

Re RWANDA BAR ASSOCIATION (2)

[Rwanda SUPREME COURT – RS/SPEC/00001/2017/SC – (Rugege, P.J., Mugenzi, Kayitesi R., Kanyange, Mukamulisa, Gatete, Ngagi, Karimunda and Muhumuza, J.) April 28, 2017]

Constitution – Authentic Interpretation of laws – Admissibility – Condition for admissibility of the petition for authentic interpretation of law – The petitioner must beforehand demonstrate either his/her personal interest, interest of the one(s) s/he is representing who are incapable to file the petition on their own, to file it in public interest, the existence of the judgments or administrative decisions related to a matter of public interest which are conflicting in the interpretation of the legal provision or that the law contains ambiguous words which can lead to conflicting interpretation and it is in public interest that those words be clearly construed.

Constitution – Authentic Interpretation of laws – Inadmissibility – The petition for the authentic interpretation is inadmissible if it relates to a pending case or that which has not yet exhausted the ordinary procedures of appeal.

Constitution – Authentic Interpretation of laws – Summoning of the Government in the petition for the authentic interpretation of laws – Whenever there is a petition for the authentic interpretation of laws, the Government should be summoned to submit its opinion.

Constitution – Authentic Interpretation of laws – Law applicable in the procedure of the hearing of the petitions relating to the authentic interpretation of laws – The provisions of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court relating to petitions seeking to declare unconstitutional a treaty, an international agreement or a law apply.

Constitution – Authentic Interpretation of laws – Legal effect – The authentic interpretation does not only have a binding force on the petitioner but rather it even binds all persons and it can be referred to in future without making another authentic interpretation of that same law.

Constitution – Authentic Interpretation of laws – The role of the Rwanda Bar Association – The Rwanda Bar Association has the power to examine the requests for the authentic interpretation of the laws it receives and decide whether the authentic interpretation is needed or not, and if necessary it can revise it before submitting it to the Supreme Court and its role continues until the Court has heard the petition and it appears to give its opinion – The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 96(3).

Constitution – Authentic Interpretation of laws – The decision of the Rwanda Bar Association – The decision of the Bar Association regarding the admissibility of the request for the authentic interpretation submitted through it is non-appealable.

Constitution – Authentic Interpretation of laws – Issues which must be established in the authentic interpretation by the Court – While making the authentic interpretation of laws, the Court must establish whether the application of the law can lead to a conflict in its interpretation; is there misapplication or misinterpretation of the law to the extent that it does not reflect the motivation for its enactment or falls short of solving social problem for which it was enacted and it must interpret the law or its provisions in case there is ambiguity in its literal words and also give an extensive interpretation of the law in case it is apparent that it is silent on some aspects which leads to lacunae in its application.

Facts: The amendment of the Constitution of Rwanda of 2003 in 2015 vested the Supreme Court with the authority to make authentic interpretation of laws and also regulated that any interested citizen can request for the authentic interpretation of laws through the Rwanda Bar Association. Accordingly the Bar Association on several occasions submitted to the Supreme Court the citizen's requests for the authentic interpretation of laws, consequently it was summoned to appear and enlighten the Court about those petitions.

The Bar Association requested the Court to postpone the scheduled hearing so that the Supreme Court makes an authentic interpretation of article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, in a bid to determine the role of the Rwanda Bar Association in the submission and hearing of the petition for the authentic interpretation of the law. The Supreme Court admitted the petition of the Bar Association and summoned the Government in that hearing.

At the beginning of the hearing, the Government of Rwanda requested the Court to first examine the basis upon which the Government is summoned in the petitions regarding the authentic interpretation of laws because summoning the State in those cases were not provided for.

In its explanations regarding the provision requested to be authentically interpreted, the Bar Association states that it's ambiguous to the extent that it can be construed in two different ways. On the one hand it can be perceived as if Rwanda Bar Association is a channel through which a petition for the authentic interpretation of the laws goes through without any other formalities; in that case it would imply that the Bar cannot refuse to submit to the court the petition it receives.

On the other hand it is likely to be construed that the Bar Association has a role to play in the petition submitted through it, so that only petitions containing ambiguous provisions are the ones submitted to the court, and if necessary it gives advice to those who submit through it the petitions for the authentic interpretation of laws when it deems the authentic interpretation unnecessary.

For the Government, its opinion is that in making the authentic interpretation of paragraph 3 of the above mentioned article, the Supreme Court should declare that the Bar Association has the capacity to reject, admit or to revise the petitions it receives and be summoned to enlighten the court on those petitions.

Held: 1. Whenever there is a petition for the authentic interpretation of laws, the Government should be summoned so that it gives its opinion, since it is in a better position to know the *ratio legis* for the enactment of that law and its summoning should not be considered as making it a party to the petition, rather it is in the spirit of providing useful opinion which may assist the Court in the authentic interpretation of the laws.

2. Due to the great importance of the petition for the authentic interpretation, in the absence of a specific law regulating its procedure, the provisions of Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court relating to petitions seeking to declare unconstitutional a treaty, an international agreement or a law are the ones to be applied because all these petitions are of public interest and are adjudicated on the first and last instance by the Supreme Court.

3. Authentic interpretation does not only bind the petitioner but it binds even the third party and it can be referred to in future without making another one for that same law.

4. The Rwanda Bar Association has the power to examine the requests for the authentic interpretation of the laws it receives and decide whether the authentic interpretation is needed or not, if necessary it can revise it before submitting it to the Supreme Court and its role continues until the Court hears the petition and it appears to give its opinion. The decision of the Bar Association regarding the admissibility of the request for the authentic interpretation submitted through it is non-appealable.
5. The petitioner must beforehand demonstrate either his/her personal interest, interest of the one(s) s/he is representing who is/are incapable to file the petition on their own, to file it in public interest, the existence of the judgments or administrative decisions related to a matter of public interest which are conflicting in the interpretation of the legal provision or that the law contains ambiguous words which can lead to conflicting interpretation and it is in public interest that those words be clearly construed.
6. The petition for the authentic interpretation is inadmissible if it relates to a pending case or that which has not yet exhausted ordinary procedures of appeal.
7. While making the authentic interpretation of the law, the Court must establish whether the application of the law can lead to a conflict in its interpretation, is there misapplication or misinterpretation of the law to the extent that it does not reflect the motivation for its enactment or falls short of solving social problem for which it was enacted and it must interpret the law or its provisions in case there is ambiguity in its literal words and also give an extensive interpretation of the law in case it is apparent that it is silent on some aspects which leads to lacunae in its application.

Petition with merit.

Statutes and statutory instruments referred to:

The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 96(3).

Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, articles 53 - 61.

Law N°83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, article 2(1).

Cases referred to:

Democratic Green Party of Rwanda (DGPR) v. Government of Rwanda,
RS/SPEC/0002/15/CS, rendered by the Supreme Court on 8/10/2015.

Authors cited:

Reginald Parker, Administrative Interpretations, University of Miami Law School, 5U.
Miami L. Rev.533 (1951).

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,
Havana, Cuba, Cuba 27 /8/- 7/9/1990.

John M. Huels, Classifying Authentic Interpretations of Canon Laws, The Jurist 72 (2012).

John F. McCarthy, The canonical meaning of the recent authentic interpretation of canon
230.2 regarding female altar servers, Organ of the Roman Theological Forum,
January 1995.

Judgment

I. SUMMARY OF FACTS

[1] The Rwanda Bar Association on numerous occasions have been submitting to the Supreme Court petitions for the authentic interpretation of some of the provisions of laws requested by the citizens through the Bar Association as set forth in article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015. Later on the Bar Association received summons from the Supreme Court, to appear in the court hearings scheduled on 31/01/2017, to enlighten the Court on those requests for the authentic interpretation.

[2] In that regard, the Bar Association wrote to the Chief Justice requesting that the hearing of the petition for the authentic interpretation submitted by the citizens through the Rwanda Bar Association which was scheduled on 31/01/2017 be postponed, for the Supreme Court to make first an authentic interpretation of article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, so that the role of the Rwanda Bar Association in the filing and hearing of the petitions requesting for the authentic interpretation of the law be determined.

[3] The petition was examined in the hearing of 05/04/2017, Counsel Bagabo Faustin and Basomingera Alberto representing the Rwanda Bar Association while the Government of Rwanda was represented by State attorney Rubango K. Epimague. Before the commencement of the hearing State Attorney Rubango requested that the court first examine the basis for summoning the Government in the hearings of the petitions for the authentic interpretation of the law.

II. ANALYSIS OF LEGAL ISSUES

Whether the Government of Rwanda should not have been summoned in this case.

[4] State Attorney Rubango Epimague, submits that the summoning of the Government in petitions relating to the authentic interpretations of the law is not provided for by the laws. He further states that summoning the Government in matters which falls under special jurisdiction of the Supreme Court is only exercised in the petitions regarding the constitutionality of the laws. He goes on to adduce that even when the authentic interpretation was done by the parliament, the Government was not required to give opinion.

THE VIEW OF THE COURT

[5] As averred by the State Attorney, neither the Constitution of the Republic of Rwanda of 2003 revised in 2015 nor the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides for the summoning of the Government in the hearing of the petition relating to the authentic interpretation. Nevertheless the summoning of the Government in extra ordinary cases is a usual trend albeit not being provided for by the law. One of the examples is in the hearings of the cases relating to the constitutionality of the laws. Before the amendment of the Constitution in 2015 the summoning of the Government in such cases was not provided for. The Supreme Court decided

to begin summoning the Government because of its role in the enforcement of the law and its knowledge of the purpose for the enactment of the law¹.

[6] Bearing in mind the role of the Government highlighted above, the Court finds that whenever it is seized by a petition for the authentic interpretation of the law, the Government should be summoned to appear to give its opinion on that petition, since it is the one in a better position to know the motive for the enactment of that law. Its summoning should not be viewed as making it a defendant, intervener or a forced intervener but it is in the context of giving an opinion which can assist the Court in the authentic interpretation of the law. The petition for the authentic interpretation is a special case, which is of public interest, thus the opinion of the State Attorney is of paramount importance.

[7] The Court finds that it is not only the summoning of the Government in the petition for the authentic interpretation of the law which is not provided for by the laws but also the procedure for their hearing is not provided for. In absence of the law regulating the procedure of these petitions and also considering the importance of the petitions for authentic interpretation, the Court finds that the provisions relating to petitions seeking to declare unconstitutional a treaty, an international agreement or a law of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court should be the ones applied.

[8] The similarity among all these petitions is that they are all of public interest and are heard on the first and last instance by the Supreme Court. As is the case for the petitions relating to the unconstitutionality of the laws or provisions, when authentic interpretation is done, it does not only have a binding force on the petitioner but also binds all persons and it can be relied upon in future on a similar issue without making another authentic interpretation on the same law. This opinion concurs with that of Reginald Parker, whereby he states that “[.....] the court, in deciding a question of law which lends itself to several constructions, interprets the law with binding force, not only for the parties involved in the litigation that gave rise to the decision, but also for the future”².

Determining the role of Rwanda Bar Association in the filing of the petitions.

[9] Explaining about the provision for which the authentic interpretation is requested, Advocate Basomingera, representing the Rwanda Bar Association states that article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 is ambiguous to the extent that it can be perceived in two ways. On the one hand, it can be perceived as if Rwanda Bar Association is a medium through which requests for the authentic interpretation of the law pass through without any other formalities. In that case it would imply that the Bar cannot refuse to submit to the court the petition it receives. That would mean that the Bar Association has no role in the examination of the requests for the authentic interpretation done by the Supreme Court.

[10] On the other hand, he states that the provision can be construed that the Bar Association must have a hand in the requests submitted through it, in such a way that requests concerning ambiguous provisions are the only ones submitted to the Court, and if necessary it offers advice to those who submitted their requests for the authentic interpretation, when it finds the authentic interpretation not necessary because the law on which that request is based is clear.

¹ See Judgment RS/SPEC/0002/15/CS regarding the interpretation of the constitutional provision rendered by this Court on 8/10/2015.

² Reginald Parker, Administrative Interpretations, University of Miami Law School, 5U.Miami L.Rev.533(1951).

[11] Counsel Basomingera gave an example of the request it received from Banque Populaire du Rwanda (BPR Ltd), whereby it drafted a summary of the facts and it also demonstrated its analytical approach. He concludes by requesting the Supreme Court to explicitly clarify the role of the Rwanda Bar Association in the process of authentic interpretation.

[12] Counsel Bagabo Faustin also representing the Rwanda Bar Association submits that the Bar was summoned to plead and moreover a party litigates the facts s/he can defend. He goes on to state that the issue to determine is whether the Bar Association has the discretion to reject a request for authentic interpretation, in case it finds the provision of the law in contention not ambiguous and the ground on which it can base on to reject that request. He wonders if there should exist a remedy for a citizen whose petition has been rejected by the Bar Association on the ground that there is no ambiguity.

[13] He furthermore argues that among the requests received by the Rwanda Bar Association most of the issues are related to the cases in which the applicants were party and the position of the Bar Association is that the authentic interpretation should not be requested in relation to a lawsuit since it is not a remedy by way of appeal rather it is a matter of general public.

[14] He concludes by praying that in case the Court declares that the Bar Association has the capacity to initially examine the requests it receives and decides whether to admit or reject it, that decision should be final lest it becomes a lawsuit and the procedure of submitting such requests through the Bar Association would lose credibility.

[15] State Attorney Rubango avers that members of the Bar Association have different interpretations of the article requested to be authentically interpreted, some argue that the Bar Association does not have the power to reject a matter submitted to it by the citizen whilst others argue that the motive for the lawmaker to provide for such matters to firstly go through the Bar Association was because as an organ with legal professional members it has to first assess whether it is necessary to submit them to the Supreme Court, dismiss or revise them.

[16] In his concluding remarks, he declares that the opinion of the Government of Rwanda, is that in making the authentic interpretation of article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, the Supreme Court should declare that the Rwanda Bar Association has the capacity to reject, admit or revise the requests it receives and to be served with summons to appear and elaborate where necessary. Otherwise if the Supreme Court declares that the Rwanda Bar Association has no power to revise or reject the requests, it would not be conceivable how the Bar Association would be served with summon to appear and give explanations on the matter it is not convinced of. He also affirmed that according to the analysis they made, they found that after the power to make authentic interpretation of the law has been vested with the Supreme Court, there will be a lot of issues because people may use it as case delaying tactic.

THE VIEW OF THE COURT

[17] The authentic interpretation of laws is provided for in article 96 of the Constitution of the Republic of Rwanda of 2003 revised in 2015. That article provides that: “the authentic interpretation of laws is done by the Supreme Court. Authentic interpretation of laws may be requested by Cabinet or the Bar Association. Any interested person may request for an authentic interpretation of a law through the Bar Association. In case of conflict between the

languages in which a law was published in the Official Gazette, the language in which that law was adopted prevails”.

[18] The Bar Association contends that the article mentioned in the previous paragraph creates ambiguity in determining the role of the Bar Association in the petitions requesting for the authentic interpretation of the laws submitted through it by any interested person. As indicated in article 96 of the Constitution mentioned above, any interested person has the ability to request for the authentic interpretation, nonetheless it has to be requested through the Bar Association. A person is not allowed to independently submit his or her request to the Supreme Court. The Bar Association seeks to get clarification on its role when the authentic interpretation is requested through it. The role of the Bar Association in the petition submitted to the Supreme Court must be viewed from the angle of the duties of its members as laid down in the law establishing the Bar Association and also emphasized by other principles governing the profession of Advocates alongside with examining the motive of entrusting the Bar Association with the obligation of receiving and submitting a petition of Citizen to the Supreme Court.

[19] Article 2(1^o) of the Law N^o83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, stipulates that an Advocate is a person in the legal profession charged with assisting and representing litigants before administrative entities, courts and other decision-making organs. He/she may prepare and present his/her submissions before such institutions. He/she may also counsel, mediate litigants and draft private deeds; [.....]. This corresponds with the statements of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana Cuba which established the Basic Principles on the Role of Lawyers. Particularly *litera* 13 of those principles declared that Lawyers have a duty of advising their clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients.³

[20] The request of any interested person is submitted through the Bar Association purposely because it's an institution composed of legal professionals. The role of the Bar Association in regard to that request must be consistent with the professionalism expected of it with the aim of serving justice and also rendering assistance to who seek it. Therefore the Bar Association cannot be taken as an institution meant only to transmit a message like a post office and disregard its fundamental duty of serving justice.

[21] In accordance with the provisions of article 96 paragraph 3 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, The Court finds that it would be meaningless for the requests to be submitted through the Bar Association and the latter does not make any assessment of them. This would be tantamount to allowing anybody who desires to request for the authentic interpretation in the Supreme Court to do so. If it happens to be the case, then it would be in conflict with the legislative intent of regulating the submission of petitions through the Bar Association and it would create a loophole which could be exploited by those who may want to request for unnecessary authentic interpretation with the intention of delaying cases, those who might use it as a tactic for indirectly lodging an appeal or requesting for that

³ “[...] the duties of lawyers towards their clients shall include: Advising their clients as to their legal rights and obligations and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients”. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Cuba 27 /8/- 7/9/1990.

authentic interpretation in an unprofessional way which would make it complicated for the Court to examine the matter.

[22] The Supreme Court finds that in case a request for the authentic interpretation of the law has been submitted through the Bar Association, it must critically assess whether that authentic interpretation is undoubtedly necessary. When it finds the authentic interpretation not necessary because the law or the provision requested to be interpreted is clear, it notifies the applicant and if need be it counsels him/her. In case the Bar Association decides to reject the request, that decision is final. As an organ of legal professionals when it finds the petition with merit, if necessary it can revise it before being submitted to the Supreme Court, so that the Court examines a clear and an understandable issue relating to authentic interpretation. The role of the Bar Association does not end there, rather it continues until the Court has heard the petition and it appears to give its opinion.

[23] Pursuant to the reasons stated in the previous paragraphs, the Supreme Court finds that the Rwanda Bar Association has the capacity to examine the requests for the authentic interpretation of the law, and to decide whether that authentic interpretation is necessary or not and if it finds it necessary then it submits it to the Supreme Court.

Conditions for the admissibility of the petition for the authentic interpretation.

[24] There is a difference between authentic interpretation of the laws and the ordinary interpretation of the law. Authentic interpretation is carried out in a special way by the people legally authorized to do so, and the ambiguous law is interpreted. John M. Huels put it in these words: “[...] there is a special form of interpretation that officially and authoritatively resolves the meaning of a doubtful law. This is called "authentic interpretation" and may only be made by the legislator or one to whom he has entrusted the power to interpret the law authentically [...].”⁴ John F. McCarthy on his part states that “authentic interpretation is an interpretation that is imposed in an obligatory manner, or authoritatively, by a public person possessing this power”.⁵ Therefore this cannot be likened with the ordinary interpretation of laws which can be made by the Judge who has encountered an issue requiring interpretation in the case without necessitating the lodging of an independent claim.

[25] Due to the nature of the authentic interpretation as explained in the two preceding paragraphs, the Supreme Court finds it necessary to put in place guidelines to facilitate those who wish to submit petitions for authentic interpretation and which can also be used by the Bar Association or the Court in examining those petitions. These are the following guidelines:

The petitioner must initially demonstrate the interest s/he, or those s/he is representing who cannot submit the petition on their own, have in the requested authentic interpretation or if s/he filed the petition in public interest.

S/he must demonstrate the existence of judgments or administrative decisions related to a matter of public interests that are conflicting in the interpretation of the legal provision.

A petition can also be admitted if the applicant demonstrates that the law contains ambiguous words which can lead to a conflict in interpretation and it is in public interest that those words are clearly interpreted.

⁴ John M. Huels, Classifying Authentic Interpretations of Canon Laws, *The Jurist* 72 (2012), accessed on <http://heinonline.org/HOL/LandingPage?handle=hein.journals/juristcu72&div=29&id=&page>

⁵ John F. McCarthy, The canonical meaning of the recent authentic interpretation of canon 230.2 regarding female altar servers, *Organ of the Roman Theological Forum*, January 1995.

However, a petition is inadmissible if it relates to a pending case or if that case has not yet exhausted the ordinary procedures of appeal.

[26] Notably, depending on the issue at hand, in making the authentic interpretation of the law the Court must determine: a) whether the application of the law can lead to a conflict in its interpretation, b) whether sometimes there is misapplication or misinterpretation of the law to the extent that it does not reflect the purpose for its enactment and falls short of solving a social problem it was meant to solve. The Court must also a) interpret the law or its provisions in a case where there is ambiguity in its literal words, b) to give extensive definition of the law in case it is apparent that its silence on some aspects leads to lacunae in its application.

III. THE DECISION OF THE COURT

[27] The Supreme Court admits the petition submitted by the Rwanda Bar Association.

[28] Declares that in accordance with article 96(3) of the Constitution of the Republic of Rwanda of 2003 revised in 2015, the Rwanda Bar Association has the capacity to admit, reject or revise the request it receives. It should also be summoned to appear in the Court to give clarifications on that petition.

[29] Declares that the Government of Rwanda must be served with summons to appear in the petitions relating to authentic interpretation.

[30] Declares that in the screening of the petition relating to the authentic interpretation, the provisions in paragraph 25 and 26 of this judgment should apply.