NTEGEYE v ECOBANK RWANDA LTD ET AL

[Rwanda SUPREME COURT – RCOMAA 00001/2019/SC (Ntezilyayo, P.J., Rukundakuvuga and Cyanzayire, J.) 24 January 2020]

Review of the case due to injustice – Review of the case due to injustice is a special procedure that cannot be subject to other remedies of appeal because those remedies have to first be exhausted – A decision on the case under review due to injustice is not subject to any other remedy of appeal because the cases to be eligible for review due to injustice must have exhausted those remedies.

Facts: BCDI (ECOBANK) offered a loan to Ntegeye Bernard and the latter failed to pay back in due time as agreed. For that reason, he agreed to hand over his immovable property composed of a house to BCDI, but they agreed that, in case the Bank would like to sell it, Ntegeye Bernard would have preemptive rights for a period of 10-year.

Thereafter, the house was auctioned and purchased by BNR, but the loan was not all covered. Ntegeye referred his claim against ECOBANK to the arbitration tribunal, arguing that his house was sold illegally, but the arbitration tribunal held the house was sold legally.

Ntegeye appealed before the High Court and the latter ordered the annulment of the agreement tittled *acte de cession d'immeuble* concluded between BCDI and Ntegeye, and that the latter be given back his house.

BCDI appealed before the Supreme Court arguing that the appealed judgment, was not rendered in consideration of the subject matter since the Court ordered the annulment of the sale agreement, and this was not the subject matter for the appeal. The Supreme Court found his appeal with merit, and ordered Ntegeye to pay back the principal loan with its interests.

Ntegeye applied for the review of the case due to injustice, and later, the two parties to the case concluded an amicable settlement agreement. In its decision, the Supreme Court held that the application for review of the case due to injustice is not admissible because the concluded amicable settlement has the same binding force as the final judgment, therefore, the application was not admitted.

With reference to article 83 of the Organic Law N^{o} 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, Ntegeye filed another claim requesting the review of that judgment, stating that the aforementioned article does not prohibit him to apply for the review of the judgment rendered in the review due to injustice, rather the present article only excludes judgments rendered by the Supreme Court and the latter found that they are vitiated by injustice, and he therefore found that his application did not violet this article since it was not admitted for examination.

Ecobank Rwanda Ltd and National Bank of Rwanda argue that article 83 Organic Law No 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court barred him from applying for the review of the judgment which was rendered during the review due to injustice because the second paragraph state that the decision taken in the review of the judgment due to injustice cannot be appealed.

The Supreme Court rendered the ruling based on article 53 of the Law Nº 30/2018 of 02/06/2018 determining the jurisdiction of courts, which stipulates that a judge who received a case vitiated by injustice may choose one among the decisions and held that it is vitiated by injustice or not, he may even not admit the application. Any decision made by the judge about this, is irrevocable. Therefore, a judgment, rendered on the case under review due to injustice cannot be subject to any procedure of appeal because it is binding.

Held: 1. A decision on the case under review due to injustice is not subject to any other remedy of appeal because the cases to be eligible for review due to injustice must have exhausted those remedies.

The application for review of the judgment due to injustice; is inaddmissable;
Court fees cover the proceeding expenses.

Statutes and statutory instruments referred to:
Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, article 53
Organic Law Nº 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 83.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] In 1998, Ntegeye Bernard was offered the loan by BCDI SA (currentlty called Ecobank Rwanda Ltd) equivalent to 50,000,000 Frw and deducted from that amount 42,485,087 Frw to pay back the pending loan he got from BACAR SA in 1993 for building a house in the plot No 1200 Kacyiru – North. Ntegeye Bernard failed to pay back the loan offered by BCDI SA, and the loan increased to 73,839,942 Frw, and this resulted in the conclusion of an greement of appropriating to the Bank the house located in the plot Nº 1200 Kacyiru - North, a house that was then valued to 41,484,288 Frw. On that amount (value of the house), a sum of 4,122,750 Frw was added as the value of its furniture, and the total value of the house was estimated to 45,607,038 Frw, meaning that his pending debt was 28,232,904 Frw. Article 6 of the agreement they concluded stipulates that once the Bank decides to sell the house, Ntegeye Bernard will have a 10- year right of preemption. Ntegeye Bernard failed to pay back the remaining amount so that the amount of money increased. On 11/04/2003, BCDI SA auctioned the aforementioned house, and the successful purchaser was National Bank of Rwanda.

[2] Ntegeye Bernard filed an application against BCDI SA (changed to Ecobank Rwanda Ltd) before the Arbitral Tribunal with the intervention of National Bank of Rwanda, stating that his house located in the plot No 1200 Kacyiru-North was illegaly auctioned, and without considering the article 6 of the agreement they had concluded. On 02/12/2005, the Arbitral Tribunal held that BCDI SA did not violate the agreement, that the purchase by National Bank of Rwanda was valid,

and ordered Ntegeye Bernard to pay 28,232,000 Frw mentioned in the agreement of 09/02/2001. With regard to the preemption right, the Tribunal motivated that the statements of Ntegeye Bernard are baseless, because he did not prove if he could purchase a house sold at 100,000,000 Frw while he failed to reimburse 28,232,000 Frw. The Tribunal found that the Bank failed to fulfill its responsibilities of informing him about the sale, and thus ordered the Bank to award him damages equivalent to 5,000,000 Frw.

[3] Ntegeye Bernard was not satisfied with that decision from the Arbitration, and appealed before The High Court of the Republic.On 31/05/2007, in the judgment, RCOMA 0020/05/HC/KIG, this Court declared that the agreement concluded between Ntegeye Bernard and BCDI SA entitled "*Acte de cession d'immeuble*" is invalidated and that Ntegeye Bernard did not owe a loan to that Bank based on the Bank statement of the account N° 110-2534703-9. The Court ordered that Ntegeye Bernard be reappropriated his house, be awarded 6,000,000 Frw as compensation for pecuniary loss and 5,000,000 for moral damages.

[4] BCDI SA and National Bank of Rwanda filed appeal against that judgment, before the Supreme Court. on 30/07/2010, in the judgment, RCOMAA 0005/07/CS, The Court found that appeal with merit, and ordered Ntegeye Bernard to pay Ecobank Rwanda Ltd (former BCDI SA) 48,102,687 Frw resulting from the loan amounting to 28,232,000 Frw and its interests. The Court motivated that:

> a. The High Court rendered the judgment, on the subject matter not filed, bacause it indicated that the sale agreement between BCDI SA and National Bank of Rwanda was fraudulent, but it invalidated the agreement concluded between BCDI SA and Ntegeye Bernard which was not the subject matter of the filed claim;
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> b. The agreement concluded on 09/02/2001 entitled « *acte de cession d'immeuble*» fulfilled all conditions required for a valid sale agreement, therefore, the house subject to that agreement became the property of BCDI SA, meaning that the latter had right to sell it to National Bank of Rwanda;
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> c. With reference to the report by the Expert appointed by the Court, Ntegeye Bernard did not pay back the remaining amount of the loan he received from BCDI SA.

[5] Ntegeye Bernard applied for a review of the case due to injustice, and the Office of Ombudsman indicated that the Supreme Court did not decide on the implementation of the provision of the article 6 of the agreement entitled « *acte de session d'immeuble* », and it even did not say anything about it, while they constituted the subject matter of the claim. The file was submitted to the Supreme Court, and the claim was registered on RS/REV/INJUST/COM 0001/16/CS. In that judgment, Ecobank Rwanda Ltd raised an objection related to inadmissibility of the claim of Ntegeye Bernard, arguing that after submitting his concern to the Office the Ombudsman, they concluded an amicable settlement agreement.

[6] On 09/09/2016, the Supreme Court held that the objection raised by Ecobank Rwanda Ltd had merit, and declared the inadmissibility of the application for a review of the case due to injustice submitted by Ntegeye Bernard and ordered the latter to pay to Ecobank Rwanda Ltd and National Bank of Rwanda the procedural and counsel fees. The Court made that decision basing on the article 591 of Book III of the Civil Code which stipulated that "Amicable settlement agreement has the same binding force between their parties as the judgment, finally decided on at

the last instance. Nobody can request its invalidation on the grounds that he made a mistake related to legal provisions, or that the price was excessive".

[7] The Supreme Court motivated that Ntegeye Bernard and Ecobank Rwanda Ltd concluded an agreement on 06/03/2014 stating that the two parties agree on the execution of the judgment, RCOMAA 0005/07/CS rendered on 30/07/2010. The article one of the aforementioned agreement stipulates that Ntegeye Bernard agrees to pay 34,000,000 Frw to Ecobank Rwanda Ltd in order to settle the disputes between them [1], and the article 3 stipulates that both parties voluntarily agree to conclude an amicable settlement agreement being aware of its related impacts, and therefore agree on its execution and implementation with full honesty [2].

[8] The Supreme Court also motivated that Ntegeye Bernard concluded an amicable settlement agreemnet with Ecobank Rwanda Ltd after he had submitted his application about injustice faced, because he submitted his application in 2012, and the agreement was concluded on 06/03/2014; and in that agreement he stated that the dispute between him and the Bank is settled in all grounds of the judgment, including those he had sued for injustice. The Court indicated that, in the amicable settlemet agreement with the Bank, he agreed that he did not face injustice, if it was not so, he should have mentioned the grounds on which the disputes were settled and others for which he was still in disagreement with the decision made on them.

[9] Ntegeye Bernard filed another claim requesting the review of the judgment, N° RS/REV/INJUST/COM 0001/16/CS rendered on 09/09/2016. The Court's Registry confirmed that the claim was not admitted to be registered in the Court's registers because it is against the provisions of the article 83 of the Organic Law N° 03/2012/OL of 13/06/2012 determing the organization, functioning and jurisdiction of the Supreme Court. Ntegeye Bernard lodged his appeal to the President of the Supreme Court. In his decision of 08/06/2018, the President of the Supreme Court held that the appeal of Ntegeye Bernard be registered in the Court's registers for the Bench to examine whether the judgment, rendered on the case under review due to injustice could be reviewed so that the decision made thereof could serve as jurisprudence for other courts.

[10] Ntegeye Bernard based his application for the review of the case on legal principles disregarded by the Court, and those are : «*contra proferentem* »[3], and «*Parol evidence rule* »[4]and he stated that he knew them after the case under review was pronounced. In their submissions, the defendants argued that those principles already exist in the law, and therefore it cannot be a ground for reviewing the judgment, because there is no convincing reason for failing to refer to them in his pleading for the concerned case.

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[1] *« Monsieur Ntegeye Bernard s'engage à verser la somme de 34.000.000 Frw à Ecobank Rwanda en vue de liquider tous ses engagements qu'il a envers Ecobank Rwanda Ltd en rapport avec le jugement (RCOMAA 0005/07) ».*

2 "les parties s'engagent à clôturer la mise en application de l'arrêt RCOMAA 0005/07 de la Cour Suprême et à exécuter de bonne foi la transaction. Les parties s'interdisent de remettre en cause la mise en application de la transaction et de ce fait les parties rappellent connaître pleinement la portée de leur engagement volontaire auquel elles ont donné un consentement libre et éclairé ».

3 The principle states that, in case of confusing terms in the agreement, the consideration is made to the elements that are in the interest of a party which did not contribute to its drafting.

4 The principle states that when there is a written agreement signed by both parties concerned, it could not be changed on basis of the verbal statements contrary to its written contents.

[11] The defendants also stated that Ntegeye Bernard failed to respect the deadline for submitting an application, because the judgment, RS/RV/INJUST/COM 0001/16/CS was rendered on 09/09/2016, while the application for its review was submitted after one year on 09/09/2017, and the law provides that it has to be submitted not later than two months. Ntegeye Bernard stated that he knew the principle of « *contra proferentem* » on 14/08/2017 and he submitted his application on 27/09/2017 before a period of two months was expired.

[12] The case was heard in public on 06/01/2020, Ntegeye Bernard represented by Counsel Zawadi Stephen, Counsel Mubangizi Frank and Counsel Umutangana Aimée Jacqueline, whereas Ecobank Rwanda Ltd was represented by Counsel Munyaneza Remy and National Bank of Rwanda represented by Counsel Murego Jean Leonard and Counsel Byiringiro Jacques. The parties to the case started by discusing on the issue regarding whether the judgment, rendered on the case under review due to injustice could be reviewed, and it was decided that this issue would be firstly decided by Court. The Court informed the parties that a decision on that issue would be pronounced on 24/01/2020. In case the Court should rule that the judgment, rendered on the case under review due to injustice could be rereviewed, the following other legal issues would thereafter be analysed:

a. Whether the deadlines for the review of the judgment, had been respected;

b. Whether failure to respect a legal principle could be a reason to review the judgment,

[13] Basing on what have been stated in the previous paragraphs, the main issue analysed in this judgment, was to determine whether the judgment, rendered on the case under review due to injustice could be reviewed.

II. THE LEGAL ISSUE AND ITS ANALYSIS

- **Whether the judgment, rendered on the case under review due to injustice could be reviewed**

[14] The Counsel for Ntegeye Bernard argue that the article 83 of the Organic Law Nº 03/2012/OL determining the organization, functioning and jurisdiction of the Supreme Court does not prohibit him to apply for the review of the judgment, RS/RV/INJUST/COM 0001/16/CS. They explain it as follows:

a. They state that the present article excludes only cases heard by the Supreme Court and found them vitiated by injustice, because it corrects all legal errors committed and provides legal guidance, and that is why the law provides that a such decision is final and irrevocable. This does not concern the judgment, RS/RV/INJUST/COM 0001/16/CS since it has not been analysed and held that it was vitiated by injustice;

b. They state that the application of Ntegeye Bernard is not among excluded cases aforementioned, since it has not been admitted and examined, meaning that the injustice the Office of the Ombudsman found in the judgment, RCOMAA 0005/07/CS rendered by the Supreme Court on 30/07/2010, is still existing. They add that an objection raised by Ecobank Rwanda Ltd and the injustice found by the Office of the Ombudsman should have been examined and decided on together;

c. They also indicate that the statements of the counsel for Ecobank Rwanda Ltd and National Bank of Rwanda that the article 53 of the Law Nº 30/2018 of 02/06/2018 determing the jurisdiction of courts clarified the article 83 of the aforementioned Organic Law, are baseless, since it had been enacted after the application filing.

[15] The Counsels for Ecobank Rwanda Ltd and National Bank of Rwanda argue that the article 83 of the Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court impeded him to file again an application against a decision on the judgment, reviewed due to injustice. They explain it as follows:

a. The second sentence of that article mentions "a decision made", meaning that any decision that can be made on a judgment, reviewed due to injustice is final. This has been emphasized by the legislator in the article 53 in the last part of a New Law determing the jurisdiction of courts published in 2018[5], and this law can be referred to in order to make the aforementioned article 83 clearer;

b. Another reason for the inadmissibility of the application of Ntegeye Bernard is based on the interest of justice that take account of the irrefutable truth of the court final decision. This is the reason why there exist ordinary and extraordinary appeal procedures, their modalities and time limit. Failure to respect them violates the principle that takes account of the court final decision, the winning party would have doubt about what he/she won for, or the parties would neglect by thinking that at any time and for any ground they could file again application before the courts.

c. They maintain that the way in which the counsels of Ntegeye Bernard interprets the article 83 of the Organic Law Nº 03/2012/OL of 13/06/201 is wrong, because they want to dissociate what the legislator did not dissociate, and this is not accepted in the interpretation of law, it is necessary to analyse the entire article, not its part; and this should be related to the title of this article which deals with any decision made, meaning in case the injustice had been pointed out, in case the injustice had not been pointed out or in case the application is not admitted.

[16] They add that the doubt of the President of the Supreme Court raised when he accepted the registration of the application of Ntegeye Bernard does no longer exist, because it was clarified by the article 53 of the Law Nº 30/2018 of 02/06/2018 determing the jurisdiction of courts, meaning that the Court guidance is no longer needed.

DETERMINATION OF THE COURT

[17] In the decision Nº 0022/2019 of 08/06/2018 relating to the recourse of Ntegeye Bernard for the admissibility of his application for the review of the case, the President of the Supreme Court found that, for the interests of justice, the application had to be registered in the Court's registers in order to provide a legal guidance that would be used by other courts in determining whether the judgment, rendered on the case under review due to injustice can be reviewed, basing on the provisions of the article 83 of the Organic Law No 03/2012/OL of 13/06/2012 determining

5 «Judgements reviewed on the grounds that they were vitiated by injustice are not subject to any appeal procedure »

the organization, functioning and jurisdiction of the Supreme Court (that was in place when the application was filed).

[18] Pending the hearing of the judgment, the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts was published, and the provisions of the article 83 of the Organic Law No 03/2012/OL of 13/06/2012 aforementioned, were modified by the provisions of the article 53 of the Law N° 30/2018 of 02/06/2018. Even though the article 83 of the Organic Law No 03/2012/OL of 13/06/2012 has been repealed, the Court finds that it is necessary to provide a legal guidance on its provisions differently interpreted by the parties to the case, since it is still applied to the ongoing cases in the courts filed before the publication of the Law N° 30/2018 of 02/06/2018, with reference to the provisions of the article 280 of the present Law[6].

[19] Article 83 of the Organic Law Nº 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court stipulated that: "When the Supreme Court finds that the decision which was made is unjust, it shall correct errors made in the judgment and provide legal guidance to correct such errors. The decision made shall not be subject to any procedure of appeal".

[20] In interpreting this article, it is necessary to examine first what was the purpose when establishing the procedure for the review of the case due to injustice. Cases applied for the review due to injustice are already heard at the last instance[7]. The purpose of the legislator was to correct the injustice that may be committed during the case hearing, due to errors and judge's blatant disregard for legal provisions and evidence, without any other procedure to correct it. It is an extraordinary procedure that cannot be subject to other appeal procedures, since they are already exhausted.

[21] The judge who is assigned the application for the review of the case due to injustice can make one of the following decisions:

a. When he finds injustice, he repairs it and provides a legal guidance when necessary;

b. When he finds that there is no injustice, he motivates it and holds that the application has no merit and sustains the judgment, rendered;

c. He can reject an application; when he finds that the conditions for the admissibility of the application for the review of the case due to injustice are not respected; at that time, he holds that the application is rejected.

[22] The decision made by the judge among the aforementioned three decisions shall not be subject to any procedure of appeal. This is what is stipulated in the last sentence of the article 83 of the aforementioned Organic Law No 03/2012/OL of 13/06/2012 when examined together with the heading of that article. That title stipulates a "Decision taken on the application for review of a final decision", and this does not only concern a decision for injustice, but also it concerns any decision that can be made on the application for the review of the judgment, due to injustice. If

6 "Ongoing cases in the courts before this law comes into force, are tried in accordance with this law, but without having any impact on the trial procedure followed before its publication".

7 The article 78 of the Organic Law No 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court;

Article 53 of the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts.

such is not the case, any judgment, that determined that it is not vitiated by injustice, or which rejected an application, can open other ordinary and extraordinary procedures of appeal, this can result in endless hearing of a case in courts, and this was not the purpose of the legislator.

[23] The Court finds that, in the first sentence of the aforementioned article 83, the legislator provided a procedure to follow in case the Supreme Court finds injustice in the judgment, in order not to only repair the injustice committed but also to provide a legal guidance that can be referred to by the courts for similar cases. This was not necessary in case the Court finds that no injustice was committed or that the application cannot be admitted, and this is why it is not provided, because it can be considered that the judgment, subject to the application for the review is sustained.

[24] The Court observes that what should be understood is that in the article 83 of the Organic Law N^{o} 03/2012/OL of 13/06/2012, the legislator's purpose was not to maintain endless cases in the courts, and this is why the last sentence of that article does not only concern the decision which confirmed that an injustice was committed but also it concerns the decision which held that there was no injustice as well as the decision which rejected the application. For this reason, in the article 53 of the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, the legislator clarified the confusion caused by the text of the article 83 of the Organic Law N^{o} 03/2012/OL of 13/06/2012, and the text of the last sentence of that article was put in its own special paragraph which stipulates that: "Judgments reviewed on grounds of being vitiated by injustice may not be appealable".

[25] Basing on the explanations above provided, the Court finds that the decision made on the application for the review of the judgment, due to injustice cannot be subject to review or any procedure of appeal. In this case, Ntegeye Bernard applied for the review due to injustice of the judgment, RS/RV/INJUST/COM 0001/16/CS rendered by the Supreme Court on 09/09/2016, about the application for the review of the judgment, vitiated by injustice. This means then, that the application for the review of the case due to injustice, submitted by Ntegeye Bernard cannot be admitted and examined. For that reason, the Court finds that it is no longer necessary to analyse other issues raised.

- **Whether Ecobank Rwanda Ltd and National Bank of Rwanda should be awarded the damages they claimed**

[26] The counsel for National Bank of Rwanda argue that due to the pecuniary loss that the Bank suffered from the unnecessary lawsuits Ntegeye Bernard dragged it in, they request the Court to order him to pay the Bank the damages related to being dragged in unnecessary lawsuits, the counsel and procedural fees, all amounting to two million (2,000,000Frw).

[27] The counsel for Ecobank Rwanda Ltd requested the Court to order Ntegeye Bernard to pay damages related to continuous unncessary lawsuits dragged in equivalent to ten million (10,000,000Frw), procedural and counsel fees amounting to two million (2,000,000Frw).

[28] The counsel for Ntegeye Bernard argue that the damages related to unnecessary lawsuits requested by Ecobank Rwanda Ltd and National Bank of Rwanda are baseless, because it is the

right Ntegeye Bernard is granted by the law to apply for the review of the case vitiated by injustice in order to obtain fair justice. They also state that Ecobank Rwanda Ltd should be held liable for its procedural and counsel fees, because it is the one which pushed Ntegeye Bernard in lawsuits.

DETERMINATION OF THE COURT

- **Regarding the damages for being dragged in unnecessary lawsuits**

[29] The Court finds that Ecobank Rwanda Ltd and National Bank of Rwanda should not be awarded the claimed damages for being dragged in unnecessary lawsuits, because Ntegeye Bernard filed a claim to protect his interests, and the law grants him such rights.

[30] The Court finds that Ecobank Rwanda Ltd should be awarded procedural and counsel fees since it has been deemed necessary to follow up its case against Ntegeye Bernard and pay the Counsels who represented it before the Court. The Court finds that the Bank should not be awarded 2,000,000 Frw it claimed because it cannot prove it and it is excessive, and in its discretion, the court awards 300,000Frw for procedural fee and 500,000Frw for counsel fee. This means that the total amount Ecobank Rwanda Ltd is awarded is 300,000Frw + 500,000Frw = 800,000Frw.

[31] The Court finds that National Bank of Rwanda should not be awarded procedural and counsel fees it claimed on the grounds that the case was followed up and pleaded by its officers who are remunerated for such job and they receive related facilities from the national budget. This is similar to the decision made in the judgment, RAD 00001/2019/SC rendered by that Court on 31/05/2019 for Kabango Antoine against The Republic of Rwanda.

III. DECISION OF THE COURT

[32] Declares inadmissible the application submitted by Ntegeye Bernard because it was not lodged in accordance with the law;

[33] Held that the judgment, RS/RV/INJUST/COM 0001/16/CS rendered by the Supreme Court on 09/09/2016 is sustained;

[34] Orders Ntegeye Bernard to award Ecobank Rwanda Ltd 800,000Frw for procedural and counsel fees;

[35] Orders that the court fees paid by Ntegeye Bernard cover the proceeding expenses.