

MUKARWEGO ET.AL v. NGIRIYABANDI

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV0009/14/CS, (Rugege P.J., Kayitesi R. and Mutashya, J.) September 14, 2018]

Evidence law – Summary of judgment – Summary of judgment is not a copy of judgment but it is irrefutable evidence that judgment was truly rendered between parties and it indicates the decision taken in that case.

Civil procedure – A judgment which acquired the force of res judicata – Rendering a judgment on the object which had already been the object of the claim in the final judgment, it is an irregularity which shall be corrected by the annulment of that judgment.

Facts: Ngiriyabandi sued Nyiringango before Kanto Court of Nyaruguru stating that he appropriated his land basing on forged document which demonstrates that this land was object of litigation between them before the first instance Court of Gikongoro which is not the case, then Kanto Court of Nyaruguru held that the land in litigation originates from Sekidende who bequeathed it to Ngiriyabandi, thus the latter has right to live in and exploit it, Gumiriza and Nyiringango have to hand it over because they forcibly appropriated it, that court also ordered Nyiringango to give Ngiriyabandi damages.

Nyiringango appealed to the Court of Gikongoro province, stating that the land belongs to Sekidende who bequeathed it to his child Gumiriza, he adds that a house was built in that land in 1960, and that land was litigated against Ngiriyabandi before the first instance Court of Gikongoro but the latter lost the case though he has no copy of judgment. The Court rendered the judgment holding that the appeal of Nyiringango lacks merit and ordered him to pay damages to Ngiriyabandi.

Nyiringango appealed before the High Court, chamber of Nyanza, this Court decided to **strike off the case from the register because of Nyiringango's default to appear**, it also held that the appealed judgment will be executed even if the case is reintroduced.

Nyiringango died, and his children represented by Mukarwego Josepha, applied for a case review before Nyamagabe Intermediate Court, they produced a summary of judgment RCA5799/13 as a proof that Nyiringango had a court case against Ngiriyabandi about that land and that Nyiringango won the case, they stated, that summary of judgment could not be found when their father pleaded. The intermediate Court of Nyamagabe decided that the document produced by the claimants cannot be considered as a reason for the case review and concluded that the document produced, is not related to the case for which the review is sought.

After that decision, Mukarwego wrote to the office of Ombudsman requesting for review the case rendered by the intermediate Court of Nyamagabe because it is vitiated by injustice, then the Ombudsman wrote to the President of the Supreme Court requesting to review the case of Mukarwego due to injustice, that the grounds of injustice are based on the decision of the Intermediate Court of Nyamagabe which disregarded the summary of the judgment RCA5799/13 rendered on 27/07/1983 by the First instance Court of Gikongoro, issued on 20/10/2011 by the registrar of the Intermediate Court of Nyamagabe, while that summary of judgment is a proof that the land in litigation was object of the claim for which Ngiriyabandi André lost in 1983., He

continues stating that, for the Intermediate Court of Nyamagabe to disregard that proof, it is an injustice.

In the interlocutory judgment, the hearing before the Supreme Court first examined whether the summary of judgment RCA5799/13 would have been considered as a reason for the case review before the intermediate Court. The Supreme Court rendered the interlocutory judgment holding that the summary of judgment RCA5799/13 rendered on 27/07/1983 between Nyiringango and Ngiriyabandi, originates from a case which was truly rendered.

The case was resumed by hearing the grounds of injustice in the case RC135/3 rendered on 11/03/2004 by Nyaruguru Kanto Court and the case RCA0275/05/TP/GIRO-RCA 2880/7/04 rendered on 05/05/2005 by Nyamagabe Intermediate Court, the claimants state that Ngiriyabandi could not file a claim for the land which had already been adjudicated before court because the judgment acquired the force of res judicata, the defendant states, the fact that the summary of the judgment was accepted by the Court as reason for the case review, what is remaining is to examine its merit in accordance with the Law.

Held:1. Summary of judgment is not a copy of judgment but it is irrefutable evidence that judgment was truly rendered between parties.

2. Rendering a judgment on the object which had already been an object of the claim in the final judgment, it is an irregularity which shall be corrected by the annulment of that judgment.

Application for the case review due to injustice has merit;

Statutes and Statutory instruments referred to:

Law N°22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 14.

Organic - Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 81.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3.

Law N°18/2004 of 20/6/2004 relating to civil, commercial, labour and administrative procedure article 360.

Minister of justice's order N°002 of 06/01/2005 regulating Court fees in civil, commercial, labour, and administrative cases, article 2.

No cases referred to.

Authors cited:

Serge GUINCHARD, Droit et Pratique de la Procédure Civile, p. 1225

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started before Nyaruguru Kanto Court with number RC135/3, whereby Ngiriyabandi André sued Nyiringango Faustin, that he appropriated his land basing on fogged documents indicating that there was a Court case of Gikongoro First Instance Tribunal opposing them, while it is not, then on 11/03/2004, Nyaruguru Kanto Court decided that the land in litigation originates from Sekidende who bequeathed it to Ngiriyabandi André when he was still child, thus he has right to live in and exploit it, and ordered Gumiriza and Nyiringango Faustin to hand it over because it has been proven that they forcibly occupied it, that Court also ordered Nyiringango Faustin to give Ngiriyabandi André damages equal to 25,000Frw for delaying and removing him in his property.

[2] Nyiringango Faustin appealed before Gikongoro Province Court, the claim was registered on N°RCA0275/05/TP/GIRO-RCA 2880/7/04, stating that the land belongs to Sekidende who bequeathed it to his child Gumiriza, that the house was built for him in 1960, and he won the case which opposed him to Ngiriyabandi André about that land, although he has no copy of judgment. On 05/05/2005, this Court decided that the appeal of Nyiringango Faustin has no merit, and ordered him to pay damages to Ngiriyabandi André equal to ten thousand (10.000Frw) for removing him in his property.

[3] Nyiringango Faustin appealed before the High Court, chamber of Nyanza, his claim was given N°RCAA 0725/05/HC/NYA, on 04/06/2008 this Court decided to **strike off the case from the register because of Nyiringango's default to appear**, it also held that the appealed judgment RCA0275/05/TP/GIRO-RCA 2880/7/04 rendered on 05/05/2005 by Gikongoro Province Court will be executed in its *entirety* even if the case is reintroduced.

[4] After the death of Nyiringango Faustin, his children Mukamana Donatha, Nyirabutoragurwa Médiatrice and Mukarwego Josepha, represented by Mukarwego Josepha applied for reviewing the case N°RCA0275/05/TP/GIRO-RCA2880/7/04 before the Intermediate Court of Nyamagabe, indicating that the summary of the judgment RCA5799/13 is a proof that Nyiringango Faustin won the case of land he had against Ngiriyabandi André, they stated that when their father pleaded before Court, that summary could not be found, they pray to consider it as a reason of case review, their claim was recorded on RCA0261/11/TGI/NYBE.

[5] On 16/03/2012, the Intermediate Court of Nyamagabe rendered the judgment, and held that the document produced by the claimants is not a reason for case review, because it relates to the issue of money, it does not indicate who won the land while it is the one in litigation in the case being reviewed, it also held that the document produced cannot be considered as a judgment, rather it demonstrates that there is an issue of money which was settled between Nyiringango Faustin and Ngiriyabandi André, and the Court concluded that the case RCA0275/05/TP/GIRO-RCA2880/7/04 can not be reviewed, because the document produced by the claimants is not related to the case which is sought to be reviewed.

[6] When Mukarwego Josepha received this decision, she wrote to the office of Ombudsman requesting for review of the case RCA0261/11/TGI/NYBE due to injustice, then on 27/03/2013, the ombudsman wrote to the President of the Supreme Court requesting the review of the case of Mukarwego Josepha who also represents her sisters Mukamana Donatha and Nyirabutoragurwa Médiatrice,

[7] The Ombudsman states that the grounds of injustice are based on the decision of the Intermediate Court of Nyamagabe which did not consider the summary of the judgment RCA5799/13 rendered on 27/07/1983 by First Instance Court of Gikongoro, delivered by that Court on 20/10/2011, while that summary is a proof that the land claimed by Ngiriyabandi André is the one he lost in the case rendered in 1983, he states that the summary of judgment is a sine qua none proof as provided by article ya 184,3° of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, that for The Intermediate Court of Nyamagabe to disregard that document, it is injustice as.

[8] He further states that the Intermediate Court of Nyamagabe was mistaken, whereby it decided that the document produced by Mukarwego Josepha cannot be considered as a judgment, rather it demonstrates that there is an issue of money which was settled between Nyiringango Faustin and Ngiriyabandi André while in that document, the subject matter was not the money, but the land as it is clear in that summary of judgment.

[9] The hearing of the case happened in public on 18/12/2017, Mukamana Donatha and Nyirabutoragurwa Médiatrice represented by Mukarwego Josepha assisted by Counsel Kayirangwa Marie Grâce, Ngiriyabandi André was represented by Counsel Sindayigaya Abson, that day they argued on the issue to know whether the summary of the judgment RCA5799/13 would have been considered as a reason for the case review in the case RCA0261/11/TGI/NYBE, and the court decided that the decision will be pronounced on 19/01/2018.

[10] On 19/01/2018, the Supreme Court decided that it is needed to conduct investigations in the Intermediate Court of Nyamagabe and where the Kanto Court of Nyaruguru was located, to verify whether the judgment RCA5799/13 was rendered.

[11] The investigation was conducted on 02/04/2018, the Court after checking the court register found in the Intermediate Court of Nyamagabe where the case RCA5799/13 was registered, the court found its content is the same with the summary of judgment written by the chief registrar of that Court on 20/10/2011.

[12] The Court also went to the Primary Court of Nyaruguru to check whether there was a case between Nyiringango Faustin and Ngiriyabandi André in 1983, it only found the case with N° RC135/3 rendered on 11/03/2004, but the case rendered before Genocide was not found, the personnel of Primary Court told those in investigation that the court registers of that time were burnt and others damaged.

[13] The Court decided to resume the hearing on 22/05/2018, so that the parties argue on the outcome of the investigation, on that date, parties appeared and the hearing took place, parties argued on the outcome of the investigation conducted in the Intermediate Court of Nyamagabe and former Kanto Court of Nyaruguru, the Court decided that the decision on whether the case RCA5799/13 really happened, will be pronounced on 18/06/2018.

[14] On that day, the Supreme Court rendered an interlocutory judgment and held that the summary of the judgment RCA5799/13 rendered on 27/07/1983 between Nyiringango Faustin and Ngiriyabandi André, originates from a case which was truly rendered, thus, it would have

been considered in the judgment RCA0261/11/TGI/NYBE as reason for the case review of the judgment RCA0275/05/TP/GIRO-RCA2880/7/04 which opposed Nyiringango Faustin to Ngiriyabandi André.

[15] In that interlocutory judgment, the Supreme Court reversed the judgment RCA0261/11/TGI/NYBE rendered on 16/03/2012 by the Intermediate Court of Nyamagabe, in which the Court did not admit the application for review of the case RCA0275/05/TP/GIRO-RCA2880/7/04 rendered on 05/05/2005 by the Intermediate Court of Nyamagabe, it decided to resume the hearing on the date to be communicated later to the parties to hear the grounds of injustice which vitiates the case RC135/3 rendered by Kanto Court of Nyaruguru on 11/03/2004, and the case RCA0275/05/TP/GIRO - RCA2880/7/04 rendered on 05/05/2005 by the Intermediate Court of Nyamagabe.

[16] The public hearing of the case was resumed on 24/07/2018, whereby Mukarwego Josepha who represents her sisters Mukamana Donatha and Nyirabutoragurwa Médiatrice, was assisted by Counsel Kayirangwa Marie Grâce, whilst Ngiriyabandi André assisted by Counsel Sindayigaya Abson.

[17] Counsel Kayirangwa Marie Grâce assisting Mukarwego Josepha and her sisters, states that Ngiriyabandi André should not file a claim of land which had been an object of the claim because the judgment has force of res judicata, she adds, the fact that the Intermediate Court of Nyamagabe disregarded the summary of the judgment, it is injustice because it ignored that most of the documents were damaged after Genocide, Counsel Sindayigaya Abson states, the fact that the summary of the judgment was accepted by the Court as reason for the case review , what is remaining is to examine its merit in accordance with the Law.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the Land litigated in the judgment RCA0275/05/TP/GIRO- RCA2880/7/04 rendered on 05/05/2005 was already adjudicated on in final judgment.

[18] Kayirangwa Marie Grâce, the counsel for Mukarwego Josepha who represents her sisters Mukamana Donatha and Nyirabutoragurwa Médiatrice, states that the land claimed by Ngiriyabandi André before former Kanto Court of Nyaruguru was litigated between Ngiriyabandi André and Nyiringango Faustin and the former lost the case, he appeared before the First Instance Court of Gikongoro and again he lost the case in the judgment RCA5799/13 rendered on 27/07/1983, but after Genocide against the Tutsi in 1994, he filed again a claim before Kanto Court of Nyaruguru, and before the Intermediate Court of Nyamagabe because he believed that all documents were lost.

[19] She continues stating that, the summary of the decision of the intermediate Court of Nyamagabe in the judgment RCA5799/13 rendered on 27/07/1983 found in Court's archives, must be considered to decide that the land in litigation was adjudicated on in the final judgment between Nyiringango Faustin and Ngiriyabandi André, thus, it should not be brought before the Court any more. Mukarwego Donatha who represents her sisters Mukamana Donatha and Nyirabutoragurwa Médiatrice, states that she requests for justice.

[20] Ngiriyabandi André, the defendant, states that it is not true that the documents have disappeared, because he had no case against Nyiringango Faustin, rather he had a case against Ruboneza who had appropriated that land when he was a soldier, that the land belongs to his uncle, thus, he could not have a case against Nyiringango Faustin while he has no blood relation with him. Therefore, he adds that he should not suffer from injustice basing on the summary of the judgment delivered by the Intermediate Court of Nyamagabe in circumstances he does not know.

[21] Counsel Sindayigaya Abson assisting Ngiriyabandi states that the case being heard is based on the summary of the judgment delivered by the intermediate Court of Nyamagabe which the Supreme Court already admitted in an interlocutory judgment, that he believes that what is remaining is to examine its merit in accordance with the Law.

VIEW OF THE COURT

[22] Article 81,2° of the organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that “the review of a final decision due to injustice shall only be applied for, on any of the following grounds: (...) when there are provisions and irrefutable evidence that the judge ignored in rendering the judgment”.

[23] Article 14 of the Law N°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides that: “a case having been definitively decided cannot again be litigated for the same facts, between the same parties acting for the same cause”.

[24] Article 3 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges”.

[25] With regarding to this case, the Supreme Court finds that the summary of the judgment produced by Mukarwego Josepha in the case RCA0261/11/TGI/NYBE, indicating that the First Instance Court of Gikongoro rendered in appeal the case RCA5799/13 on 27/07/1983 between Nyiringango Faustin and Ngiriyabandi André, in which land was the subject in litigation, that Court decided that Ngiriyabandi André lost the case while Gumiriza representing Nyiringango Faustin won the case, Ngiriyabandi André was also ordered to pay various fees which include court fees, damages, and State fees. That summary of judgment was delivered by the registrar of the Intermediate Court of Nyamagabe on 20/10/2011, the pieces of information were extracted from court register 13.

[26] The Court finds that this summary of judgment demonstrates without doubt that there was a case of land between Nyiringango Faustin and Ngiriyabandi André as Mukarwego Josepha and her sisters were arguing, it is an element of evidence to prove that both parties had ever pleaded on that land before the first instance Court of Gikongoro whereby the judgment RCA5799/13 was rendered on 27/07/1983, thus, no any other judgment should have been rendered on that piece of land basing on the principle of the force of res judicata, as provided, by article 14 of the Law N°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure mentioned above.

[27] The Court further finds, the fact that a summary of judgment was produced instead of a copy of judgment, the reason is that the judgment itself cannot be found as observed by the Supreme Court in its investigation of 02/03/2018 whereby the chief registrar of the Intermediate Court of Nyamagabe confirmed that, the copy of judgment cannot be found except court register N°13 in which he copied the decision taken in the case RCA5799/13, but he also confirmed that, the whole judgment cannot be found¹ because the judgments and some of the registers of the period prior to genocide against Tutsi of 1994 disappeared, this was also the statement of the chief registrar of the Primary Court of Kibeho where all judgments and registers of former Kanto Court of Nyaruguru were shifted to, after restructuring of the judiciary.

[28] The Court finds without merit the statements of that who represents Ngiriyabandi André that the summary of the judgment is not a judgment because it does not indicate the owner of the the land, because even though it is not a copy of judgment but it is an irrefutable evidence that there was a court case between these both parties, and it was delivered by competent authority indicating the decision taken, that summary also has its value because it is one of the documents which were provided by the article 2 litera 6² of the Ministerial Order N°002 of 06/01/2005 related to court fees in civil, commercial, labour and administrative cases, which enumerated it among the documents to be delivered by the registrar of the Court. This document was also provided by article 360 of Law N°18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure which was in force when that document was issued. This article provides that in case of indigence noted by the President of the court that rendered the judgment, orders that an expedition, an extract or a copy is issued.³

[29] The court finds without merit the statement of Ngiriyabandi André that the summary of judgment does not indicate whether the land in litigation in the judgment RCA5799/13, is the same land litigated in the judgment RC135/3 rendered by Kanto Court of Nyaruguru and the judgment RCA0275/05/TP/GIRO - RCA2880/7/04 rendered by the Intermediate Court of Nyamagabe because he does not prove that this land is different from the one litigated in the case RCA5799/13 while that case demonstrates a land as object in litigation between Nyiringango Faustin and Ngiriyabandi André, therefore, he loses the case due to lack of evidence of what he alleges as provided by article 3 of the Law relating to evidence and its production mentioned above.

[30] The Court finds irregularities in the fact that former Kanto Court of Nyaruguru and former Court of Gikongoro Province rendered the judgment deciding on the land which was already adjudicated on in the final judgment, because of those irregularities, the judgments should be quashed. This is also the opinion of legal scholars Serge Guinchard in his book titled

¹ See investigation affidavits established on 2th /03/2018 from page 2 to page 3 of the case file

² Court fees for documents established in civil, commercial, labour and administrative cases are set as follows:

- A document which enforceable title, a complete copy of the judgment, a summary of judgment or a summary of any other document established by a Court registrar:
- First two pages
- Every additional page

³ When the president of the Court which rendered the judgment found a party to the case with extreme poverty, he orders to give him a copy of the judgment, or a summary of judgment free of charge, and on the bottom of that document is written that is delivered free of charge.

“Droit et Pratique de la Procédure Civile” on page 1225, paragraph 3⁴, where he explains that annulment of the judgment is one of possible consequences in case a judgment is rendered disregarding that the object in litigation was already adjudicated on in final judgment.

III. DECISION OF COURT

[31] Decides that the application for review of the case RCA0261/11/TGI/NYBE rendered on 16/03/2012 by the Intermediate Court of Nyamagabe due to injustice, has merit;

[32] Decides that the judgment RC135/3 rendered on 11/03/2004 by former Kanto Court of Nyaruguru, and the judgment RCA0275/05/TP/GIRO- RCA2880/7/04 rendered on 05/05/2005 by the Intermediate Court of Nyamagabe are quashed;

[33] Sustains the rulings of the judgment RCA5799/13 rendered on 27/07/1983 by the First Instance Court of Gikongoro on 27/07/1983.

⁴ Le prononcé d'un jugement auquel est conférée l'autorité de la chose jugée entraîne deux séries d'effets : d'une part, le juge est dessaisi et ne peut plus revenir sur sa décision, d'autre part, s'il arrive qu'un autre juge rende une décision méconnaissant la chose précédemment jugée, une sanction pourrait être prononcée tendant à l'annulation de cette décision.