

## MBARUSHIMANA v. NTIGURIRWA ET AL

[Rwanda SUPREME COURT – RCAA0010/13/CS (Hatangimbabazi, P.J., Mukamulisa and Hitiyaremye, J.) June 19, 2015]

*Law determining jurisdiction of courts – Jurisdiction of the Supreme Court – Objection on lack of jurisdiction – Material jurisdiction in relation to the value of awarded damages – In case of determination of the material jurisdiction in relation to the value of damages awarded in the case, it is taken into account the amount of damages awarded by any court rather than considering the amount of damages awarded by appellate court only – Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme court, article 28, paragraph 2, litera 7°.*

**Facts:** On 22 August 2005, the municipal Administration of Gitarama, which later become Muhanga District, represented by its Vice Mayor in charge of Economic development conducted an auction in the context of executing the judgment N° R.C.4227/14/2005 - RCA9404/133 in which Iyamuremye and others won the case against Mbarushimana, and the judgment N° 39320/03, in which Bank of Kigali (BK) won the case against Mbarushimana and Nyiransabimana. The auction concerned the main house in the enclosure and its annexes as well as a big house for rent; all located in Gahogo in Gitarama town. All properties were acquired by Ntigurirwa, and the proceeds were apportioned among Mbarushimana's creditors. After he purchased them, Ntigurirwa begun to erect a floor with three levels in the plot of land and consequently, he demolished some of the existing houses and he was awarded all documents confirming his ownership.

On 20 September 2005, Mbarushimana filed a case before the Intermediate Court of Muhanga stating that the execution of the judgment contravened the law, and thus requested that it should be annulled. The Intermediate Court decided in the case RC 0174/05/TP/GIT that Mbarushimana's claim has merit, and it annulled the auction alleging that it was conducted by an incompetent authority. In executing this judgment rendered by the Intermediate Court, the Court bailiff reinstated Mbarushimana in ownership of the house left after demolition while for the big house which was for rent; he established a notice of inexistence because it was replaced by a floor with three levels and thus requested Mbarushimana to seize the court to resolve the issue of the missing house.

After Ntigurirwa was deprived of those properties, he filed a case to the Intermediate Court of Muhanga requesting for the nullification of the auction which deprived him of the properties he acquired, and meanwhile, Mbarushimana filed the case to the Court requesting for the expulsion of Ntigurirwa from the floor of the house he erected on his plot. After it was realised that both cases are related, they were joined together and heard in a single lawsuit, and this court decided that the claim of Ntigurirwa lacks merit, therefore that the public auction remains valid and It decided that the claim of Mbarushimana has partial merit, and consequently that the building with three levels was erected by Ntigurirwa on the plot of land belonging to Mbarushimana. However, in order for this building to remain in the ownership of Ntigurirwa should pay 83,300,000Frw of compensation to Mbarushimana and ordered him to pay 500,000Frw to Muhanga District because he dragged it into unnecessary lawsuits.

Ntigurirwa appealed to the High Court, Chamber of Nyanza which found it with merit, and therefore the plot in which a house was erected with three levels belongs to Ntigurirwa and consequently the public auction conducted on 13<sup>th</sup> October 2010 is nullified. It discharged him of 83,300,000Frw of compensation he was ordered to pay as well as 500,000Frw which

was awarded to Muhanga District. Mbarushimana appealed against the case to the Supreme Court alleging that the judge contradicted himself whereby he nullified the public auction but did not rely on that nullification to order the successful purchaser to be paid back the price he paid and the owner of the houses to hold their ownership. Therefore, he should have relied on these grounds and confirm the auction to be valid.

At the beginning of the hearing, Counsel Habineza Jean Paul representing the heirs of Ntigurirwa, raised an objection of inadmissibility of the appeal claim initiated by Mbarushimana alleging that even if Mbarushimana was awarded compensation amounting to 83,300,000Frw by the Intermediate Court, but that they were abolished in the appealed judgment; therefore in accordance with article 28, litera 7 of its paragraph 2 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, his appeal claim does not fall into the jurisdiction of the Supreme Court because the amount awarded as damages by the appealed Court does not reach 50,000,000Frw. Counsel Kayiranga Bernard who represented Muhanga District supports the arguments of Counsel Habineza Jean Paul and affirms that damages stated in this article 28, paragraph 2 and litera 7 of the aforementioned organic law relates to those awarded by the High Court judge, therefore the appeal claim of Mbarushimana does not fall into the jurisdiction of the Supreme Court.

Counsel Nsengiyumva Jean Claude for Mbarushimana states that if the subject matter of the case consists of the amount of damages awarded by the judge of the Intermediate Court which is higher than the said amount; the appeal falls into the jurisdiction of the Supreme Court. The Court found that it should hear and decide on the objection first, and then it was the only issue debated on.

**Held:** 1. The analysis of litera 7 of article 28 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court implies that in case of objection on the value of damages awarded by previous courts, the judge who is stated as competent to address such objection is not only that of the High Court (or the Commercial High Court or Military High Court), rather he/she can be even that of the court which was seized with the appeal claim, therefore the appeal claim based on this objection falls within the jurisdiction of the Supreme Court.

**Objection rejected.  
Appeal falls within the jurisdiction of the Supreme Court.  
Court fees is suspended.**

**Statutes and Statutory instruments referred to:**

Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28, paragraph 2, litera 7°.

**No case referred to.**

## **Judgment**

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

[1] This case derived from a public auction which was conducted on 22/08/2015 in execution of the judgment N° R.C.4227/14/2005 - RCA9404/133 in which Iyamuremye Nathanaël and others won the case against Mbarushiman Boniface and the judgment N°39320/03 in which Bank of Kigali (BK) won against Mbarushimana Boniface and Nyiransabimana Gaudence. In the course of the auction, the house was sold, its fence and annexes, as well as the main house which was for rent, all located in Gahogo in Gitarama town. This auction was conducted by the administration of Gitarama Municipality which later became Muhanga District, represented by its Vice Mayor in charge of economic development.

[2] All published houses for auction were purchased by Ntigurirwa Eustache and the proceeds were apportioned among traders with whom Mbarushimana had disputes and BK resulting from the debt he owed it. Just after acquisition of those buildings in auction, Ntigurirwa started to build new houses including a building with three floors and therefore demolished the existing houses and was handed with all land titles indicating his ownership over that land.

[3] On 20 September 2005, Mbarushimana Boniface initiated a claim before the Intermediate Court of Muhanga alleging that the public auction was not conducted in compliance with the law, therefore that it should be nullified. On 8 February 2007, the court decided in the judgment RC0174/05/TP/GIT that the claim of Mbarushimana has merit and that the auction is nullified because it was held in contradiction with the law because it was conducted by an incompetent officer.

[4] It is in the course of execution of this ruling that a dispute arose because the court bailiff restored Mbarushimana Boniface into ownership of houses, consequently he noted that some of the houses are available and restored to him back but the main house for rent was missing as in its place, it was erected a big building with three floors. He therefore informed Mbarushimana to file a case to court for that issue.

[5] On 28 October 2010, Ntigurirwa Eustache who bought the houses through auction, and holds the titles over them and a construction permit over the whole land, filed the claim to the Intermediate Court of Muhanga requesting for the nullification of the auction on the basis of which he was expelled from his buildings. Subsequently, Mbarushimana also filed the claim, requesting for expulsion of Ntigurirwa from the building (floor) he constructed on his plot. These two cases were joined together and heard in the same lawsuit, and on 18 November 2011, the court decided that Ntigurirwa's claim lacks merit and upheld the validity of the auction.

[6] Concerning Mbarushimana Boniface's claim, the court found it with merit partially, and decided that the three floor building which was erected to the land belonging to Mbarushimana by Ntigurirwa, should remain in his ownership and pay 83,300,000Frw of compensation to Mbarushimana and 500,000Frw of damages to Muhanga District for dragging it into unnecessary lawsuits.

[7] Ntigurirwa Eustache appealed to the High Court, Chamber of Nyanza which in its decision of 26 June 2012 found his appeal with merit, and therefore decided that the plot in which it is erected a floor of three levels belongs to Ntigurirwa and consequently the public auction conducted on 13 October 2010 is nullified. It discharged him of 83,300,000Frw as compensation as well as 500,000Frw which was awarded to Muhanga District.

[8] Mbarushimana Boniface appealed to the Supreme Court alleging that in his decision, the judge contradicted himself whereby he nullified the public auction but did not rely on that nullification to order the successful purchaser to be paid back the price he paid and the owner of the houses to hold ownership over them. Therefore, he should have relied on these grounds and confirm the auction to be valid.

[9] The public hearing was held on 19<sup>th</sup> May 2015, whereby Mbarushiman Boniface was represented by Counsel Nsengiyumva Jean Claude while the heirs of Ntigurirwa Eustache were represented by Counsel Habineza Jean Paul, and the State Attorney Kayiranga Bernard representing Muhanga District.

[10] At the beginning of the hearing, Counsel Habineza Jean Paul on behalf of the heirs of Ntigurirwa Eustache raised an objection of inadmissibility of the appeal claim initiated by Mbarushimana Boniface, alleging that it does not fall into the jurisdiction of the Supreme Court. The Court found that it should hear and decide on the objection first, and it was the only issue debated on.

## **II. ANALYSIS OF THE LEGAL ISSUE**

**To examine whether the appeal claim initiated by Mbarushimana Boniface does not fall into the jurisdiction of the Supreme Court.**

[11] Counsel Habineza Jean Paul states that before the examination of the merit of the case, the court should examine the jurisdiction of the Supreme Court as provided for by article 28, paragraph two of the Organic Law determining the organisation, functioning and jurisdiction of the Supreme Court. He states again that in the Intermediate Court, Mbarushimana Boniface was awarded damages amounting to eight three millions, three hundred thousands (83,300,000Frw), but that in appealed case, those damages were discharged.

[12] He argues that in accordance with article 28, paragraph 2, litera 7 of the Organic Law determining the Organisation, functioning and jurisdiction of the Supreme Court, the appeal claim lodged by Mbarushimana Boniface does not fall into the jurisdiction of this court, because damages awarded in the judgment which was rendered by the High Court, Chamber of Nyanza which is the same judgment appealed against, do not exceed fifty millions Rwandan francs (50,000,000Frw).

[13] Counsel Nsengiyaremye Jean Claude for Mbarushimana Boniface argues that their appeal relied on article 28, paragraph 2 and litera 7 of the Organic Law determining the organisation, functioning and jurisdiction of the Supreme Court which provides that the Supreme Court has appellate jurisdiction over cases heard and decided in the second instance by the High Court, involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000Frw), or when the value of the case, as determined by the judge in the case of a dispute, is at least fifty million Rwandan francs (50,000,000Frw) or its equivalent. He therefore argues that given that the dispute relies on the amount of damages awarded by the judge of Intermediate Court which exceeds the given amount, which implies that their appeal falls into the jurisdiction of the Supreme Court.

[14] Counsel Kayiranga Bernard for Muhanga District supports the statements of Counsel Habineza Jean Paul who represents the heirs of Ntigurirwa Eustache by stating that the appeal of Mbarushimana Boniface does not fall into the jurisdiction of the Supreme Court. He also

relies on the article 28, paragraph 2, litera 7 of Organic law determining the organisation, functioning and jurisdiction of the Supreme Court, and confirms that damages stated in this provision consist of those awarded by the High Court.

## **REASONS FOR THE COURT DECISION**

[15] Article 28, paragraph 2 and litera 7 of Organic Law N°03/2012/OL of 13/06/2012, determining the organisation, functioning and jurisdiction of the Supreme Court provides that: “The Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases, involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000Frw), or when the value of the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (50,000,000Frw)”.

[16] The Court finds that in accordance with the aforementioned litera 7 of article 28, it is wondered if it should be relied on damages awarded by the High Court (or by Commercial High Court or by the Military High Court) only amounting to at least 50,000,000Frw for the determination of the jurisdiction of the Supreme Court, or damages awarded by the judge of the High Court or by Commercial High Court or by the Military High Court) only amounting to at least 50,000,000Frw in case of the dispute thereto.

[17] The Court is of the view that even if the litera 7 stated in this article relates to the whole sentence as expressed at the beginning of article 28 whereby it states that “cases heard and decided upon in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases”, nowhere it is indicated explicitly in the reading of litera 7 that the court which it states consists of the High Court only (or Commercial High Court or the Military High Court), and indeed, it is written in french “une juridiction de jugement”, which means the court in general (or Commercial High Court or the Military High Court), therefore it is possible to consider the amount of damages awarded by any Court in that judgment without taking into account the only damages awarded by the court which rendered the appealed case.

[18] The analysis of this provision implies again that when a dispute arises in relation to amount of damages awarded by the previous courts, the judge mentioned who can rule on those disputes is not only the judge of the High Court (or Commercial High Court or the Military High Court), rather it can be even the judge of the Supreme Court who was seized with appeal, and this reasoning is similar to some case laws of the Supreme Court on the similar issue.

[19] Concerning this case, the court finds that the dispute in the High Court, Chamber of Nyanza was based on the amount of compensation awarded by the Intermediate Court equivalent to eighth three million, three hundred thousand Rwandan francs (83,300,000Frw) representing compensation for the edification of the building on the plot of land of Mbarushimana Boniface by Ntigurirwa Eustache. This dispute continued even to the Supreme Court as a ground of appeal lodged by Mbarushimana after the High Court, Chamber of Nyanza discharged that compensation.

[20] In accordance with reasons mentioned above, as it is clear that there is still debate on the amount of compensation equivalent to eighth three million, three hundred thousand

Rwandan francs (83,300,000Frw) awarded by the judge at Intermediate Court level; the Court is of the view that the appeal claim based on this dispute falls into the jurisdiction of the Supreme Court in accordance with the provision of litera 7 of article 28 of the Organic Law N°03/2012/OL of 13/06/2012, determining the organisation, functioning and jurisdiction of the Supreme Court.

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

- [21] Court decided that the objection raised by Succession of Ntigurirwa is without merit.
- [22] Court decided that the appeal lodged by Mbarushimana Boniface falls into the jurisdiction of the Supreme Court.
- [23] Court Scheduled the hearing of the case and put it on 15<sup>th</sup> September 2015.
- [24] Court suspended the payment of court fees.