

# HABIMANA v. REKAYABO

[Rwanda HIGH COURT– RCA 0197/12/HC/KIG (Hitimana, P.J) May 23, 2014]

*Family law – The paternity Action – Evidence – The value attached to the DNA test – The results of DNA test in determining whether the alleged father is the biological father of the child are considered as true because this test results demonstrate that they have no biological relationship or confirms that they have biological relationship which is over 99%.*

**Facts:** During their adolescence, Rekayabo and Habimana were in love. Later on, Rekayabo delivered a child named Niyigena Mugisha; this led Rekayabo to file a claim with the Primary Court of Nyamirambo requesting the Court to hold that the child named Niyigena Mugisha is born of Habimana, and the Court held that the child belongs to him basing on the documents he wrote recognizing the child

Habimana was not satisfied with the ruling of the case and then appealed in the Intermediate Court arguing that though he was in a relationship with Rekayabo, her child Niyigena Mugisha is not his and that even those documents he wrote he has written them under the local authorities' order and therefore he requested to test for DNA. The Court ruled that the child is his without considering the DNA test which he had requested basing rather on other evidences including the documents recognizing the child which he wrote or signed before the authorities and local residents.

Habimana was not satisfied with the ruling of the case and appeals in the High Court stating that the Intermediate Court did not indicate that he requested to test for DNA in the trial meant to establish his paternity while it granted this request but it was frustrated by Rekayabo who never turned up for the test, and thereafter it relied on the evidence which were already submitted before while he does not agree with them.

**Held:** The results of DNA test in determining whether the alleged father is the biological father of the child are considered as true because this test results demonstrate that in no way the alleged father could be the biological father of the child (it proves they have no biological relationship) or confirms that they have biological relationship which is over 99%. Therefore, the test demonstrating that Habimana Assoumani could not be the biological father of Ally Niyigenga Mugisha must be considered as true.

**Appeal has merit;  
With the Court fees to the respondent.**

**Statutes and statutory instruments referred to:**

Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, article 106 (1).

**Cases referred to:**

Prosecution v. Kambanda Hussein, RPAA 0054/09/CS rendered by the Supreme Court on 30/06/2011.

## Judgment

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

[1] The case began in the Primary Court of Nyamirambo, whereby Rekayabo Hashura requested the Court to hold that the child named Niyigena Mugisha Ally is born of Habimana Assumani. The Court held that the child belongs to him. Habimana Assumani was not satisfied with that ruling and appealed against it in the Intermediate Court stating that, even if he knew Rekayabo Hashura, he is not the father of her child Niyigena Mugisha Ally and he rather requested to test for DNA.

[2] The Intermediate Court relied on the documents which Habimana wrote on several occasions and found that, apart from his allegations that he wrote them under the authorities' threat, he does not produce any evidence demonstrating he recognised the child as his under any duress. It also based on the fact that Habimana accepts that they fell in love in the course of their adolescence and thereafter Rekayabo gave birth to a child. Habimana recognised the child as his and provides his alimony and all these were put in black and white in documents he wrote himself recognising the child. The Court found that those evidences comply with the provisions of article 328 of Law n° 42/1988 Instituting the Preliminary Title and the Civil Code Book I which stipulates that the claim for seeking establishment of paternity is accepted in particular in cases mentioned by the same article including the unequivocal written or oral statement to the fact the man recognizes the child and the fact that the man accepts to well treat the child, caters for and educate the child as his father. The Court continued motivating that the fact that the parties were not able to test for DNA as they had requested, the Court could considered other evidences which confirm that Habimana used to recognise the child including the documents he wrote or signed recognizing the child as his before the authorities and local residents. The Court finds, therefore, that those evidences are enough to confirm that the child belongs to Habimana. Due to those grounds, the Court held that the child belongs to Habimana Assumani and ruled that the appealed judgment is sustained.

[3] Habimana Assumani was not satisfied with the ruling, and appealed in this Court. He explained that he appealed to Intermediate Court requesting to go for DNA test because, even if he agrees that he fell in love with Rekayabo after recognising the child before the local authorities and was providing alimonies for him, Rekayabo began to inform friends of Habimana that the child does not belong to him which made him suspicious. He argues that the Intermediate Court ordered them to test for DNA and on the day of test Rekayabo never turned up, Habimana called her and she refused to come; but the Intermediate Court disregarded all those facts in the judgment. He submitted that he has explained circumstances in which he wrote documents recognizing the child and that he admitted the child could be his; but he subjected this to the condition that after his birth they would go for DNA test.

[4] The Court admits the second appeal of Habimana Assumani since article 106 (1) of Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts stipulates that the High Court hears appealed civil cases heard on the second instance by the Intermediate Court when it does not set out whatsoever the basis for decisions. The High Court has considered the judgment delivered by the Intermediate Court as not setting out whatsoever the basis for decision because Habimana Assumani appealed requesting to test for DNA and the Court granted this because in its decision of 04 May 2012 it ordered for tests that would help for DNA test of Habimana Assumani and Niyigena Mugisha Ally. These medical test were not carried out and the judge does neither provide in the judgment the reasons why those medical tests were not conducted nor why he abandoned the DNA test which both parties agreed it would help them to know whether Habimana is

really the biological father of the child; but rather chose to base on the evidences already available in the case file.

[5] After admitting the appeal, the High Court ordered in its decision of 19 May 2013 to take blood samples of Habimana Assumani and Niyigena Mugisha Ally to carry out DNA test to help the Court determine whether Niyigena Mugisha Ally is born of Habimana Assumani as confirmed Rekayabo Hashura, the mother of Niyigena Mugisha Ally,.

[6] The tests were carried out and transferred to the Court by the Prosecutor General in his letter of 23 October 2013 and the hearing was reopened on 29 April 2014.

[7] The issue in this case is to determine whether, according to the DNA test carried out, it should be confirmed that Niyigena Mugisha Ally is born of Habimana Assumani.

## II. ANALYSIS OF THE LEGAL ISSUES

[8] After taking oath, the expert Dr Christa Augustin explains the way he used in DNA testing, demonstrating that there are inconsistencies with paternity in 10 out of 18 DNA – Short- Tandem – Repeat Systems. Therefore, in his conclusion, he confirms that Assumani Habimana does not have the paternally inherited allele of the child Ally Niyigena Mugisha in these 10 systems. Thus he cannot be the father of the child.

[9] Rekayabo Hashura argues that she does not agree with the results and she prefers the use of other means because she, as the mother of the child, knows well that Habimana Assumani is the father of child.

[10] The Court finds that Habimana Assumani and Rekayabo Hashura agreed in Intermediate Court and also in this Court that the DNA test is the one that should resolve their problem. Also, the Court finds that, apart from this, the confirmation of the expert who carried out the test must be considered because it is consistent with the other experts' confirmation. They explain that where the child has a paternal allele that is not found in the tested man. In such cases, the paternity index [PI] is 0.0, the combined paternity index [CPI] is 0.0 and the probability of paternity is 0.0%<sup>1</sup>. The expert found the same for Ally Niyigena Mugisha and Assouman Habimana since he found that Assouman Habimana does not have the paternally inherited allele of the Child Ally Niyigena Mugisha.

[11] The Court finds that, as for the value attached to the DNA test, the Supreme Court also held that the test results in determining whether the alleged father is the biological father of the child are considered as true because this test results demonstrate that in no way the alleged father could be the biological father of the child (it proves they have no biological relationship) or confirms that they have biological relationship which is over 99%<sup>2</sup>. Therefore, the test demonstrating that Habimana Assoumani could not be the biological father of Ally Niyigena Mugisha must be considered as true.

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<sup>1</sup> See, <http://www.genetica.com/GeneticaWebV2.nsf/XReadingtheResults.xsp>, where they explain the reading of DNA TEST results.

<sup>2</sup> Prosecution v. Kambanda Hussein, RPAA 0054/09/CS rendered by the Supreme Court on 30/06/2011.( law report , n<sup>o</sup> 11, pg 14)

[12] In light of the above explained grounds, the Court finds that the appeal of Habimana Assoumani has merit and the child Ally Niyigenga Mugisha is not born of his union with Rekayabo Hashura

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

[13] Decides that the appeal of Habimana Assouman has merit;

[14] Decides that the appeal of Rekayabo Hashura has no merit;

[15] Decides that the ruling of the judgment RCA 0658/11/TGI/NYGE rendered by Intermediate Court of Nyarugenge on 31/07/2012, is overturned;

[16] Decides that the child Ally Niyigenga Mugisha is not born of Habimana Assumani;

[17] Orders Rekayabo Hashura to pay the Court fees amounting to 75,000Frw starting with the deposited court fees.