

NDEREYEHE V. NYIRAMAHINGURA ET AL.

[Rwanda – SUPREME COURT– RS/INJUST/RC 00020/2017 (Mukanyundo P.J., Hitiyaremye and Munyangeri J.) 09 March 2018]

Civil procedure Law – Third party opposition – Interests – Interests of a party who files a third party opposition claim, must be different from those of the parties to the case whose judgment is subject to the opposition.

Facts: Ndereyehe filed a claim against her daughter Musengimana before the Primary Court of Kinihira, that she illegally appropriated his two pieces of land, eucalyptus plantation, and three cows. That Court decided that the claim has merit because he got the properties he claimed for, after the death of Musengimana’s mother, It also ordered Ndereyehe to give to Musengimana her ascending partition.

Musengimana appealed before the Intermediate Court, stating that the properties under litigation belonged to her late mother, that his father dispossessed them from her young sister Nyiramahingura who she also represents in this case. That Court decided that Musengimana cannot represent her sister because she has no power of attorney, It also sustained the decision of the appealed judgment.

After that judgment, Nyiramahingura filed a third party opposition claim against it, suing Ndereyehe alone, but Musengimana intervened in the case after accepting to be a party to it though she was not sued. Nyiramahingura states that she opposed that judgment because her father Ndereyehe located his second wife’s residence in the land where her mother used to reside, whilst she got it as a donation from her grandfather. That Court decided that Nyiramahingura and Musengimana should keep the house and the land left by their mother and that their father should donate to them half of the piece of land located at Remera because he did not donate them any ascending partition while regarding the other issues in this case, the Court decided that each should be divided into two, whereby the ½ must be given to Musengimana and Nyiramahingura, and the other ½ must be given to Ndereyehe and his second wife. Ndereyehe appealed before the High Court, but his claim was inadmissible.

Ndereyehe applied to the office of Ombudsman, the review due to injustice, the judgment rendered by the Intermediate Court, the Ombudsman after examining his request, he wrote to the President of the Supreme Court, requesting to review the judgment due to injustice because Nyiramahingura was not allowed to file for third party opposition claim against the judgment RCA0195/12/TGI/GIC between her father and her old sister, then the President of the Supreme Court ordered for the review of that judgment.

Before the Supreme Court, Ndereye states that the injustice he faced, based on disregarding laws before the Intermediate Court by admitting his daughter Nyiramahingura’s claim whereas the object in litigation was the family property.

Nyiramahingura, submits that, there was no injustice in admitting the third party opposition claim by the Intermediate Court, because she had interests in that case in which she was not a

party before, and that the law provides that a child cannot claim for what his/her father or mother claimed to another person rather than a family member, it does not prevent any family member to claim for his/her rights on the family properties against other family members,

Held: 1. Interests of a party who files a third party opposition claim must be different from those of the parties to the case whose judgment subject to the opposition it is not enough to indicate that someone has interests in the judgment subject to the opposition, the third party opposition claim is not admitted if the claimant in that claim, cannot indicate a particular interest he/she has different from that one pursued by the previous party. Therefore, Nyiramahingura's claim for the third party opposition should not have been admitted because she failed to prove her particular interests different from the one pursued by Musengimana in the judgment for which she applied for the opposition.

**The claim for the review of the judgment due to injustice has merit;
Judgment RCA 0296/12/TGI/GIC is quashed;
Sustains the judgment RCA 0195/12/TGI/GIC.**

Statutes and statutory instrument referred to:

Law N°21/2012 of 14/06/2012 relating to the civil, commercial labour and administrative procedure, article 176

No Case law referred to:

Authors cited:

Serges Guinchard, Droit et pratique de la procédure civile, 8ème Edition, Dalloz, 2014, P. 1595 (551-53)

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started before the Primary Court of Kinihira t, Ndereyehe François suing his daughter Musengimana Philomène for two pieces of land, forest and three cows which she appropriated herself. On 31/05/2012, that Court rendered the judgment RC0108/012/TB/KINI, and decided that the claim of Ndereyehe François has merit because he acquired the properties he sued for, after the death of Musengimana Philomène's mother, and he kept the obligation of looking after this child after she separated from her husband, that however, he has to make an ascending partition for her according to his patrimony.

[2] Musengimana Philomène appealed for that decision before the Intermediate Court of Gicumbi, stating that the properties under litigation belonged to her mother Icyitegetse Bernadette, but his father wants to donate them to his second wife, that he took off them from her little sister Nyiramahingura Gratia who she also represents in that case.

[3] On 14/09/2012, that Court rendered the judgment RCA0195/12/TGI/GIC and decided that Musengimana Philomène did not submit any proof that her sister gave her the power of representing her, that she did not also mention it at first instance, thus the case is between her and her father only. Regarding the properties in litigation, the Court sustained the rulings of the appealed judgment because Musengimana Philomène did not prove that the properties under litigation belonged to her mother.

[4] After rendering this judgment, Nyiramahingura Gratia filed a third party opposition before the intermediate Court of Gicumbi suing Ndereyehe François only, but later, Musengimana Philomène intervened in the case though she was not sued. The grounds of Nyiramahingura Gratia's claim, are that her father Ndereyehe François gave his second wife the land as a residence where her mother Icyitegetse Bernadette used to reside, whereas it was donated to her by her grandfather Bagora.

[5] On 28/02/2013, that Court rendered the judgment RCA0296/12/TGI/GIC, and decided that Nyiramahingura Gratia and Musengimana Philomène own the house and the land located at Gitwa in which they were left in by their mother, and ordered Ndereyehe François to give them on the land located at Remera because he did not make an ascending partition. Regarding other objects in litigation, comprising of the forest and three (3) cows, the Court decided that each of them is divided, and the half be given to Musengimana Philomène and Nyiramahingura Gratia, whereas the other half be given to Ndereyehe François and his second wife Siyonteze Verdianna. It holds that the judgments RC0108/012/TB/KINIH and RCA0195/12/TGI/GIC are nullified. Ndereyehe François appealed against this judgment before the High Court, but his claim was not admitted because it does not fulfill the requirements of the Law.

[6] Ndereyehe François applied to the Office of Ombudsman for the review of the judgment RCA0296/12/TGI/GIC due to injustice to the Ombudsman, wrote to the President of the Supreme Court requesting him the review of that judgment due to injustice, then on 18/04/2017 the President of the Supreme Court in order N°028/2017, decided that the judgment RCA0296/12/TGI/GIC be transferred to the registry of the Supreme Court to be rescheduled for review.

[7] The office of Ombudsman states that the grounds of injustice in that judgment are based on disregarding the Laws in admitting the third party opposition's claim filed by Nyiramahingura Gratia. This office explains that Nyiramahingura Gratia had no standing to file a third party opposition against the judgment RCA 0195/12/TGI/GIC basing on the provisions of the article 176, paragraph one and two, of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure because the subject matter was a family's property and she is a child of the respondent, this ground was also the one indicated by Ndereyehe François while explaining his injustice before the Supreme Court.

[8] The hearing was conducted in public on 30/01/2018, Ndereyehe François being assisted by Counsel Kayitana Dominique Savio, whereas Counsel Kananga Protogène represents Musengimana Philomène who in also represents her sister Nyiramahingura Gratia.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the claim of third party opposition against the case RCA0195/12/TGI/GIC should not have been admitted by the Intermediate Court of Gicumbi.

[9] Ndereyehe François states that he had a court case with Musengimana Philomène, thus she had no standing to apply for the opposition of the judgment in which she was a party. Counsel Kayitana Dominique Savio who assists her, adds that this is contrary to article 175 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, which provides that, the person entitled to apply for opposition is that one who was not a party to the case, thus Musengimana Philomène had no standing to apply for opposition of the case RCA0195/12/GIC in which she was a party.

[10] Counsel Kayitana Dominique Savio continues stating that the judgment RCA0296/12/TGI/GIC rendered by the Intermediate Court of Gicumbi, after the opposition of the judgment RCA0195/12/TGI/GIC, was vitiated by injustice because the claim filed by Nyiramahingura Gratia and Musengimana Philomène, should not have been admitted. He explains that this case started before the Primary Court of Kinihira whereby family property composed of two (2) pieces of land, forest, and six (6) cows were in litigation, Ndereyehe François suing his daughter Musengimana Philomène claiming that she leaves those properties. He keeps stating that Musengimana Philomène after she lost the case, she appealed but she lost again afterward, she and her young sister Nyiramahingura Gratia applied for the opposition of that judgment disregarding the fact that the property under litigation is a family property, besides, Musengimana Philomène was party to it, this violates the provisions of the article 176 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

[11] Counsel Kananga Protogène representing Nyiramahingura Gratia and her old sister Musengimana Philomène, states that by admitting the claim for third party opposition filed before the Court by Nyiramahingura Gratia alone, there is no injustice because she had interests as indicated in the judgment RCA0296/12/TGI/GIC, she has never been a party to the case for which she applied for opposition, though Musengimana Philomène who was party to the case did not oppose it, rather the latter was summoned to the case as a person who was party to the case for which the opposition was applied, as provided by the Law that if a judgment is subject of opposition, all parties to the concerned case are summoned. He states, the fact that Musengimana Philomène appears among the claimants, was due to the Court's mistake. He concludes by stating that the issue of Nyiramahingura Gratia and Musengimana Philomène concerns their rights to stay in the properties left by their late mother.

[12] With regard the provisions of article 176, paragraph two of the Law N°21/2012 of 14/06/2012 aforementioned, Counsel Kananga Protogène explains that the Law provides that a child cannot claim for what his/her father or mother claimed to another person rather than a family member, it does not prevent any family member to claim for his/her rights on the family properties against other family members, if it is so instituted, it would be an injustice. Counsel Kananga Protogène finds that it is not prohibited for a child or a parent to oppose a property in case anyone dispossesses the other, the will of the legislator in article 176 of the Law N°21/2012 of 14/06/2012 is to protect the rights of family members among themselves.

DETERMINATION OF THE COURT

[13] Article 176 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “any person who was not a party to a case but who has an interest in it may make a third party application to set aside a judgment which is prejudicial to his/her rights and if neither he/she nor the person he/she represents were called at the trial. The provisions of paragraph one of this article shall not apply to the spouse of either party or their children when the subject matter is the family property”.

[14] In explaining the interests of the claimant of the third party opposition claim, the Legal scholars state that it is not enough to indicate the interest in judgment subject to opposition, rather those interests should be different from that one of the parties to the case subject to opposition. They continue stating that, the claimant is a third party opposition claim must indicate that he/she is personally prejudiced, in a way different from that of the parties to the opposed judgment, rather than considering the decision of the Court only, this is why the claim does not intend reviewing the judgment for a better result. (*....Pour être utile, l'intérêt doit être distinct de l'une des parties ayant participé au procès. Le préjudice ne doit pas résulter, sans autre élément, de la seule solution, mais doit s'analyser au regard de la situation personnelle du tiers opposant, qui doit prétendre à un intérêt distinct, un préjudice personnel, et évidemment doit avoir une analyse juridique, au moins en partie différente de celle déjà présentée. Il ne s'agit point ici de refaire le procès à l'identique, pour tenter d'obtenir un meilleur résultat...*)¹

[15] With regard to whether Musengimana Philomène opposed a judgment for which she has been a party, the documents in the case file indicate that on 12/11/2012, Nyiramahingura Gratia filed a third party opposition claim against the judgment RCA 0195/12/TGI/GIC rendered on 14/09/2012 suing Ndereyehe François (judgment RCA0296/12/TGI/GIC, page 2), these parties are also mentioned on the document summoning Ndereyehe François in the pre-trial meeting (page 11,12).

[16] The case file indicates also, the hearing of the case RCA0296/12/TGI/GIC of 18/12/2012, the Court asked Musengimana Philomène whether she agrees to proceed with the hearing because it was clear that Nyiramahingura Gratia sued Ndereyehe François alone while they were all parties in the case subject to opposition, and she agreed.

[17] Basing on those documents, though the judgment RCA0296/12/TGI/GIC reviewed due to injustice indicates that the claimants are Nyiramahingura Gratia and Musengimana Philomène, the Supreme Court finds that there was a mistake because as aforementioned, Nyiramahingura Gratia is the only one claimant for a third party opposition claim against the judgment RCA0195/12/TGI/GIC , this is emphasized by the decision of the Court whereby It states that “ It admits Nyiramahingura Gratia’s claim”.

[18] Concerning the issue whether Nyiramahingura Gratia, had standing to apply for opposition for the case RCA 0195/12/TGI/GIC, the Supreme Court finds that in this case, the object in litigation is a family property of Ndereyehe François who pleads against Musengimana

¹ Serges Guinchard, Droit et pratique de la procédure civile, 8ème Edition, Dalloz, 2014, P. 1595 (551-53).

Philomène and Nyiramahingura Gratia, he has from his first wife, late Icyitegetse Bernadette, each party argues to be entitled with the rights over that property. As afore indicated, Nyiramahingura Gratia and Musengimana Philomène both want to appropriate the land and forest which they state that they belong to their mother as indicated in the judgment RC0108/012/TB/KINIH (page 1, paragraph one and two) and in case RCA 0195/12/TGI/GIC (page 2, paragraph 5), on the other hand, Ndereyehe François states that property is his.

[19] of the fact that Musengimana Philomène and Nyiramahingura Gratia's claims are the same in this case because none is requesting, in particular, the ownership on her own of the property under litigation, rather they all claim that property to be returned to the property of their mother Icyitegetse Bernadette, this is also emphasized by the fact that in the judgment RCA 0195/12/TGI/GIC Musengimana Philomène was pleading stating that she also pleads on behalf of her young sister Nyiramahingura Gratia though the Court did not admit it, therefore, the Supreme Court finds that Nyiramahingura Gratia's claim for opposing the judgment RCA 0195/12/TGI/GIC should not have been admitted because she failed to prove a particular interest different from the one pursued by Musengimana Philomène in the judgment for which she applied for a third party opposition.

[20] Basing on the provision of article 176 of the Law N°21/2012 of 14/06/2012 aforementioned and doctrines of the Legal scholars, the Supreme Court finds that the claim of a third party opposition of the judgment RCA 0195/12/TGI/GIC filed by Nyiramahingura Gratia before the Intermediate Court of should not have been admitted, thus, the judgment RCA 0296/12/TGI/GIC is quashed, the Court sustains the rulings of the judgment RCA 0195/12/TGI/GIC, the one which has to be executed.

III. DECISION OF THE COURT

[21] Decides that the claim for the review of the judgment RCA 0296/12/TGI/GIC due to injustice filed by Ndereyehe François has merit;

[22] Decides that the judgment RCA 0296/12/TGI/GIC rendered by the Intermediate Court of Gicumbi on 28/02/2013 is quashed, sustains the rulings of the judgment RCA 0195/12/TGI/GIC rendered by the same Court on 14/09/2012.