

NKURUNZIZA ET AL. v. HAKIZIMANA ET AL

[Rwanda SUPREME COURT – RCAA 0054/12/CS (Nyirinkwaya, P.J., Hatangimbabazi and Hitiyaremye, J.) July 3, 2010]

Contracts or obligations Law – Defamation – Moral damages – Option to file a case to the court – Procedural costs and counsel fee – Defamation means imputation of a specific act to another person which is likely to damage the honour or dignity, or bring him/her to public contempt – It may be instituted through criminal proceedings as it may be instituted through civil proceedings – In this case, the terms “les mauvais compagnies” and “l’irreconnaissance” shall be perceived as individuals mentioned have unpleasant behaviour of disregarding the beneficence toward them – For the determination of moral damages, it should be considered the fact that the booklets in which Hakizimana and Twizeyimana were cited have been distributed among various persons while Nkurunziza and his wife named Nzayinganyiki did not try to recall them or publicly apologize to the people they defamed so that it can erase the tarnished image – Organic Law n° 01/2012/OL of 02/05/2012 instituting penal code, articles 288 and 289 – Law of 30/07/1888 relating to contracts or obligations, article 258.

Facts: The case begun in the Intermediate Court of Musanze, whereby Hakizimana and his wife Twizeyimana sued Nkurunziza and his wife Nzayinganyiki for the fact that while they were celebrating their graduation, they printed a booklet containing many photos and wrote on the page which contained their picture the statement: “les mauvais compagnies [sic]” whereas on the picture itself they wrote “l’irreconnaissance [sic]”. Hakizimana and Twizeyimana requested 40,000,000Frw of damages for defamation and 1,000,000Frw of publication of the judgment in the Imvaho Nshya Newsletter.

Before the hearing of the case on merit, the defendants raised an objection of lack of jurisdiction stating that there was no criminal claim, and that the offence of defamation of which they are accused of must first be referred to the conciliation committee, but the Court overruled that objection.

On the merits of the case, this Court held that the defendants defamed the plaintiffs and ordered them to pay 2,000,000Frw of moral damages and 500,000Frw of procedural costs and counsel fees to the plaintiffs.

Nkurunziza and Nzayinganyiki appealed the judgment to the High Court, chamber of Musanze, stating that the first instance Court tried a case which did not fall into its jurisdiction since what they are accused of is a criminal matter which is within the jurisdiction of the Conciliators Committee and of which it should first be reported to the judicial police. They further argue that the Court charged them damages without establishing that what they did was done in bad faith or that it was not true. The High Court held that their appeal was without merit but that the judgment is overruled in regard to the damages and ordered them to pay Hakizimana and his wife Twizeyimana 500,000Frw of moral damages for each one, 250,000Frw of counsel fees and 100,000Frw of procedural costs; all amounting to 1,350,000Frw.

Hakizimana and his wife Twizeyimana appealed again to the Supreme Court relying on the objection they had raised before but during the hearing they informed that they abandon their raised objection however they concentrate their defense to the merit of the damages they have been charged stating that the Court did not indicate the required conditions for damages to be

ordered which are the fault, prejudice, and causation link. Therefore, they find that the damages ordered are unsubstantiated.

They state in addition that there is no produced evidence indicating that they had a bad faith when they printed the photos of Hakizimana and Twizeyimana in the booklet the released in the course of preparation of the graduation of Nkurunziza, rather, they intended to demonstrate his life style, friendship with some families and bad relations with some people including Hakizimana.

Hakizimana and Twizeyimana state that they submitted written evidence based on the document prepared and distributed by Nkurunziza and Nzayinganyiki, and this evidence indicates that they were defamed. Therefore, they find that the judge was not wrong in sustaining their pleadings.

Held: 1. Defamation means Imputation of a specific act to another person, which is likely to damage the honour or dignity, or bring him/her to public contempt. It may be instituted through criminal proceedings as it may be instituted through civil proceedings based on the fact that “Any act of man, which causes damage to another obliges the person by whose fault it happened to repair it”.

2. The Court finds that the words “les mauvais compagnies” and “l’irreconnaissance” should not be perceived otherwise than people cited have unpleasant behavior consisting of disregarding the beneficence toward them, and this has been emphasized by Nkurunziza who stated in this court that the law does not protect the people’s lack of integrity or those with immoral behavior.

3. For the determination of moral damages, it should be considered the fact that the booklets in which Hakizimana and Twizeyimana were cited have been distributed to various persons while Nkurunziza and his wife named Nzayinganyiki did not try to recall them or publicly apologize to the people they defamed in order to retract the bad reputation among the population. Therefore, moral damages amounting to 2.000.000Frw awarded to hakizimana and Twizeyimana by the intermediate Court of Musanze, especially that the High Court did not present the motivation of its reduction; however, even 40,000,000Frw they requested is excessive comparing to the prejudice suffered from the fault.

**Appeal without merit.
Cross-appeal has merit in part.
Court fees to appellants.**

Statutes and statutory instruments referred to:

Organic Law n° 01/2012/OL of 02/05/2012 instituting penal code, articles 288 and 289.

Law of 30/07/1888 relating to contracts or obligations, article 258.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] During the preparation of Nkurunziza Apollinaire graduation in civil engineering, Nkurunziza Apollinaire and his wife Nzayinganyiki Elizabeth published a booklet in which they included many photos of several people and commented on them. It is in that context that they included the photos of Hakizimana Sylvain and his wife Twizeyimana Emeritha and other people on the page which was written on “les mauvais compagnies [sic]” whereas on the photo itself, they wrote “l’irreconnaissance [sic]”.

[2] Hakizimana Sylvain and his wife Twizeyimana Kwitonda Emeritha sued Nkurunziza Apollinaire and Nzayinganyiki Elizabeth in the Intermediate Court of Musanze requesting moral damages amounting to 40,000,000Frw for defamation and 1,000,000Frw for publishing the judgment in *Imvaho Nshya*.

[3] Prior, the Intermediate Court of Musanze ruled on the objections raised by the defendants who objected that the claim should not be admitted because there was no criminal claim and that the offense they are accused of is tried at the first instance by the Conciliators Committee, but the court overruled it.

[4] The judgment on merits was delivered on 11 January 2011 and the Court decided that Nkurunziza Apollinaire and Nzayinganyiki Elizabeth offended Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha because they defamed them. It ordered the defendants to jointly pay 2,000,000 Frw of moral damages and 500,000Frw of procedural costs and counsel fees to the plaintiffs.

[5] Nkurunziza and Nzayinganyiki appealed against the judgment to the High Court, Chamber of Musanze, claiming that the first instance court ruled on a case which does not fall into its jurisdiction because the subject matter of what they are sued for is a criminal issue which falls into the jurisdiction of the Conciliators Committee, and should be submitted to the judicial police first. They further state that the court ordered them to pay damages without indicating that what they did was done with bad faith or that it is not true.

[6] The High Court delivered the judgment on 27 April 2012 and upheld that their appeal is without merit, that the appealed judgment has changed only in regard to the amount of damages to be paid, whereby it ordered the appellants to pay Hakizimana Sylvain and Twizeyimana Kwitonda 500,000Frw of moral damages for each one, 250,000Frw of advocate fees and 100,000Frw of procedural costs, all amounting to 1,350,000Frw.

[7] Nkurunziza Apollinaire and Nzayinganyiki Elizabeth appealed again to the Supreme Court on May 28 2012 for the same grounds as in the first appeal.

[8] The hearing was conducted in public on 27 May 2014, Nkurunziza Apollinaire assisted by Counsel Nyirabuheta Béata who represented also Nzayinganyiki Elizabeth and Counsel Nsengiyumva Straton assisting Hakizimana Sylvain and representing Twizeyimana Kwitonda Emeritha.

[9] In the course of the hearing, the appellants stated that they renounce the objections raised from the first instance court and that they opt to concentrate their appeal on the merit of ordered damages.

II. ANALYSIS OF LEGAL ISSUES

1° Whether Nkurunziza Apollinaire and Nzayinganyiki Elizabeth were charged damages without indicating the fault they committed.

[10] Counsel Nyirabuheta for Nkurunziza Apollinaire and Nzayinganyiki Elizabeth states that in order for damages to be awarded, the fault, prejudice and causal link must be established, but none of them was established in this case. Therefore, the damages awarded are groundless.

[11] In addition, she states that there is no produced evidence proving that his clients acted in bad faith when they put the photos of Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha in the published booklet for Nkurunziza Apollinaire's graduation, since in contrast they intended to show his lifestyle, friendship with some families and bad relationships with other people including Hakizimana Sylvain.

[12] Nkurunziza states that before Hakizimana got married, he was considered as a child at home, and that they assisted him during his wedding, therefore, they had no reason to defame him. He argues that the judge should have considered the context in which the words were used in and see if they are of defamation nature or not.

[13] He further states that the word "irreconnaissance" written on the photo of Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha means "disregarding the generosity done to you" while the words "mauvais compagnie" that are written on the top of the page on which the photo is printed mean "bad fellows".

[14] He further argues that it is not a fault to reveal the bad deeds of someone with the purpose to help him to rehabilitate himself and that the law does not protect people on the integrity they do not possess or those with immoral behavior. The bad behaviors stressed above refer to the fact that Hakizimana was considered as one of their children but does not value the generosity toward him.

[15] Counsel Nsengiyumva states that Hakizimana Sylvain and Kwitonda Emeritha submitted written evidence based on the documents prepared and distributed among the people by Nkurunziza Apollinaire and Nzayinganyiki Elizabeth. Thus, it is evident that they were defamed, the reason why he considers that the Court did not error by valuing their submissions.

THE VIEW OF THE COURT

[16] Defamation means imputation of a specific act to another person, which is likely to damage the honour or dignity, or bring him/her to public contempt. It may be instituted through criminal proceedings pursuant to article 288 and 289 of the current organic law instituting the penal code, as it may be instituted through civil proceedings in compliance with the provision of article 258 of the law relating to contracts or obligations which stipulates that "Any act of man, which causes damage to another obliges the person by whose fault it happened to repair it".

[17] The Court finds that the words "les mauvais compagnies" and "irreconnaissance" cannot be perceived in any other way apart from the individuals mentioned have unpleasant behaviour of disregarding the generosity rendered towards them, and it has been stressed by Nkurunziza in this court whereby he states that the law does not protect the people on the integrity they lack or those with immoral behavior.

[18] The Court again finds that what Nkurunziza and his wife intended when they presented to their invited guests, Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha as bad friends and they disregard generosity rendered to them without further explanations cannot assist Nkurunziza and twizeyimana to change their behaviour as they submit it, rather, it is considered as defaming them as explained in previous courts. Therefore, it is not necessary to examine whether their statements contain the truth or not because even them, did not include in the booklet they gave to their guests the explanations they relied on when making those statements.

[19] The court further finds that it was not necessary to include in the booklet reserved for the invited guests on Nkurunziza Apollinaire's graduation day, the photos of Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha on which it was written that they have been bad fellows and disregarded the generosity rendered to them. Consequently, the fact that they have unnecessarily included their photos, which indicates the intention to present them with a bad reputation among those invited guests.

[20] Concerning the prejudice suffered from the fault, the Court finds that the fact that their photos were put in the booklet which were distributed among Nkurunziza Apollinaire and Nzayinganyiki Elizabeth guests, and recorded in the category of bad fellows and they branded them as ingrates, it disgraced them before the public since they were presented as infamous persons.

2° Concerning damages

[21] Nkurunziza Apollinaire and Counsel Nyirabuheta state that 1,000,000Frw of damages awarded by the High Court are excessive and that in case it is found that Nkurunziza and his wife Nzayinganyiki Elizabeth committed a fault, they be charged a token compensation of 1Frw.

[22] In the cross appeal, Counsel Nsengiyumva states that in contrast, the damages awarded to Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha are few compared to the extent they were defamed and dishonored, therefore prays that they both be awarded 40,000,000Frw requested in the first instance.

[23] In addition to that, he requests that his clients be awarded 1,000,000Frw of procedural costs and counsel fees in the High Court and the Supreme Court in addition to 500,000Frw they were awarded in Intermediate Court, all amounting to 1,500,000Frw.

THE VIEW OF THE COURT

[24] The Court finds that for determination of moral damages, it should be taken into account the fact that the booklet that Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha were mentioned in were distributed among various individuals, and Nkurunziza and wife Nzayinganyiki Elizabeth did not try to recall them from the people or publically apologize to the persons they defamed, so that it could erase the tarnished reputation to the population.

[25] Pursuant to the aforementioned motivation, the Court finds that 2,000,000Frw of damages awarded to Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha by the Intermediate Court of Musanze should be upheld and each one should receive 1,000,000Frw, especially that the High Court did not indicate the grounds for the reduction of those

damages. 40,000,000Frw requested is excessive compared to the extent of the prejudice caused by the fault.

[26] Concerning the incurred costs of procedure and counsel fees before the High court and on this instance level, the Court finds that Hakizimana Sylvain and Twizeyimana Emeritha should be awarded them because they had to hire an advocate and spent some amounts of money to follow up the case and appearance to the court. However, they should be determined upon court's discretion, therefore, according to the state of the case, they are awarded 600,000Frw (300,000Frw x 2), in addition to 500,000Frw awarded on first instance.

III. DECISION OF THE COURT

[27] Decides the appeal lodged by Nkurunziza Apollinaire and Nzayinganyiki Elizabeth has no merit.

[28] Decides that the cross appeal lodged by Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha has merit in part.

[29] Orders Nkurunziza Apollinaire and Nzayinganyiki Elizabeth to jointly pay Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha moral damages amounting to 1.000.000Frw for each one, all amounting to 2,000,000Frw.

[30] Orders Nkurunziza Apollinaire and Nzayinganyiki Elizabeth to jointly pay Hakizimana Sylvain and Twizeyimana Kwitonda Emeritha 1,100,000Frw of procedural costs and counsel fees constituted by 500,000Frw for first instance level, 300,000Frw for High Court and 300,000Frw for this level.

[31] Orders Nkurunziza Apollinaire and Nzayinganyiki Elizabeth to jointly pay court fees amounting to 24,550Frw.