

NYIRAROMBA v. NGIRINSHUTI

[Rwanda SUPREME COURT – RC0002/16/CS (Mugenzi, P.J., Gatete and Munyangeri, J.)
January 27, 2017]

Civil procedure – Objection – Requirements for admissibility of the claim – Interest – A person can only seize a court when s/he suffers from a prejudice of his own interests and where the result of the action will benefit him personally – Law N°21/2012 of 24/06/2012 relating to civil, commercial, labour and administrative procedure, article 18(12).

Civil procedure – Admissibility of the intervention claim – In case the main claim does no longer exist due to its rejection, even the examination of the incidental proceeding becomes impossible – Law N°21/2012 of 24/06/2012 relating to civil, commercial, labour and administrative procedure, article 119.

Facts: This case is the result of actions that Nyiraromba and Ngirinshuti initiated against each other whereby Nyiraromba alleges that Ngirinshuti dispossessed her from farmlands she was given by her mother. The District Court of Kabagali decided that the farmlands on which Nyiraromba built the house belong to her while none of them produced reliable evidence for the remaining three farmlands.

Both parties lodged appeal against the decision where Nyiraromba alleged that the previous Court disregarded elements of evidence she submitted indicating that she owned land in dispute 40 years ago whereas Ngirinshuti stated that the same Court disregarded the document produced by Nyiraromba indicating the size of the plot of land given to her and the blueprint of the disputed land. He adds that this Court relied on inconsistent provisions of the law and that it disregarded that he owned those lands before he took refuge and that it is when he come back that he realized they were occupied by Nyiraromba.

The appealed Court held in the judgment RCA0935/05/TP/GIT - RCA0913/05/TP/GIT that the claim is rejected because claimants are not entitled to personally seize the court for family property. In addition, this Court quashed the appealed judgment as well as the verdict of *Abunzi* Committee for their contradiction with the provisions of public order.

Nyiraromba did not abandon as she rather seized the Primary Court of Ruhango alleging that one of the farmlands was granted to her by her mother and the remaining two belong to their family. Ngirinshuti responded that those farmlands were donated to him by Nyirabujangwe, his grandmother and mother to Nyiraromba.

In the RC0191/09/TB/RHGO, this honorable Court held that Nyiraromba is the owner of the disputed farmlands because she acquired them from her deceased parents therefore that the donation alleged by Ngirinshuti lacks merit.

Ngirinshuti lodged an appeal to the Intermediate Court of Muhanga whereby he stated that the previous court disregarded the ruling of the verdict of *Abunzi* Committee, that it did not interrogate member of the family and that Nyiraromba seized the court in her own name while before the *Abunzi* Committee, she sued members of Nyirabujangwe and Habuhazi's family.

In the judgment RCA0740/09/TGI/MHG of 19/03/2010, the Court upheld the appealed judgment due to the fact that Ngirinshuti does not produce evidence of his donation of three disputed farmlands by his grandmother Nyirabujangwe.

After Nginshuti lost the case, he sued Nyiraromba before *Abunzi* Committee alleging that among farmlands for which Nyiraromba won the case include his houses and this Committee decided on the issue disregarding the fact that Nyiraromba won the case for farmland and properties on it. Nyiraromba opposed the *Abunzi* Committee verdict before the Primary Court of Byimana, which held, in the judgment RC0377/13/TB/BMN of July 2, 2013 interpreted by the judgment RC0159/15/TB/BYM, that three house erected on the said land belong to Nginshuti.

After the trial of all these cases, Nyiraromba filed a case to the Supreme Court whereby she requested to resolve contradictions existing between the judgment RC0377/13/TB/BMA of July 2, 2013 interpreted by the judgment RC0159/16/TB/BYM of December 23, 2015 rendered by the Primary Court of Byimana and the judgment RCA070/09/TGI/MHG rendered by the Intermediate Court of Muhanga on March 19, 2010.

She adds that the Primary Court of Byimana should not had admitted the claim of Nginshuti while she won the case on both plots of land and properties attached on it, and that the Court violated the provisions of the Law by admitting the element of evidence submitted by one party in the interpretation case and decided without summoning her to appear. She therefore prays this honorable Court to quash all those judgments and sustain the judgments RCA0740/09/TGI/MHG and RC0191/TB/RHGO because they were not reversed by any other judgment. She finally requests Nginshuti to pay her compensation for procedural expenses.

Nsabiaremye Protais intervened voluntarily in the case alleging that among plots of land in dispute include the plot he bought and built a house on it but that he is being requested to demolish it as part of the execution of the judgment RC0377/TB/BYM of July 7, 2014 rendered by the Primary Court of Byimana.

In the course of hearing before the Supreme Court, counsel for Nginshuti raised two objections. The first relies on the fact that the claim of Nyiraromba should not have been admitted on all instances of proceedings because she claimed for family properties against one person. The second objection relies on the fact that Nyiraromba lacks interest and capacity to initiate a claim to the Supreme Court while the property in dispute was acquired by Nsabiaremye, who was issued the related emphyteutic lease and won the case in which all judgments in relation to it as well as their execution were nullified. Therefore, Nyiraromba has no longer the right over it. After being requested to provide explanations relating the objection according to which the claim should not have been admitted on all level of proceedings, Counsel Mberabagabo for Nginshuti informed the court that they withdrew the objection.

Nyiraromba defends that she has interest as well as status to sue because the buyer of her property is aggrieved and that she is the right person with relevant information since she won the case in respect of it.

Nsabiaremye holds that Nyiraromba had capacity and interest in this case because she had been a party who would like to seek the court to settle inconsistencies in order to avoid potential threat from the acquirer aggrieved in his right.

Held: 1. A person can only seize a court when s/he suffers from a prejudice of his own interests and where the result of the action will benefit him/her personally. Therefore, the person with interest is the one with the status to file a claim, which is understood as the prerogative to request the judge to reinstate him in his right over the disputed property. Thus, the claim according to which the appellant prays the Court to resolve the issue of

contradicting rulings over immovable property she already transferred should not be admitted because she lacks personal and direct interest vesting her with the status to sue for it.

2. Interventions shall be admissible only if they are interconnected with the main claim, which implies that in case the latter does no longer exist due to its rejection even the examination of the interconnected claim becomes impossible and this is in conformity with the principle which states that the accessory follows the principal. Therefore, the intervention claim is rejected as well.

**Objection sustained.
Intervention rejected.
Court fees to the Applicant.**

Statutes and statutory instruments referred to:

LawN°21/2012 of 24/06/2012 relating to civil, commercial, labour and administrative procedure, articles 18(12°) and 119.

No case referred to.

Author cited:

Mélina Douchy - Oudot, Procédure civile, 2ème édition, Paris, 2006, p.106, N°127; p.108, N°129.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Nyiraromba initiated a claim before the Court of Kabagali District against Ngirinshuti alleging that the latter dispossessed her fields pretending to have been given them by his grandmother. The court decided in the judgment RC0200/05/TD/KAB of April 24, 2005 that the field in which Nyiraromba erected her house belongs to the plaintiff since she was awarded it by Nyiranjangwe Sarah as admitted by Ngirinshuti. It also decided that none of the parties managed to prove the ownership over three remaining fields in disputes; therefore both parties should jointly administer them until the owner produces the ownership evidence.

[2] Both parties lodged appeal whereby Nyiraromba alleged that elements of evidence she produced to the Court were not considered and that her ownership over those fields was rejected while she owned them for 40 years. Ngirinshuti alleged that the court disregarded, the document produced by his opponent which indicate the dimension of the plot awarded to Nyiraromba, the blueprint of the land in dispute and it referred to contradicting provisions and disregarded the fact that he owned them before the period of war and that it is when he came back from asylum that he realized Nyiraromba occupied them..

[3] In the Judgment RCA0935/05/TP/GIT-RCA0913/05/TP/GIT of September 18, 2008, the court rejected the claim due to the lack of status to file claims relating to family property in their own names, therefore that the appealed judgment as well as the verdict of *Abunzi* committee of June 30, 2005 are quashed because of their inconsistency with provisions of public order.

[4] Nyiraromba reinitiated the claim to the primary Court of Ruhango whereby she claimed ownership over three fields, of which she was given one by her mother while the remain two belong to her family. Ngirinshuti respond that he was given them by his grandmother named Nyirabujangwe who is also the mother to Nyiraromba. In the judgment RC0191/09/TB/RHGO of October 9, 2009, the court confirmed Nyiraromba to have the ownership right over three fields in dispute because she inherited them from her deceased parents, therefore that the donation to Ngirinshuti is baseless.

[5] Ngirinshuti lodged an appeal to the Intermediate of Muhanga alleging that it dispossessed him from his three plots of land in disregarding of the verdict of *Abunzi* Committee while it was rendered on the basis of the inquiry made to the field, that it did not interrogate family members and that it disregarded the fact that before the court, Nyiraromba initiated a claim in her names while before *Abunzi* Committee, she sued members of Nyirabujangwe and Habuhazi' family.

[6] In the judgment RCA0740/09/TGI/MHG of March 19, 2010, the Court upheld the appealed ruling on the basis that Ngirinshuti failed to produce evidence of his donation of three plots in dispute by his grandmother Nyirabujangwe; who refutes it in a written document which reached to the Court of Canton of Murama on September 24, 1990, and this is evident in the judgment RCAA2505/07/HC/NYA as well as the document written by Nyirabujangwe to Nyiraromba on October 3, 1984 in which she donated a land to her as an expression of gratitude.

[7] Ngirinshuti Emmanuel pursued Nyiraromba before *Abunzi* Committee alleging that among that the plot she was awarded by the court includes his houses; and this Committee decided in disregard of the fact that Nyiraromba was awarded both plots and all properties on it. Nyiraromba opposed the verdict of the Committee before the Primary Court of Byimana, which in the judgment RC0377/13/TB/BMN rendered on July 2, 2013 interpreted by the judgment RC0159/15/TB/BYM, decided that three houses erected on that plot measuring 20m out of 40m belong to Ngirinshuti Emmanuel as indicated by the document of June 15, 1985 proving that Nyirabujangwe Sarah donated it to him and that he funded the construction through a bank loan.

[8] Nyiraromba filed a claim to the Supreme Court requesting to resolve contradictions between the judgments RC0377/13/TB/BMA of July 2, 2013 interpreted by the judgment RC0159/16/TB/BYM of December 23, 2015 rendered by the Primary court of Byimana and the judgment RCA070/09/TGI/MHG rendered by the Intermediate Court of Muhanga on March 19, 2010. She raised also an issue regarding whether the decision of the Primary Court of Muhanga could contradict that of the Intermediate Court.

[9] She states in addition that the Primary Court of Byimana should not have admitted the claim of Ngirinshuti while the case relating to the land and all properties on it, was ruled in his favour, and that this Court violated the provisions of the law where in the course of the interpretation of the judgment, it admitted the element of evidence of one of the sides by taking the decision without summoning her. Therefore, she requested the court to quash those decisions and that the judgments RCA0740/09/TGI/MHG and RC0191/TB/RHGO be considered for execution as long as no other judgment reversed them and that Ngirinshuti should be ordered to pay her 900,000Frw in damages for procedural expenses.

[10] Counsel Ndagijimana Viateur for Nsabiyaemye Protais, who intervened voluntarily in the trial, alleges that the land in litigation include the plot he bought from Nyiraromba on

the amount of 650,000Frw where he owns a house worth 25,173,880Frw and that he is requested to remove all his assets in term of executing the judgment RC0377/TB/BYM rendered on July 7, 2014 by the Primary Court of Byimana. He in addition requests the court to prevent the violation of his right over the plot N°6818 and to be paid 800,000Frw for being dragged into unnecessary lawsuits and 1,000,000Frw of Counsel fees.

[11] The judgment was heard in open court on December 13, 2016 whereby Nyiraromba Marthe was represented by Counsel Kayirangwa Marie Grâce, Nginshuti Emmanuel being represented by Counsel Mberabagabo Balinda Richard.

[12] The side of Nginshuti raised two objections whereby they state that the claim of Nyiraromba should not had been admitted on all instances on the reason that he sued one person for family properties, the second objection being relating to the fact that Nyiraromba lacked status and capacity to initiate a claim to the Supreme Court because the disputed properties were sold to and owned by Nsabiaremye.

[13] After the request to provide explanations about the objection that the claim would not had been admitted on all instances of proceedings, Counsel Mberabagabo Balinda Richard stated that they withdraw it; therefore the Court is going to examine the objection relating to whether Nyiraromba lacked interest and status to file the claim initiated to the Supreme Court.

II. ANALYSIS OF LEGAL ISSUE

Whether Nyiraromba has interest and status to file a claim for deliberation on inconsistency between judgments RC0377/13/TB/BMN of July 2, 2013 and RCA0740/09/TGI/MHGA of March 19, 2010.

[14] Counsel Mberabagabo for Nginshuti states that the claim of Nyiraromba should not be admitted because she lacks interests and status in relation to the disputed property, since after she won the case about it, she sold it to Nsabiaremye, which means she no longer has the right to claim it; rather, it is up to the acquirer to seize the court if he is aggrieved and force the seller to intervene.

[15] He adds that the emphyteutic lease title is registered on the names of Nsabiaremye who bought the property, which replaced all related rendered judgments and this is clear in respective submissions of Nyiraromba and Nsabiaremye who claim its ownership.

[16] Counsel Kayirangwa argues that her client Nyiraromba has interest and status to initiate a claim because the the buyer of her property is aggrieved and that she is the right person with relevant information since she won the case in respect of it.

[17] Counsel Ndagijimana Viateur for Nsabiaremye states that Nyiraromba has status and interest in this case because she has been a party and would like to seek the court to settle inconsistencies in order to avoid potential threat from the acquirer who was aggrieved in his right.

OPINION OF THE COURT

[18] *Litera* 12^o of article 18 of the Law N^o21/2012 of 24/06/2012 relating to civil, commercial labour and administrative procedure provides that a claim shall not be admitted and recorded in the court register in case the plaintiff lacks status, capacity and interest.

[19] The court is of the view that as explained by Law Scholars, a person can only seize a court when s/he suffers from a prejudice of his own interests and where the result of the action will benefit him personally¹. Therefore, the person with interest is the one with the status to file a claim, which is understood as the prerogative to request the judge to reinstate him in his right over the disputed property².

[20] Concerning Nyiraromba who initiated a claim requesting for the settlement of inconsistency between judgments relating to immovable properties she was involved in and who, after she won the case, sold them to Nsabiyaemye who was issued their emphyteutic lease titles; the court finds that, pursuant to stated reasons, the interest alleged by Nyiraromba, as a seller, that the acquirer is hindered by third parties over the said property, lacks merit because this property does no longer belong to her; therefore her will to assist the acquirer in order to avoid third parties' disturbances does not reflect her personal and direct interest to file a claim.

[21] The court finds therefore that in accordance with the provisions of article 18, *litera* 12^o of the Law N^o21/2012 of 24/06/2016 stated above, the claim of Nyiraromba should not be admitted and examined given that she lacks status and interest to initiate a case for resolving contradictions arising between judgments RC0377/13/TB/BMN of July 2, 2013 and RCA0740/09/TGI/MHGA of March 19, 2010.

[22] It further finds that given that the main claim of Nyiraromba was not admitted, even the intervention by Nsabiyaemye is rejected pursuant to the provision of article 109 of the Law N^o21/2012 of 14/06/2012 as stated above which provides that interventions shall be admissible only if they are interconnected with the main claim, which means that in case the latter does no longer exist due to its rejection even the examination of the interconnected claim becomes impossible and this is in conformity with the principle which states that the accessory follows the principal.

III. DECISION OF THE COURT

[23] Sustains the objection raised by Ngirinshuti Emmanuel for inadmissibility of the claim initiated by Nyiraromba Marthe;

[24] Rejects the claim initiated by Nyiraromba Marthe;

[25] Rejects the intervention claim instituted by Nsabiyaemye Protais;

[26] Orders Nyiraromba Marthe to bear related court fees.

¹«Une personne ne peut saisir une juridiction que dans la mesure où elle souffre d'une lésion de ses intérêts propres et où le résultat de l'action lui profitera personnellement»: Méline Douchy - Oudot, Procédure civile, 2ème édition, Paris, 2006, p.106, N^o127.

²«A la qualité pour agir toute personne qui a un intérêt à agir... l'intérêt donne au demandeur la qualité pour agir.... Il est le titre qui donne la prérogative de demander raison au juge d'une prétention». Ibidem, p.108, N^o129.