Appeal requesting for the analysis of injustice in the judgment rendered by the High Court on 27/02/2020. The President of the Court of Appeal, after analysis of the petition, wrote to the President of the Supreme Court requesting that the above mentioned judgment should be reviewed for grounds of injustice. The President of the Supreme Court decided that the judgment should be reviewed for the grounds of injustice and the judgment was referred to the Court of Appeal for hearing.

The claimant explained the injustice within the judgment under review by stating that the High Court did not determine whether the judgments RC 0129/15/TGI/NYGE and RADA0025/14/HC/KIG had already been final, examine whether they ruled on the rectification of the registration certificate, and she requests to determine whether the certificate should be corrected for demarcation of the passage granted to her for its development, to order to the respondent to be liable for the car locked in her home when he blocked the passage and various damages

The respondent submits that the claimant has neither interest nor standing to claim for a public passage, the subject-matter of her claims have been adjudicated by the final judgments, and they cannot be held liable for the loss for which she claims the damages.

Regarding the fact that the application for review of the judgment RADA 00071/2019/HC/KIG due to injustice should be declared inadmissible since the claimant has neither standing nor interest to sue, the respondent avers that the claim of the applicant should be declared inadmissible because it was filed before the Intermediate Court of Nyarugenge and not examined, and she waited for its analysis in the course of this case on basis of a letter issued by MINITRAPE to her mother and which was never taken into consideration for execution, and the plot is still State-owned, the fact that the plot is still State-owned indicates that she has no standing nor interest to lodge a claim for it unless she provides the power of attorney to file a claim of behalf of State.

The claimant argues that the admissibility of the application for review due to injustice had already been examined by the President of the Court of Appeal and the President of the Supreme Court who declared it admissible, therefore this objection should be declared inadmissible for its analysis, in case the application for review due to injustice was examined, it is necessary to firstly analyze the claimant's standing and interest, therefore such issues cannot be re-examined by this Court. The claimant states that even if the property is registered to the respondent, this cannot preclude any interested party to lodge a claim for it, she has interest over the passage under litigation because it gives to access to her home and she had developed the place where there was a sewer.

Rwanda Natural Resources Authority argues that the Court can hear the case and examine whether the claimant had standing and interest to sue even before, since these issues had always been raised in the previous judgments. The claimant fails to prove her ownership on the disputed plot of land, because from the beginning of the case the subject-matter was to request the Court to order the demarcation of the passage from the land title indicating the land ownership and this was impossible before proving the right to the plot of land emanating from a judgment she won that confers to her what she claims or an agreement with the respondent who is the owner of the plot of land.

With regard to whether the High Court did not examine the appeal grounds of the claimant who states that the previous judgments were not final about the rectification of registration certificate while no case was heard about it, the claimant sustains that various judgments were rendered and it was mistakenly adduced that they had been final. She also states that following the judgment pronouncement, the professional bailiff executed the judgment, she filed a claim before the Court which ruled that the execution was legally conducted, but she realized that the executed judgments were not final on the rectification of the registration certificate.

She goes on by explaining that she realized that the previous judgments were not final because by the judgment RC 0129/15/TGI/NYGE, the Court declared that it lacks the jurisdiction, and never heard the case on the merits, while in the judgment RADA 0025/14/HC/KIG, it was determined whether Gasabo District had the competence to decide on the issues or whether the decision taken should be nullified, and nothing else of the grounds of appeal has been examined, the Court therefore nullified the District's decision and ruled that whoever is not satisfied with the validity of the registration certificate, should file a claim in accordance with the legal procedure.

The respondent advances that the High Court clearly explained that the issue related to the rectification of the land registration certificate was settled by the abovementioned judgments because it was examined by the courts which rendered those judgments and the claimant as well as the respondent were parties, the aggrieved party could have lodged appeal against them, and this is the reason why they sustain that the previous judgements have already become final.

Rwanda Land Management and Use Authority states that the previous judgements have become final, since their subject-matter was adjudicated and became final. It states that the judgment RADA 0025/2014/HC sustained the previous judgment, as the respondent maintained the land title and the cadastral certificate he had, the Court provided the position on the rectification of the certificate or the issue should be submitted before the court, this was not respected by the claimant since she never instituted any claim for the demarcation of the disputed passage from the respondent's plot of land.

With regard to whether the registration certificate n0 Vol. RTXXXIV Folio 93 replaced by UPI: 1/02/13/03/1120 has to be rectified for demarcating the passage, the claimant advances that her mother wrote to the Ministry of Public Works and Energy (MINITRAPE) requesting to be granted the unused sewer in front of her home for serving for easement, since she could no longer pass through the neighbour's plot of land as the latter has fenced it and the passage was granted to her and she was even requested to develop it at her convenience. She further explains that the owner who sold the plot of land to the respondent also requested for the same passage and it was granted to her. The Ministry later notified her in writing that the granted easement was withdrawn because it was mistakenly granted and she was requested to bring back her land title for readjusting the

plot of land to the previous boundaries but she failed to do so because she sold the plot of land before the boundary readjustment.

She explains that her statements match with the investigation findings which indicate that the disputed area was used as public passage instead of the respondent's plot where he built a pit latrine and a bungalow, the respondents' allegations that the sewer comprised two parts are not true.

The respondent submits that the claimant's allegations that she claims for an easement are not true because she already has it and the disputed area is registered on his land title and nobody else has the right over it. He further indicates that he blocked the passage because the claimant has access to the passage on the road located on the opposite side, and the decision of Gasabo District was nullified, and the report indicated that she has access to her home and she holds the documents issued by different organs from Kigali City to Remera Sector, for these reasons and on basis of the documents and final judgments, he notes that the title granted to him cannot be modified.

Rwanda Land Management and Use Authority states that during the investigation, the Court found that the allegations about the so-called public passage are not true, because a public passage has starting and closing coordinates. It requests the Court to consider that the claimant has access to the road on the opposite side and there is no planned road which gives access to her home through the respondent's plot of land. It adds that the letters of 1991 cannot serve as basis for granting to the claimant the passage under litigation because they are no longer valid because they have been nullified by other official decisions issued by the same organs which indicated that she cannot be granted such passage, the reason why each one should maintain the plot of land granted, since each party annexed a part of sewer to his/her plot of land.

With regard to whether the respondent should be fined for the loss incurred due to the period of locking the car of the claimant, the latter requested for 42,100,000 Frw arguing that her car has been locked since 2016 up to date.

The respondent states that the passage blockage was done by the court bailiff, and the claim related to the passage blockage was adjudicated against the court bailiff and she lost. She cannot file it again for hearing, he finds that he cannot be ordered to pay damages because the claimant was requested to take out her car by the time of the execution of the judgment rendered by the High Court and she refused. The respondent again submits that nothing proves that the concerned car was in good conditions, he was authorized to erect the constructions.

RLMUA submits that the Court shall examine the issues related to the claimed damages.

**Held:**1 Regarding the application for review of a judgment vitiated by injustice, the objection of inadmissibility of a claim is not only limited to the time limit to file a claim, in case such objection is of public order, it can be raised at any time by a party or a court at its own initiative. Therefore, Uwamahoro Mbabazi Liliane has standing and interest to sue since she derives the standing from the rights granted to her mother and she has an interest to sue because if she wins the case she will enjoy again the easement to her home without any difficult.

2. It is not enough to possess the land title for asserting that the property belongs to a given person on basis of the fact that the property is registered on him/her, rather, he or she has to prove the acquisition mode of the property. Therefore, nothing does not preclude that the land title granted to Habimana Anselme on basis of the final judgments while those judgments do not grant to him the rights on the disputed plot of land should be rectified about the disputed area for the purpose

of demarcation of the disputed public passage giving access to the home of Uwamahoro Mbabazi Liliane.

**The objection of inadmissibility is hereby void of merit  
The application for review for grounds of injustice is hereby admitted.  
The ruling of the High Court is entirely quashed.  
Court fees are borne by the Public Treasury.**

**Statutes for reference:**

Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 62 and 63.

Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, articles 3,12,14,81,83,111,129,161 and 176.

Law N° 15/2013 of 16/06/2013 governing land in Rwanda, articles 11,12,37 and 38.

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

Law of 20 July 1920 relating to immovable property, article 34.

Ministerial order n° 002/2008 of 01/04/2008 determining land registration modalities, article 23.

**Cases referred to:**

Busoro v. Busoro et al. RS/INJUST/RC00022/2018/SC, rendered by the Supreme Court on 21 June, 2019.

Harerimana v. Sebukayire, RCAA 0018/13/CS, rendered by the Supreme Court on 24/12/2014.

Rutabayihu v. Batamuliza RCAA0013/13/CS rendered by the Supreme Court on 03 June 2016

**Authors cited:**

Jean Vicent et Serge Guinchard, Procédure civile 24<sup>e</sup> éd. Dalloz, Paris, 1996, P.98.

Serge Guinchard, Droit et pratique de la procédure civile, 8<sup>e</sup> éd., Dalloz, Paris, 2014, P.5,8, 1209.

Melina Douchy- Oudot, Procédure civile, 2<sup>e</sup> éd., EJA, Paris, 2006, P.108.

## **Judgment**

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

[1] On 22/12/1990, Nyirambabazi Vénantie wrote to the Ministry of Public Works and Energy (MINITRAPE) requesting the passage where was the sewer no longer in use for accessing to her home, because she could no longer pass through the plot of her neighbour who had already fenced it. In the letter n° 11.04.04/1974 of 20/02/1991, the Ministry informed her that the requested passage was granted, but she had to develop the place without encroaching on the neighbours' plot nor damaging the existing tree boundaries. When Nyirambabazi Vénantie was authorized to develop the sewer, Rwendeye Nzabonimpa Donatille wrote to MINITRAPE requesting for the same place where was the sewer for annexing it to her plot and it was granted to her on 15/01/1992. MINITRAPE later noted that it was mistakenly granted and wrote on 15/09/1992 to Rwendeye Nzabonimpa Donatille nullifying the decision granting the place, it explained that the granting decision was mistakenly taken because the place should be for public use. By the same letter,

MINITRAPE precised that the boundaries of the plot of Rwendeye Nzabonimpa Donatille had to be rectified to maintain its initial sizes as per the statement of land measurement and demarcations number 3200 of 01/04/1981; but this was not done until Rwendeye Nzabonimpa Donatille sold her plot to Habimana Anselme with his wife Irere Jeanne Marie Claire who immediately fenced the plot and blocked the passage, thus Uwamahoro Mbabazi Liliane was deprived of the easement to her home, and her car was locked in it up to date.

[2] Uwamahoro Mbabazi Liliane then resorted to different state organs for the passage reopening to access to her home, and Gasabo District wrote on 19/09/2022 to Habimana requesting him to apply for rectification of the ownership title n° 1120 (the former plot number was 5056) for demarcation of the passage, as it was not part of his property, and then the lawsuits were initiated.

[3] Habimana Anselme seized the Intermediate Court of Gasabo requesting the nullification of the decision of Gasabo District contained in the District letter of 19/09/2012, requesting him to apply for rectification of the land title, by the judgment RAD 0057/13/TGI/NYGE decided on 28/03/2014 the Court found that there was no error that could lead to the nullification of the decision of Gasabo District. Habimana Anselme appealed to the High Court, and the Court ruled by the judgment RADA 0025/14/HC/KIG rendered on 16/01/2015 that the decision of Gasabo District requesting Habimana Anselme to apply for the rectification of his land title was taken by incompetent officers and invalidated it.

[4] Uwamahoro Mbabazi Liliane also sued Habimana Anselme before the Intermediate Court of Nyarugenge requesting for the invalidation of the land title number 1120, replacing the plot number 5056, this Court rendered the judgment RC 0129/15/TGI/NYGE on 23/04/2014 and declared her claim inadmissible since it did not fall under the jurisdiction of the chamber hearing the civil matters, rather it was within the jurisdiction of the specialised chamber hearing the administrative matters.

[5] Uwamahoro Mbabazi Liliane filed another claim before the Intermediate Court of Nyarugenge suing Habimana Anselme together with Rwanda Land Management and Use Authority, requesting for demarcation of the passage from Habimana's land ownership title Vol. RTXXXIV Folio 93 of 18/04/2012 replaced by that of 18/04/2016, because from 15/09/1992, the passage was planned by the Government (MINITRAPE) as public.

[6] [6] The Intermediate Court of Nyarugenge rendered the judgment RC 00131/2017/TGI/NYGE on 18/04/2019 and found that the allegations of the respondent that the claimant lacks standing and interest to sue are not grounded, and on the merits of the case, it found that the claim filed by Uwamahoro Mbabazi Liliane was unfounded and it could not order to Rwanda Land Management and Use Authority to demarcate the passage on the plot of Habimana Anselme while there are final judgments RC0129/15/TGI/NYGE and RADA 0025/14/HC/KIG.

[7] Uwamahoro Mbabazi Liliane appealed against that decision before the Hight Court and prayed it to examine whether the judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG had really became final, whether they ruled on the rectification of a registration certificate and whether the registration certificate that had number Vol. RTXXXIV Folio 93 of 18/06/2012 replaced by UPI 1/02/13/03/1120 of 18/04/2016 should be rectified.

[8] By the judgment RADA 00159/2019/HC/KIG decided by the High Court on 27/02/2020 in which the parties were Uwamahoro Mbabazi Liliane, Habimana Anselme and Rwanda Land Management and Use Authority, the High Court declared inadmissible the claim filed by Uwamahoro Mbabazi Liliane because the decision was already taken about her claim in the judgment RADA 0025/14/HC/KIG rendered by the High Court on 16/01/2015, it found also that there is no ground to rule on other issues because the principal claim was declared inadmissible.

[9] Uwamahoro Mbabazi Liliane petitioned the President of the Court of Appeal requesting to examine the injustice in the judgment RADA 00071/2019/HC/KIG decided by the High Court on 27/02/2020, after analysis of her petition, the President of the Court of Appeal wrote to the President of the Supreme Court requesting the review of the judgment RADA 00071/2019/HC/KIG for grounds of injustice. By the decision n0 031/CJ/2020 of 28/09/2020, the President of the Supreme Court decided that the judgment should be reviewed for grounds of injustice and it was transferred to the Court of Appeal and was recorded as RS/INJUST/RAD 00002/2020/CA.

[10] Uwamahoro Mbabazi Liliane explained the injustice within the judgment under review by stating that the High Court did not determine whether the judgments RC 0129/15/TGI/NYGE and RADA0025/14/HC/KIG had already been final, she requests to examine whether they ruled on the rectification of the registration certificate, and whether the certificate should be corrected for demarcation of the passage granted to her mother Nyirambabazi Vénantie who developed it, to order to the respondent to be liable for the car locked in her home when he closed the passage and she requested for the procedural fees and lawyer's fees. The respondent submits that Uwamahoro Mbabazi Liliane has neither standing nor interest to sue for public passage in the instant case, because her claims have been decided in the judgments which have already become final and they are not liable for the loss for which she claims damages.

[11] The judgment was called for hearing in public on 01/12/2020, the parties appeared, Uwamahoro Mbabazi Liliane was assisted by Counsel Kayijuka Ngabo together with Counsel Bagabo Faustin, Rwanda Land Management and Use Authority appeared represented by Counsel Eulade Mbonigaba whereas Habimana Anselme was assisted by Counsel Munderere Léopold. On that day, the case was not heard because there was a document uploaded by the claimant's representatives with delays and the representatives of the respondent did not upload their defence submissions, and the hearing was adjourned on 13/01/2021. On the fixed date, the hearing was resumed, the Court found that some parties were assisted, others represented just as before. The Court first heard the objection raised by Habimana Anselme arguing that Uwamahoro Mbabazi Liliane did not have standing nor interest to sue for a public passage. The Court also examined whether the judgments RC 0129/15/TGI/NYGE and RADA0025/14/HC/KIG had already become final, and whether these judgments ruled about the disputed registration certificate. The Court also examined the issue related to the rectification of the registration certificate Vol. RTXXXIV Folio 93 of 18/06/2012 replaced by UPI: 1/02/13/03/1120 of 18/04/2016 for demarcation of the passage. The hearing was not closed because the Court deemed necessary to conduct the site visit on the location of the subject-matter, the site visit was fixed on 03/02/2021 and the hearing was then adjourned on 24/02/2021.

[12] The hearing was resumed on 24/02/2021, Uwamahoro Mbabazi Liliane was assisted by Counsel Kayijuka Ngabo, whereas the respondent still maintained the same counsel as before, the

parties were given the floor to comment on the findings of the site visit, and the Court examined the issues not previously settled, the hearing was closed, the parties were notified that the pronouncement was scheduled on 26/03/2021 and it was adjourned on 31/03/2021.

## II. ANALYSIS OF LEGAL ISSUES

### 1. Whether the application for review due to injustice of the judgment RADA 00071/2019/HC/KIG filed by Uwamahoro Mbabazi Liliane should be declared inadmissible as she lacks standing and interest to sue.

[13] Habimana Anselme together with Counsel Munderere Léopold, referring to articles 3 and 81 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, request the Court to declare inadmissible the claim filed by Uwamahoro Mbabazi Liliane because she lodged the same claim before the Intermediate Court of Nyarugenge which did not examine it, and she waited for its analysis in the course of this case on basis of a letter issued by MINITRAPE to her mother and which was never taken into consideration for execution, and the plot is still State-owned, the fact that the plot is still State-owned indicates that she has no standing nor interest to lodge a claim for it unless she provides the power of attorney to file a claim on behalf of State.

[14] Counsel Munderere Léopold supports that the objection raised by Habimana Anselme for requesting the Court to declare inadmissible the application for the judgment review on the grounds of injustice is based on the fact that during the pre-trial conference they requested the claimant to justify the injustice and she did not do so. He further adds that article 63 of the Law n0 30/ 2018 of 02/06/2018 determining the jurisdiction of courts which does not preclude the Court to reexamine the claim on the merits and the objections raised, he relies on that provision to request the Court to reexamine the raised objections.

[15] Counsel Bagabo Faustin and Counsel Kayijuka Ngabo assisting Uwamahoro Mbabazi Liliane state that the admissibility of the claim related to the injustice was examined by the President of the Court of Appeal and the President of the Supreme Court, such objection should not be admitted and examined, because for analysing the claim related to injustice, it is necessary to firstly examine the standing and interest of the claimant, such objection should not be reexamined by this Court. They state that by the judgment RS/INJUST/RC 00022/2018/SC rendered on 21 June 2019 whereby the parties were Busoro v. Busoro et al., the Supreme Court ruled that the objection which can preclude the hearing on the merits of the claim related to injustice is not admissible for analysis because it had been examined by the concerned organs, except when it is obvious that the claimant went beyond the time limit for lodging the claim.

[16] With regard to the issue of interest that Uwamahoro Mbabazi Liliane has in this case, they sustain that the fact that the property is registered on Habimana Anselme does not preclude any other interested party to sue for it since she has the interest to disputed passage because it gives access to the client's home, in addition, she developed it as it was a sewer.

[17] They also state that the plot of land is State-owned, Uwamahoro Mbabazi Liliane claims for the passage granted to her mother Nyirambabazi Vénantie, it gives access to her home, she has been deprived of the easement, therefore, she has interest to claim it.

[18] Counsel Mbonigaba Eulade representing RLMUA submits that the Court should hear this case and examine whether Uwamahoro Mbabazi Liliane had standing and interest to sue even before, because all these issues were heard in the previous judgements. With regard to the above mentioned judgment RS/INJUST/RC 00022/218/SC rendered by the Supreme Court, Counsel Mbonigaba maintains that this case has nothing to do with the current subject-matter, because the Court pointed out the objection that bars the hearing and which is raised before the Court adjudicating the case on the grounds of injustice, the instant case intends to determine whether the claim of Uwamahoro Mbabazi Liliane was admissible even before and this issue has been heard in the judgments RC0129/15/TGI/NYGE and RADA 0025/14/HC/KIG which have already become final.

[19] Counsel Mbonigaba Eulade further submits that the Court is entitled to declare that Uwamahoro Mbabazi Liliane has no interest into this case, given that she can not prove the right she has on the disputed land, because from the beginning the subject-matter was to order to Rwanda Natural Resources Authority to demarcate the passage from the land title and this could not be possible before she proved the rights she has on the land emanating from the judgment she won and that granted to her the subject-matter of her claim, or mutual agreement with Habimana Anselme, the land owner.

[20] He also submits that the inadmissibility of the claim is based on the fact that Uwamahoro Mbabazi Liliane relies on the letter written by MINITRAPE to Rwendeye Nzabonimpa Donatille notifying her that the disputed plot should remain a public land, basing on article 11 of the law governing land, her claim is inconsistent with article 37 of the same law that provides for servitude. Basing on article 12, paragraph 6 of the law governing land in Rwanda, he finds that Uwamahoro Mbabazi Liliane is claiming the land which does not belong to her, the reason why he states that she lacks interest in this case.

## **DETERMINATION OF THE COURT**

[21] Article 63 of the Law n0 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that when the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgement on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties.

[22] Article 3 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that “a claim is admissible in court only if the claimant has standing, interest and capacity to sue”, whereas article 83, paragraph 4 of the same law provides that “a plea of inadmissibility of a claim is any plea seeking to have the other party’s claim declared inadmissible without being heard on the merits considering such other party as having no right to act such as lack of standing, capacity and interest to sue”.

[23] Article 129, paragraph one of the above mentioned Law n0 22/2018 of 29/04/2018 provides that “the reasons for inadmissibility of a case are indicated in writing in the defence submissions. If the objection is of a public order nature such as going beyond time limits for appeal, lack of standing, capacity or interest to act, the objection may be raised by a party or the court on its initiative at any time”.

[24] With regard to the interest to sue, legal scholars Jean Vincent and Serge Guinchard, in their book *Procédure civile* state that the interests to sue must be immediate, already real, and based on the existing object, not on the probability. This is similar with the statements of Serge Guinchard in the book *Droit et pratique de la procédure civile* where he writes that the interests must be personal, real and current, the fact that the interests are personal indicates that the claim is filed by the involved party, because nobody is mandated to sue for another person's interests. With regard to the standing to sue, another legal scholar, Melina Douchy-Oudot, in her book *Procédure civile* clarifies that the standing is entitled to the person with interest to sue, given that the standing to sue is often associated with the interest to sue .

[25] The case file indicates that Uwamahoro Mbabazi Liliane filed a claim in the Intermediate Court of Nyarugenge praying it to order to the former Rwanda Natural Resources Authority to demarcate a public passage from the land title Vol. RTXXXIV Folio 93 of 18/06/2012, later replaced by the one of 18/04/2016, the claim was registered as RC 00131/2017/TGI/NYGE. In the instant case, the Intermediate Court of Nyarugenge declared unfounded the objections for inadmissibility raised by the respondents, it declared unfounded the claim filed by Uwamahoro Mbabazi Liliane because it should not order to the Authority to demarcate a public passage decided by the High Court in the judgment RADA 0025/14/HC/KIG of 16/01/2015 which became final. The judgment was then appealed before the High Court and the appeal was registered as RADA 00071/2019/HC/KIG (But in the copy of the judgement, the case was mistakenly recorded as RADA 00159/2019/HC/KIG), it was examined whether Uwamahoro Mbabazi Liliane had standing and interest to sue in this case, and the Court held that all her claims had been heard in the final judgments, and thus declared her claim inadmissible.

[26] With regard to whether Uwamahoro Mbabazi Liliane had standing and interest to sue, the Supreme Court, in the judgment RS/INJUST/RC00022/2018/SC, analysed article 62 of the Law n0 30/2018 of 02/06/2018 determining the jurisdiction of courts, and finds that it denotes that before ordering the review of a judgment vitiated by injustice, the President of the Supreme Court firstly considers the reports submitted by competent organs; when he finds that there is no objection to the hearing on the merits, he orders that the case should be re-adjudicated; the reason why article 63 of the same law provides that any court requested to review a case vitiated by injustice has to hear it on the merits. The Court further indicates that by so providing, the legislator beared in mind that all issues related to objections are already settled, unless a litigant proves a special objection such as error on time limit to file a claim .

[27] The Court finds that by the ruling of the above judgement of the Supreme Court which decided that no objection should be raised in the review of the cases vitiated by injustice, unless a litigant proves a special objection such as error on time limit to file a claim, the Court did not indicate the types of objections to be raised, the reason why the Court does not limit itself to the time limit to file a claim, especially that the law provides that when the objection of inadmissibility is of public order, it may be raised by a party or by the Court at its own initiative at any time , therefore it declared unfounded the allegations of the claimant's representatives who state that in the review of the judgments vitiated by injustice, no other objections are raised.

[28] The Court finds that the passage under litigation as indicated in the claim of Uwamahoro Mbabazi Liliane was granted to her late mother Nyirambabazi Vénantie by MINITRAPE, as above detailed, she developed it so that herself and her visitors had easy access to her home by foot or

car, therefore, Uwamahoro Mbabazi Liliane has capacity to sue because she inherits the rights held by her mother on the passage. The fact that it is now impossible to easily have access to her home and her own car is locked in her home because Habimana Anselme blocked the passage indicates the interest of Uwimana Mbabazi Liliane to sue for such passage because she has been affected by the fact that Habimana Anselme blocked it.

[29] The Court finds that the allegations of the respondents that the passage is public and does not belong to Uwamahoro Mbabazi Liliane so that she has standing and interest to sue for it without proving the rights granted by the Government, are unfounded, because the fact that it is public does not deprive her of the rights to it as easement to her home and she developed it after being granted the requested authorisation, she spent money for having easy access to her home, but she is currently deprived of such rights.

[30] Basing on the aforementioned explanations, the Court finds that Uwamahoro Mbabazi Liliane has standing and interest to sue, she derives the standing from the rights granted to her mother, and she has interest in case, her claim is declared grounded, she shall have easy access to her home, therefore, the objection for inadmissibility raised by Habimana Anselme is not founded.

**2. Whether the High Court did not examine the grounds of appeal filed by Uwamahoro Mbabazi Liliane that the judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG had not become final as regards the rectification of the registration title and did not adjudicate that issue.**

[31] Counsel Bagabo Faustin assisting Uwamahoro Mbabazi Liliane submits that there had been various judgments and it was mistakenly asserted that they became final. He states that the first case originated from the claim filed by Habimana Anselme requesting the invalidation of the decision of Gasabo District, the judgment RAD 0057/13/TGI/NYGE was rendered, the Intermediate Court of Nyarugenge maintained the decision of Gasabo District, by the ruling of the judgment RADA 0025/14/HC, the High Court declared invalid the decision of Gasabo District basing on the fact that the District is not the Court, the rectification should be done by the competent organs.

[32] He also submits that, following the judgment ruling, the professional bailiff named Kamanzi executed the judgment, his client filed a claim against such execution, the Court held that the execution was legally performed, but Uwamahoro Mbabazi Liliane estimated that the executed judgments were not final as regards the rectification of the registration certificate, she requested Rwanda Land Management and Use Authority to demarcate from the title of Habimana Anselme the passage granted to her mother and it refused to do so, she filed a claim before the Intermediate Court of Nyarugenge which was recorded on RC 0129/15/TGI/ NYGE, the Court ruled that the chamber hearing the civil matters did not have jurisdiction to hear the claim she filed, then after she lodged the claim before the chamber hearing the administrative matters and the case was recorded on RC 00131/2017/TGI/NYGE (mistakenly recorded as civil case) and by that judgment, the Court ruled that both judgments RC 0129/15/TGI/NYGE and RADA 0025/2014/HC were final. Uwamahoro Mbabazi Liliane appealed to the High Court and the case was recorded on RADA 00159/2019/HC/KIG, the judge did not decide on the subject-matter which was to determine whether the above mentioned judgments were final as regards the rectification of the registration title, rather the ruling was made on the claim admissibility.

[33] He further explains that the judgments RC 0129/15/TGI/ NYGE and RADA 0025/14/HC/KIG were not final as regards the rectification of the registration certificate; by the judgment RC 0129/15/TGI/NYGE, the Court ruled that it did not have jurisdiction, and any other decision was taken on the merits of the case, while in the judgment RADA 0025/14/HC/KIG, the High Court only examined whether Gasabo District had competence to decide on the issue and whether the decision of the District should be nullified, and any other decision was taken about the appeal grounds, the Court held that the decision of Gasabo District should be nullified, the party which challenges the registration title could lodge a claim before the court according to legal procedure; the judgment was final as regards the decision of Gasabo District, but it was not final as regards the rectification of the registration title as requested by MINITRAPE.

[34] Counsel Bagabo Faustin further states that in 2016 RLMUA wrote to Habimana Anselme requesting him to return back his land title for rectification by demarcating the public passage because it should not be registered to anyone as evidenced by the letter sent by MINITRAPE in 1992 to Rwendeye Mbonimpa Donatille, but later Counsel Munderere Léopold indicated to RLMUA that there are final judgements, Habimana Anselme should be granted the rights to annex the disputed passage to the plot registered on his title, RLMUA referred to such judgements and wrote to Uwamahoro Mbabazi Liliane that her request to rectify the land title of 18/04/2016 with number 1120 which was number 5056 located in Remera –Rukiri I registered to Habimana Anselme and his wife Irere Marie Claire and to demarcate the public passage is not possible, therefore the Government should be held liable for not having enforced its commitment, because from the time when MINITRAPE wrote to Rwendeye Nzabonimpa Donatille to bring back her land title to be corrected, she never did it and that is the same title that Habimana Anselme used in the application for refurbishment and blocked the passage for his client.

[35] Counsel Kayijuka Ngabo assisting Uwamahoro Mbabazi Liliane adds that the judgment RC 0129/15/TGI/NYGE was final on the issue pertained to the fact that her claim was not under the jurisdiction of the Intermediate Court of Nyarugenge, the Chamber hearing the civil matters, and the judgment RADA 0025/14/HC/KIG was final on the issue pertained to the decision of Gasabo District, therefore those judgments were not final on the request of Uwamahoro Mbabazi Liliane to correct the registration title.

[36] Habimana Anselme and his legal Counsel Munderere Léopold sustain that in the paragraph 15 of the judgment for review on the grounds of injustice, the High Court clearly explained that the issue related to the registration certificate was settled by the judgments RC 0129/TGI/NYGE and RADA 0025/14/HC/KIG as it was examined by the courts which adjudicated the cases and the respondent as well as Uwamahoro Mbabazi Liliane were parties, the aggrieved party should have lodged appeal, therefore, they rely on that fact to assert that the judgments were final.

[37] Counsel Mbonigaba Eulade representing RLMUA sustains that the judgments RC 0129/15/TGI/ and RADA 0025/14/HC/KIG were final since the subject-matter was adjudicated and became final because by the time the Court analysed the judgment RADA 0025/14/HC/KIG, it ruled that it has the jurisdiction to order the rectification of the registration certificate, but it did not order to Uwamahoro Mbabazi Liliane to seize a court nor to change the procedures of filing her claim, since the only procedure she had was the extraordinary appeal provided under articles 161 to 176 of the law relating to civil, commercial, labour and administrative procedure. He further states that she intended to implement the subject-matter of her claim she filed against

RLMUA, as evidenced by the letters written before the judgment RADA 0025/14/HC/KIG, and the letter of 05/07/2015 written by the Authority without being aware that the judgments were final, and then after it provided the orientation on the issue.

[38] He adds that on basis of its reading, the judgment RADA 0025/2014/HC sustained the issues as they were previously, Habimana Anselme had and kept the land title and the cadastral certificate, it provided the orientation on the procedure for rectification of the title by Rwanda Land Management and Use Authority or submitting the issue before the court, and it was not taken into account by Uwamahoro Mbabazi Liliane because she never sued Habimana Anselme for demarcation of the area from his plot of land.

## **DETERMINATION OF THE COURT**

[39] Article 3 of the Law n0 15/2004 of 12/06/2004 of the law of evidence and its production states that every litigant should prove the veracity of his/her allegations while article 14 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that “a case that has been definitively decided cannot again be litigated for the same facts, between the same parties acting with respect to the same cause”.

[40] A legal Scholar Serge Guincharde states that a judgment becomes final if the court had adjudicated the claim on the merits and took a final decision...The judgment remains valid as long as there is no other decision that quashes it by the appeal procedure.

[41] The case file indicates that Habimana Anselme sued Gasabo District together with Uwamahoro Mbabazi Liliane before the Intermediate Court of Nyarugenge praying it to nullify the District’s decision that prejudiced him. But in the judgment RAD 0057/13/TGI/NYGE, the Court ruled in favour of the District’s decision that ordered him to give back his land title for demarcation of the public passage. Habimana Anselme was not satisfied with the court’s ruling and appealed against it before the High Court, and in the judgment RADA 0025/14/HC/KIG of 16/01/2015, the High Court ruled that Gasabo District did not have power to decide over this issue, and the Court, therefore, invalidated the District’s decision. With regard to the claim of Uwamahoro Mbabazi Liliane for correction of the registration certificate, the Court ruled that the subject-matter to be examined does not concern the rectification of Habimana’s land registration certificate for analysing the elements of evidence he provides as the subject-matter to be examined is to determine whether Gasabo District was competent to take the decision it took.

[42] The case file indicates that Uwamahoro Mbabazi Liliane sued Habimana Anselme before the Intermediate Court of Nyarugenge praying it to invalidate his land title, the claim was recorded as RC 0129/15/TGI/NYGE but the Court did not examine it, because it found that the claim was lodged before the civil chamber which does not have the jurisdiction to hear it, rather it is within the jurisdiction of the chamber hearing the administrative matters.

[43] Following the abovementioned judgment, Uwamahoro Mbabazi Liliane filed another claim before the administrative chamber of the Intermediate Court of Nyarugenge suing RLMUA together with Habimana Anselme praying the Court to order to RLMUA (the former Rwanda Natural Resources Authority) to demarcate the public passage on the land title Vol. RTXXXIV Folio 93 of 18/06/2012 replaced by that of 18/04/2016, the claim was recorded as RC

00131/2017/TGI/NYGE (though it was an administrative case) it was examined whether there had been the final judgement between both parties so that the claim of Uwamahoro Mbabazi Liliane can be declared inadmissible, whether the claim of Uwamahoro Mbabazi Liliane can be declared inadmissible because she lacks standing and interest to sue, whether the claim of Uwamahoro Mbabazi Liliane can be declared inadmissible because she filed it before the civil chamber instead of the administrative chamber, whether the Court can order to Rwanda Land Management and Use Authority to demarcate the passage officially provided by the land title Vol. RTXXXIV Folio 93 of 18/06/2012 and whether the damages claimed by Uwamahoro Mbabazi Liliane can be awarded to her and repaid the procedural fees.

[44] Having examined the abovementioned issues, and by its decision of 18/04/2019, the Court found that the judgments RC 00129/15/TGI/NYGE and RADA 0025/14/HC/KIG were not final for RLMUA, Uwamahoro Mbabazi Liliane had standing and interest to sue (paragraph 11), even if RLMUA was not party to the aforementioned cases, the claimant did not indicate any ground for suing it, except requesting to be ordered to demarcate the passage from the challenged title, it ruled that (paragraph 23) the subject-matter of the claim filed by Uwamahoro Mbabazi Liliane against Habimana Anselme had been heard in the judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG, and these judgments have been final between her and Habimana Anselme.

[45] Uwamahoro Mbabazi Liliane appealed before the High Court, praying it to examine whether the judgments RC0129/15/TGI/NYGE and RADA 0025/14/HC/KIG had really become final and whether they ruled about the correction of the registration certificate challenged in this case; to determine whether the registration certificate with n0 Vol. RTXXXIV Folio 93 of 18/06/2016 replaced by UPI: 1/02/13/03/1120 of 18/04/2016 can be corrected by demarcating the passage under litigation, to determine whether Habimana Anselme can be held liable for the loss incurred by Uwamahoro Mbabazi Liliane for her car locked in her house due to the fact that the passage was blocked. The representative of RLMUA filed the cross appeal claiming the payment of the proceeding expenses and Habimana Anselme raised again the objection related to the fact that Uwamahoro Mbabazi Liliane has no standing nor interest to sue.

[46] Concerning the cross appeal, the High Court rendered the judgment RADA 00071/2019/HC/KIG under review on the grounds of injustice (though the copy of the judgement was numbered RADA 00159/2019/HC/KIG), and held that the appeal filed by Uwamahoro Mbabazi Liliane was inadmissible for her claim for which the decision was taken in the judgment RADA 0025/14/HC/KIG rendered by the High Court on 16/01/2015.

[47] The Court of Appeal finds that by the judgment RADA 00071/2019/HC/KIG the High Court did not examine on the merits the appeal lodged by Uwamahoro Mbabazi Liliane related to determine whether the judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG had become final on the correction of the challenged registration certificate and whether the same Court adjudicated on that issue in the judgment RADA 0025/14/HC/KIG, rather it examined the issue related to determine whether Uwamahoro Mbabazi Liliane had standing and interest to sue; instead of ruling on the issue, it decided in the paragraph [17] that her claim was inadmissible because it has been held in the judgment RADA 0025/14/HC/KIG which has been final, while it is obvious that it had not yet examine the issue related to the judgment that became final as it was analysed in the paragraphs [18]-[24].

[48] The Court finds that by the analysis of paragraphs [18]-[24], the High Court limited itself to decide that the judgment RADA 0025/14/HC/KIG rendered by the High Court and the judgment RC 0129/15/TGI/NYGE rendered by the Intermediate Court of Nyarugenge had become final, but it did not clarify if they had been final as regards the rectification of the registration certificate and whether those judgments ruled about that registration certificate.

[49] The Court finds that the fact that the High Court did not determine whether Uwamahoro Mbabazi Liliane had standing and interest to file this claim, whether the judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG had become final about the rectification of the registration certificate, and whether they ruled about it, as she requested by her appeal, indicates the injustice incurred by Uwamahoro Mbabazi Liliane through the judgment for which she applied for review on the grounds of injustice.

[50] With regard to whether those judgements had been final about the correction of the registration certificate, the Court of Appeal finds that in the judgment RC 0129/15/TGI/NYGE, the Intermediate Court of Nyarugenge, the Chamber hearing the civil matters declared its incompetence to hear the claim of Uwamahoro Mbabazi Liliane that sought the rectification of the registration certificate for demarcation of the challenged passage, and thus it is obvious that it did not decide on it. The subject-matter in the judgment RADA 0025/14/HC/KIG was the request for invalidation of Gasabo District's decision that allegedly affected Habimana Anselme, the Court decided that the decision of the District was nullified because it was taken by incompetent officer, the claim filed by Uwamahoro Mbabazi Liliane requesting the correction of the registration certificate should not be analysed, because it did not constitute the subject-matter as the subject-matter was to determine whether Gasabo District was competent to take the decision as it did.

[51] The Court of Appeal finds that the fact that by the judgement RC 0129/15/TGI/NYAGE the claim was not admitted on the ground that the Court lacked jurisdiction, while the judgment RADA 0025/14/HC/KIG only ruled about the nullification of Gasabo District's decision, indicates that the judgments did not rule about the rectification of the registration certificate, and they became final on the analysed issues, and as the legal scholar, Serge Guinchard explained it in his aforementioned book, (page 15, paragraph 14), for a judgement to be final, the Court must have tried the filed claim on the merits and take a final decision.

[52] The Court therefore finds that the statements of Habimana Anselme and RLMUA that those judgments had become final and ruled about the registration certificate are unfounded.

[53] The Court finds that Habimana Anselme could not rely on those judgements to request to the professional bailiff to execute them by granting to him the challenged passage and RLMUA could not rely on them for granting to him the rights over the passage, because those judgments did not take any decision granting to him the rights over the area.

### **3. Whether the registration certificate number Vol. RTXXXIV Folio 93 of 18/06/2012 replaced by UPI: 1/02/13/03/1120 of 18/04/2016 can be corrected for demarcation of the passage**

[54] Uwamahoro Mbabazi Liliane submits that her mother Nyirambabazi Vénantie wrote to MINITRAPE on 22/12/1990, requesting to develop the former sewer in front of her home for easy

access to her home because her neighbor had blocked the passage serving for easement; on 20/02/1991, MINITRAPE replied to her granting her the requested passage and ordering to her to develop it at her convenience.

[55] She adds that, in the meantime, and on unknown date, Mrs Rwendeye Nzabonimpa Danatille wrote to MINITRAPE requesting for the same passage, and it was granted to her, but on 15/01/1992, MINITRAPE noticed that it was mistakenly granted, and on 15/09/1992 it wrote to Rwendeye Nzabonimpa Donatille notifying her of the invalidation of the decision granting the area, by the time of the reception of the letter, she should no longer use such area, because it is public, not only she was deprived of the right over the area, but also she was requested by MINITRAPE to bring back the title awarded to her for being corrected, because the Ministry requested to the competent organs to harmonize the title with former boundaries of her plot of land. She states that on basis of the inspection carried out by the civil engineer and other officers of Gasabo District, it was found out that Habimana Anselme built on the public passage and he must be held liable for that fact, she requests the Court to hold that the public passage be maintained and demarcated from the land title UPI : 1/02/13/1120 granted to Habimana Anselme, because he built on the area by disregarding the letters requesting him to bring back the title for being corrected and he refused to do so.

[56] Counsel Bagabo Faustin representing Uwamahoro Mbabazi Liliane sustains that the demarcation of the passage should be based on three elements:

- a) Since Mrs Nyirambabazi Vénantie requested for the passage and it was granted to her, and since MINITRAPE wrote to Rwendeye Nzabonimpa Donatille requesting her to bring back her land title for rectification, because the place granted to her was public, there has never been any other decision that granted to Habimana Anselme the public passage, apart from the land title and the registration certificate that were mistakenly granted by MINITRAPE and the judgments that were allegedly final while it was not the case.
- b) Since 1992, the passage was a public road giving access to the home of Nyirambabazi Vénantie, and all persons who lived there knew that it was a public passage, and when Habimana Anselme was constructing the fence with Ruliba bricks, he left the passage which was used until 2016 when he blocked it, basing on the judgments allegedly final, therefore she notes that Habimana Anselme should demolish the fence which blocks the passage to Uwamahoro Mbabazi Liliane for replacing it at where it was, as RLMUA notified him that the area should remain passable.
- c) The report drafted by the engineer of Remera Sector indicates the modalities in which the plot was granted and concludes by stating that the passage was public and should be demarcated from Habimana Anselme's registration certificate.

[57] Counsel Bagabo Faustin avers that the allegations of the respondents that the land title granted to Habimana Anselme was delivered to Rwendeye Nzabonimpa Donatille before Nyirambabazi Vénantie requested for the area are not true because on 22/12/1990 she requested for the place where was the sewer and it was granted to her on 20/02/1991 while Rwendeye Nzabonimpa Donatille got it on 15/01/1992, she was given a land title on 01/02/1992 and her right on it was withdrawn on 15/07/1992. He adds that Uwamahoro Mbabazi Liliane is not claiming for the passage, rather she is suing for the passage officially granted and later was annexed to the plot

of Rwendeye Nzabonimpa Donatille while it was developed by her mother on her own expenses for easement to her home.

[58] Counsel Bagabo Faustin sustains that, on basis of the letters he produced, Rwendeye Nzabonimpa Donatille was requested to bring back the title for rectification but she did not do so, and when Habimana Anselme was requested to do so he refused to comply with, those irregularities should be corrected, because Uwamahoro Mbabazi Liliane requested RLMUA to demarcate the passage from Habimana Anselme's title and it replied to her by contradictory statements, advancing that it cannot demarcate the passage while there are pending cases, even if the Authority was aware that the judgments were not final as regards the registration certificate.

[59] Counsel Kayijuka Ngabo who also assists Uwamahoro Mbabazi Liliane submits that Nyirambabazi Vénantie was granted by official competent organ the right to develop a public passage, it can be understandable if the official organs regain it for public interest, but Uwamahoro Mbabazi Liliane cannot be deprived of it for being granted to another person who does not justify the public interest. He sustains that the passage should be reinstated because the statements of Habimana Anselme that Uwamahoro Mbabazi Liliane has the passage in front of her house are not true, because there is a talus so that one of her cars was locked in the home and the other one is packed in the neighbor's home.

[60] Counsel Kayijuka Ngabo states that the respondents' allegations that the land title cannot be challenged are inconsistent because Habimana Anselme was granted the building permit in 2016 on the basis of the judgments which were allegedly final, disregarding the letters delivered to him requesting him to apply for its rectification and the letter authorising Nyirambabazi Vénantie to develop the passage.

[61] Counsel Kayijuka Ngabo adds that the explanations provided by Uwamahoro Mbabazi Liliane are consistent with the inspection findings which indicate that the disputed area was a public passage instead of Habimana Anselme's plot where he constructed a pit latrine and a bungalow, the statements of the respondents that the sewer had two parts are not true, because the mother of Uwamahoro Mbabazi Liliane did not take the title nor the part of the sewer to annex it to the land registered on her title, instead, she requested, granted and developed the area usable by any one and the Court noted that on the fence there is number 55 of Habimana Anselme and number 53 of Uwamahoro Mbabazi Liliane which is invisible because it has been blocked, it is only visible from the side where there is a pit latrine of Habimana Anselme constructed in the front of Uwamahoro Mbabazi Liliane's gate, this indicates that it was later constructed, because before the number was visible as it is written on her gate blocked by Habimana Anselme.

[62] Habimana Anselme supports that the allegations of Uwamahoro Mbabazi Liliane that she needs a passage are not true because she has it already, the disputed passage is indicated on the land title, the reason why nobody should claim for it as per the provisions of article 23 of the Ministerial Order n0 002/2008 of 01/04/2008 determining modalities of land registration which provides that the ownership title cannot be challenged, the reason why on 01/08/2016 he was authorized to construct the fence.

[63] He further sustains that he blocked the fence giving access to Uwamahoro Mbabazi Liliane's home because she had access to the road on opposite side, given that the decision of

Gasabo District was invalidated, and the report findings indicated that she has another passage, and she holds documents of different organs from City of Kigali to Remera Sector, on basis of those documents and the final judgments, the registration certificate issued to him cannot be challenged.

[64] Counsel Munderere Léopold submits that Uwamahoro Mbabazi Liliane insists on the letter of 1991, but she disregards that the article 34 of the Law of 20 July 1920 relating to immovable property provides that the property title cannot be challenged, thus, MINITRAPE retracted from the decision provided in the letter written to Rwendeye Nzabonimpa Donatille, because she held documents including the property title issued in 1992 and other decisions conveyed by the letters later issued. He sustains that Uwamahoro Mbabazi Liliane has another passage on the opposite side, the other passage she claims should be through Habimana Anselme's plot which he does not rent, but for which he holds the registration certificate.

[65] Regarding the laws granting the rights to Habimana Anselme, he refers to article 38 of the Law n0 43/2013 of 16/06/2016 governing land in Rwanda which reads that the landowner shall not refuse passage, in case Uwamahoro Mbabazi Liliane needs the passage giving access to her home, she had to negotiate with Habimana Anselme, but she refused to do so. With regard to Remera Sector report included in the case file, he states that the City of Kigali report of 26/02/2016 indicates that Uwamahoro Mbabazi Liliane is escalating provocation because she has the passage, and the Master Plan indicates that there is no road planned on the disputed area. Regarding the statements of the claimant who submits that she has no easement to her home, he avers that Habimana Anselme indicates the way in which he settled the issue for having access to her home, there is a talus in front of her home and he wonders why Uwamahoro Mbabazi Liliane cannot develop the area on the opposite side for enabling her car to enter into the home.

[66] He states that the fact that Habimana Anselme demolished the fence (which did not block the disputed passage) does not constitute a problem, because it is his right guaranteed by law, he did not construct it on basis of the judgments, rather he did it on basis of the registration certificate while Uwamahoro Mbabazi Liliane has no basis to state that he had no right to construct it.

[67] Counsel Munderere Léopold submits that, as noted by the Court during the investigation, the fact that Uwamahoro Mbabazi Liliane has no passage is not true, because the Court judges accessed to her home through the passage on the opposite side, the issue is not that she has no passage, as she puts that anyone passes where he/she wants and she wants to have access to both roads, while her all neighbours pass by the road on the opposite side, if she needs to pass by the plot of Habimana Anselme, she must prove that such road is planned on the Master plan.

[68] Counsel Mbonigaba Eulade representing RLMUA sustains that the statements of the counsel of Uwamahoro Mbabazi Liliane that the disputed area was taken from one party to be handed to the other, are not true, because Rwendeye Nzabonimpa Donatille applied requesting for this area, even if she already had the ownership title thereof since 1/02/1992, MINITRAPE wrote to her on 15/09/1992 notifying her that the disputed area remains a public passage, but this was not respected, because she already had the ownership title for such plot.

[69] Counsel Mbonigaba Eulade further explains that the statements of the paragraph 3 of the investigation report that Uwamahoro indicated that she passed through the plot are erroneous

because she mentioned that the area on the sewer was initially water drainage and she later annexed it to her land, he wonders whether she annexed it after having requested for it as the disputed area was granted to Habimana Anselme. He submits that the statements that she could pass through anywhere she wanted are not true, rather she passed by the area where she enjoyed the easement, thus he notes that in case the claim is the passage and whether the Court finds that she has the passage, it has to hold that it lacks merits, in case it finds that she does not have the passage, it has to analyse whether she uses the right procedure to get it, given that she can get it in case she agrees with Habimana Anselme with the intention to buy it.

[70] He also adds that the claimant requests for easement, not for the ownership right, she does not sue RLMUA, since it does not co-own the land with Habimana Anselme, and the Court cannot decide on basis of the letter, as by that fact it invalidates other documents for which a claim was not filed.

[71] Counsel Mbonigaba Eulade was asked to explain why MINITRAPE wrote to Nyirambabazi Vénantie authorizing her to develop the disputed area, he explained that Mrs Rwendeye Nzabonimpa Donatille already had the ownership title, and she later requested to annex the disputed area to her land, he also adds that though MINITRAPE wrote to Mrs Rwendeye Nzabonimpa requesting her to return back her land title for rectification as it has realized that it erred, the reason why MINITRAPE did not change her title, it could be worse if it had demarcated the passage from the land of Rwendeye Nzabonimpa Donatille who had the ownership title.

[72] Counsel Mbonigaba Eulade submits that in the course of the investigation conducted by the Court, the latter found out that the allegations about the so-called public passage are not true, because a public passage has starting and closing coordinates. He requests the Court to consider that the claimant has access to the road on the opposite side and there is no planned road which gives access to her home through Habimana Anselme's plot of land. He adds that the letters of 1991 cannot serve as basis for granting to Uwamahoro Mbabazi Liliane the passage under litigation because they are no longer valid because they have been nullified by other official decisions issued by the same organs which indicated that she cannot be granted such passage, the reason why each one should maintain the plot of land granted, since each party annexed a part of sewer to his/her plot of land.

## **DETERMINATION OF THE COURT**

[73] Article 3 of the above mentioned law n0 15/2004 of 12/06/2004 relating to evidence and its production states that "Each party has the burden of proving his/her allegations".

[74] Article 23 of the Ministerial Order n0 002/2008 of 01/04/2008 dermining modalities for land registration states that "The Certificate of Registration on the Register of Titles is full evidence for the right of ownership, empyteutic lease or real rights or encumbrances (real charges) that are specified on it. The right of ownership which is recorded thereon cannot be challenged, even though the Certificate was drawn on basis of a cancellable or invalid contract of alienation, or a court order obtained by surprise. Nonetheless, when the right of ownership over the property is still with the acquirer, causes of rescission or invalidity of the alienation that was made to him give rise for the assignor to a cause of action for reassignment of the property with damages, if need be."

[75] In the letter of 22/12/1990, Mrs Nyirambabazi Vénantie (mother of Uwamahoro Mbabazi Liliane) wrote to the Ministry of Public Works and Energy ( MINITRAPE) requesting for the passage giving access to her plot located in Remera I, where there was the sewer located in the front of her home, it replied to her on 20/02/1991, it recognized her request for a passage on the place where there was a sewer, but she was requested to develop it at her convenience, without encroaching on the neighbours' plots nor damaging the existing tree fence.

[76] The case file also contains the letter of 15/09/1992 written by MINITRAPE to Rwendeye Nzabonimpa Donatille informing her of the nullification of the title issued to her through the letter of 15/01/1992 recognizing her request of annexing the land between the neighbors' plots and her plot number 5056, by the date of reception of the letter, she was requested to dispossess herself of that land as it is considered as public passage used by anyone at his/her wish, it requested the competent organs of MINITRAPE (Director of Cadastre Division and Director of Domain Division ) to implement the decision, the land title delivered to Rwendeye Nzabonimpa Donatille should be corrected, the boundaries of the plot of Rwendeye Nzabonimpa Donatille had to be rectified to maintain its initial sizes as per the statement of land measurement and demarcations number 3200 of 01/04/1981.

[77] The report drafted on 04/07/2007 by the General Inspection of Kigali City upon the request of the Management of the City which intended to solve the issue of Uwamahoro Mbabazi Liliane, indicated that the mistakes were committed by the time of establishing the ownership title on which they mentioned the wrong plot with different measurements to which MINITRAPE referred.

[78] The case file contains the letter of 2016 written by Engineer Sagashya Didier, Deputy Director of Rwanda Natural Resources Authority to Habimana Anselme requesting him to bring back his ownership title n0 Vol.RTXXXIV Folio 93 of 18/06/2012 for being granted the right ownership title with the exact measurements of his plot, which bears number RTXXXIII Folio 140 of 18/04/2012. There is also the letter written by RLMUA to Habimana Anselme requesting him to bring back his title for rectification.

[79] The case file also contains the elements of evidence produced by Habimana Anselme including the registration certificate of 10/10/2005 later replaced by that of 22/08/2012, UPI : 1/02/13/03/1120 issued to him on 18/04/2016, the letter written by the Deputy Director of Rwanda Natural Resources Authority, Land management and geo-information services Department of 22/10/2012 addressed to the Mayor of Gasabo District requesting to submit to the Authority the former files of plot number 5056 (previously 589) Remera and plot number 5058 Remera for allowing it to settle the complaint filed by Nyirambabazi Vénantie, the letter of 15/12/2014 delivered by the Mayor of Kigali City to Irere Marie Jeanne Claire authorizing her to construct a fence, the letter of 2/07/2016 issued by the Executive Secretary of Remera Sector authorizing Habimana Anselme to construct a pit latrine, and the document of 2016 authorizing him to build a fence and he started to build by 30/05/2016. The above mentioned Authority also wrote to Uwamahoro Mbabazi Liliane the letter of 01/08/2016 notifying her that the rectification of ownership title Vol.RTXXXIV Folio 93 of 18/06/2016 of Habimana Anselme replaced by that of 18/04/2016 for the plot number 1120, former 5056, can only be possible on basis of the mutual agreement of the concerned parties, or a court's ruling.

[80] The case file contains also the report drafted by Nsengiyumva Kagabo Antoine in charge of Cadastre (he did not indicate the District where he works) on 26/07/2016 about the plot number 1120 and number 1985 located in Remera nearby SONATUBE in Gasabo District, in the report conclusion, he indicates that in case the plot of land under litigation between Habimana Anselme and Uwamahoro Mbabazi Liliane is considered as a road, the plot n01120 will no longer keep its actual size of 2,085 sqm.

[81] As indicated in the investigation report of 10/02/2021 conducted by the Court of Appeal in Gasabo District, Remera Sector, Rukiri I Cell , on the above date, the Court visited the location of the subject-matter, observed the measurement of the plot, and the litigants indicated where there was the sewer which was developed by Nyirambabazi Vénantie, the mother of Uwamahoro Mbabazi Liliane, so as to have a passage giving access to her gate (number 53), between the fence number 51 and the fence number 55 of Habimana Anselme. On that place, there are assets of Habimana Anselme including the sitting room of the clients coming to his bar (bungalow) and the pit latrine constructed to the gate of Uwamahoro Mbabazi Liliane and connected to his fence. The investigation team entered into the home of Mbabazi Uwamahoro Liliane by the road on the opposite side, accessed to the pedestrian passage, entered into her home by the stairs she laid on the talus so that she can have access to the road, noted the car of Uwamahoro Mbabazi Liliane locked in the home because the road she used had been blocked.

[82] The Court finds that the issue of this case is the right that MINITRAPE granted to Nyirambabazi Vénantie authorizing her to freely develop the area where was the sewer so as to have the road giving access to her home, she developed the area so that she easily accessed to her home and any other person could pass by there, but later MINITRAPE granted the same area to Mrs Rwendeye Nzabonimpa Donatille who requested it for annexing it to her plot of land, without delays, MINITRAPE remarked that it mistakenly granted it to her and notified her of the nullification of the decision of granting it to her, she was requested to dispossess herself of that plot and her title should be rectified, but this was not done until she sold her plot of land, she gave the uncorrected documents to Habimana Anselme who bought the plot, when the latter was requested to apply for correction of the documents he refused to do so, rather he relied on those mistakes to apply for the new title UPI: 1/02/13/1120 of 18/04/2016, he sued Gasabo District which requested him to apply for the rectification of the land title on basis of the report prepared by its staff.

[83] The Court finds that the subject-matter in this case is not the request for the passage as stated by Habimana Anselme and RLMUA representative , rather it is the right to the public passage giving access to the home of Uwamahoro Mbabazi Liliane of which she was deprived, and she holds such right from her mother who was granted the passage by MINITRAPE, therefore, the statements of Habimana Anselme and RLMUA representative that Uwamahoro Mbabazi Liliane did not claim for the passage according to the procedure provided under the law, that she should comply with the provision of the article 38 of the Law No 43/2013 of 16/06/2013 governing land in Rwanda, she should mutually agree with Habimana Anselme who could grant to her the passage, are baseless, given that the disputed area is not the land of Habimana Anselme where there should be the passage, rather it is the easement to the public passage giving access to her home as it was the case before it was blocked.

[84] The Court finds that, as indicated by the aforementioned elements of evidence included in the case file and its findings during the investigation it carried out, the passage giving access to the home of Uwamahoro Mbabazi Liliane was used from the time it was developed by Nyirambabazi Vénantie in 1991 until when Habimana Anselme was given the building permit by Gasabo District (Director of Housing in Gasabo District) in May 2016, he demolished the fence made of Ruliba bricks previously erected and shifted it, and he blocked the passage giving access to the home of Uwamahoro Mbabazi Liliane where she used to drive her car.

[85] The Court finds that the statements of Habimana Anselme and his counsel Munderere Léopold together with RLMUA representative that the documents issued to him should not be invalidated because the plot under litigation is recorded to him and has the documents related to it including the registration certificate and the ownership title, are baseless, because nothing precludes the document rectification in case it is pointed out that they were mistakenly granted and he unlawfully enjoyed the rights entitled by them. In addition, as above explained, the judgments on which Habimana Anselme referred to for shifting his fence and building the pit latrine and the bungalow did not grant to him the right to the disputed passage where he erected the constructions, therefore, he could not block the gate and the road giving access to the home of Uwamahoro Mbabazi Liliane granted to her by the competent organs as public passage.

[86] The Court also finds that the understanding of the respondents in this case that the owner of the property is the one to whom is registered, cannot always be considered as true, because there are reasons for which the owner of the property is not necessarily the one to whom it is registered, for example, when it is evident that he/she illegally acquired it (fraudulently acquired), or he/she did not prove its acquisition mode. This position is reflected in different judgments rendered by the Supreme Court and this Court whereby those Courts ruled that property registration alone is not enough to qualify as the rightful owner of a property, one has to prove its acquisition mode. Though Habimana Anselme produces the property documents that include the registration certificate and the ownership title issued by RLMUA, due to the fact that he and RLMUA advance that he obtained the documents related to the disputed land on basis of the final judgments RC 0129/15/TGI/NYGE and RADA 0025/14/HC/KIG and it has been pointed out that those judgments do not grant to him the right on the disputed land, nothing precludes the rectification of the documents issued to him as regards the surface of the disputed land for demarcation of the disputed public passage giving access to the home of Uwamahoro Mbabazi Liliane.

[87] Basing on the aforementioned legal provisions and explanations, the Court finds that the area used as public passage shall be demarcated from the registration certificate with number Vol. RTXXXIV Folio 93 of 01/02/13/1120 of 18/6/2016 replaced by UPI : 1/02/13/03/1120 of 18/04/2016 of Habimana Anselme and Irere Marie Jeanne Claire, their plot shall maintain the initial sizes as before it was requested by Rwendeye Nzabonimpa Donatille and mistakenly granted to her by MINITRAPE in its letter of 15/01/1992, this shall be executed by Rwanda Land Management and Use Authority (RLMUA).

[88] The Court also finds that, due to the fact that Habimana Anselme built a fence on basis of the documents illegally acquired and the professional bailiff awarded to him the area while the issue had not been adjudicated nor ordered in the judgments allegedly considered as final about the subject-matter, it is him who shall be held responsible for the consequences of his acts, he shall remove the constructions which replaced the existing buildings (fence), he shall clear the area

as he erected the constructions on the area knowing well that there was a public passage, and he has no supporting court ruling that grants to him the right on that area, therefore, he has to remove the constructions erected on that area within a period of one (1) month calculated from the date of the judgment pronouncement, in case he fails to do so, the judgment shall be compulsorily executed.

#### **4. Whether Habimana Anselme is liable for the damages related to the loss emanating from the period during which the car of Uwamahoro Mbabazi Liliane was locked in her home.**

[89] Uwamahoro Mbabazi Liliane states that Habimana Anselme is liable for the loss amounting to 42,100,000 Frw for having locked her car from June 2016 to date.

[90] Counsel Kayijuka Ngabo submits that Uwamahoro Mbabazi Liliane incurred a loss inflicted by Habimana Anselme, because from 2016 he built a fence, he blocked her gate, so that it was impossible to use her car, one car was locked in the house, another remained outside, it was necessary for them to rent another car for their activities, she paid 25,000 Frw per day, she paid the parking fees for another car during the night, since 56 months ago, the loss amounts to 17,000 days x 25,000 Frw = 42,100,000 Frw.

[91] Concerning the elements of evidence for expenses, he states that they did not request for invoices, but it is undoubtful that the car is locked in the home and was not taken outside during that period while it was normally used, it is evident that there are damages, the car was locked by Habimana Anselme not by the professional bailiff because Habimana Anselme requested him to execute the judgment, the professional bailiff is only prosecuted for the faults personally committed.

[92] Habimana Anselme submits that the passage was blocked by the professional bailiff Kamanzi, the claim related to blocking the passage had been adjudicated between Uwamahoro Mbabazi Liliane and the professional bailiff Kamanzi and she lost the case so that she cannot file it again for being re-adjudicated, he notes that he has any liability because Uwamahoro Mbabazi Liliane was requested to remove her car by the time of the execution of the judgment RADA 0025/14/HC/KIG and she refused to do so. He also avers that nothing proves that the car was in good conditions and he was authorized to erect the constructions.

[93] Counsel Munderere Léopold sustains that Uwamahoro Mbabazi Liliane cannot claim for 42,100,000 Frw to be paid by Habimana Anselme because the amount is unjustified and she does not produce any supporting element of evidence, she did not exhibit any invoice, for that, she is a losing party. He states that Habimana Anselme is no longer concerned with the acts of blocking the passage because Uwamahoro Mbabazi Liliane sued the professional bailiff who blocked it and she lost the case, she was requested to remove her car and she refused to do so.

[94] Mbonigaba Eulade representing RLMUA in this case submits that the Court shall examine the issue related to the damages claimed by Uwamahoro Mbabazi Liliane.

## **DETERMINATION OF THE COURT**

[95] Paragraph one of article 12 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that “The claimant must prove a claim, failing which the respondent wins the case”.

[96] When the Court visited the location of the subject-matter, it found that there was the car of Uwamahoro Mbabazi Liliane which was locked in the house from the time when the gate and the road (public passage) where the car used to pass were blocked by Habimana Anselme.

[97] The Court finds that the statements of Habimana Anselme together with his legal counsel Munderere Léopold that the damages related to the period during which the car was locked and not used should be paid by the professional bailiff Kamanzi, because he is the one who blocked the gate, are unfounded, because the professional bailiff acted upon the request of Habimana Anselme for executing the judgment RADA 0025/14/HC/KIG , while that judgment did not rule about the right to the passage under litigation, also it is Habimana Anselme who erected the constructions on the passage under litigation.

[98] The Court finds that the damages amounting to 42,100,000 Frw claimed by Uwamahoro Mbabazi Liliane to be paid by Habimana Anselme for having locked her car so that she rented another car cannot be awarded as she claims, because she did not produce supporting elements of evidence. However, it finds that it is evident that the car is parked in the home since 2016 and not used by its owner on the ground that it was locked by the time of the execution of the abovementioned judgment upon the request of Habimana Anselme, it is obvious that Uwamahoro Mbabazi Liliane had been deprived of the right of using it as usual, therefore, for having been deprived of such right, she shall be paid by Habimana Anselme the damages awarded in the Court’s discretion amounting to ten (10.000.000 Frw) million Rwandan francs.

##### **5. Whether the procedural fees and the lawyer’s fees shall be awarded in this case**

[99] Counsel Kayijuka Ngabo submits that Habimana Anselme must pay 10,000,000 Frw to Uwamahoro Mbabazi Liliane as the lawyer’s fees and the procedural fees from the beginning of the case, the fees claimed by the legal counsel of Habimana Anselme cannot be awarded to his client, because it is him who dragged Uwamahoro Mbabazi Liliane to file a claim, RLMUA does not deserve the fees it claims because it issued to Habimana Anselme the land titles on which he based by blocking the passage so that she seized the courts.

[100] Habimana Anselme together with his legal counsel submit that Uwamahoro Mbabazi Liliane does not deserve the fees she claims because she does not produce any supporting element of evidence and she dragged herself into all lawsuits which she lost, rather Habimana Anselme must be paid by Uwamahoro Mbabazi Liliane 5,000,000 Frw as lawyer’s fees, 1,000,000 Frw as procedural fees and 3,000,000 Frw as moral damages for disturbances due to his plot of land for a period of 8 years.

[101] Counsel Mbonigaba Eulade avers that he cannot retort about the damages, because the Authority he represents is not liable for them, rather Uwamahoro Mbabazi Liliane must pay to RLMUA 3,000,000 Frw as the procedural fees and for having dragged into the lawsuits the Authority he represents.

## **DETERMINATION OF THE COURT**

[102] 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. 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”.

[103] The Court finds that the amount of 10,000,000 Frw as the procedural fees and the lawyer’s fees claimed by Uwamahoro Mbabazi Liliane from Habimana Anselme is excessive, she is awarded, in the court’s discretion, 3,000,000 Frw including the lawyers’ fees and the procedural fees. Concerning the procedural fees and the lawyer’s fees they claim from Uwamahoro Mbabazi Liliane, they cannot be awarded them as they are losing party.

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

[104] Holds that the objection of the claim inadmissibility raised by Habimana Anselme is unfounded.

[105] Holds that the application filed by Uwamahoro Mbabazi Liliane for the review of the judgment RADA 00071/2019/HC/KIG rendered by the High Court on 27/02/2020 on the grounds of injustice is founded.

[106] Holds that the judgment RADA 00071/2019/HC/KIG rendered by High Court on 27/02/2020 is quashed.

[107] Orders to Rwanda Land Management and Use Authority (RLMUA) to demarcate the passage under litigation from UPI: 1/02/13/03/1120 of 18/04/2016, the plot of Habimana Anselme and Irere Marie Jeanne Claire shall maintain its former dimensions as it was before MINITRAPE mistakenly granted it to Rwendeye Nzabonimpa Donatille in the letter of 15/01/1992.

[108] Orders to Habimana Anselme to remove the constructions he erected on the passage under litigation within a period of one month from the date of this judgment pronouncement, in case he fails to voluntarily proceed, the judgment shall be compulsorily executed.

[109] Orders to Habimana Anselme to pay to Uwamahoro Mbababazi Liliane the damages amounting to 10,000,000 Frw for being deprived of her rights to use her car, and 3,000,000 Frw as the procedural fees and the lawyer’s fees.

[110] Declares that the court fees are borne by the Public Treasury.