

RUTAZIBWA v. GOVERNMENT OF RWANDA (MINIRENA)

[Rwanda SUPREME COURT – RS/REV/RAD 00001/2018/SC
– (Kayitesi, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and
Rukundakuvuga, J.) September 27, 2019]

Civil procedure – Case review – Fraud – Review of the case due to fraud – For the case to be reviewed on the ground of fraud, it should first be established that a party was involved in fraudulent acts aimed at misleading the judge so that the outcome of the case is in that party's favour and the ruling of the case must have been solely based on the false information relied upon – It is not considered as fraudulent act when a party does not put at disposal the documents in his/her possession which might be in favour of the adversary's claims – Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 170.

Fact: Fundi died in 1997, he left behind a widow, Mukandutiye and the children including those he born outside the wedlock. One of his children, Rutazibwa, inventoried all his father's property to be inherited, during the process of inheritance there were some misunderstandings among the family members, thus he filed a case at the Intermediate Court of Karongi, requesting that he should be given his share and reimbursed the money he used to make the inventory of the property.

During the trial, Rutazibwa found that some of the assets were registered in the names of MINIRENA, Mukandutiye, and others, therefore he lodged an administrative case against Mukandutiye

and Rwanda Natural Resources Authority, requesting that the Government of Rwanda on behalf of MINIRENA be forced to intervene. The Court ordered the assets registered in the names of Mukandutiye be included among the family property and that MINIRENA retains those registered on it.

Rutazibwa appealed to the High Court, which found the appeal with no merit. He further appealed to the Supreme Court and Mukandutiye filed a cross-appeal. The Court found the appeal and the cross appeal with no merit and Rutazibwa was ordered to pay damages.

Rutazibwa applied for the review of the case in the Supreme Court, claiming that new evidence was discovered which prove that there are letters which the Land Registrar wrote to the authorities of the District and Sectors where those assets are located, requesting them to rectify the errors so that the land be registered on the rightful owner but those letters were not delivered to the intended recipient, therefore he finds that the Rwanda Land Management and Use Authority acted fraudulently which affected the outcome of the case and that those fraudulent acts were discovered after the judgment had been rendered, that is the reason he requests for a review of that case.

The government of Rwanda argues that the new evidence produced by the Plaintiff for the case to be reviewed is ambiguous because it is not clear whether those letters are the ones he considers as new evidence and moreover he states that he submitted those letters to the Court, implying that it is not new because he already had it even during the hearing of the case, and also he does not demonstrate how it contradicts the evidences based upon in rendering the judgment, thus his application should be rejected.

Mukandutiye claims that the Land Registrar knew the properties which belonged to the family of Fundi, but gave half baked information that led the Court to make a wrong ruling, which was a fraudulent act that affected the outcome of the case, therefore, since there is now a piece of evidence proving that the information based on in making the rulings was false, it should be based on to rectify the errors contained in that judgment.

Held: 1 For the case to be reviewed on the ground of fraud, it should first be established that a party was involved in fraudulent acts aimed at misleading the judge so that the outcome of the case is in that party's favour and the ruling of the case must have been solely based on the false information relied on.

2. It is not considered a fraudulent act when a party to the case does not put at disposal the documents in his/her possession that might be in favour of the adversary's claims.

**Application for case review is rejected.
Court fees cover the expenses of the case.**

Statutes and statutory instruments referred to:

Law N° 22/2018 of 13/06/2018 relating to civil, commercial, labour, and administrative procedure, article 170.

Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure (which was in force at that time), article 118.

No cases referred to.

Authors cited:

G rard Cornu, Vocabulaire juridique, 6 me  d., Paris, Presses Universitaires de France, 1987, p. 291

Hakim Boularbah, Olivier Caprasse, Georges de Leval, Fr d ric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernelle, Jean-Fran ois Van Drooghenbroeck, Droit Judiciaire, Manuel de proc dure civile T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

Izabelle Despres et Laurent Dargent, Code de Proc dure Civile, 107  me  d., Dalloz, 2016, p. 709.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Fundi Project died in 1997, leaving behind a widow, Mukandutiye Bellancile and her children, he also left behind other children he sired out of wedlock. Rutazibwa Alexandre, one of the deceased's children searched for all of the deceased estates for inheritance, these consists of land located in Karongi, Rutsiro and Nyamasheke districts, but during the process of inheritance and distribution of the property there was some misunderstandings between him and the other heirs of Fundi and the widow, this led Rutazibwa to file a suit before the Intermediate Court of Karongi requesting to show the assets of the late Fundi Project, he was able to come across, be allocated his share and move out of joint ownership and be reimbursed the money he used to search for those assets.

[2] During the hearing of the case for the inheritance, it came to the attention of Rutazibwa Alexandre that some of the assets

of his late father, were registered on MINIRENA, another to MUKANDUTIYE Bellancille, and others to various people, this prompted him to file an administrative case against MUKANDUTIYE Bellancille and the Rwanda Natural Resources Agency (which became the Rwanda Land Management and Use Agency) in the Intermediate Court of Karongi. That institution requested that the Government of Rwanda, on behalf of the Ministry of Natural Resources (MINIRENA), intervene in the case. In his claim, RUTAZIBWA Alexandre requests that the land registered on MINIRENA and to MUKANDUTIYE Bellancille, as well as those pieces of land which is not on the list provided by the Land Registrar be handed to the heirs of Fundi Project.

[3] The case was registered RAD 0039/14 / TGI / KRG, decided on 14/07/2016, the Intermediate Court of Karongi held that the land UPI 03/07/4/5439, 03/07/4/5442, 03 / 07/4/5452, 03/07/4/5482, 03/07/4/5489, 03/07/4/5490, 03/07/4/5491, 03/07/4/5493, 03/07 / 4/5501, 03/07/4/5509, 03/07/4/5516, 03/07/4/5534, 03/07/4/5506 registered on Mukandutiye Bellancille be removed and registered to the family of Fundi Project which is his heirs and that the MINIRENA remains with the land registered in its name, and the land which Rutazibwa Alexandre requested that the Land Registrar includes on the list of the assets to be inherited should remain in the ownership of those in whose names are registered.

[4] Rutazibwa Alexandre was not contented with the rulings of the case and therefore, appealed to the High Court, chamber of Rusizi, based in Karongi, the appeal was registered on RADA 00001/2016 / HC / RSZK, rendered on 17/3/2017, the Court found the appeal of Rutazibwa Alexandre without merit and thus

sustained the ruling of the judgment RAD 0039/14 / TGI / KGI which was rendered by the Intermediate Court of Karongi.

[5] Rutazibwa Alexandre was again not satisfied with the judgment and appealed to the Supreme Court, the appeal was registered on number RADAA 00004/2017 / SC; Mukandutiye Bellancille filed a cross-appeal. The Supreme Court rendered the judgment on 02/02/2018 and held that the appeal of Rutazibwa Alexandre is not founded and also the cross appeal of Mukandutiye Bellancille lacks merit, it ordered Rutazibwa Alexandre to pay MINIRENA and RNRA Rwf400,000 in damages.

[6] On 06/11/2018, Rutazibwa Alexandre requested for the review of case N°. RADAA 00004/2017 / SC in the Supreme Court. In his submissions, he argues that rendering the judgment new evidence was got, that evidence was got on 17/09/2018. Explaining the new evidence, he states that the Land Registrar demonstrated to the Court that he wrote to the District and Sectoral Officers where the land to be inherited is situated to rectify the errors, so that the land is registered in the names of its owners, but the letters were not delivered to the recipient, thus the errors were not rectified. He states that if the Court had found the truth contained in the letter from t Musasa Sector dated 12/09/2018 (which he replied to when Counsel. MUTEMBE wrote on 20/08/2018). 2018), out, before the adjudication of case RADAA 00004/2017 / SC, the Court should not have taken the same decision as it took.

[7] The hearing of the case was scheduled on 19/03/2019, but the case was adjourned to 11/06/2019 for the parties to reach an amicable agreement as they had requested (The hearing was postponed to 7/6/2019 by the Registry of the Court due to the new

trial schedule). On that day, the case was not heard, it was postponed to 10/09/2019 at the request of the representative of the Government of Rwanda, who claimed that he found out late the new date that the case had been transferred and that he could not adequately prepare for it.

[8] The case was heard in public on 10/09/2019, Rutazibwa Alexandre was assisted by Counsel Mutembe Protais, Mukandutiye Bellancille assisted by Counsel Owerisima Honorine, and the Government of Rwanda represented by Counsel Cyubahiro Fiat, the parties gave their submissions of determining whether the claim for review filed by Counsel Mutembe Protais on behalf of Rutazibwa Alexandre, is admissible

[9] In his defense, Counsel Mutembe Protais, assisting Rutazibwa Alexandre, states that the reason they request for the review of the case is the fraud which was committed by the Rwanda Land Management and Use Authority, which affected the outcome of the case; contrary to the court submission that new evidence has been obtained since the judgment was rendered. The fact that there was a fraud that affected the outcome of the case is concurred by the counsel of Mukandutiye Bellancille, while the State Attorney differs that there was no fraud.

[10] The main issue to be considered in this case, therefore, is whether the Rwanda Land Management and Use Authority acted in a fraudulent way which affected the outcome of the case, to the extent that it should be reviewed.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the Rwanda Land Management and Use Authority acted in a fraudulent way which affected the outcome of the case, for this case to be reviewed.

[11] In his submission, the counsel for Rutazibwa Alexandre, Advocate Mutembe Protais, argues that the grounds for his claim for the review are the following:

- a. The fraudulent acts that were noticed after the judgment has been rendered. He argues that after the Land Registrar realizing that he had made a mistake, he wrote three letters, some were sent to Gihombo Sector and Musasa Sector, requesting that people who are registered on the land which is under litigation should return the land titles, because it was erroneous that they were issued with titles for the land which belongs to Fundi Project family;
- b. The third letter addressed to the Rwanda land management and use authority, regarding the wetlands which were registered on the Government but were plots that were shared between the heirs of Fundi and the community. He argues that concerning the so-called wetlands, the Land Registrar wrote to the Mayor of Nyamasheke District, requesting him to confirm whether that land was shared among the community, but in that letter, he did not indicate that the land, which was registered to MINIRENA, was wetlands;
- c. after losing the case in the Supreme Court, it came to their notice that the letters of the Land Registrar were not delivered to the recipients, they found out this when he wrote to the Mayor of Gihombo and Musasa

Sectors, who also replied that the letters had not been delivered to them;

- d. the fact that the letters were not delivered to their intended recipients, is that there was a trick, which is a sign of fraud. If the Land Registrar did not deliver the letters to the recipients, it was because he did so on purpose. The fraud is based on the fact that the Land Authority' pleadings are different from what its Director wrote to the Local Authorities, and if the Supreme Court had found that the letters did not reach their intended recipient it would not have held that the 5 lands were swamps and that 31 plots of land remain in the names of those who possess it, yet they had been already divided between the heirs of Fundi and the community;
- e. the fact that the letter was written after the judgment had been rendered was due to the fact that they did not know whether the letters had been received by the recipient and that during the hearing they had no idea that the letter had not been delivered to the intended recipient;
- f. the fraudulent act done by the Land Registrar of not delivering the letters he wrote to the recipient was also done in the court because he did not give that information to the parties for them to acknowledge that it was an error.

[12] Counsel Mutembe Protais concludes that based on article 170 of Law N° 22/2018 of 13/06/2018 relating to Civil, Commercial, Labour and administrative procedures, he finds that the application of Rutazibwa Alexandre should be admitted

because he couldn't know by then that those letters had not reached the intended recipient.

[13] Counsel Kayiranga Rukumbi Bernard representing the Government of Rwanda at the hearings of 19/03/2019 and 07/06/2019, states that the new evidence of Rutazibwa Alexandre on which he bases his application for review of the case which is contained in his court submissions is ambiguous because no one knows if those various letters he submitted are the ones that he calls new evidence. In addition, Counsel Mutembe Protais himself stated that the letters were submitted to the Court, which means that it was not new evidence because it was already in place at the time of the trial. These letters include:

- a. the one Counsel Mutembe Protais wrote to the Mayor of Gihombo;
- b. the one he wrote to the Executive of Musasa Sector;
- c. letters which the Deputy Land Registrar wrote to the executives of the Sectors;
- d. letter of Counsel Mutembe Protais to the Mayor of Nyamasheke District;
- e. a copy of the document signed by the former State Attorney Rusanganwa Eugène.

[14] He further states that pursuant to article 170 of Law N^o. 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedures, new evidence is the piece of evidence which a party could not know that it exists, which he later finds or could not access it during the court trial, and it has weight when it contradicts those that were based on in rendering the judgment which is being requested for review. Regarding this case,

Rutazibwa Alexandre does not produce the piece of evidence that was not available during the hearing of the case requested to be reviewed and does not demonstrate how it contradicts those relied on in adjudicating the case, therefore his claim is inadmissible.

[15] Counsel Cyubahiro Fiat, representing the Government of Rwanda in the hearing held on 10/09/2019, states that:

- a. The letter dated 12/9/2018, which Counsel Mutembe Protais consider as new evidence, refers to the land located in Musasa Sector (Rutsiro District), while the one he requests to be given, regarding the one registered on MINIRENA is located in Gihombo Sector (Nyamasheke District), therefore it is not connected to the one referred to in the letter he considers as new evidence;
- b. The evidence which Counsel Mutembe Protais considers as new is not, because it is a letter he wrote after rendering the judgment, which means that he could have got it before the hearing ;
- c. The above mentioned letters were debated upon from the beginning of the case and even before the Intermediate Court of Karongi, whereby the Deputy Land Registrar was sued because of those documents. Regarding this statement, Counsel Mutembe Protais replied that they did not sue him because of fraud, but rather that what they had brought a case against him was requesting for damages because he stressed Rutazibwa when he refused to register him on the pieces of land he was given ;
- d. There was no fraud in the letters written by the Deputy Land Registrar, he wrote to the local authorities

asking them to confirm the information he has and it is his responsibility ;

- e. The Rwanda Land Management and Use Authority does not register land on a person at that person's request, but rather registers it after that person has demonstrated the right he/she has on that land. The fact that Rutazibwa Alexandre failed to prove the right he has on that land before the Intermediate Court and before the High Court, chamber of Rusizi, the Land Authority could not register the land on him ;
- f. Rutazibwa Alexandre, lost all the cases because he failed to submit the evidence proving that the land he was litigating for belonged to his parent.

[16] In his defense, Counsel Owerisima Mungwe Honorine representing Mukandutiye Bellancille states that:

- a. The Land Registrar knew the truth about the FUNDI Project's assets, but gave the Court misleading information, leading to the court making a wrong decision, implying that it was fraud that affected the case;
- b. the fact that a piece of evidence demonstrating that the information relied upon is incorrect was discovered, should be based upon to rectify such errors and the land to be registered to the real owners;
- c. depending on when the new evidence was discovered and the fraud contained, he finds it sufficient that the application for review should be admitted;
- d. the rulings of the case affected Mukandutiye Bellancille because of fraud, the fraud is that the

letters had not been received by the recipient, because if they had received them, the issues raised in this case would have been resolved;

- e. Pursuant to article 58, paragraph d, of Ministerial Order N° 002/2008 of 01/04/2008 determining the procedure for registration of land, he finds that the issue could have been resolved without going to court, as the Registrar had to immediately register the land on the Fundi Project family.

DETERMINATION OF THE COURT

[17] Among the grounds for the application of the case review provided by article 170 of Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administration procedure, including the fact that the case was vitiated with fraud (dol personnel) that affected the outcome of the case, and was never identified during the hearing by the party which lost the case.

[18] Fraud (dol personnel) is defined by legal expert Gérard CORNU as anything that entails deception "fraud", i.e. lying, buying witnesses, agreeing with the other party's lawyer and so on, to deceive the judge to win the case.¹

¹ “Ancienne cause d’ouverture de la requête civile englobant toute fraude (mensonge, subornation de témoins, collusion avec l’avocat de l’adversaire, etc.) destinée à tromper le juge pour obtenir de lui une décision à son profit, aujourd’hui remplacée par la “fraude”, cas d’ouverture du recours en révision ; Gérard CORNU, Vocabulaire juridique, 6^{ème} éd., Paris, Presses Universitaires de France, 1987, p. 291.

NB : Under the Rwandan laws “requête civile” was replaced by “recours en révision”

[19] Legal scholars led by Georges de LEVAL, also explain that in order for the case to be reviewed on the ground of fraud, there must have been fraudulent acts in order to deceive the judge in order the one engaged in the fraudulent means to win the case. They also explain that fraud should not be confused with the fact that the party intentionally does not display or provide documents in his/her possession that would support the arguments of the other party. This is no the same as a party to the case telling lies to the judge or fraudulently hiding the document. They also explain that for the case to be reviewed due to fraud, the ruling of the case must have been solely based on false information.²

[20] Also, legal scholars, Isabelle DESPRES and Laurent DARGENT, based on court interpretations, explained that silence can be considered as fraud, but it can be considered as such when is silent on the claim filed against him/ her or when he has been asked to give explanations, but that it cannot be considered as a

² “L’ouverture à requête civile sur la base du dol personnel est ainsi soumise à quatre conditions...Il faut d’abord qu’il y ait eu des manoeuvres frauduleuses déployées en vue d’obtenir une decision favorable en trompant le juge. L’on ne peut à cet égard assimiler la simple et inévitable subjectivité dans la défense de ses propres intérêts à un dol personnel. De même, la simple abstention d’une partie de produire par loyale spontanéité, devant le juge, des documents de nature à faire triompher la prétention de la partie adverse ne constitue pas en soi un dol.....Il en est autrement, et il y a dol, lorsque la partie trompe le juge par une affirmation mensongère et une dissimulation frauduleuse de pièces, constituant ensemble une manoeuvre dolosive.En d’autres termes, pour que le dol personnel puisse fonder une requête civile , il faut que la décision entreprise repose tout entière sur des informations à ce point mensongères qu’elles ont aveuglé le juge et l’adversaire “ ; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, Droit Judiciaire, Manuel de procédure civile ,T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

fraud the silence of the party on the matters he had not been sued against or asked to give explanations.³.

[21] When read together, the explanations of the Legal Scholar and the provisions of article 170 of the law N° 22/2018 of 29/04/2018 cited above, the interpretation is that:

- a. For the case to be reviewed on the grounds of fraud:
 - i. there must have been actions to mislead the judge in order for the one misleading to win the case.
 - ii. the ruling must be based solely on false information;
 - iii. fraud must have affected the outcome of the case;
- b. the silence of the party on matters that he was not required to provide information that was not considered fraudulent;
- c. The conduct of the party of not revealing documents that would support the arguments of the other party is not considered as fraud.

[22] In this case, Rutazibwa Alexandre's allegation that there was fraud, is based on the fact that the person who represented Rwanda Land Management and Use Agency did not tell the

³ “ Seul peut constituer un acte frauduleux le silence gardé par une partie sur des faits contestés par l’autre partie ou dont il lui est demandé de rendre compte (à l’exclusion du silence d’une partie sur des faits qui ne lui sont pas reprochés et sur lesquels aucune explication ne lui est demandée)”; Isabelle DESPRES et Laurent DARGENT, Code de Procédure Civile, 107^{ème} éd., Dalloz, 2016, p. 709.

judges that there were letters from the Deputy Land Registrar in the Western Province of Rwanda wrote to the local authorities of Musasa (Rutsiro) and Gihombo (Nyamasheke) Sectors on 7/01/2015, and the one he wrote to the Mayor of Nyamasheke District on 29/01/2015, was not delivered to them.

[23] According to the case file, the letters (Rutazibwa Alexandre received a copy) were written when the case was still ongoing at the Intermediate Court of Karongi, because the case was filed in 2014 and the judgment rendered on 14/07/2016. Based on the copy of the judgment and the minutes of the hearing, except for the letter dated 29/01/2015⁴, no other letter was party mentioned, so that if necessary those mentioned in those letters be forced to intervene. It was not even raised on the appeal level in the High Court, chamber of Rusizi. In the Supreme Court, the minutes of the hearing of 19/12/2017 those letters were mentioned, but the Rwanda Land Management and use Authority was not asked to explain whether they were delivered to the receipt.

[24] Based on the information provided in the preceding paragraphs, the Court finds that the Rwanda Land Management and Use Authority did not inform the Court that the letters the Deputy Land Registrar of the Western Province which he wrote to the Executives of the Sectors of Musasa, and Gihombo, and Nyamasheke District, were not delivered to the intended recipient, cannot be construed as fraud for the following reasons:

⁴ Urukiko rwabajije Me Mutembe icyo avuga kuri iyo baruwa, asubiza ko ibiyikubiyemo byanditse kuri MINIRENA, bakaba bemera ko byandikwa kuri “succession” Fundi.

- a. The Rwanda Land Management and Use Authority were never asked to give explanations regarding whether the letters written by its employee were received by the intended recipient and refused to give the explanations or provide false information so that it could win the case. Rutazibwa Alexandre, who knew that those letters were written since he was given copy, did not inquire what happened after it those letters were written, especially that it was in his benefit;
- b. There is no evidence that the Rwanda Land Management Authority deceived the judge to mislead him so that it wins the case, and the legal principle is that fraud is not presumed but should be proved.⁵

[25] The Court also finds that, even if the judges were to be told that the above letters written by the Deputy Land Registrar, had not reached the intended destination, it would not have changed the outcome of the case for the following reasons:

- a. The Supreme Court, in the case requested for review, motivated that RNRA cannot be compelled to register the land on the “Succession” FUNDI Project land which land is registered to other persons (outlined in the case) because they were not sued or forced to intervene in the case. It explained that this would be

⁵ “Il convient enfin que le dol soit-par toutes voies de droit-prouvé par celui qui l’allègue ; il y va d’une application du principe général en vertu duquel le dol ne se présume pas ; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, op. cit, p. 1184.

ruling on a person or persons who were not parties to the case, confirming that the land be taken from them without trial, their right to defense would be violated;

- b. It would not have been possible for the persons mentioned in the letters of the Deputy Land Registrar to be compelled to intervene in the case because article 118 of Law No. 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which was in force by that time forced intervention to hold the intervenor liable on the appeal level was not allowed;
- c. So even if the Court were to be informed that the above letters were not delivered to the intended recipients, it would not have changed the outcome of the case because it would not have ruled on people who were not parties to the case.

[26] The Court, therefore, finds that pursuant to article 170 of Law N° 22/2018 of 29/04/2018 relating to civil, commercial, Labour and administrative procedures, and on the motivations given above, no fraud was committed by the Rwanda Land Management and use Authority (RNRA), which affected the outcome of the case, so that it the case should be reviewed; thus the claim filed by Rutazibwa Alexandre for reviewing the case is inadmissible.

III. DECISION OF THE COURT

[27] Holds that the claim filed by Rutazibwa Alexandre requesting for a review of the case is rejected because it was filed illegally;

[28] Sustains the rulings of the Judgment N° RADAA 0004/2017/SC rendered by the Supreme Court on 02/02/2018;

[29] Orders that the court fees deposited by Rutazibwa Alexandre cover the expenses incurred in this case.