

Re BYANSI (ADD)

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00002/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Muhumuza and Kalimunda, J.) December 24, 2021]

Constitution – The petition seeking to declare unconstitutional the provisions of the law – The interests to sue – Although the interest must be broadly understood and be regarded in the right of the petitioner to seek the repeal of the provisions of a particular Law as they make the purpose of the Constitution unattainable while it should be protected, the petitioner has a duty to provide his personal interests in the petition in order to avoid unnecessary petitions that could interfere with the functioning of the courts.

Facts: Byansi petitioned in the Supreme Court seeking confirmation that articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/2018 determining offences and penalties in general are contrary to articles 15 and 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 as provided for by the Constitution. He states that those articles are detrimental to him as professional journalist in his profession and to the freedom of media as provided for by the Constitution.

The State attorney retorts that such provisions are not contrary to the Constitution because there are acts of a journalist as an ordinary person and as well as his/her actions as a journalist, which means that his or her entire life is not about journalism, so what is allowed to other ordinary people is also allowed to journalist and what they should be held accountable for may apply to journalists too.

In this case, the Court first examined whether the petitioner has an interest to sue, where he alleges that the foregoing provisions interfere with the work of investigative journalism, which means that he has a personal interest and a general interest in filing a petition because the freedom of information has a connection with the general interest because he may not publish information for fear of being prosecuted by criminal provisions in petition.

In the instant case, the State Attorney argues that the petitioner has an interest to petition considering his profession and based on the provisions of articles 38 of the Constitution and 72 of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts.

Held: 1. Although the interest must be broadly understood and be regarded in the right of the petitioner to seek the repeal of the provisions of a particular law as they make the purpose of the Constitution unattainable while it should be protected, the petitioner has a duty to provide his personal interests in the petition in order to avoid unnecessary petitions that could interfere with the functioning of the courts.

2. A journalist exercises his or her career of seeking information in order to educate the public, promote activities that benefit the public and promote the freedom of such profession.

3. Freedom of the press consists of the way in which a journalist expresses his or her opinions and how he or she collects, receives, delivers and imparts information and opinions through a variety of media outlets.

The petitioner has interest.

The hearing of this case will resume.

Statutes and statutory instruments referred to:

The Constitution of the Republic of Rwanda of 2003 revised in 2015, articles 15 and 38.

Law n°68/2018 of 30/08/2018 determining offenses and penalties, articles 156, 157, 194, 218 and 251.

Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, article 72.

Law n° 02/2013 of 08/02/2013 regulating media, articles 5 and 8.

Cases referred to:

Re Byansi Samuel Baker, RS/INCONST/SPEC0003/2021/SC ruled by the Supreme Court on 10/12/2021.

Re Mugisha Richard, RS/INCONST/SPEC 00002/2018/SC ruled by the Supreme Court on 18/01/2019.

Judgment

I. BACKGROUND OF THE CASE

[1] On May 2, 2021, Byansi Samuel Baker petitioned the Supreme Court seeking to declare articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/2018 determining offences and penalties in general inconsistent with articles 15 and 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

[2] He explains that he is currently a professional journalist with a business card number 17/726-1, that he focuses on local and external investigative journalism from 2015 to date, and that subsequent the publication of the Law no. 68/2018 of 30/08/2018 determining offences and penalties in general in the Official Gazette, he found that articles 156, 157, 194, 218 and 251 of that Law were prejudicial to his work and violate the freedom of the press as provided for in articles 15 and 38 of the Constitution of the Republic of Rwanda.

[3] He states in particular that:

- Article 156 prohibits the publication of photos, photographs, audio or visual recordings without the permission of the owner, yet there are photos, audio or visual recordings that are taken in public places to the extent that it is not easy to get everyone's permission before their publication.
- Article 157 prohibits the publication of statements, photographs and visual recordings that have been altered while in the course of the preparation of the story, a journalist as a professional may edit to make the story more comprehensible and interesting to the audience. He explains that there are times when a story may be based on image or photograph editing, which is a form of cartoons and that even Charlie Hebdo magazine that has only been doing cartooned stories for 200 years.
- Article 194 prohibits anyone from spreading false information or harmful propaganda with intent to cause a hostile international opinion against Rwandan

Government. He asserted that the fact that this article uses the term "anyone" it violates the rights of a journalist because he or she is treated as an ordinary person while he/she has a special obligation to publish opinions that may not be accepted by all, and in another instance he/she would publish a story he/she was told by someone who did not tell him/ her the truth. In addition, the fact that such article does not provide a definition of the term "propaganda" can lead to divergent interpretation by each court, which may affect the journalist.

- Article 218 prohibits humiliation or insult against foreign Heads of States or representatives of foreign States or representatives of international organizations in Rwanda while on duty, which induces discrimination against the protected subjects and impedes the freedom of seeking and publish information and the freedom of expressions.
- Article 251 any person in possession of evidence of the innocence of another person prosecuted or convicted of a felony or a misdemeanour, who deliberately refuses to give such evidence to judicial authorities, yet the journalist has a duty of confidentiality in relation to the source of information and thus subjecting him to punishment violates the freedom of expression.

[4] State Attorney Mbonigaba Eulade and State Attorney Habumuremyi Prosper, state that articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/ 2018 determining offences and penalties in general are not in violation of articles 15 and 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 because of there are acts of a journalist in the capacity of an ordinary person and his/her other acts as a journalist , which means that he/she does not act as a journalist in his/her entire life, thus, what ordinary persons do, a journalist can do it and what they should be held accountable for applies to him/her too.

[5] The hearing was held in public on 13/12/2021 whereby Byansi Samuel Baker was represented by Counsel Gakunzi Musore Valéry and Counsel Ruramira Bizimana Zébedée, while the Government of Rwanda was represented by State Attorney Mbonigaba Eulade and State Attorney Habumuremyi Prosper. The Court first examined whether Byansi Baker has interest to sue.

II. ANALYSIS OF LEGAL ISSUE

- Whether Byansi Baker has interest to sue

[6] Byansi Samuel Baker, Counsel Gakunzi Musore Valéry and Counsel Ruramira Bizimana Zébedée assisting him allege that he has the right to defend his interests because as a professional journalist, the provisions he attacks in the court to be unconstitutional infringe upon his daily work and the public rights, due to the fact that information is imparted in public interest. They argue that the position adopted by the instant Court in the case of Counsel Mugisha Richard,¹ is that the interests of the party must be broadly perceived by considering general interest that the claimant has in petitioning that the provisions of the law be declared to be unconstitutional, because in such

¹ See judgment RS / INCONST / SPEC 00002/2018 / SC decided by the Supreme Court on 18/01/2019.

judgment, the petition was filed by a Lawyer and the instant Court found that it was not necessary for him to wait for the law to affect his interests before he could seize the Court.

[7] They allege that Byansi Samuel Baker, as a journalist, finds that articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/2018 determining offences and penalties in general hamper his or her work as an investigative journalist, which means that he has personal interest and a public interest in filing a petition because the freedom of press has a connection with the public interest since he may not publish the news for fear of being prosecuted under the challenged criminal provisions.

[8] Counsel Mbonigaba Eulade and Counsel Habumuremyi Prosper, representing the Attorney General, argue that based on the profession of journalism that Byansi Samuel Baker exercises and the provisions of article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 and article 72 of Law no. 30/2018 of 02/06/2018 determining the jurisdiction of courts, it appears that Byansi Samuel Baker has an interest to sue.

DETERMINATION OF COURT

[9] Article 72 of Law no 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that the Supreme Court is petitioned by any person or company and associations with legal personality over petitions seeking to declare unconstitutional a law if they have any interest. [...]

[10] The first paragraph of Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, states that freedom of press, of expression and of access to information are recognised and guaranteed by the State.

[11] Article 5 of Law n° 02/2013 of 08/02/2013 regulating Media reads that a journalist shall have the following main obligations: 1° to inform; 2° to educate population and promote leisure activities; 3° to defend the freedom of information, analyse and comment on information. Article 8, paragraph 3 of the same law provides that every journalist has the right to freedom of opinion and expression; this right includes the right to seek, receive, give and broadcast information and ideas through any variety of media.

[12] When these legal provisions are jointly read, they lead to the fact that a journalist is engaged in his or her profession of seeking information for the purpose of educating the public, promoting public activities, the profession of journalism and defending the freedom of the press. The law states therefore that freedom of expression must be perceived as a way a journalist expresses his or her opinions and how he or she seeks, receives, imparts and broadcasts information and ideas through various media outlets. That is to say, in accordance with the provisions of article 72 of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts above-mentioned, a journalist has the right to claim that there is a new law that violates his or her rights or responsibilities that he/she is entitled to by the Constitution and other laws.

[13] With regard to the scope of interests of the petitioner of a claim requesting the declaration of provisions of a particular law unconstitutional, the instant Court has analysed such issue in a number of judgments, including that of Counsel Mugisha Richard, where it found that although it is necessary to prevent the petitions by the persons intending to grandstand, publicize their

activities or to be given the rights entitled to others while it is necessary to safeguard the limited resources of the courts by avoiding being distracted by inexistent issues, as far as constitutional petitions are concerned, interest must be broadly understood where it should be considered in the rights of petitioners that seek the repeal of certain provisions of the law as they prevent the achievement of the purpose of the Constitution, which should in contrast be protected².

[14] The Court finds that this position was upheld in the Judgment of Byansi Samuel Baker decided on 10/12/2021, but the Court added that in order to avoid unnecessary petitions that could jeopardize the functioning of the courts, the petitioner has the duty to prove his or her personal interest in the case³. In this regard, it is evident to the Court that Byansi Samuel Baker as a journalist operating in Rwanda has a personal interest in this case because the provisions of articles of which he requests the Court to declare unconstitutional are in particular relating to the media. In addition, the law determining offences and penalties in general apply to anyone who is on Rwandan territory including journalists; therefore, its provisions he alleges that they should be repealed for being inconsistent with the Constitution could prejudice him now or in the future.

[15] The Court therefore finds that articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/2018 determining offenses and penalties in general, are relevant to the responsibilities of the press, which implies that in the event the Court finds that they are in fact in violation of articles 15 and 38 of the Constitution as alleged by Byansi Samuel Baker and his legal counsel, such decision would be in his best interest, and for this reason, he has interest to petition seeking to repeal the provisions of the law he claims they deprive him of the right he is entitled by the Constitution.

III. DECISION OF THE COURT

[16] Holds that Byansi Samuel Baker has interest in the instant case to petition in order to declare articles 156, 157, 194, 218 and 251 of Law n° 68/2018 of 30/08/2018 determining offences and penalties in general, inconsistent with articles 15 and 38 of the Constitution.

[17] Holds that the hearing of the instant case shall be resumed on 14/02/2022.

² See judgment RS / INCONST / SPEC 00002/2018 / SC ruled by the Supreme Court on 18/01/2019..

³ See judgement RS / INCONST / SPEC 0003/2021 / SC ruled by the Supreme Court on 10/12/2021.