

## SEMANYENZI v. NTIHABOSE

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV0010/15/CS (Mutashya, P.J., Karimunda and Gakwaya, J.) January 22, 2016]

*Civil procedure – Review of the judgment due to injustice – Self declaration of incompetence by Abunzi committee – The decision of the Abunzi committee – A party who seizes the primary Court after the decision of the Abunzi committee declaring itself incompetent is not considered as appeal against the Abunzi decision on the appellate level but as an action on the first instance, therefore time barred against the claims of appeal does not apply – Organic Law N°31/2006 of 14/08/2006 determining the organization, jurisdiction, competence and functioning of the mediation committee, article 8.*

**Fact:** Semanyenzi sued Ntihabose in the *Abunzi* Committee of Nganzo cell accusing the latter of unlawfully possessing his farm land which he won in a case he had against Gabiro (the Grandfather of Ntihabose Théoneste) in the First Instance Court of Gitarama. The *Abunzi* Committee declared itself incompetent on the ground of the value of the subject matter.

Semanyenzi filed a claim in the Primary Court of Nyamabuye, which held that Ntihabose failed to prove that he has the contested farm as an inheritance and even though this was the case, it would have no merit because the predecessor was not the owner given that Semanyenzi Déogratias had won it in the judgment N° RC1324/4. Consequently, it held that the contested farm belongs to Semanyenzi Déogratias and Ntihabose Théoneste was ordered to pay time wage and the costs of the case.

Ntihabose appealed in the Intermediate Court arguing that Semanyenzi Déogratias lied that the contested land belongs to him because he won the case in the judgment N° RC1324/4 about it whereas belongs to Ntihabose because he inherited it from his grandfather named Gabiro. In its judgment, the Court sustained the rulings of the appealed judgment.

Again, Ntihabose appealed to the High Court claiming that the Intermediate Court did not demonstrate the motivations of its judgment. That Court held that Semanyenzi delayed to file a claim against the award of *Abunzi* committee to the Primary Court thus the later and the Intermediate Court disregarded the time bar for filing of the claims from the *Abunzi* Committee as provided for by the law while it is a procedure of public order. Thus, both of those Courts rendered their judgments without a legal basis, therefore their judgments should be quashed and the decision of the *Abunzi* sustained.

Semanyenzi applied for a review of the judgment due to injustice and the Supreme Court examined whether filing a claim in the Primary Court contesting the decision of the *Abunzi* committee in which it declared itself incompetent is considered as an appeal likely to involve the delay to file it in the Primary Court of Nyamabuye.

**Held:** The fact that the *Abunzi* Committee declared themselves incompetent to hear a claim on the ground of the value of the subject matter and no one appealed against it, a claim submitted at the Primary Court regarding the subject matter on which the *Abunzi* Committee declared itself incompetent is not considered as a claim of appeal on the pretext that because the decision of *Abunzi* Committee became final, therefore when Semanyenzi filed a claim at the Primary Court it was not an appeal, rather, he was filing the claim in the competent Court for the first time. Thus, the time computation relating to appeal claim does not apply to a plaintiff who filed a claim to the competent Court for the first time.

**The claim for the review of the judgment due to injustice has merit;  
The judgment RCAA0078/11/HC/NYA rendered by the High Court, chamber of  
Nyanza is quashed;  
The judgments RCA0358/010/TGI/MHG and RC0172/09/TB/NYBYE rendered by the  
Intermediate Court of Muhanga and the Primary Court of Nyamabuye  
respectively are sustained;  
The Court fees to the respondent.**

**Statutes and statutory instruments referred to:**

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 171 and 172

Organic law N°31/2006 of 14/08/2006 determining the organization, jurisdiction, competence and functioning of the mediation committee, article 8.

**No case referred to.**

## **Judgment**

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

[1] Semanyenzi Déogratias sued Ntihabose Théoneste in the Abunzi committee of Nganzo cell accusing him of unlawful occupation of his farm land which he won in the judgment N° RC1324/4 between Semanyenzi v. Gabiro (the Grandfather of Ntihabose Théoneste) in the First Instance Court of Gitarama on 23 April 2009. Pursuant to the value of the subject matter the Abunzi committee declared itself incompetent to hear that claim because its value exceeds three million Rwandan franc (3,000,000Frw).

[2] After the decision of *Abunzi* committee, Semanyenzi Déogratias filed a claim in the Primary Court of Nyamabuye. In the judgment N° RC0172/09/TB/NYBYE rendered on 24/06/2010, the Court held that Ntihabose failed to prove that he has the contested farm as an inheritance and even though this was the case, it would have no merit because the predecessor was not the owner given that Semanyenzi Déogratias won it in the Court. It held that the contested farm belongs to Semanyenzi Déogratias and Ntihabose Théoneste was ordered to pay 8,500Frw for daily wage compensation and 46,740Frw of the costs of the case.

[3] Ntihabose Théoneste was not satisfied with the decision, thus he appealed in the Intermediate Court arguing that Semanyenzi Déogratias lied that he won the case about all the contested farm land while Ntihabose Théoneste inherited it from his grandfather named Gabiro.

[4] In the judgment N° RCA0358/010/TGI/MHG rendered on 28 January 2011, the Court held that Ntihabose Théoneste failed to prove his statement that the contested farm is his inheritance from his grandfather Gabiro, therefore it sustained the appealed judgment and Ntihabose Théoneste was ordered to pay the Court fees of 5,000Frw.

[5] Ntihabose Théoneste appealed in the High Court chamber of Nyanza stating that the Intermediate Court rendered the judgment without demonstrating the legal basis.

[6] In the judgment N° RCAA0078/11/HC/NYA rendered on 20 January 2012, the Court found that the *Abunzi* committee rendered its decision on 23 April 2009 while Semanyenzi Déogratias filed the claim on 25 May 2009 and the last day for seizing the Court was on 22 May 2009. It ruled that he delayed to file the claim, therefore that Primary Court and the Intermediate Court disregarded the prescribed time limit for filing a claim from the *Abunzi* Committee as provided for by the law while it is of public order, and consequently both Courts rendered the judgment without a legal basis, therefore the judgments they rendered should be quashed and the decision of the *Abunzi* Committee of 23 April 2009 sustained. Semanyenzi Déogratias was ordered to pay the court fees equal to 22,000Frw.

[7] Semanyenzi requested in writing the office of ombudsman to analyse the existence of injustice in the judgment rendered by the High Court, chamber of Nyanza. On 07 October 2014, the Ombudsman wrote to the President of the Supreme Court requesting that the judgment N° RCAA0078/11/HC/NYA rendered on 20 January 2012 be reviewed due to injustice.

[8] In the decision N°17/2015 of 31 March 2015, the President of the Supreme Court requested the Supreme Court registry to schedule the hearing of the judgement N° RCAA0078/11/HC/NYA rendered by the High Court, chamber of Nyanza on 20 January 2012 to examine whether it should be reviewed due to injustice.

[9] The hearing in public was held on 08 December 2015, Semanyenzi Déogratias appeared through his Counsel Kabagambe Joëlle and Ntihabose Théoneste was also represented by Counsel Ndagijimana Viateur.

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

**Determine whether the lodging of a claim in the Primary Court after the decision of lack of competence of the *Abunzi* committee should be considered as an appeal.**

[10] Kabagambe Joëlle, the Counsel for Semanyenzi Déogratias states that they first lodged the claim in the *Abunzi* Committee of Nganzo cell, requesting it to endorse the judgments which bestowed to Semanyenzi Déogratias the right on the contested farm land, but the *Abunzi* committee found that the value of the subject matter exceeds three million (3,000,000Frw). It declared itself incompetent to hear the case, which led them to lodge a new claim in the Primary Court of Nyamabuye which overruled the objection raised by Ntihabose Théoneste who claimed that the claim of appeal was lodged beyond the time limit for lodging an appeal, that Court held that the claim which was lodged was not the decision of *Abunzi* committee, rather, Semanyenzi Déogratias lodged a new claim which also has merit.

[11] He explains that Ntihabose Théoneste continued relying on the objection of inadmissibility of a claim in the Intermediate Court and in High Court but during the preliminarily hearing in the Supreme Court, Ndagijimana Viateur, the counsel for Ntihabose Théoneste stated that the objection they raised in the previous Courts has no merit because after the *Abunzi* committee declared itself incompetent, the claim which was filed in the Primary Court of Nyamabuye was new and independent.

[12] He concludes stating that the allegations of Ntihabose Théoneste misled the High Court into declaring that at the Primary Court the case was heard as an appeal against the decision of *Abunzi* committee and that there was a delay in its submission, therefore he

requests this Court to rectify those errors and quash the judgment rendered by the High Court and uphold the judgment rendered by the Intermediate Court of Muhanga.

[13] Ndagijimana Viateur, the counsel for Ntihakose Théoneste concurs that the High Court erred in declaring that the subject matter at Primary Court of Nyamabuye was an appeal which was filed outside the time limit while it was a new claim because they did not address the merit. He explains that his client had submitted two issues, and the one for inadmissibility of the claim due to time bar of the appeal and another one concerning the fact that the Primary Court of Nyamabuye and Intermediate Court of Muhanga declared that Semanyenzi Déogratias won the case without any legal basis, thus he finds that the procedure to rectify the error is not to quash the decision of the High Court, rather to give to Semanyenzi Déogratias the opportunity to prove his plaint so that Ntihakose Théoneste could defend himself.

## VIEW OF THE COURT

[14] Article 171 of the Law N<sup>o</sup>21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “when the appeal court overrules the appealed judgment, the court shall hear the case in substance unless the overruling was done because there were irregularities in lodging the appeal or for lack of jurisdiction” whereas article 172 of that law provides that “the court which annuls the appealed judgment shall not hear it. The parties may, however, file a new claim at the first level court where there is possibility of correcting the errors made”.

[15] Article 106(1) of the organic Law N<sup>o</sup>51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as it was amended and completed to date provides that “the High Court hears appealed civil cases heard on the second instance by the Intermediate Court when such cases: 1<sup>o</sup> do not set out whatsoever the basis for decisions, are based on non-existing laws or were pronounced by incompetent court...”.

[16] The case file demonstrates that Semanyenzi Déogratias first lodged the claim in the *Abunzi* committee of Nganzo cell requesting to be given back his farm land which is unlawfully possessed by Ntihakose Théoneste. On 23 April 2009, that committee ruled that the subject matter exceeds their competence (cote 7), which led Semanyenzi Déogratias on 25 May 2009 to file a claim in the Primary Court of Nyamabuye (cotes 3-4). During the hearings of 09 September 2009, Semanyenzi Déogratias explained that his prayer to the Court is to order Ntihakose Théoneste to give him back his farm land which he unlawfully possesses. In his defence, the defendant argued that he lives in the remaining part of the plot of land he received from his grandfather who gave it to him after he won the case between him and Semanyenzi from 1988. Because of that, the court ordered them to hand a plot demarcation plan of the disputed land and it carried out its own investigation before it took the decision (cotes 11-31).

[17] Also the case file demonstrates that the Primary Court of Nyamabuye found that the submission of Semanyenzi Déogratias filing the claim were submitted in due time but it is the decision of the *Abunzi* Committee which was availed with delay and the Court held that due to that, its recording in the registry of claims delayed as well, but that he is allowed to file a claim. After examining the pleadings of both parties and those included in the case file, the Court finds that Ntihakose Théoneste does not prove that his grandfather gave him the

contested farm land as an inheritance and even if this was the case, he cannot be awarded it because his grandfather lost the case about it in favour of Semanyenzi Déogratias (cote 36).

[18] The documents composing the case file demonstrates that at the appellate level in Intermediate Court of Muhanga, Nsabimana Gabriel, the counsel for Ntihakose Théoneste first raised an objection of inadmissibility of the claim stating that Semanyenzi Déogratias delayed to appeal to the Primary Court of Nyamabuye and also he lied that the contested plot belongs to him. The Court found that Ntihakose Théoneste did not prove his argument, and it held that the appealed judgment is sustained. That objection was again raised in the appeal at the High Court, chamber of Nyanza on 20 October 2015, and that Court rendered a judgment in which it overturned the rulings of both Courts on the ground that Semanyenzi Déogratias delayed to file a claim to the Primary Court of Nyamabuye (cotes 35, 40 and 41).

[19] The Court finds that the decision of the *Abunzi* Committee of Nganzo Cell of 23 April 2009 states that “basing on article 8(1<sup>o</sup>) of the Organic Law N<sup>o</sup>31/2006 of 14/08/2006 determining the organization, jurisdiction, competence and functioning of the mediation committee, we find the subject matter to exceed the value of material competence of the *Abunzi* committee”. This means that the committee rejected the whole claim it was seized with by Semanyenzi Déogratias who had to file a new claim to the competent Court and it was not necessary to use the decision of the *Abunzi* committee, rather it was only enough to demonstrate that, based on the value of the subject matter and its location, the Court he filed the claim to is the one with the jurisdiction to hear his case.

[20] The Court finds that the fact for Semanyenzi Déogratias to have informed the Primary Court of Nyamabuye that he delayed to appeal because he did not get the decision of the *Abunzi* committee on time which the Court based on to give him a chance to be heard even if his claim delayed to be recorded in Court register of claims was a mistake because after the *Abunzi* committee declared itself incompetent to hear the claim of Semanyenzi Déogratias, this decision was final and it means that when he filed a claim to the Primary Court of Nyamabuye, Semanyenzi Déogratias was not appealing but it was the first time he lodged the claim in the competent Court, therefore the time limit prescribed for appeal claims cannot be referred to bar a party who intend to file an initial claim to the competent Court.

[21] The Court finds also that what have been mentioned in the previous paragraph, is emphasized by the fact that in examining the claim of Semanyenzi Deogratias, the Primary Court of Nyamabuye did not behave as an appellate Court because it deeply analysed and examined the claim as a first instance Court, because if it was to examine the appeal it would have first adjudicated on the competence of the *Abunzi* committee because it is the only legal issue examined and decided on by that committee, and the fact that it was not done so implies that the judgment was not on appeal level.

[22] The Court finds that the High Court chamber of Nyanza erred in declaring that the previous Courts rendered the judgment without demonstrating any legal basis due to the fact that they disregarded the prescribed time limit for appeal claims of appeal provided for by the law and consequently it heard a case which does not fall into its jurisdiction, because if it found that the Primary Court of Nyamabuye heard this judgment on the first instance as this Court finds it, the High Court chamber of Nyanza would have found that the claim of appeal of which it was seized did not fall into its jurisdiction pursuant to the provisions of article 106(1<sup>o</sup>) of the Organic Law N<sup>o</sup>51/2008 of 09/09/2008 stated above and this implies that the ground on which the High Court based on in admitting the appeal and quashing the judgments rendered by those Courts has no merit.

[23] Basing on the motivations above, the Court finds that the judgment N° RCAA0078/11/HC/NYA rendered by the High Court, Chamber of Nyanza on 20 January 2012 should be quashed, and the judgment N° RCA358/010/TGI/MHG rendered by the Intermediate Court of Muhanga on 28 January 2011 which affirmed the rulings of the judgment N° RC0172/09/TB/NYBYE rendered by the Primary Court of Nyamabuye on 24 June 2010 is upheld.

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

[24] It admits the claim of Semanyenzi Déogratias requesting for the review of the judgment due to injustice because it was lawfully filed;

[25] It declares that the claim has merit;

[26] It declares that the judgment N° RCAA0078/11/HC/NYA rendered on 20 January 2012 by the High Court, Chamber of Nyanza is reversed;

[27] It sustains the judgment N° RCA0358/010/TGI/MHG rendered on 28 January 2011 by the Intermediate Court of Nyamabuye and judgment RC0172/09/TB/NYBYE rendered on 24 June 2010 by the Primary Court of Nyamubuye;

[28] It orders Ntihakose Théoneste to pay the court fees equal to 100,000Frw.