

MUKAGATARE v. SUCCESSION BWANAKEYE

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV 0007/14/CS (Mukanyundo, P.J., Rugabirwa and Hitiyaremye, J.) October 10, 2014]

law determining jurisdiction of courts – Supreme Court jurisdiction – Application for review of the judgment due to injustice – Objection for inadmissibility of claim – Inspection report – The effect of absence of the report of inspection of the Court in the file of the case – The absence of the report of the inspection of courts in the case file cannot be the motif to not admit the claim because generally it is used in the preparation of the hearing of the case – Organic Law n° 03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 81(1).

Facts: In 1995, Mukagatare built a house in the plot which she argues she was given by Ngoma Municipality. In 2000, Bwanakeye François began to sue Mukagatare alleging that she has erected a building in his garden then in 2006 she sued him at the Intermediate Court of Huye requesting to stop construction activities which Mukagatare carried out on his plot of land.

That Court ruled that Mukagatare should demolish a bungalow and the houses built on the land of Bwanakeye.

Mukagatare was not satisfied with the ruling of the judgment and appealed to the High Court, Nyanza Chamber which held that the ruling of the judgment rendered by the Intermediate Court is totally sustained.

Mukagatare was not satisfied with the ruling of the judgment and she appealed to the Supreme Court. After the objection of lack of jurisdiction raised the Counsels for Bwanakeye, the Supreme Court held that her appeal does not fall into the jurisdiction of the Supreme Court.

After Mukagatare saw that decision, she proceeded to the Office of Ombudsman requesting review of judgment RCA 1633/06/HC/NYA on grounds of injustice and the Ombudsman Office addressed a letter to the President of the Supreme Court requesting review her judgment due to injustice grounds submitted to it by Mukagatare.

Succession Bwanakeye raised the objection of inadmissibility of the claim of Mukagatare within the framework of injustice arguing that he has not seen the report of Inspectorate of Courts and it is not included in the case file.

Mukagatare presents her defence arguing that this objection should not be considered because, in respect to the report of inspection, she was not the one who should submit it but that ground of the disregarded evidence shall be examined during the hearing of the case on merits.

Held: 1. The absence of the report of the inspection in the case file does not affect the parties because generally it is used to prepare the hearing of the case and not to examine injustice.

**The objection has no merit;
The claim is admitted;
Suspends the court fees.**

Statutes and statutory instruments referred to:

Organic Law n° 03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 81(1).

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Mukagatare Grâce is a Rwandese who fled in 1960 due to political reasons which were in the country during that period; in 1994 she returned in Rwanda and settled in former Butare Province. In 1995, she built on the plot which she argues that she was given by Ngoma Municipality, where she resides. In 2000, Bwanakeye François began to sue Mukagatare because she built on his garden; the issue was submitted to the administrative authorities.

[2] In 2006, Bwanakeye François sued Mukagatare Grâce at the Intermediate Court of Huye claiming to stop illegal construction activities carried out on his plot of land. In the judgment 0069/06/TGI/HYE/RC0002/06/TP/BUT rendered by the Intermediate Court of Huye on 29 December 2006 it held that Mukagatare Grâce should demolish a bungalow and the houses which are built on the plot of land of Bwanakeye François within the period not exceeding 30 days.

[3] Mukagatare was not satisfied with the ruling of the judgment and appealed at the High Court, Nyanza chamber which rendered the judgment RCA 1633/06/HC/NYA on 03 November 2008 whereby it held that Mukagatare loses the case and that the ruling of the judgment RC 0069/06/TP/BUT rendered by the Intermediate Court of 29 September 2006 is sustained in its all grounds.

[4] Mukagatare Grâce was not satisfied with the ruling of the judgment and she appealed to the Supreme Court. After the objection of lack of the jurisdiction raised by the Counsel for Bwanakeye, the Supreme Court held that the appeal against the judgment RCA 1633/06/HC/NYA rendered by the High Court, Nyanza chamber on 3 November 2006 does not fall into the jurisdiction of the Supreme Court.

[5] After seeing that decision Mukagatare proceeded to the Office of Ombudsman requesting review of judgment RCA 1633/06/HC/NYA due to grounds of injustice, and on 27 March 2013, the Ombudsman Office wrote to the President of the Supreme Court requesting review of the mentioned judgment due to injustice reasons which was submitted by Mukagatare.

[6] The Office of Ombudsman argues that the ground of evident injustice in that judgment is justified by the official documents which Mukagatare demonstrated at the High Court, Nyanza Chamber proving that the plot in litigation belongs to her, but that Court disregarded them. Those are the same included in the submission submitted by Mukagatare to the Supreme Court demonstrating injustice she suffered from.

[7] The hearing in public was conducted on 16 September 2014, Mukagatare represented by Counsel Hakizimana John whereas Succession Bwanacyeye was represented by Counsel

Ngirabakunzi Evariste who raised immediately the objection for inadmissibility of the claim whereby he states that it is not in conformity with article 79 and 81 of Organic Law n° 03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the objection raised by Succession Bwanakeye François for inadmissibility of Mukagatare's claim has merit.

[8] Counsel Ngirabakunzi Evariste raised the objection of inadmissibility of Mukagatare's claim for injustice reasons arguing that he did not see the report of Inspectorate of the Courts and it is not included in the file and he also argues that Mukagatare Grâce filed a claim on the basis of article 81(2) of Organic Law n° 03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court submitting that the Courts disregarded the laws and the evidences obvious to everyone while in the judgment rendered by the Intermediate Court of Huye Mukagatare was requested the evidences and she produced the act of notoriety of 30 March 2000 and the construction permit document and the Court found that the act of notoriety confirms that she possesses Bar Isangano and did not grant her the plot, therefore she built on it without the consent of the owner. He concludes arguing that there is no injustice because those evidences which she states they were disregarded were examined by the Court but it did not give them the merit.

[9] Hakizimana John, Counsel for Mukagatare Grâce, argues that the objection should not be sustained because, in respect to the report of Inspection of Courts, Mukagatare was not the one who should submit it and concerning the disregarded evidence, that ground shall be examined during the hearing of the case on merits. He concludes praying the Court not to consider both grounds and to reject the objection for not admitting the claim submitted by Succession Bwanacyeye.

VIEW OF THE COURT

[10] Article 81 paragraph 1 of Organic Law n° 03/2012/OL of 13/6/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that "The review of a final decision due to injustice shall only be applied for on any of the following grounds: 1° when there is unquestionable evidences of corruption, favoritism or nepotism that were relied upon in the judgment and that were unknown to the losing party during the course of the proceedings; 2°when there are provisions and irrefutable evidence that the judge ignored in rendering the judgment; 3°when the judgment cannot be executed due to the drafting of its content".

[11] Concerning this judgment, in her letter of 27 March 2013, the Ombudsman sent to the President of Supreme Court requesting review of judgment RCA 1633/11/HC/NYA rendered by the High Court, Nyanza Chamber on 3 November 2008 on grounds of injustice she demonstrates that that judgment was rendered while disregarding the evidences which are obvious to everyone.

[12] In addition, the file demonstrates that Mukagatare Grâce who prayed that the judgment should be reviewed due to injustice reasons, in the submission which she submitted, states that the previous Courts disregarded the evidences which are evident to everyone, including the document which gave her the power to build a kiosk in that plot, act

of notoriety, cadastre of the plot in litigation and the lease contract which she concluded with the administration of Huye District on 28 August 2006.

[13] Concerning the report of Inspection of the Courts, which the Counsel for Succession Bwanakeye states that it is not in the file, the Court finds that the report does not have the relationship with the judgment and that even though it is used in preparation of the case hearing, it is not used in examining injustice; therefore, its absence in the file does not prejudice the defence of the parties.

[14] Therefore, the Supreme Court finds that article 81 paragraph 1 section 2 of the Organic Law mentioned above provides for the evidences and laws which were disregarded; this implies that the requirements of that provision in respect to admissibility of the claim were complied with and their validity will be examined in the hearing of the case on merits. Therefore, the objection raised by the Counsel for Succession Bwanacyeye has no merit.

III. THE DECISION OF THE COURT

[15] The Court decides that the objection raised by Succession Bwanacyeye François has no merit;

[16] The Court declares that the claim of Mukagatare Grâce is admitted to be examined on merits;

[17] The Court decides that the hearing of the judgment RS/REV/INJUST/CIV 0007/14/CS will continue on 13 January 2015;

[18] The Court suspends payment of the court fees.