# Re RWANDA BAR ASSOCIATION

[Rwanda SUPREME COURT – RS/CLR/SPEC 00001/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Muhumuza and Karimunda, J.) February 18, 2022]

*Functioning of the Courts – Stare decisis principle – Supreme Court – Cases decided by the Supreme Court, as the highest court in the country, are binding to other courts.*

Functioning of the Courts – Stare decisis principle – Court of Appeal – *Decisions of the Court of Appeal are binding to lower courts, as long as the set legal position was not challenged by the Supreme Court.*

*Functioning of the Courts – Stare decisis principle – Judgments published in Law Report - Selected judgments that are published in Law Report are binding to courts since they are superior to unpublished cases decided by the courts at the same level on a similar issue, and they can be used by the parties or judges. Instructions of the President of the Supreme Court n°001/2021 of 15/03/2021 governing the publication of Law Reports, Article 9.*

*Functioning of the Courts – Stare decisis principle – In order to adhere to the principle of stare decisis, each Court must adhere to its own legal position taken on a particular issue or the position set on that matter by the higher court.*

**Facts:** Rwanda Bar Association states that ENSafrica Rwanda Limited, a legal services firm, has been audited by the Rwanda Revenue Authority, and such firm was ordered to pay the Value Added Tax (VAT) and penalties for services provided to individuals and companies located abroad.

ENSafrica Rwanda Limited has filed a complaint in the Commercial Court requesting it to decide that the tax and penalties imposed by Rwanda Revenue Authority are inconsistent with the law, as the impugned services were taxed as exported services, which should therefore be taxed to 0% of VAT. For Rwanda Revenue Authority, such services were not exported, which is why they should be taxed at the standard rate of 18%.

The Court held that ENSafrica Rwanda Limited's claim was unfounded, and ordered the latter to pay Value Added Tax (VAT) and penalties imposed by Rwanda Revenue Authority because the work and services delivered benefited to those living in Rwanda though they are foreigners, and consequently, they have to be taxed at the normal rate. ENSafrica Rwanda Limited appealed the decision to the Commercial High Court, which also ruled that the appeal is without merit, and changed the amount of tax imposed to ENSafrica based on invoices.

Following the request of ENSafrica Rwanda Limited, Rwanda Bar Association petitioned the Supreme Court seeking an authentic interpretation of exported services that are subject to zero % tax rate as provided for in article 5, paragraph one, subparagraph 1 ° of the Law on Value Added Tax, for a clear understanding on matters related to exportation of services. The Supreme Court ruled that the complaint is not admissible based on the grounds that there was already an interpretation issued by the Commercial High Court on that matter which has not yet been overlured .

In this regard, Rwanda Bar Association petitioned the Supreme Court, requesting for the reversal of the position taken by the Commercial High Court on the aforementioned issue. The Bar states that in 2015, a value added tax law regulating goods and services taxed at zero percent (0%) was passed, but that law does not specify services for export. The same Bar argues that the fact that the legislator has not provided the definition of exported services, there will continue to be differing opinion between taxpayers and Rwanda Revenue Authority, so it is necessary for the Supreme Court to issue a direction on the matter, as the interpretation issued by the Commercial High Court is inconsistent wit the law, especially in the case of international treaties ratified by Rwanda, yet such treaties are valid and

applicable in the country, and are superior to ordinary legislations, including the Law on Value Added Tax.

The Bar Association, basing on various foreign judgments, maintains that the position set by the Commercial High Court is inconsistent with the principle of destination, because based on that principle, exported services should be zero-rated percent (0%).

The School of Law of the University of Rwanda, as Amicus Curiae, provides explanations on different categories of exported services and how different laws and experts interpret them. Based on various legal definitions, as well as on the principle of destination, that School of Law finds that the interpretation issued by the Commercial High Court on exported services is inconsistent with the Rwandan legislations, consequently, such that direction should be reversed by the Supreme Court because it is baseless.

**Held:** 1. Cases decided by the Supreme Court, as the highest court in the country, are binding to other courts.

2. Decisions of the Court of Appeal are binding to lower courts, as long as the set legal position was not challenged by the Supreme Court.

3. Selected judgments that are published in Law Report are binding to courts since they are superior to unpublished cases decided by the courts at the same level on a similar issue, and they can be used by the parties or judges. This, however, does not preclude the respect of the principle that the decision of the Court becomes binding on that court and its lower courts in unpublished cases.

4. In order to comply with the principle of stare decisis, each Court must adhere to the position it has set on a particular issue or the one set by the higher court on similar matter.

5. The decision in the judgment RCOMA 00350/2019/HCC rendered by the Commercial High Court cannot be considered as a position set by that Court on the disputed issue as the claimant failed to prove that the same position was adopted in other various decided cases for similar issues or if the Commercial Court, which is lower in hierarchy, has been relying on that position, especially instead since in another case between Rwanda Revenue Authority and ENSafrica Rwanda Limited, with a similar issue, which was delivered after the decision on the judgment for which the position is challenged, the same Court has taken a decision that is different from the challenged decision before the instant Court.

**Application for reversing the position set in the previous case decided by the Commercial High Court lacks merits.**

**Statutes and statutory instruments referred to:**

Constitution of the Republic of Rwanda of 2003 revised in 2015, article 95;

Law n$^{o}$ 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 52, 65 and 73;

Law n°012/2018 of 04/04/2018 determining the organization and functioning of the Judiciary, article 50;

Law n$^{o}$ 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 132;

Law n$^{o}$ 02/2015 of 25/02/2015 modifying and complementing Law n° 37/2012 of 09/11/2012 establishing the value added tax, article 1;

Law n° 37/2012 of 09/11/2012 establishing the value added tax, article 5;

Instructions of The President of the Supreme Court n°001/2021 of 15/03/2021 governing the publication of Law Reports, article 9.

**Cases referred to:**

Access Bank Rwanda Ltd v SOTIRU Ltd, RS/INJUST/RCOM 00003/2019/SC rendered by the Supreme Court on 26/06/2020;

Re. Great Lakes Initiative for Human Rights and Development, RS/INCONST/SPEC 00002/2019/SC, rendered by the Supreme Court on 04/12/2019.

Rwanda Revenue Authority v ENSafrica Rwanda Limited, COMA 00017/2021/HCC, rendered by the Supreme Court on on 29/12/2021.

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# Judgment

## I. BACKGROUND OF THE CASE

[1] The Rwanda Bar Association (RBA) petitioned the Supreme Court seeking to reverse the position taken in the judgment RCOMA 00350/2019/HCC rendered by the Commercial High Court on 04/12/2019 about the case ENSafrica Rwanda Limited v. Rwanda Revenue Authority (RRA).

[2] Rwanda Bar Association states that ENSafrica Rwanda Limited, a legal services firm, has been audited by the Rwanda Revenue Authority, and was ordered to pay the Value Added Tax (VAT) and penalties for services provided to individuals and companies located abroad.

[3] According to Rwanda Bar Association, such decision pushed ENSafrica Rwanda Limited to file a complaint in the Commercial Court requesting it to decide that the tax and penalties imposed by Rwanda Revenue Authority are contrary to the law, as the impugned services were taxed as exports, which should therefore be taxed to 0% of VAT. For Rwanda Revenue Authority, such services were not exported, which is why they should be taxed at the standard rate of 18%.

[4] On 20/03/2019, the Court ruled that ENSafrica Rwanda Limited's claim was unfounded, and accordingly ordered it to pay the value added tax (VAT) and a fine amounting to 22,814,510 Frw imposed by the Rwanda Revenue Authority. The Court relied its ruling on the fact that the work and services provided benefited persons residing in Rwanda despite being foreigners, and consequently, they have to be taxed at the normal rate.

[5] On 04/12/2019, ENSafrica Rwanda Limited appealed the decision to the Commercial High Court in the case RCOMA 00350/2019/HCC, which also ruled that the appeal lacks merits, reversed the ruling on matters relating to invoices subject to VAT, and ordered ENSafrica Rwanda Limited to pay 29,261,826 Frw imposed by Rwanda Revenue Authority.

[6] Following the request of ENSafrica Rwanda Limited, Rwanda Bar Association petitioned the Supreme Court in the case RS/INTL/SPEC 00001/2020/SC seeking an authentic interpretation of

exported services that are subject to zero % tax rate as provided for in article 5, paragraph one, subparagraph 1° of the Law on Value Added Tax, for a clear understanding on matters related to exportation of services.

[7] In the instant case, the Bar Association criticized the way the Commercial High Court interpreted Article one of the Law nº 02/2015 of 25/02/2015 modifying and complementing the Law n° 37/2012 of 09/11/2012 establishing the value added tax, where in paragraph 25 of the above case, such Court stated that "…the definition of exported services that should not be subject to value added tax (VAT) should not be based solely on the fact that the beneficiary of such services is abroad but it should be taken into account that the service provided to that person was meant to be consumed abroad where that beneficiary lives, because that is when such services can be deemed to have been exported and exempted from VAT. (...) while services delivered in Rwanda to a foreigner who is not even living in Rwanda but which has to be enjoyed in Rwanda, should not be considered as exported services."

[8] On 23/10/2020, the Supreme Court ruled that the complaint is not admissible on the grounds that there exists an interpretation issued by the Commercial High Court on the matter which has not yet been challenged, that in the event that the Court at the last instance has taken a position on a particular matter, such position is exhaustive in such a way that no further authentic interpretation is required, and the party feeling dissatisfied with such position and wishing it to be changed in the interests of future cases, files a claim to the Supreme Court.

[9] In this regard, Rwanda Bar Association petitioned the Supreme Court, requesting for the reversal of the position taken by the Commercial High Court on the issue stated in the previous paragraphs.

[10] The case was heard on the merits on 13/12/2021, and the Rwanda Bar Association appeared being represented by Counsel Bizimana Emmanuel and Counsel Nzafashwanayo Dieudonné.

[11] The Court first examined the request of University of Rwanda (*UR/School of Law*) to appear as Amicus Curiae in this case. After listening from the representatives of the Bar Association, the Court found that there was no reason to prevent the University of Rwanda, School of Law, to appear as Amicus Curiae in this case, therefore, its request was accepted. The University of Rwanda, School of Law was represented by Counsel Bagabo Faustin and Counsel Sebucensha Leonard.

# II. ANALYSIS OF LEGAL ISSUE

### 1. Whether the position taken by the Commercial High Court in the Case RCOMA 00350/2019/HCC should be reversed

[12] Legal Counsel for the Bar Association requested the Court not to rely on the contents of the first ground of their submissions on incompatibility, rather to take into account the information to be provided in the course of the hearing.

[13] Counsel Nzafashwanayo Dieudonné, representing the Bar Association, states that in 2015, the Law nº 02/2015 of 25/02/2015 modifying and complementing Law n° 37/2012 of 09/11/2012 establishing the value added tax was passed, wherein its Article one modified and complemented Article 5 of Law n° 37/2012 of 09/11/2012.

[14] He states that Article 5 of the aforementioned Law n° 37/2012 provided and defined in detail the goods and services subject to zero percent (0%) tax rate, some of which being goods and services

exported.[1] He added that when the article was amended in 2015, exported goods and services continued to be zero-rated, but the law did not specify exported services.[2]

[15] He alleges that the same article did not provide that exported services are those rendered abroad only, yet Article 5, paragraph one, subparagraph 1, of the Law of 2012 (modified and complemented by that of 2015) provided for a list of goods and services that are considered to be exported, especially services rendered abroad.

[16] Counsel Nzafashwanayo Dieudonné argues that the lack of of definition of exported services by the legislator will perpertrate differing opinions between the taxpayers and Rwanda Revenue Authority, so it is necessary for the Supreme Court to shed light on the matter, as the interpretation issued by the Commercial High Court is inconsistent with the law, especially international treaties ratified by Rwanda.

[17] In the course of the hearing, Counsel Nzafashwanayo Dieudonné provided the definition of exported services based on the *World Trade Organization* (WTO) document entitled *Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS).*[3] He argues that such guidelines mean that trade in services includes cross-border supply, where a person from one country provides services to others through telecommunications or email without having to travel to another country.

[18] This concurs with the decisions of World Trade Organisation on United States–Measures Affecting the Cross-Border Supply of Gambling and Betting Services.[4] He further added that such explanations are inconsistent with the Commercial High Court's view on the meaning of exported services, as the said Court explained that in order for a service to be considered as exported, it must be consumed abroad.

[19] Counsel Emmanuel Bizimana, representing the Bar Association, states that the position set by the Commercial High Court contradicts international conventions that Rwanda had signed, yet such conventions are valid and applicable in the country, and are superior in hierarchy to ordinary legislations including the Law on Value Added Tax as provided for in Articles 168 and 95 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

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[1] Such article reads that the following goods and services shall be zero- rated:
1º exported goods and services:
exported recognised goods bearing stamps by the Commissioner General;
transportation services and other related services with regard to export goods referred to in item a) of this Article;
transportation services of goods in transit in Rwanda to other countries including related services;
aircraft benzene;
services rendered abroad;
goods used in aircrafts from Rwanda to abroad;
2º goods sold in shops that are exempted from tax as provided for by the law governing customs;

[2] Article one of the said law reads that the following goods and services shall be zero- rated:
1° exported goods and services;
2° minerals that are sold on the domestic market;

[3] WTO, *Council for Trade in Services, "Guidelines for the Scheduling of Specific Commitments Under The General Agreement On Trade In Services (Gats)", 23rd March 2001, Cross-border supply is defined as International transport, the supply of a service through telecommunications or mail, and services embodied in exported goods (i.e. services supplied in or by a physical medium, such as a computer diskette or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered.*

[4] WTO, "United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services", Report of Panel, 10th November 2004, the panel concluded that *"…market access commitment for mode 1 implies the right for other Members' suppliers to supply a service through all means of delivery, whether by mail, telephone, Internet etc., unless otherwise specified in a Member's Schedule…"*

[20] He further adds that the Supreme Court in the aforementioned case RS/INTL/SPEC 00001/2020/SC, ruled that such conventions should be referred to for finding out the definition of exported services, thus, the reversal of the challenged position is in the interest of the law.

[21] Counsel Emmanuel Bizimana also alleges that the position taken by the Commercial High Court is in violation of the principle of destination approved by the Supreme Court in the case RS/INCONSIST/SPEC 00004/2019 on the petition initiated by Counsel Nzafashwanayo Dieudonné, where it held that such principle is the basic principle on matters related to value added tax (VAT) for the trans-border trade of goods and services.

[22] He argues that the principle is supported by the OECD International VAT/GST Guidelines, 2017, where after explaining the taxation of business-to-business (B2B) and Business-to-Consumer (B2C), the same guidelines state that services are taxed on the basis of place of their consumption instead of the place of their performance. He added that this concurs with the provisions of the aforementioned international conventions, as it leads to the fact that the services taxed on basis of place of consumption and the place where the consumption of a service occurs is where the beneficiary of the service is located; that this makes it clear that the services are being exported, which are delivered to a foreign resident, and therefore should be zero-rated (0%).

[23] Legal Counsel for the Bar Association also explain the principle based on judgments from various countries, including the case of the Commissioner of Domestic Taxes vs Total Touch Cargo Holland — Income Tax Appeal n°17 of 2013, which was decided by the Kenyan High Court, where it held that the place of performance is not the one that determines that a service is exported or not, but that the test is the place of consumption and not the place of performance.[5]

[24] They also cited the case of the Indian Central Excise and Service Tax Appellate Tribunal in the case of Microsoft Corporation (I) (P) Ltd vs *Commissioner of Service Tax, New Delhi*, *Commissioner of Service Tax, New Delhi*, which also reiterated on the same principle by stating that what matters is the location of the consumer and not the location of a service provider, [6] and ruled that marketing services offered by Microsoft Operation Singapore Pvt Ltd in India are part of exported services even though the impugned services were performed on Indian soil.[7]

[25] They also alleged that the Kenyan Tax Court of Appeal also reiterated on the principle of destination, in the Tax Appeal case nº 5 of 2018 of Coca-Cola Central East and West Africa Limited vs The Commissioner of Domestic Taxes; where it held that advertising services offered in Kenya by Coca-Cola Central East and West Africa Limited (a Kenyan company) to Coca-Cola Corporation Export (based in the United States) are exported services, and therefore, they should be zero-rated (0%).[8]

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[5] See Judgement of High Court of Kenya, Commissioner of Domestic Taxes vs Total Touch Cargo Holland— Income Tax Appeal nº.17 of 2013, para.30.

> *"The location where the service is provided does not determine the question of whether the service is exported or not. The test is the location (or place) of use or consumption of that service. Therefore, the relevant factor is the location of the consumer of the service and not the place where the service is performed."*http://kenyalaw.org/caselaw/cases/view/165957/.

[6] *"… the relevant factor "… is the 'the location of the service recipient' and not the 'place of performance…", See Judgment of Indian Central Excise and Service Tax Appellate Tribunal, Microsoft Corporation (I) (P) Ltd. vs. Commissioner of Service Tax, New Delhi [2014-TIOL-1964-CESTAT-DEL]*.

[7] Idem.

[8] See judgement of Tax Appeals Tribunal, *Coca-Cola Central East and West Africa Limited v The Commissioner of Domestic Taxes [Tax Appeal No 5 of 2018], http://www.kenyalaw.org/tribunals/TaxAppealTribunal/2020/COCA%E2%80%93COLA-Central-East-and-West- Africa-LTD-v-Commissioner-of-Domestic-Taxes[2020]eKLR.pdf.*

[26] Legal Counsel for the Bar Association, based on the aforementioned foreign cases from various countries, argue that the position set by the Commercial High Court is clearly in violation of the principle of destination, because under that principle, exported services that should be zero-rated (0%) are those delivered to foreign residents regardless of place of performance, excluding on-the-spot services which are taxed based on the place of performance.

[27] They also allege that the challenged position was set by the Commercial High Court without providing motivation, which is contrary to Article 132, paragraph 2, of Law n° 22/2018 of of 29/04/2018 relating to civil, commercial, labor and administrative procedure reading that reasons are given for the judgment, covering both the facts and legal cinsiderations.

[28] Legal Counsel for the Bar Association, based on the foregoing, find that such position should be reversed since it is confusing, and could continue to lead to disputes between Rwanda Revenue Authority and taxpayers as well as the courts that would address the issue of defining exported services that are zero-rated, as the Commercial High Court has never defined a place where the benefit from a service accrues, while it is the basis of its explanation, since you cannot determine if a particular service was exported (based on a position taken by the Commerce High Court) without first determining the place of consumption.

[29] Representatives of the University of Rwanda, the School of Law, as Amicus Curiae, provided explanations on different categories of exported services and how different legislations and legal experts interpret them.

[30] They define exported services based on the definition provided by article one of the General Agreement on Trade in Services (GATS) which explains that: internationally traded services mean:

- the supply of a service from the territory of one Member into the territory of any other Member;
- the supply of a service in the territory of one Member to the service consumer of any other Member;
- the supply of a service by a service supplier of one Member, through commercial presence in the territory of any other Member;
- the supply of a service by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.[9]

[31] They state that such definition concurs with the one provided for under Article 16 of the Protocol on the Establishment of the Common Market of the East African Community.

[32] They further argue that the World Trade Organization (WTO) has clearly defined the trade in services and the manner in which they are delivered basing on the aforementioned Article 1, paragraph 2 of GATS. The first category consists of cross-border trade in services, where the domestic buyer is provided with services from abroad through telecommunications or postal services. The second category consists of services consumed abroad (consumption abroad), such as tourists, students, or patients. With regard to the third category of commercial presence, it refers to the services provided by a trader who has opened a subsidiary/branch/agency to deliver services in another country (banks,

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[9] Art.1 of GATS states that *"For the purposes of this Agreement, trade in services is defined as the supply of a service: (a) from the territory of one Member into the territory of any other Member; (b) in the territory of one Member to the service consumer of any other Member, (c) by a service supplier of one Member, through commercial presence in the territory of any other Member,* (d) *by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member".*

hotels, construction companies, etc.). The fourth category is about the service provided in another country (movement of natural persons), where a foreign trader provides a service to an individual or a private trader (consultancy firm, hospital, construction company).

[33] Representatives of Amicus Curiae, referring to the the foregoing explanations provided by various legislations, and on the principle on value added taxation that states that the tax is payable by the country of the end user (Principle of destination), find that the position taken by the Commercial High Court for exported services contradicts with Rwandan legislations, consequently, such position should be reviewed by the Supreme Court.

## DETERMINATION OF THE COURT

[34] Article 65 of the Law n°30/2018 of 02/06/2018 determining the jurisdiction of Courts reads that the Supreme Court has jurisdiction to review the direction of the final judgements taken by the courts to protect the law and give direction on request by the Rwanda Bar Association or the National Public Prosecution Authority.

[35] In analyzing the foregoing, the Court finds it necessary to first determine the meaning of the direction given by the Courts.

[36] Normally, cases decided by the Supreme Court as the highest court in the country[10] are binding to other courts. By law, the Supreme Court is responsible for overseeing the conduct of cases in other courts, with the aim of correcting any errors in its jurisdiction and administration of justice, and to provide a legal position to other courts in resolving similar legal disputes as decided in the case of RS/INJUST/RCOM 00003/2019/SC decided by the Supreme Court[11] and in the case RS/INCONST/SPEC 00002/2019/SC[12] where the Supreme Court stated that the opinion was later upheld in Article 65 of the above-mentioned law determining the jurisdiction of courts where it appears that adherence to the existing direction in resolving a particular issue is an irrebuttable principle because, for that direction to be reviewed, it requires initiation of a petition to the Supreme Court, and as set out in the last Paragraph, Article 73 of the same Law, the decision of the court highlights the challenges of the direction in force and gives a new direction.

[37] Pursuant to the direction provided by the Legislator in Law n° 30/2018 of 02/06/2018 determining the jurisdiction of Courts, it empowered the Court of Appeal with the jurisdiction to hear at the first level of appeal cases that were used to be heard by the Supreme Court, as provided in Article 52 of the said law, meaning that judgments rendered in this regard are binding to lower courts, as long as they are not reviewed by the Supreme Court.

[38] In addition, according to the provisions of Instructions of the President of the Supreme Court n° 001/2021 of 15/03/2021 governing the publication of judgments in the Law Report, even selected judgments which are published in a law report are also binding to courts since they are superior to cases decided by the courts at the same level on a similar issue, and they can be used by the parties or judges.[13] This, however, does not preclude the respect of the principle that the decision of the Court becomes binding to that court and lower courts in unpublished cases.

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[10] Article 50 of the Law n° 012/2018 of 04/04/2018 determining the organization and functioning of the Judiciary.

[11] Judgment RS/INJUST/RCOM 00003/2019/SC about Access Bank Rwanda Ltd v SOTIRU Ltd rendered on 26/06/2020, page 6, paragraph 14.

[12] Judgment RS/INCONST/SPEC 00002/2019/SC, Great Lakes Initiative for Human Rights and Development seeking to repeal of the provisions as they are unconstitutional, rendered on 04/12/2019, paragraphs 32 and 33.

[13] See Article 9 of the aforementioned Instructions n°001/2021.

[39] The foregoing affirms the principle of stare decisis which also states that the decision of the Court in a particular case is binding on the very court and lower courts, and must be respected. This principle helps to build up consistent principles based on the law, which leads to the trust of the Courts and the decisions they make.[14] In order for the court direction to be reviewed, a petition to the Supreme Court must be initiated, as per the provisions of article 65 of the aforementioned Law n° 30/2018 of 02/06/2018 , for the protection the law and giving direction.

[40] Petitioning the Supreme Court for the review of the precedent set by courts in the interests of the law is not a particularity to Rwanda since it is also done in different countries. As in France, legal scholar Natalie Fricero explains that the appeal in the interest of the law is reserved for the Public Prosecutor at the Court of Cassation, who can act to stop a violation of the law by a court, when the judgment has not been challenged by the parties. This appeal is original in that it is intended to protect the general interest and does not affect the position of the parties, meaning that parties are not allowed to base on the reviewed direction and request anything.[15]

[41] Another legal scholar Serge Guinchard also stated that only the Public Prosecutor at the Court of Cassation, on his own initiative, can lodge an appeal for a symbolic censure of a judgment that has flouted the law but against which the parties are satisfied with and did not wish to appeal. He/she may proceed in this way against any decision that is contrary to the laws, regulations or forms of procedure, even if the decision has already been executed. He/she must lodge such an appeal within five years from the delivery of the decision. Through that appeal, the Public Prosecutor acts as guardian of legality.[16]

[42] Although the previous paragraphs state that the power to file a complaint requesting for the reversal of the court's position in the interests of the law belongs to the Prosecutor General as provided for in Article 65 of the aforementioned Law n° 30/2018, the Court finds that the explanation contained therein should also apply to complaint filed by the Bar Association as it has also been entitled to that jurisdiction by the same law.

[43] With regard to the impugned case RCOMA 00350/2019/HCC decided by the Commercial High Court on 04/12/2019 of which a reversal of the position is requested, the Court finds that the decision in that case, wherein the court ruled that ENSAfrica Rwanda Limited should be taxed at the normal rate of 18% because the taxable services were consumed in Rwanda, even though the beneficiary is a foreigner, should not be considered as the position taken by such a Court in this regard. This is supported by the fact that the Legal Counsel for the Bar Association failed to prove to the Court that the same position was adopted in other various decided cases with similar issues or if the Commercial Court, which is lower in hierarchy, has been relying on that position.

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[14] *Berland, David. L., Stopping the pendulum: why stare decisis should constrain the Court from further modification of the search incident to arrest exception, University of Illinois Law Review (2011) (2), 695. '' [….] It promotes the consistent development of legal principles and it fosters reliance on judicial decisions and contributes to the actual and apparent reliability of the judicial process*.'' https://www.researchgate.net/publication/264877323_Stopping_the_pendulum_Why_stare_decisis_should_constrain_the_court_from_further_modification_of_the_search_incident_to_arrest_exception

[15] Fricero, Natalie, *Procédure Civile*, 5e ed., LGDJ, 2014, page 438; '' *Le pourvoi dans l'intérêt de la loi est réservé au Procureur Général près la Cour de Cassation, qui peut agir pour cesser une violation de la loi par un tribunal, alors que le jugement n'a pas été attaqué par les parties*. […..]. *Ce pourvoi est original, en ce qu'il est destiné à protéger l'intérêt général, et qu'il n'affecte pas la situation des parties.*

[16] Guinchard, Serge, Procédure *Civile, Droit interne et européen du procès civil*, Ed. Dalloz, 34e édition, 2018, page 643(1434); ''*Seul le Procureur Général près la Cour de Cassation, de sa propre initiative, peut former un pourvoi tendant à une censure symbolique d'un jugement ayant bafoué la loi mais contre lequel les parties, satisfaites, n'ont pas voulu exercer de recours. Il peut procéder ainsi contre toute décision contraire aux lois, règlement ou aux formes de procéder, et ce meme si la décision a déjà été executée.* […. ] *fixe un délai de cinq ans à compter du prononcé de la décision. Par le pourvoi, le Procureur Général se comporte en gardien de la légalité* [….].

[44] Another evidence that such is not the position taken by the Commercial High Court, is that in a different case between the Rwanda Revenue Authority and ENSafrica Rwanda Limited decided on 29/12/2021 on a similar issue, after the ruling that set the disputed position, the said Court reviewed its previous position, and made a different decision from the subject matter in the instant Court, where the Commercial High Court ruled that the services delivered by ENSafrica Rwanda Limited should be regarded as exports that have to be zero-rated;[17] a judgment against which Rwanda Revenue Authority lodged an appeal before the Court of Appeal.[18] All this confirms that there is no so far final position on this issue to the extent of being subject to a claim for its reversal in the interest of the law and to provide another direction in accordance with the provisions of Article 65 of the aforementioned Law n° 30/2018. Accordingly, the application filed by the Rwanda Bar Association is baseless.

## III. DECISION OF THE COURT

[45] Holds that the application filed by Rwanda Bar Association seeking the reversal of the position taken in the judgment RCOMA 00350/2019/HCC rendered by the Commercial High Court on 04/12/2019, lacks merits.

[17] Judgment RCOMA 00017/2021/HCC about Rwanda Revenue Authority v ENSafrica Rwanda Limited rendered on 29/12/2021, from page 19 to 21, paragraphs 30, 31 and 32.
[18] The case was registered to RCOMAA 00022/2022/CA.