

MUNYAMPUNDU ET AL v. KIGALI CITY

[Rwanda SUPREME COURT – RADA0011/13/CS (Mukanyundo, P.J., Rugabirwa and Ngagi, J.) March 18, 2016]

Administrative procedure – Administrative decision – The transfer of the responsibility from one administrative entity to another – Administrative appeal – The right entity to lodge an administrative appeal to and to be sued – The transfer of the responsibilities from one administrative entity to another makes the latter entity liable for the decisions made by the former entity; thus the entity which made the contested decision when the transferred responsibilities were still in its competence no longer have the capacity to entertain an administrative appeal regarding that decision or to be sued for it rather the one to which those responsibilities were transferred to is the one to be sued and the one to which an administrative appeal can be filled to – Law N°08/2006 of 24/02/2006 determining the organization and functioning of the district, article 67 – Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and procedure, article 339.

Contracts or obligations law – Damages – There is no damages awarded to the plaintiff when the appeal has no merit because the defendant has no fault to be held reliable – Decree law 30/07/1888 relating to Contracts or obligations, article 258.

Facts: After Kigali City has allotted to Kalisa the plot N°1068 located at Kacyiru Sector, Gasabo district which belonged to Gatarayiha who had given it to his children, who are Munyampundu, Muhizi, Mukarwego and Sebahire. Those children lodged an administrative appeal to Kigali City claiming that the laws relating to expropriation in the public interest especially the provisions relating to fair compensation should be followed.

Munyampundu and others did not get a response therefore they sued Kigali City in the High Court requesting for the annulment of the decision which deprived them of their plot. That court held that their claim is inadmissible because they sued a wrong party as they should have sued Gasabo district, because although at the time of allocation of the plot the matters relating to the allocation of plots were in the competence of Kigali City, but at the time of the lawsuit the matters relating to the land use and allocation of plots were in the attribution of the district.

Munyampundu and others appealed to the Supreme Court contending that the High Court relied on the Law¹ which is not related to the admissibility of a claim and the transfer of the responsibility of allocation of plots to the district does not imply that the district must be liable for the annulment of a decision made by Kigali City because it is not the one which made that decision. They also request for various damages.

Held: 1. The fact that the responsibilities of allotting the plots were transferred from Kigali City to the Districts in its territorial boundaries is a ground for which Kigali City cannot be sued in a case relating to the allocation of a plot which was carried out when those responsibilities were still in its competence, instead the right party to sue is the District because it is the one responsible for all the matters regarding the allocation of plots in its territory including those claims not settled by Kigali City.

¹ It based on article 67(17), Law N°08/2006 of 24/02/2006 determining the organization and functioning of the district.

2. The administrative appeal before the authority which no longer has competence at the time it was lodged is disregarded.
3. No damages awarded to the plaintiff when the appeal has no merit.

The appeal lacks merit.

The court fees deposited by the appellants are equal to the expenses of the case.

Statutes and statutory instruments referred to:

Law N°08/2006 of 24/02/2006 determining the organization and functioning of the District, article 67.

Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and procedure, article 339.

Decree law 30/07/1888 relating to Contracts or obligations, article 258.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François state that their father Gatarayiha Frédéric left behind for them a plot N°1068 located in Kacyiru sector, Gasabo district. Later they heard that Kigali city allotted it to Kalisa Evariste. On 14 August 2009, through a letter to the Mayor of Kigali City, they made an administrative appeal requesting that the laws relating to expropriation in the public interest should be complied with especially those providing for the appropriate compensation.

[2] On 14 January 2010, Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François lodged a claim in the High Court requesting for the annulment of the decision which deprives them of that plot. In the judgment N° RAD0008/10/HC/KIG rendered on 11 December 2012, that Court declared the claim inadmissible.

[3] In making that declaration, the High Court found that the decision which allotted the plot N°1068 to Kalisa Evariste was made by the Mayor of Kigali City on 07 March 2001 and the plaintiffs lodged an administrative appeal requesting for the annulment of that decision to the Mayor of Kigali City on 14 August 2009, and then that Court motivated that at the time of giving away that plot the issues concerning plots were in the attributions of Kigali City, but now (at the time of filing a claim), the land use and allotment of the plot are in the attributions of the district, implying that Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François sued a wrong defendant because they should have sued Gasabo District, thus it declared that their claim should not be admitted basing on article 67(17) of Law N°08/2006 of 24/02/2006 determining the organization and functioning of the district.

[4] Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François appealed in the Supreme Court claiming that the High Court relied on the Law² which does not relate to the admissibility of a claim because the grounds for admissibility of the claim are provided for by articles 2, 77 and 142 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, and the duties of allotting plots being in the attributions of the district does not imply that the District is responsible for the annulment of the decision made by Kigali City because it is not the one which made that decision, rather in order to determine who should be sued, it should be determined the one who made that decision which is the subject for annulations as provided for by article 93(1) of the Organic Law N°51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts, and therefore the fact that for the decision was made by the Mayor of Kigali City is also the one to whom the administrative appeal was addressed as it is provided for by article 339 of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, and this implies that that they complied with the law. They requested for various damages as indicated in their submissions.

[5] The hearing was conducted in public on 16/02/2016, the appellants being represented by Counsel Nkanika Alimasi, whereas Kigali City was represented by the state attorney Kayiranga Rukumbi Bernard.

II. ANALYSIS OF THE LEGAL ISSUE

Determining whether the transfer of the attribution of plots allotment in the authority of Gasabo district, exempts Kigali City to be sued in a case relating to plots allotment preformed while that attribution was still under its authority.

[6] Nkanika Alimasi, the counsel for the appellants states that the High Court rejected their claim on the basis of article 67 of the Law N°08/2006 of 24/02/2006 determining the organization and functioning of the District while they sued for annulment of the decision made by Kigali City which deprived them of the plot so that plot be allotted to the rightful owners who are Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François. He argues that the judge motivated that they sued a wrong defendant but he disregarded the fact that the subject matter relies on the decision made by Kigali City.

[7] Kayiranga Rukumbi Bernard, the Counsel for Kigali City invoked the indivisibility and continuity of the administration of the government and explained that when the duties of a particular organ of the government is attributed to another organ, the latter organ assumes those duties, and it is liable for the faults that were committed. He explains that in this case the duties regarding the plots in Kigali City were transferred to the Districts, which means that for land cases, even if the decisions were made by Kigali City, the Districts are liable. He states in addition that the Supreme has already taken a position on this legal issue, in the judgment N° RCAA0057/05/CS, Succession Rukeba c/ MINITRAPE rendered on 10 February 2006, whereby it found that, in order to continue the hearing Kigali city had to be summoned as the successor of MINITRAPE, thus he is of the view that the Supreme Court should summon Gasabo District as it was the case in the judgment mentioned above whereby Kigali City was summoned and the hearing proceeded.

² It based on article 67(17), Law N°08/2006 of 24/02/2006 determining the organization and functioning of the district.

VIEW OF THE COURT

[8] Article 67(17) of the Law N°08/2006 of 24/02/2006 determining the organization and functioning of the District, provides that the responsibility of the District Executive Committee is promoting land use, organizing and allotting plots in the District.

[9] In this case, it is indicated in the case file that the decision which allotted the plot N° 1068 to Kalisa Evariste was made by the Mayor of Kigali City on 07 March 2001. It is also demonstrated that Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François lodged the administrative appeal to the Mayor of Kigali City on 14 August 2009 requesting for the annulment of that decision as provided for by article 339 of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and procedure which was in force that time.

[10] The Court holds the same view like that of the High Court that by the time the above mentioned plot was allotted to Kalisa Evariste, Kigali City was the one with the responsibility of allotting plots but at the time of filing the claim that responsibility had already been transferred to the District, and by this, it means that Kigali city was the right party to be sued after the administrative appeal lodged by Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François, because in the Law N°08/2006 of 24/02/2006 mentioned above, the legislator did not provide that it's Kigali city which will be sued in the cases originating from the decisions relating to plots allotment which were made before the promulgation of that law. This implies that given that it is Gasabo District which was assigned with the responsibility in matters regarding land use and plots allotment, it is the one which is liable for all matters regarding the allotment of plots in its territory including those that were not solved by Kigali City (transfer of rights and obligations).

[11] The Court also finds that it cannot base on the ground that the administrative appeal was lodged to the Mayor of Kigali City to hold that the right party to be sued is Kigali City, because the administrative appeal was done before the authority that did no longer have the competence and obligations relating to allotment of the plots.

[12] Pursuant to the motivation provided above, the Court finds that for the obligations of allotment of plots were transferred from the competence of Kigali City to the competence of the Districts in its territory, this constitutes the ground for Kigali City not to be sued in the case relating to the allotting of the plot which was done when it still had those obligations.

Whether appellants should be awarded damages they claimed for.

[13] Nkanika Alimasi, the counsel for appellants argues that given that Kigali City used delaying tactics by claiming for what are not provided by the law, it made them incur the expenses on the appellate level and also delayed the case, therefore Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François should be given 1,000,000Frw of procedural fees (500,000Frw corresponding to every instance), 1,000,000Frw of the counsel fees and 12,000,000Frw of moral damages (3,000,000Frw for each).

[14] Kayiranga Rukumbi Bernard, the counsel for Kigali City argued that damages claimed by the appellants have no basis because Kigali City exercised its rights as a respondent, thus this should not be considered as delaying the case because raising an objection is a right granted to a party by the law.

VIEW OF THE COURT

[15] Article 258 of the civil code book three (CCB III) provides that “any act of man, which causes damage to another obliges the person by whose fault it happened to repair it”.

[16] As motivated above, the Court finds that because the appeal of Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François lacks merit, it implies that they should not be awarded damages in this case, especially that Kigali City did not commit any fault for it to be liable for damages as it is provided for by article 258 mentioned above.

III. DECISION OF THE COURT

[17] It holds that the appeal submitted by Munyampundu Alphonse, Muhizi André, Mukarwego Emerthe and Sebahire François lacks merit;

[18] It rules that the judgment N^o RAD0008/10/HC/KIG rendered by the High Court on 11 December 2012 is sustained.

[19] It orders that the court fees deposited by the appellants are equal to the expenses incurred in the case.