

## KHALID v. AHMED ET AL

[Rwanda SUPREME COURT – RC 0002/09/CS(Kayitesi R., P.J., Mukamulisa and Mukandamage, J.) March 19, 2010]

*Law determining jurisdiction – Supreme Court jurisdiction – Remedies in the Supreme Court – Admission of a third party opposition claim – An extraordinary remedy of third party opposition may be prevented by the law – A case decided by the Supreme Court shall not be retried save only for the purpose of rectifying an error apparent on the record or clarifying a decision which is ambiguous or susceptible to divergent interpretations – The Constitution of the Republic of Rwanda of 4 June 2003 as amended and complemented to date, article 144 – Organic Law N° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the Supreme Court, article 84 – Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 176.*

**Facts:** Khalid Foz filed a third party opposition in the Supreme Court against the judgment RCAA 0006/08/CS delivered by the Supreme Court on 26 June 2008. In that case, Assini Omar and Ali Fikirini were opposing Ahmed Abdulatif and *Succession* Yussuf Bin Abdulaziz in the appeal case RCA 0386/07/HC MUS encompassing other cases, rendered by the High Court, Chamber of Musanze and *Succession* Mohamed Yussuf Bin Abdulaziz intervened in it.

Assini Omar raised the objection relating to the lack of status of *Succession* Yussuf Bin Abdulaziz while the later raised the objection regarding security deposits furnished by foreigners. However, the court decided to examine the admissibility of the claim first, pursuant to article 84 of the Organic Law N° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the Supreme Court as amended and completed to date, and article 144 of the Constitution of the Republic of Rwanda of 4 June 2003 as amended and complemented to date.

The plaintiff side states that they filed the case to the court which they consider to have jurisdiction because the Supreme Court hears cases on merits implying that third party opposition claim is an individual's right provided for by article 18 of the Constitution and that there are other cases tried by the Supreme Court basing on this provision, one of them they came across being RSOCAA 0008/06/CS, EER v. Musenyeri Sebununguri delivered on 17 July 2009 which related to opposition. Upon its analysis, it is clear that even the third party opposition should be admitted. Concerning the defense on article 144 of the Constitution which provides that the decisions of the Supreme Court are not subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision; he stated that he considers opposition like third-party opposition.

The counsel for Assini Omar argues that the third party opposition is filed by a third person to the case implying that it is an opposition initiated by different persons. He added that it is clearly motivated in the judgment RSOCAA 0008/06/CS that the litigant is entitled to use ordinary and extraordinary remedies, therefore he finds that if the Supreme Court admitted it, the third party opposition is valid and is his right as long as the rendered judgment prejudice his rights because according to him, it is not fair as how the Supreme Court could allow the existent party to plead and denies it to a third party to the judgment.

The counsel for Ahmed Abdullatif states that all those provisions of the law are clear because nothing would have prevented the Legislator to add the opposition and third party opposition

in the provision of article 84 of the Organic Law n° 1/2004 of ku wa 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, and that there exists a case law RCA 0002/05/CS, Kagoyire Christine v. Amuri Sultan relating to the third party opposition which should be relied on by the Supreme Court because it held that such a remedy is not provided for by the law before the Supreme Court, therefore he finds that the case law submitted by the opponent party related only to the opposition.

The counsel for Succession Yussuf Bin Abdulaziz emphasized that according to article 176 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which stipulates that any judgment shall be subject to third party opposition, unless otherwise provided by the Law.

Ali Fikirini states that the third party opposition lodged by Khalid Foz should be admitted because he was cited several times without being summoned the reason why he has interest as he was not notified about it.

**Held:** 1. An extraordinary remedy of third party opposition may be prevented by the law.

2. A case decided by the Supreme Court shall not be retried save only for the purpose of rectifying an error apparent on the record or clarifying a decision which is ambiguous or susceptible to divergent interpretations.

**Claim rejected.  
Court fees to the third party.**

**Statutes and statutory instruments referred to:**

The Constitution of the Republic of Rwanda of 4 June 2003 as amended and complemented to date, article 144.

Organic Law N° 01/2004 of 29/01/2004 establishing the organisation, functioning and jurisdiction of the Supreme Court, article 84.

Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 176.

**No case referred to.**

## **Judgment**

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

[1] This case derives from the third party opposition claim filed by Khalid Foz in this Court against the ruling of the case RCAA 0006/08/CS rendered by the Supreme Court on 26 June 2008. In that case, Assini Omar and Ali Fikirini sued Ahmed Abdulatif and Succession Yussuf Bin Abdulaziz in appeal against the judgment RCA 0386/07/HC MUS to which other cases were joined and it was rendered by the High Court, Chamber of Musanze. Succession Mohamed Yussuf Bin Abdulaziz intervened in it.

[2] In that judgment RCAA 0006/08/CS against which the third party opposition was lodged, the Supreme Court decided that the appeal lodged by Assini Omar has no merit, that the appeal of *Succession* Yussuf Bin Abdulaziz has merit and that the voluntary intervention

by *Succession* Mohamed Yussuf Bin Abdulaziz was not heard because Counsel Musonera who filed the application withdrawn from the case and was not replaced.

[3] The Supreme Court ordered Assini Omar to pay 3,780,000 Frw to *Succession* Yussuf Bin Abdulaziz of rent in addition to 28,620,000Frw he was charged in the judgment rendered by the High Court, Chamber of Musanze, all amounting to 32,400,000Frw and pay jointly with Ali Fikirini 300,000 Frw of procedural costs in addition to 1,431,000Frw they were charged by the High Court and everyone pays 4% of prorated fee of damages charged and jointly pay 36,650Frw of Court Fees, failure to pay it within 8 days, it shall be deducted from their assets through government coercion.

## **II. THE CASE BEFORE THE SUPREME COURT**

[4] Pursuant to the Supreme Court president's order n° 0038/09/RC of 20/10/2009, the hearing was scheduled on 10 November 2009 but was not held and it was adjourned to 10 January 2010 in the interest of justice because some of the litigants wished to be heard while others wanted the hearing to be adjourned because there was information that Counsel Musonera Alexis for Khalid Foz committed an accident.

[5] On 19 January 2010, the hearing proceeded in public, in presence of Counsel Musonera Alexis for Khalid Foz, Assini Omar represented by Counsel Buhuru Pierre Célestin, Counsel Hakizimana Théogène for *Succession* Yussuf Bin Abdoulaziz, Counsel Habimana Adolphe for Ahmed Abdoulatif and Ali Fikirini standing on his own.

[6] Before the examination of the objections relating to the status of *Succession* Yussuf Bin Abdulaziz raised by Assini Omar in his submissions and another one raised by Counsel Hakizimana Théogène relating to the security deposits furnished by foreigners, the Court resumed to prior examine the admissibility of the claim it was filed with in accordance with article 84 of the Organic Law n° 1/2004 of 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court as amended and complemented to date and article 144 of the Constitution of 4 June 2003 as amended to date.

[7] Counsel Musonera Alexis was allowed time to submit and stated that they filed to the Court which they consider to have jurisdiction pursuant to aforementioned provisions because the Supreme Court tries cases on merits, implying that the third party opposition claim is the individual's right provided for by article 18 of the Constitution. He explained that there exist other cases tried by the Supreme Court in which it relied on this provision, the one they came across being RSOCAA 0008/06/CS of EER against Musenyeri Sebununguri rendered on 17 July 2009 and upon its examination, he finds that even the third party opposition should be admitted.

[8] Concerning article 144 of the Constitution which stipulates that the decisions of the Supreme Court are not be subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision; he stated that he considers the opposition as the same as the third party opposition.

[9] Counsel Buhuru was allowed time to submit and stated that relying on the aforementioned opposition judgment, the third party opposition is lodged by a person who has not been sued or summoned to appear, implying that it is an opposition initiated by different persons. He argues in addition that in that case, it is well explained that the litigant

uses ordinary and extra-ordinary remedies; therefore he finds that if the Supreme Court admitted it in the case law it delivered, the third party opposition is admissible.

[10] Regarding article 84 of the Organic Law n° 1/2004 of 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court; he stated that in paragraphs 22-24 of the judgment RSOCAA 0008/06/CS, the Supreme Court interpreted it and he concluded by submitting that if the final judgment rendered by this Court prejudices Khalid Foz, he should be allowed to lodge a third party opposition claim because it is in his right as long as he demonstrates the interests thereon.

[11] Assini Omar added that the case law of the Supreme Court interpreted well those provisions of the law, especially in paragraph 25 of the judgment; therefore he does not perceive how the court allowed an existing party to plead and denies it to a third party.

[12] Counsel Habimana Adolphe was given time to submit and stated that those provisions are clear enough. Concerning the article 84 of the Organic Law n° 1/2004 of 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, he explained that nothing would prevent the legislator to insert in the opposition or third party opposition remedies, and he argues in addition that there is a case law RCA 0002/05/CS, Kagoyire Christine v. Amuri Sultan which relates to third party opposition, whereby it held that it is not provided for by the Law, that may be relied on by the Supreme Court. Therefore, he finds that the case law submitted by the opponents relates only to the opposition.

[13] Counsel Hakizimana Théogène reaffirmed that this provision is clear enough, as the remedy which is allowed for the Supreme Court judgment is the revision. He further argued that this provision is in accordance with the provision of article 176 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which stipulates that any judgment shall be subject to third party opposition, unless otherwise provided by the Law. Therefore, he finds that the third party opposition against a judgment in this court is impossible.

[14] On his behalf, Ali Fikirini states that Khalid Foz should be allowed to lodge a third party opposition against the judgment RCAA 0006/08/CS because he was mentioned several times in it but without being notified the reason why he has interest as he was not summoned.

[15] The hearing about the admissibility of the third party opposition claim was closed and litigants were informed that the pronouncement will be held on 19 February 2010, but on that day, because the deliberation was not over, it was adjourned to 19 March 2010 on which the Court deliberated as follow:

### **III. LEGAL ISSUE AND MOTIVATION**

[16] The legal issue which should be examined in this case is the admissibility of third party opposition claim lodged by Khalid Foz against the judgment RCAA 0006/08/CS delivered by the Supreme Court on 26 June 2008.

[17] Article 144 of the Constitution of 04 June 2003 as amended to date, stipulates that “the Supreme Court is the highest court in the country. The decisions of the Supreme Court are not to be subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision. Its decisions are binding on all parties concerned

whether such are organs of the State, public officials, civilians, military, judicial officers or private individuals”.

[18] Again, article 84 of the Organic Law n° 1/2004 of 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court as amended and complemented to date, states that “without prejudice to the procedures established by law for review of judgments against which no further appeal is possible, cases decided by the Supreme Court shall not be retried save only for the purpose of rectifying an error apparent on the record or clarifying a decision which is ambiguous or susceptible to divergent interpretations”.

[19] Article 176 of the Law n° 18/2004 of 20/06/2004 relating to civil, commercial, social and administrative procedure provides that “any judgement shall be subject to third party opposition, unless otherwise provided by the law”. And this implies that such extraordinary remedy of third party opposition may be prevented by the Law as provided for by the aforementioned article 84 of Organic Law n° 1/2004.

[20] Pursuant to the provisions of all those articles, the Court finds that the legislator unequivocally explained that among the remedies provided for by the law, only one consisting of case review can be used for judgment tried in last resort by the Supreme Court, as others remedies are prevented.

[21] Concerning two case laws RSOCAA 0008/09/CS, of EER v. Mgr Sebununguri and RC 0002/05/CS of Kagoyire Christine v. Abdallah Sultan and Succession Hamud rendered by the Supreme Court invoked by the parties as case law whereby some of them submit that the third party claim should be admitted by this Court while others pray it be rejected; this Court is of the view that the precedent should be constituted by a series of concurrent decisions relating to a determined legal issue, therefore these case laws cannot be considered as constituting the precedent to be relied on.

[22] Furthermore, regarding the judgment RSOCAA 0008/06/CS of EER v. Musenyeri Sebununguri rendered on 17 July 2009, the Court finds that it was adjudicated in regards to opposition, therefore should not be relied on to examine the third party opposition, especially as it is held above; this kind of remedy is not allowed against final judgment delivered by this Court.

[23] In accordance with the motivation above, the Court finds that the third party opposition claim RC 0002/09/CS initiated by Khalid Foz against the judgment RCAA 0006/08/CS should be rejected.

[24] Concerning the objection raised by Assini Omar relating to the lack of status by Succession Yussuf Bin Abdulaziz and another one raised by Counsel Hakizimana relating to the security deposit furnished by foreigners; the Court finds that their examination is no longer necessary since the claim initiated by Khalid Foz is rejected.

## **VI. DECISION OF THE COURT**

[25] Rejects the third party opposition claim initiated by Khalid Foz against the judgment RCAA 0006/08/CS rendered by the Supreme Court on 26 June 2008 because its initiation was in contradiction with the Law.

[26] Orders Khalid Foz to pay 12,500Frw of court fees, payment default of which within 8 days, that amount shall be deducted from his assets through government coercion.