

MUKAGIFUNDU ET.AL v. UWAMARIYA ET.AL

[Rwanda Supreme Court – RS/REV/INJUST/CIV0011/16/CS –Kanyange, P.J., Ngagi, and Mukandamage, J.) 21 April 2019]

Civil procedure – Application for review of a judgment on grounds of injustice – Parties – all parties in a judgment which is subject to an application for review on grounds of injustice, must be summoned though they did not apply for it to the competent organ.

Facts: Mukagifundu and Mukamutana filed a paternity case to the former Court of First Instance of Gitarama requesting the Court to declare Rugarama the legal father. There was a judicial reform in 2004 when those cases were still pending and thus they were transferred to the Primary Court of Gacurabwenge , which had the jurisdiction to hear such cases.

Mukamutana's claim was struck off the case registrar, but few days later she reintroduced the case and Uwamariya voluntarily intervened in the case claiming to represent the heirs of Iyamuremye Vénéranda, who died after he had intervened in all previous cases.

The Court held that of Rugarama was the legal father of Mukagifundu and Mukamutana, this led Uwamariya, Muhawenimana, and Uwizeyimana to appeal to the Intermediate Court of Muhanga, which heard the case after the two cases were combined. That Court reversed the rulings of the Primary Court of Gacurabwenge, and thus, Mukagifundu who also represented her younger sister Mukamutana appealed to the High Court, but the appeal was dismissed.

Mukagifungo also appealed to the Supreme Court, and the Pre-Trial Judge, in his decision, declared the appeal inadmissible on the grounds that the case was not within the jurisdiction of the Supreme Court, Mukagifundu wrote to the Office of the Ombudsman requesting that the judgment rendered by the Intermediate Court of Muhanga be reviewed on the grounds of injustice, explaining that this Court disregarded that the appellants Muhawenimana and Uwizeyimana were not parties in previous cases.

After the analysis of her request, the Office of the Ombudsman requested for the review of that judgment, and the case was reviewed before the Supreme Court on grounds of injustice.

During the hearing before the Supreme Court, the defendants raised an objection of inadmissibility of Mukamutana's claim alleging that she did not write to the Office of the Ombudsman requesting for the review of the judgment on grounds of injustice.

In her defence, Mukamutana explained that together with Mukagifundu, they were parties in court cases which were combined by the Intermediate court, the cases which are also subject to the review due to injustice and that it is not possible to review one of those judgments and leave the other. Mukagifundu argues that she requested the Office of the Ombudsman for the review of the judgment on her behalf but also for her sister, because she has been representing her in previous cases.

Held: All parties to the judgment which is subject to the review on grounds of injustice must be summoned though they did not apply for it to the competent organ because this procedure aims

to remove injustice found in a judgment rendered at the final instance, therefore, Mukamutana must not be excluded from the proceedings.

**The objection overruled
The hearing will resume;
Court fees are suspended.**

Statutes and statutory instruments referred to:

Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, articles 78 and 79.

Law N° 76/2013 of 11/09/ 2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman, article 15.

Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure, article 10.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

- [1] On 06/06/1996, Mukagifundu Pauline and Mukamutana Hyacinthe brought paternity proceedings before the Court of First Instance of Gitarama praying the Court to declare that Rugarama is their father, Mukagifungo's claim was recorded under N° RC 152/1/96, and that of Mukamutana under N° RC 0148/1/96.
- [2] The Judicial Reform of 2004 occurred while all those cases were pending. Mukagifundu Pauline followed up her case in the Intermediate Court of Muhanga but she was advised to follow up her case before the Primary Court of Gacurabwenge because her case was in the jurisdiction of that court, thereafter, she was told that her claim N° RC 152/1/96 and that of her sister were removed from the court registers.
- [3] Mukagifundu Pauline filed an application for re-introduction of her case, and her claim was recorded under N°RC 0175/09/TB/GBWE, and the court noted during the hearing that case N° RC 152/1/96 had not been removed from the court registers, but, the case N° RC 148/1/96 of her young sister Mukamutana Hyacinthe was removed, and on her request, the Court accepted for Mukagifundu Pauline to withdraw her action RC 0175/09/TB/GBWE and proceeded with her first action N° RC 152/1/96 before the Primary Court of Gacurabwenge and was recorded on N° RC 0264/09/TB/GBWE - RC 152/1/96, On the other hand, Mukamutana Hyacinthe reintroduced the case N° RC 148/1/96, which was removed from the list of the court cases after it was recorded on N° RC 0060/05/TD/KMYI/RC167/09/TB/GBWE, and her new claim was recorded on N° RC 0176/09/TB/KBWE.

- [4] Uwamariya Agnès paid court fees to intervene in the case RC 264/09/TB/GBWE - RC 152/1/96 and RC 0176/09/TB/GBWE stating that she represents the heirs of Iyamuremye Vénérande who had intervened in two previous cases RC 152/1/96 and RC 148/1/96 and she died afterward.
- [5] In judgment RC 0176/09/TB/GBWE-RC152/1/96, the Court held that Mukagifungo Pauline is Rugarama Landouard's daughter, that Uwamariya Agnes' claim is without merit. And also in the judgment RC 0176/09/TB/KBWE, the same Court held that Mukamutana Hyacinthe is also the daughter of Rugarama Landouard.
- [6] Uwamariya Agnès, Muhawenimana Bernadette, and Uwizeyimana Marie Goretti appealed against judgments RC 0264/9/TB/GBWE-RC 0512/1/96 and RC 0176/09/TB/GBWE, to the Intermediate Court of Muhanga, the appeals were recorded under N° RCA 0163/010/TGI/MHG and N° RCA 0164/010/TGI/MHG. That Court rendered those judgments on 12/11/2010, holding that the appealed judgment RC 0264/09/TB/GBWE - RC152/1/96 and RC 0176/09/TB/GBWE are reversed in whole and quashed, that Mukagifundu Pauline and Mukamutana Hyacinthe lose the case.
- [7] Not satisfied with this decision, Mukagifundu Pauline appealed to the High Court, chamber of Nyanza, his appeal was registered under N°RCAA 0347/10/HC/NYA, and on 14/10/2011, the High Court declared the appeal inadmissible for non-compliance with the requirements of article 106 of the Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts.
- [8] Mukagifundu Pauline was again not satisfied with the decision, she appealed to the Supreme Court, and her appeal was registered on N° RCAA 0135/11/CS. In pre-examination decision RC 0050/12/PRE-EX/CS, the judge declared the case inadmissible on the grounds that the Supreme Court is not competent to hear the case.
- [9] Following this decision, Mukagifundu sent a written request to the Office of the Ombudsman requesting that the judgment of the Intermediate Court of Muhanga RC 0163-RCA 0164/010/TGI/MHG be reviewed due to injustice on the following grounds :
- 1° the fact that the court disregarded that the appellants Muhawenimana Bernadette and Uwizeyimana Marie Goretti were not parties in the appealed judgments RC 0264/09/TB/GBWE-RC152/1/96 and RC 0176/09/TB/GBWE, while this objection is of a public order which prevents the claim to be admitted, therefore the fact that the claim was admitted while it should not have been admitted, this had an effect on judgments RC 0264/09/TB/GBWE/RC152/1/96 and RC0176/09/TB/GBWE in which Mukagifundu and Mukamutana were successful;
- 2° the fact that Uwamariya Agnes intervened in the cases RC 0264/09/TB/GBWE/RC152/1/96 and RC 0176/09/TB/GBWE stating that she represents Iyamuremye Vénérande's heirs who are Muhawenimana Bernadette and Uwizeyimana Marie Goretti, but that at this instance and at the level of appeal, she had acted in her own name, that especially at the level of appeal, Uwizeyimana Marie Goretti had also acted on her own behalf, therefore, this is also an objection of a public order which should have prevented the intervention in a case to be admitted.

[10] The Office of the Ombudsman, in its letter N° OMB 03/1689/0615 /KJP of 02/06/2015, addressed a request to the President of the Supreme Court, requesting that the Judgment RCA 0163-RCA 0164/010/TGI/MHG be reviewed on grounds of injustice, after analysing the General Inspectorate of Courts's report, the President of the Supreme Court ordered that the case be sent to the Court Registry for hearing.

[11] The hearing was held in public on 17/01/2017 and on 14/03/2017, Mukagifundu Pauline and Mukamutana Hyacinthe represented by Counsel Mitsindo Tom, and Uwamariya Agnes, Muhawenimana Bernadette and Uwizeyimana Marie Goretti represented by Counsel Nkubayingoga Samuel, The latter raised an objection that Mukamutana Hyacinthe's claim should not be admitted on the ground that she did not apply for the review of the judgment due to injustice.

I. ANALYSIS OF THE LEGAL ISSUE

Whether Mukamutana Hyacinthe's claim should not have been admitted.

[12] Counsel Nkubayingoga Samuel, representing Uwamariya Agnes, Muhawenimana Bernadette, and Uwizeyimana Marie Goretti states that Mukamutana Hyacinth's claim should not be admitted because Mukagifundu Pauline is the only one to have applied for the review of the judgment due to injustice, and the Office of the Ombudsman's letter indicates Mukagifundu Pauline only.

[13] Mukagifundu Pauline submits that she had addressed a request to the Office of the Ombudsman asking that her case be reviewed because of injustice, that she did so on her own behalf, but that she also represented her younger sister, Mukamutana Hyacinthe, especially that she represented her in all court proceedings, in that sense, the Office of the Ombudsman sought that their cases which had been joined, be reviewed because of injustice.

[14] Mitsindo Tom, Counsel for Mukagifundu Pauline and Mukamutana Hyacinthe, argues that the one who raised this objection agrees that both parties are those who were in the combined cases RCA 0163-RCA 0164/010/TGI/MHG, which are being reviewed due to injustice, that it would not be possible for only one of them to be reviewed and let the other, especially that Mukagifundu Pauline states that she also represented her younger sister Mukamutana Hyacinthe. He adds that of the order of the President of the Supreme Court on the admissibility of the application for review on the grounds of injustice demonstrates that those combined cases are the ones to be reviewed, which implies that Mukamutana Hyacinthe is also a party to the case.

THE DETERMINATION OF THE COURT

[15] Article 78 of the Organic Law N° 03/2012/OL of 3/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, states that the Supreme Court shall have exclusive jurisdiction over applications for review of final decisions due to injustice upon approval of the President of the Supreme Court". Article 79, paragraph

1 and 2 of that Law, states that the Office of the Ombudsman shall be the competent organ to petition the Supreme Court over the application for review of a final decision due to injustice. When the final decision is made and there is evidence of injustice referred to under Article 81 of this Organic Law, parties to the case shall inform the Office of the Ombudsman of the matter [...]"

[16] Article 15 of the Law N° 76/2013 of 11/09/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman states that in the interest of the justice, the Office shall have powers to request the Supreme Court to reconsider and review judgments rendered at the last instance by ordinary courts, commercial and Military courts if there is any persistence of injustice. The reconsideration and review shall be made in accordance with the Organic Law establishing the organization, functioning and competence of the Supreme Court”.

[17] The case file demonstrates that the judgment RCA 0163-RCA 0164/010/TGI/MHG, under review due to injustice, Mukagifundu Pauline appears alone as a defendant, but in her defence, she also represents her younger sister Mukamutana Hyacinthe, Moreover, even in its decision, the Court quashed the judgments RC 0264/09/TB/GBWE/RC 0152/1/96 and RC 176/09/TB/GBWE¹ which had all been rendered on 25/03/2010 by the Primary Court of Gacurabwenge. In addition, the report issued by the Office of the Ombudsman on an application for review does not show whether Mukagifundu Pauline addressed her request to the Office of the Ombudsman, having also represented Mukamutana Hyacinthe, however, the report of the Office of the Ombudsman indicates that It had found that the judgment RC 0163-RCA 0164/010/TGI/MHG for which Mukagifundu Pauline and Mukamutana Hyacinthe were both defendants (in appeal), that judgment was vitiated with injustice because the Intermediate Court of Muhanga disregarded an objection of a public order which would have resulted in the inadmissibility of the appeal of Uwamariya Agnès, Muhawenimana Bernadette and Uwizeyimana Marie Goretti.

[18] Pursuant to the provisions cited above, the Court finds, t an application for the review of a judgment vitiated with injustice which is submitted by the Office of the Ombudsman to the Supreme Court, intends to request removing injustice found in a judgment rendered in final instance consequently, all parties to that judgment must be summoned. The fact that Counsel Nkubayingoga Samuel is invoking that Mukamutana's application should not be admitted, but that he fails to indicate the provisions which provide that a party to the proceedings who has not applied for review on the grounds of the injustice of a final judgment to the Office of the Ombudsman cannot be admitted as a party to the proceedings examining the alleged injustice, this proves that his statement has no merit.

[19] In particular, the Court finds that Mukamutana Hyacinthe should not be excluded from the parties to the trial, because based on the nature of the case as well as on grounds of injustice submitted for review by the Office of the Ombudsman, she is concerned, so that once she is excluded from the parties to the trial, and when the ruling of the judgment

¹ Mukamutana Hyacinthe's case

affects her, this would be in contradiction with the provisions of article 10 of Law No. 21/2012 of 14/06/2012 on the Code of Civil, Commercial, Social and Administrative Procedure, which provides that no party may be judged without having been heard or summoned.

[20] In light of the above motivations, the Court finds that an objection of rejecting Mukamutana Hyacinthe's claim raised by Counsel Nkubayingoga Samuel representing Uwamariya Agnes, Muhawenimana Bernadette, and Uwizeyimana Marie Goretti is without merit.

III. DECISION OF THE COURT

[21] Finds that the objection raised by Counsel Nkubayingoga Samuel, representing Uwamariya Agnès, Muhawenimana Bernadette and Uwizeyimana Marie Goretti, lacks merit;

[22] Orders that the hearing of this case will be resumed on 27/06/2017;

[23] Orders to suspend the Court fees;

[24] The judgment is rendered as such and pronounced on 21/04/2017.