

## MUSASANGOHE v. NTAKIRUTIMANA

[Rwanda SUPREME COURT – RS/INJUST/RC00023/2017/CS (Nyirinkwaya, P.J., Mukandamage and Karimunda, J.) January 12, 2018]

*Civil procedure – Objection – Conditions for admissibility of a claim – Interest for filling a claim – The interest has to be present at the time of filling a claim; that it is not allowed that the person files a case for the future interest – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 142.*

**Fact:** This case started at Primary Court of Nyamirambo whereby Ntakirutimana on behalf of his children Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré, sued Musasangohe requesting that the Court compels her to register them on the property which she jointly owns with her legitimate husband, Ntigurirwa with whom they have another child named Mbatezimana Pautin. The Court held that the children represented by Ntakirutimana be registered on her mother’s properties, and they are entitled to 25% of it, while Mbatezimana Pautin, the child she gave birth with her legitimate husband will be entitled to 75% at the time of succession, it ruled also that no damages should be awarded in this case since it would be squandering of resources which is meant to raise children.

Both parties appealed to the Intermediate Court whereby Ntakirutimana argued that the Court ruled *ultra petita* and it did not award the requested damages alleging that it was squandering family resources while Musasangohe alleges that they are not married. On the other hand, Musasangohe argues that children she has with Ntakirutimana should not be registered on the property which she jointly acquired with her legitimate husband because they have their own property which jointly acquired with Ntakirutimana, thus the properties in litigation should be left to her and Mbatezimana, she has with a legitimate husband.

In its judgment, the Court found their appeal without merit, and thus sustained the judgment rendered by the Primary Court of Nyamirambo. Thereafter, Musasangohe sought relief from the Office of Ombudsman, which also wrote to the President of the Supreme Court requesting for the review of the judgment rendered by the Intermediate Court of Nyarugenge on the ground that it was vitiated by injustice because it disregarded the Law N°43/2013 of 16/06/2013 governing land in Rwanda and the ministerial order N°002/2008 of 01/4/2008 determining modalities of land registration; and consequently the President of the Supreme ordered for review of that judgment.

At the Supreme Court, Musasangohe raised objection of public order demonstrating that the claim of Ntakirutimana should not have been admitted by the previous Courts since the children he represented do not have the legal interest to file a claim, because the property they claim to be registered on, she is not its sole proprietor because she co-owns it with Ntigurirwa, her legitimate husband and she should not be deprived of her property since the succession will take effect after her death.

Ntakirutimana argues that he filed a claim on behalf of his children because the property in litigation is registered only on Musasangohe and Mbatezimana, therefore, he wishes that even

the other children be registered on that property so that they have same right on their mother's property.

**Held :** 1. The interest has to be present at the time of filling a claim; that it is not allowed that the person files a case for the future interest; therefore, the claim of Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré should not have been admitted by the previous Court because the interest is not present and immediate to be on their mother's property Musasangohe, because it is not yet time for distribution of the descendent partition or inheriting her property; therefore she will be inherited at the right time and in accordance with succession law.

2. In case nothing proves that a wife and a husband who are parties to the case co- own the property, nothing prevents the winner to be awarded damages when it is necessary especially that they are not legally married.

**Application for review of the case on the ground of injustice has merit.  
Court fees to the public treasury.**

**Statutes and statutory instruments referred to:**

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 142.

**No case referred to.**

**Author cited:**

Hakim Boularbah, Olivier Caprasse, Georges De Leval, Frédéric Georges, Pierre Moreau, Dominique Mougénot, Jacques Van Compernelle et Jean-François Van Drooghenbroeck, Droit judiciaire, Tome 2, Manuel de procédure civile, Editions Larcier, 2015, p 91-92.

## **Judgment**

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

[1] Ntakirutimana Ezira, on behalf of his children Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré, sued Musasangohe Vestine, mother of those children at the Primary Court of Nyamirambo praying to the Court to order her to register in their names the property which she jointly owns with her legitimate husband whose they gave birth another child named Mbatezimana Pautin. On 14 June 2013, that Court rendered the judgment RC0051/13/TB/NYB and held that Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré be registered on their mother's property that comprise of the houses located on plot n°1342, Ingenzi village and others which are located on plot n°59, Nkundumurimo village, a piece of land n°2118 in Kamenge village and the forest located on plot

n°2172 also in Kamenge village, and that they entitled to 25% like the child Mbatezimana Pautin that she has with her legitimate husband who is entitled to 75% at the time of succession and that the property continues to be administered by their mother. It also ordered that damages and counsel fees should not be awarded because it would be wastage of resource meant to raise those children.

[2] Musasangohe Vestine and Ntakirutimana Ezira appealed to the Intermediate Court of Nyarugenge whereby Ntakirutimana Ezira claimed that the Court ruled on the share of each child on the property registered in the name of Musasangohe Vestine, and it distributed it in percentages while it was not part of the subject matter, and the damages were not awarded alleging that it would cause a loss to the family while Musasangohe claims that Ntakirutimana Ezira is not a legitimate husband. On the other side, Musasangohe Vestine appealed arguing that the children she has with Ntakirutimana Ezira should not be registered on the property which belongs to her legitimate husband, because together with Ntakirutimana Ezira they acquired for those children their own properties, furthermore, her husband at any time could return from exile because he disappeared in Congo, therefore the properties in litigation should be only left to her and her child Mbatezimana Pautin that she has with Ntigurirwa Cyprien.

[3] On 13 December 2013, the Intermediate Court of Nyarugenge rendered the judgment RCA 0186/13/TGI/NYGE - RCA 0190/13/TGI/NYGE whereby it found with no merit the appeal of Ntakirutimana Ezira since his request of registering the children he has with Musasangohe Vestine on the property of their mother was granted and the property was divided among the children, that the damages which he requested for were not necessary because they would be withdrawn from the property for which he requests to be registered in the names of his children. Regarding the appeal of Musasangohe Vestine, the Court found that she did not deny those children, thus, they are entitled to the property of their mother as provided by article 326 of civil code book I which was into force by that time, and the previous Court did not order the opening of the succession, then, that it found both appeals without merit and sustained judgment RC0005/13/TB/NYB rendered by the Primary Court of Nyamirambo.

[4] After the pronouncement of that judgment, Musasangohe Vestine sought relief from the Office of Ombudsman, on 31 August 2015, that institution wrote to the president of the Supreme Court requesting that the judgment RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rendered by the Intermediate Court of Nyarugenge be reviewed because it is vitiated by injustice basing on the ground that it disregarded the Law N°43/2013 of 16/06/2013 governing land in Rwanda and ministerial order N°002/2008 of 01/4/2008 determining modalities of land registration; the president of the Supreme ordered for review of the judgment.

[5] The hearing of the case was conducted in public on 11 December 2017, Musasangohe Vestine represented by Counsel Amani Jean de Dieu whereas Ntakirutimana Ezira on behalf of his children Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré was represented by Counsel Bundogo Innocent.

## II. ANALYSIS OF THE LEGAL ISSUES

### **a. Whether Ntakirutimana Ezira, on behalf of his children, had the interest to file a claim requesting to register them on property of Musasangohe Vestine which she jointly acquired with Ntigurirwa Cyprien.**

[6] Amani Jean de Dieu, the counsel for Musasangohe Vestine states that basing on the provision of article 142 of the Law N°21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, he finds the claim submitted by Ntakirutimana Ezira would have not been admitted by the previous Courts since there is a public order ground to justify that the claim should not have been admitted because the children he represented do not have the legal interest to file a case to the Court since the property which they claim to be registered on does not belong only to their mother, rather she co-owns it with her legitimate husband Ntigurirwa Cyprien and Musasangohe Vestine should not be deprived the right on her property due to the succession that will take effect after her death, especially that her successors represented by their father who file claim, nothing proves that they are her only successors because she can give birth to other children.

[7] Bundogo Innocent, the counsel for Ntakirutimana Ezira argues that he filed a case on behalf of his children whom he gave birth together with Musasangohe Vestine because the property of the latter was only registered on his child Mbatezimana Pautin; thus, he wished that others be registered on it so that they will have the right on their mother's property, but during the preparing the case for hearing, Musasangohe Vestine declared that the property in litigation was registered in her names 100%, this led them to search the information to the land management and use authority in Rwanda/ the office of land register and it demonstrated in the letter of 22 January 2017 that the property is registered in names of Musasangohe Vestine only, therefore, the fact that Mbatezimana Pautin is not registered on it, there is no reason to register other children on it. Therefore, the judgment which is subject to the review of the case due to injustice should be quashed.

## VIEW OF THE COURT

[8] Concerning the objection of inadmissibility of the claim, article 142 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that a request for inadmissibility of a claim may be made by a party or court on its own motion. Request for inadmissibility of a claim shall be raised by the court on its own initiative if its reasons are of the nature of public law and order such as exceeding the time limit within which to appeal or lack of status, capacity or interest to sue.

[9] Regarding the interest to sue provided in the article above, law scholars states that it has been in existence at the time of filing a claim; that it is not allowed that the person files a case for the future interest<sup>1</sup>.

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<sup>1</sup> *Manuel de procédure civile, Editions Larcier, 2015, p 91-92. "l'intérêt doit être né et actuel. C'est à dire qu'au jour où il exerce son action, le demandeur doit pouvoir tirer un avantage de la prétention qu'il a émise, dans le cas*

[10] It is obvious in claimant case pleadings at the primary Court of Nyamirambo on 23 January 2013 that Ntakirutimana Ezira on behalf of his children Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré filed a case arguing that when registering the property, Musasangohe Vestine registered the whole property in her name and among her children she recorded it on Mbatezimana Pautin and she ignored the other 4 who also belong to her; he requested the Court that it should order her to register those children on her property because they will get nothing during the distribution of the descendent partition or at the time of succession since she registered the whole property on a sole heir and in addition to that he is afraid that in case she dies it will cause unnecessary lawsuits so that they can have the equal right as Mbatezimana Pautin.

[11] The Court finds that the interest which Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré have on their mother's property Musasangohe Vestine is not present and immediate, because it is not yet time for distribution of the descendent partition or inheriting her property; therefore she will be inherited at the right time and in accordance with succession law; thus, their claim should not have been admitted by the previous Court since they do not demonstrate a present interest in being registered on their mother's property.

[12] Therefore, basing on the provisions of article 142 of the Law N°21/2012 of 14/06/2012 mentioned above and the given motivations, the Court finds that the judgment RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rendered by Intermediate Court of Nyarugenge which Musasangohe Vestine requested to be reviewed due injustice should be quashed as well as the judgment rendered RC0051/13/TB/NYB rendered by the Primary Court of Nyamirambo because the plaintiffs do not have the interest.

#### **b. Concerning damages requested by Musasangohe Vestine**

[13] Amani Jean de Dieu, the Counsel for Musasangohe Vestine argues that Ntakirutimana Ezira must give her client moral damages equivalent to 1,500,000Frw for being dragged her into unnecessary lawsuit, 1,000,000Frw of the counsel fees and 500,000Frw of procedure fees on this instance.

[14] Bundogo Innocent, the Counsel for Ntakirutimana Ezira states that all amount requested by Musasangohe Vestine should not be awarded because his client filed a case to the court on behalf of his children and he is the one who take care of them, therefore, the amount he could be charged must be deducted from the property they jointly acquired.

## **VIEW OF THE COURT**

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*où elle serait déclarée bien fondée. Un intérêt éventuel ne suffit donc pas pour qu'une action soit recevable. En principe l'action ad futur umn'est pas autorisée, ce qui pose la question de la recevabilité des actions préventives et singulièrement des actions à portée probatoire ou déclaratoire, cette dernière étant destinée à faire constater l'existence ou l'inexistence d'un droit en dehors d'une constatation actuelle". Hakim Boularbah, Olivier Caprasse, Georges De Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernelle et Jean-François Van Drooghenbroeck, Droit judiciaire, Tome 2*

[15] The Court finds that nothing to prove that Ntakirutimana Ezira co-owns property with Musasangohe Vestine, especially that they are not legally married, thus nothing can prevent him to give her the damages she requests in case it is necessary to award them.

[16] Concerning 1,500,000Frw of the moral damages Musasangohe Vestine requests Ntakirutimana Ezira, the Court finds that he dragged her into unnecessary lawsuit, however, that amount which she requests is excessive therefore, she is awarded 500,000Frw in its discretion.

[17] With regard to 1,000,000Frw of the Counsel fees and 500,000Frw of the procedure fees which Musasangohe Vestine requests Ntakirutimana Ezira on this instance, the Court finds that it is true she hired a lawyer to follow up on the case, but nothing proves that the requested amount was spent on this case; therefore, in its discretion she is awarded 500,000Frw of the counsel fees and 200,000Frw for procedure fees, all amounting to 700,000Frw on this instance.

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

[18] Decides that the application submitted by Musasangohe Vestine for review of the case RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE due to injustice rendered on 13 December 2013 by the Intermediate Court of Nyarugenge has merit,

[19] Quashes the judgment RCA0186/13/TGI/NYGE - RCA0190/13/TGI/NYGE rendered on 13 December 2013 by the Intermediate Court of Nyarugenge,

[20] Orders Ntakirutimana Ezira, on behalf of his children Umuhoza Aline, Ntakirutimana Elie, Ntakirutimana Yves and Ntakirutimana Honoré to pay 500,000Frw in moral damages and 700,000Frw of the procedure fees to Musasangohe Vestine as it was motivated above,

[21] Court fees born by the public treasury.