

MURENZI v MUTABAZI ET AL.

[Rwanda SUPREME COURT - RS/INJUST/RC 00009/2021/SC (Ntezilyayo, P.J., Cyanzayire and Kalimunda, J.) June 30, 2022]

Civil procedure – Evidence based on expert’s report – Lack of expert’s oath and signature in the expert’s report – The lack of oath or signature in the expert’s report due to oblivion or negligence does not itself constitute a reason to invalidate such an expert’s report when that expert may be summoned by the Court in order to rectify those defects by signing that report or taking his/her oath before the Court as per the law.

Civil procedure – Evidence based on expert’s report – Expert self-contradiction – An expert who testified to the Court that he/she cooperated with his/her colleagues to prepare a report and then signed it, cannot later reject such a report without first proving that he/she had no capacity to refuse to sign such a report or that he/she was unaware that he/she was going to sign it.

Civil procedure – Accountability for the construction failures – Loading your things on the wall until it collapses –The property owner who loads his/her things on the wall which it cannot support, should be held accountable of problems arising from that act for he/she is personally liable for such problems, and no one else.

Facts: This case started before Gasabo Intermediate Court, Mutabazi and Muhawenimana suing Murenzi and Uwamahoro for having failures in their construction activities which led to the collapsing of their house wall that damaged their assets including their car and house, hence requesting the Court to award them compensation for damages occurred. The defendants deny their role in the collapsing of Mutabazi’s wall, rather, such incident resulted from ordinary disasters and his poor buildings since the claimant built them with no construction permit. SORAS AG Ltd (currently named SANLAM Assurances Générales Plc) intervened in the case claiming for the money they paid for the reparation of the car damaged by the collapsed wall. In the judgment n° RC 00203/2018/TGI/GSBO, the Court referred to experts’ report and witnesses and found that the collapsing of the wall was caused by the pressure of the weight of the soil used by Mutabazi in the construction of his wall which seemed to have pressurized Mutabazi’s wall, and such Court ordered Murenzi and Uwamahoro to pay claimed damages.

Murenzi and Uwamahoro appealed before the High Court alleging that the previous Court disregarded that the collapsing of the wall was caused by the fact that Mutabazi and Muhawenimana built such wall without having a construction permit, meaning that it was poorly built under sub-standards and the experts’ report is not lawful as experts who prepared it failed to arrive at a common conclusion, and they are not the ones who submitted it, furthermore, they did not take an oath for it. Mutabazi and Muhawenimana also appealed before the High Court claiming that they were not paid damages relating to vehicles used to take out the soil. SANLAM also lodged a cross- appeal claiming for including in this judgement damages awarded to them.

All those appeals were joined in the case n° RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG, and the High Court found that the fact that experts did not take their oath before submitting their report, it is a typing error, and concerned experts may be summoned to provide details on their report after taking their oath; and their failure to agree on the report

conclusion is not an issue because what matters is that they all agree on it as people who did it together, and the High Court held that the lodged appeal lacks merit.

Murenzi applied for the review of that judgment due to injustice, and the case was transferred to the Supreme Court for being heard anew, and the very Court analysed the main following issues: Whether the expert report of which in the judgment n^o RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG based on, should be invalidated; and to determine the real cause of the collapsing of the wall of Mutabazi and Muhawenimana.

The applicant for the case review raised an objection relating to *lis pendens* stating that there exists a claim filed by Mutabazi before Gasabo Primary Court, and that claim is related to instant case, and it should be examined first. The Court analysed that objection and come to the conclusion that the subject matters are different, in addition, the subject matter in the case before the Primary Court cannot be in the jurisdiction of the Supreme Court, and the case which started from the Intermediate Court up to the higher courts cannot be under the jurisdiction of the Primary Court, and the very Court found such an objection unfounded, and ordered for the resuming of the hearing in merit of the case.

The applicant to case review states that the experts' report on the collapsing of the wall is defectuous as it was not done in accordance with required procedures. Among those procedures include signature and oath of the experts, and one of those experts claimed that the report contains errors and that he/she was not allowed to provide his/her opinions, and based on that, the applicant requests for the invalidation of this report. The defendant submits that in the course of hearing, the said experts were summoned by the High Court and they provided clarifications on after taking their oath, and this removes the defects of lack of oath in the said report. He further submits that on the issue of one of the expert who does not agree with his/her colleagues on the impugned report for he/she was not given an opportunity to provide his/her opinions, this is not evidenced, especially since he/she signed that report.

With regard to the issue of the person who should pay the expert fee, the applicant to case review submits that, such a fee should be jointly paid by both parties, and the parts who loses the case would refund the winner. He further states that Mutabazi secretly negotiated with the experts on their fee in US dollars, and he did it without informing him, and therefore, he has to pay them alone. The defendant submits that this issue should not be raised at this instance since it has not been appealed in the High Court, and if it is examined, the Court should analysed the determination of the expert fee since experts on both parties agreed on it with the intention to avoid concluding a contract between each party and the one who hired them. He adds that the allegation that the expert fee is so high and that it was not agreed on by both parties, it is not true, and he therefore requests that Murenzi be held liable for that fee since he is the one who provoked the collapsing of the wall.

With regard to the cause of the collapsing of the wall, Murenzi avers that the wall collapsed due to natural disasters and the poor construction of it since Mutabazi dared to build it illegally and without a construction permit, and the water pits in his yard contributed to the collapsing of the wall. Murenzi adds that, in case the very Court finds necessary to award damages, such damages should be professionally computed, and not based on emotions, and the real value of the damages should be determined. On this issue, the defendant states that the soils loaded by Murenzi in his house provoked the collapsing of the wall due to the weight of that soils, and that the damages were determined by experts' report and not on emotions. With regard to the value of damages, he

adds that Murenzi did not criticize the experts' report at the first instance since it was done professionally, and even before the High Court, he did not appeal against it, because he was satisfied with the decision of the Intermediate Court, and thus, this issue should not be analyzed in the review of the judgment due to injustice.

Held: 1. After his/her work, an expert submits a report containing his/her signature and oath. However, nothing prevents the Court to summon that expert in order to provide clarifications on his/her work done, and this is done after he/she takes an oath, and therefore, the lack of an oath on a signed expert report does not constitute a reason for its invalidation for such an error has been rectified before the High Court whereby experts who did it took their oath before providing details thereof.

2. The role of an oath is to prove that the hired expert has fully performed his/her duties as required by the Court, with professionalism, in honesty and with impartiality. The Court does not appoint an expert for his/her oath and signature, since the latter are not included in his/her duties, rather, both are included in his/her report to increase the trust for the produced report. The expert's oath and signature prove that such an expert understands, agrees with, and is liable of the content of the report he/she submits to the Court.

3. The lack of oath or signature in the expert's report due to oblivion or negligence does not itself constitute a reason to invalidate such an expert report when that expert may be summoned by the Court in order to rectify those defects by signing that report or taking his/her oath before the Court as per the law.

4. An expert who testified to the Court that he/she cooperated with his/her colleagues to prepare a report and then signed it, cannot later reject such a report without first prove that he/she had no capacity to refuse to sign such a report or that he/she was unaware that he/she was going to sign it, therefore, the statements of the applicant for the case review that one of the experts does not agree with his/her colleagues on the content of the report, are unfounded.

5. The fact that an expert has referred his/her report to another report of which parties were not aware, by also refusing to invite them in the meeting after submitting to them his/her report, this does not constitute a reason for the invalidation of such an expert report, since parties are allowed to criticize it after reception, and this is what happened for the report based on in the instant case.

6. When the mason loads his/her things on the wall which exceeds the maximum authorised loads on a retaining wall (*dépassement des charges maximales autorisées sur un mur de soutènement*), such a mason should be personally held accountable of problems arising from that act, and no one else, therefore Murenzi should pay for the collapsing of that wall.

7. Any party entitled to ordinary of remedies of appeal but that fails to use such a right provided by law, deprives his/herself of the right to appeal procedure which could enable him/her to get his/her issues resolved at the appellate level, and such a party is not allowed to apply for review of a case he/she lost because of injustice, by disregarding other adjudicated cases, and then requests for the examination of the issues of injustice of which he/she him/herself refused to appeal against, since this is against the law.

**Judgment N° RC 00203/18/TGI/GSBO under review due to injustice is reversed in part;
Deposited Court fees cover expenses incurred in this case.**

Statutes and statutory instruments referred to:

Law n° 15/2004 of 12/06/2004 on evidence and its production, articles 76 and 93;
Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, article 55 and 63;
Law n°22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure, articles 111, 170 and 273;
Rwanda Building Code annexed to the Ministerial Order n° 04/Cab.M/015 of 18/05/2015 determining urban planning and building regulations, articles 2.6.5.19.3; 2.6.5.19.4.

Repealed laws referred to:

Decree- Law n° 20/75 of 20 June 1975 governing insurance, article 32.

Cases referred to:

RPA 0227/08/CS, Prosecution vs Sibomana Nathanael, rendered by the Supreme Court on 19/02/2010;
RPAA 0321/10/CS, Prosecution vs Habimana Jean Claude, rendered by the Supreme Court on 18/03/2016;
RCAA 0082/12/CS rendered by the Supreme Court on 06/11/2015, paragraph 11;
RS/INJUST/RC 00007/2018/SC rendered on 13/03/2020, Nditiribambe Samuel, Gatera Jason vs Nyamaswa Faustin;
RS/INJUST/RC 00024/2018/SC rendered by the Supreme Court on 21/02/2020, paragraphs 18-22;
RCOM RS/ INJUST/ RC 00004/2019/SC rendered on 28/07/2020, Mukamana, Havugimana, Umuhiza vs Candali;
Cass. Civ. 3^e, 26 mars 1997, n° 94-21, 808 Bull.Civ, III, N°69.

Authors quoted:

Serge Guinchard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, pp. 293, 1062, 1063
Loïc Cadiet na Emmanuel Jeuland, Droit judiciaire privé, 11^{ème} éd., Paris, 2019, p.222.
Tom Bingham, The Business of Judging: Selected Essays and Speeches 1985-1999, Oxford, Oxford University Press, 2000, p.36.
Etienne Vergès, Géraldine Vial et Olivier Leclerc, Droit de la preuve, Paris, PUF, 2015, p.688.

Judgment

I. BACKGROUND OF THE CASE

[1] The present case started from Gasabo Intermediate Court, Mutabazi Abayo Jean Claude and Muhawenimana Joselyne suing Murenzi Alphonse and Uwamahoro Jacqueline, for the latter's poor construction activities led to the collapsing of the claimants' wall, which damaged their 2 cars, annexed houses, as well as water tanks and their retaining steel pillars. The claimants requested that Murenzi Alphonse and Uwamahoro Jacqueline be held liable of the collapsing of their wall and pay damages thereof.

[2] Murenzi Alphonse and Uwamahoro Jacqueline denied their role in the collapsing of the wall belonging to Mutabazi Abayo Jean Claude, since the latter failed to prove that the construction activities of Murenzi Alphonse provoked the linkage in the wall, that rather, the collapsing of the wall was caused by natural disasters and the poor building of Mutabazi Abayo Jean Claude, since the latter built without a construction permit, and thus requested the Court to declare the filed claim unfounded.

[3] SORAS AG Ltd (currently named SANLAM Assurances Générales Plc) intervened in the case requesting that Murenzi Alphonse and Uwamahoro Jacqueline be ordered to refund 2,183,000 FRW spent for the reparation of the car the money they paid for the rehabilitation of the car RAD 995 F damaged by the collapsing of their wall.

[4] In the judgment n° RC 00203/2018/TGI/GSBO rendered on 08/11/2019, the Intermediate Court of Gasabo found that witnesses' testimonies, report of building inspectors from Gasabo district and the report of land expert as well as the report submitted by experts who analyzed the issue, all indicate that the collapsing of the wall could not be possible if it was not due to heavy weight that pressurized it, since the wall was so tight; the very Court further found that, in building his wall, Murenzi Alphonse seemingly put the pressure on the impugned wall of Mutabazi Abayo Jean Claude, and then loaded much soils on that wall, and thus the same Court concluded that the collapsing of the wall of Mutabazi Abayo Jean Claude was caused by the building activities of Murenzi Alphonse, hence ordering the latter and Uwamahoro Jacqueline to jointly pay Mutabazi Abayo Jean Claude and Muhawenimana Joselyne damages amounting to 22,159,538 FRW as well as 6,173 \$.

[5] Murenzi Alphonse and Uwamahoro Jacqueline appealed to the High Court alleging that the previous Court disregarded that the fact that the wall of Mutabazi Abayo Jean Claude failed to resist the water due to the latter's failure to abide by the construction standards since he built without a construction permit. They state that the experts' report referred to is not lawful since experts who prepared it failed to arrive at a common conclusion, and they are not the ones who submitted it to the Court, furthermore, they did not take an oath for it. Mutabazi Abayo Jean Claude and Muhawenimana Joselyne also appealed to the High Court alleging that they were not awarded damages they were worth to, and the amount awarded was too small since they rented a car, while the evidences they produced prove that the car RAD 586 M was paid 850,000 FRW and the car RAC 847 Y was paid 360,000 Frw.

[6] SANLAM Assurances Générales Plc lodged a cross-appeal requesting that 2,183,000 Frw awarded at the first instance be included in the decision of the High Court.

[7] All lodged appeals were joined in the case n° RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG decided on 19/02/2021, and the Court found that:

- i. the issue of joint construction of the wall was not sued to the Court, therefore it should not be examined on the appeal level;
- ii. the issue of experts who did not take their oath is a typing error that can be resolved by summoning those who prepared the report in order to provide details on it to the Court, of course after swearing in;

- iii. differing opinions among experts on the conclusion of their report is not a reason for the invalidation of such a report, because what matters is that the majority of them share assumption on it;
- iv. no expert concluded that the collapsing of the wall was caused by natural disasters, because the report of 22/05/2018 from the Village authority indicated that that issue was raised before the collapsing of the wall, meaning the collapsing was provoked by the pressure of the soils loaded by Murenzi Alphonse on the said wall;
- v. the previous Court did not err in awarding 720,000 Frw for the car in its discretion, because that Court was not compelled to base its decision on the evidence produced by the parties, rather the Court had to refer to the market price, especially since Mutabazi Abayo Jean Claude had also the duty to reduce the loss;
- vi. moral damages amounting to 20,000,000 Frw claimed by Mutabazi Abayo Jean Claude and Muhawenimana Joselyne, should not be awarded, since they failed to prove their pain, torment or stress caused by what happened, that should be covered by such an amount;
- vii. damages amounting to 2,183,000 Frw awarded to SANLAM Assurances Générales Plc have to be included in the decision of the High Court, but they have to be removed from damages awarded to Mutabazi Abayo Jean Claude and Muhawenimana Joselyne;
- viii. 3,369,336 Frw for annexed houses and 2,183,000 Frw that should be awarded to SANLAM Assurances Générales Plc are deducted from damages that had been awarded to Mutabazi Abayo Jean Claude and Muhawenimana Joselyne.

[8] The Court held that the judgment under appeal is reversed in part, and ordered Murenzi Alphonse and Uwamahoro Jacqueline to pay to Mutabazi Abayo Jean Claude and Muhawenimana Joselyne 740,000 Frw for procedural, counsel and court fees, and also ordered them to refund to SANLAM Assurances Générales Plc 2,183,000 Frw used to repair the car.

[9] Murenzi Alphonse wrote to the President of the Court of Appeal requesting that the judgment no RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG be reviewed due to injustice. After examining his request, the President of the Court of Appeal wrote to the President of the Supreme Court requesting for the review of that judgment, and in the decision no 243/CJ/2021 of 07/10/2021, the President of the Supreme Court ordered that the case be transferred to the Court Registry for it to be reheard.

[10] The hearing was conducted in public on 08/03/2022, Murenzi Alphonse and Uwamahoro Jacqueline being assisted by Counsel Habyarimana Christine, Mutabazi Abayo Jean Claude and Muhawenimana Joselyne assisted by Counsel Yaramba Ruhara Athanase and Counsel Niyitegeka Epaphrodite, while SANLAM Assurances Générales Plc was represented by Counsel Mafaranga Anastase.

[11] As soon as the hearing has started, Counsel Habyarimana Christine informed that Murenzi Alphonse was sick, that she was used to assist him, but that she was given the power to represent him on the objection related to lis pendens they raised after the pre-trial conference due to the fact that the reason for it came after. She stated that such an objection is based on a new claim filed by Mutabazi Abayo Jean Claude to the Primary Court on 24/02/2022, a claim which was docketed to n° RC 00177/2022/TB/GSBO, that after Murenzi Alphonse knew about that claim, he found

that it was linked to instant case, and he then to prepare a lis pendens objection, and she thus think that such objection should be examined first.

[12] In the preliminary judgment rendered on 14/04/2022, the Court found that the subject matter and its scope is different from the subject matter in the case n° RC 00177/2022/TB/GSBO. The same Court also found that the case filed to the Primary Court cannot fall under the jurisdiction of the Supreme Court, and the case initiated in the Intermediate Court, then heard in the High Court, which is the last instance, and later brought to review due to injustice cannot fall under the jurisdiction of the Primary Court, since the only the Court of Appeal or the Supreme Court are competent to hear such a case, and the very Court thus found no lis pendens between the instant case and the claim docketed to no RC 00177/2022/TB/GSBO in Gasabo Primary Court, therefore, those cases should not be joined.

[13] The hearing resumed on 18/05/2022, with Counsel Habyarimana Christine assisting Murenzi Alphonse and representing Uwamahoro Jacqueline, while Mutabazi Abayo Jean Claude was assisted by Counsel Yaramba Athanase and Counsel Niyitegeka Epaphrodite, who were also representing Muhawenimana Joselyne. SANLAM Assurances Générales Plc also appeared being represented as before. The Court first reminded Counsel Habyarimana Christine that, though Uwamahoro Jacqueline has not applied for the review of the judgment due to injustice, she may be heard before the Court, but she is not allowed to request anything in this case.

[14] Issues analysed in this case were about determining whether an expert report on which the High Court based its ruling should be invalidated; to determine the cause of the collapsing of the wall of the house of Mutabazi Abayo Jean Claude and Muhawenimana Joselyne; determining the value of damages caused by the collapsing of the said wall and the person liable thereof; determining the person liable for damages paid by Sanlam Assurances Générales Plc; determining the amount to be paid as counsel fee and the person liable for it, as well as the issue of various damages requested in this case.

II. ANALYSIS OF LEGAL ISSUES

II.1. Whether the expert report based on in the judgment n° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG should be invalidated

[15] Murenzi Alphonse states that the first ground for the injustice suffered is based on the fact that the expert report based on by the High Court was not done under required procedures and conditions (conditions de forme), which include the fact that experts signed before taking their oath as per the Law, 1 and the fact that Eng. Hirwa Eugène, one of the experts, confirms that the report contains errors and that he was not given an opportunity to provide his opinions thereof. He states that some of the experts appointed stated that they were not aware that they had to take their oath before, while it is known that no one is supposed to be ignorant of the current law. And with regard to the report from the Laboratory that was used to test the soil, he states that it should not be considered since it was not ordered by the Court, and even when it came out, he disowned one

¹ Article 93 of the Law n° 15/2004 of 12/06/2004 on evidence and its production in courts reading that “... The report shall be signed by all the experts. The signing of experts shall be invalid, if not preceded by the following declaration: «I, swear that I have fulfilled my mission completely and conscientiously, with accuracy and honesty. May I face the law if I did not do it with the due accuracy».

of the experts who did it named Nkurunziza Alphonse due to his partiality, and all those defects should not have been ignored by the High Court by simply stating that they are typing errors, while they constitute substantial defects that may lead to the invalidation of everything done.

[16] Mutabazi Abayo Jean Claude and his Counsels, who also represent Muhawenimana Joselyne, state that the said experts who did the report referred to by the High Court have been summoned as per article 99 of the Law on evidence and its production in courts, and they took their oath for explanations they had provided, and this rectified the defect of lack of oath in the report they had submitted. They further state that the swearing in in the course of hearing for the experts who did not sign the report they submitted to the Court concurs with the position adopted by this Court in the judgment for the Prosecution vs Sibomana Nathanel, and that of the Prosecution vs Habimana Jean Claude.²

[17] They aver that Eng. Hirwa Eugène could not find errors in expert report or find it lacking his personal opinions and then sign it, while he had confirmed before the Court that he jointly prepared it together with his colleagues, and that he voluntarily signed it. They state that an expert who does not share assumptions with his/her colleagues on an expert report may provide evidence thereof but without indicating opinions of every expert involved, as per article 94 of the Law on evidence and its production in courts, which has not been the case in the instant case, and even if it was so, this should not constitute a reason for the invalidation of what has been concluded by other experts since the decision is adopted upon the majority. They find that the expert report is one of elements of evidence in this case, and apart from it, the Court also based its ruling on the report made by the Building Inspector of Gasabo district, various witnesses including the person who sold the plot to Murenzi Alphonse, masons who built his wall and basement, and the statements of the neighbours of Murenzi Alphonse whose buildings had also been damaged by Murenzi Alphonse's activities.

[18] They state that they are of the opinion of Murenzi Alphonse that the Laboratory test was not ordered by the Court, but that this cannot prevent another expert to refer to it when performing his/her work, and Murenzi Alphonse contradicts himself on this point, since he is the one who requested the use of this Test report in the Intermediate Court, and now he claims for its invalidation. They find that Murenzi Alphonse cannot benefit from disowning an expert named Nkurunziza Alphonse in this case since such a disownment has been examined and the Court found it baseless, therefore, this should not be considered as a defect for the report prepared by that expert. They aver that Murenzi Alphonse is unable to indicate defects that could lead to the preparation of a new report, and even though his request is considered, it cannot be possible because the collapsed building has been restored, and this is the reason why they request the Court to hold that there is no injustice in the case under review on this issue.

[19] Counsel Mafaranga Anastase representing SANLAM AG Plc, states that on 22/05/2018, the soils coming from the house of Murenzi Alphonse destroyed walls, damaged the car type Prado RAD 995F belonging to Mutabazi Abayo Jean Claude under the insurance of SANLAM AG Plc (ex-SORAS AG Ltd), and 2,183,000 Frw was paid to repair it, and he thus requests the instant

² See judgment n° RPA 0227/08/CS, Prosecution vs Sibomana Nathanael rendered by the Supreme Court on 19/02/2010, and the judgment n° RPAA 0321/10/CS, Prosecution vs Habimana Jean Claude, rendered by the Supreme Court on 18/03/2016.

Court to sustain the decision of the High Court and hold Murenzi Alphonse and Uwamahoro Jacqueline liable of these damages caused.

DETERMINATION OF THE COURT

[20] Article 93 of the Law no 15/2004 of 12/06/2004 on evidence and its production in courts reads that the report shall be signed by all the experts after taking their oath for their work. Article 99 of the same Law provides that on appeal, a court can summon an expert so that he or she can give verbal explanations on a report that is in the case file, and before making a report, an expert shall swear before the Court. Both articles imply that an expert submits his/her report containing his/her signature and oath. However, nothing prevents the Court to summon the concerned expert to provide verbal explanations on his/her report, of course after swearing in.

[21] The Court finds that the role of the oath is to prove to the Court that an expert has fully fulfilled his/her duties with professionalism, honesty and impartiality. The expert's signature and oath themselves are not the main reason for the Court to appoint an expert, since that is not among his/her duties, rather, when both are included in the report, they increase the trust for it.³ The signature and oath prove that an expert understands, believes and is responsible of the content of the report he/she submitted to the Court.

[22] The Court finds that the lack of oath or signature in the expert's report due to oblivion or negligence does not itself constitute a reason to invalidate such an expert report when that expert may be summoned by the Court in order to rectify those defects by signing that report or taking his/her oath before the Court as per the law.

[23] In the case of Ngingo Damien against Akaje Alexis,⁴ the very Court found that nothing prevents the alleged defects of lack of an expert's signature and oath to be rectified by summoning the concerned expert for him/her to sign and take his/her oath for his/her work. It is in the finding of the Court that in case the report is done by many experts, every expert has to sign it. However, both courts and scholars agree on that lack of the signature of one of the experts on the report approved by his/her colleagues cannot be a reason for the invalidation of that report, in case there exists evidences that the said expert contributed to that report from its preparation up to its conclusion.⁵

[24] The Court finds that the foregoing upholds that an expert who testified to the Court that he/she cooperated with his/her colleagues to prepare a report and then signed it, cannot later reject

³ "L'expert doit réaliser ses opérations avec conscience, objectivité et impartialité...Pour obtenir la garantie que les experts respectent cette obligation, la loi s'en remet pour l'essentiel au serment qu'ils prêtent d'accomplir leur mission en honneur et conscience." Reba Etienne Vergès, Géraldine Vial et Olivier Leclerc, *Droit de la preuve*, Paris, PUF, 2015, p.688.

⁴ See judgment N° RCAA 0082/12/CS rendered by the Supreme Court on 06/11/2015, paragraph 11.

⁵ "Mais attendu que c'est à bon droit que la cour d'appel a décidé que " la preuve de la collaboration et de la conformité de l'avis des deux experts Z... Rapportée, il n'y avait pas lieu de s'arrêter à une omission matérielle qui n'entraînait aucun préjudice pour les parties." See Civ 1re, 24 juillet 1973, Bull Civ I, N° 224. "l'omission de la signature d'un des experts n'entraînerait aucun préjudice pour les parties dès lors qu'étaient établies la collaboration des experts et la conformité de leurs avis." See Serge Guinchard (Eds), *Droit et pratique de la procédure civile*, Paris, Dalloz, 2014, p.1062.

such a report without first prove that he/she had no capacity to refuse to sign such a report or that he/she was unaware that he/she was going to sign it. Therefore, the statements of Murenzi Alphonse that the report entitled Panel Expert's Technical Report done on 02/07/2019 should be invalidated on ground that Eng. Hirwa Eugène does not share assumption with his colleagues on the conclusion reached, this should not be considered, since he himself agreed that he collaborated with other experts, and signed the said report, and his signature proves that he agreed with its content.

[25] The Court finds that the case file contains the report entitled Panel Expert's Technical Report done on 02/07/2019 by Eng. Hirwa Eugène (appointed by Murenzi Alphonse's party), Eng. Kassana B. Leonard (appointed by the side of Mutabazi Abayo Jean Claude), and Eng. Dr Nkurunziza Alphonse, who was their leader, upon the order of Gasabo Intermediate Court in their decision of 08/05/2019. All the three experts signed that report, however, their signing was not preceded by swearing in as per article 93 of the aforementioned Law no 15/2004 of 12/06/2004, and there is no evidence that they took their oath before the Intermediate Court of Gasabo before they were assigned their tasks.

[26] It is in the finding of the Court that the raised defect of swearing in for that report, was rectified by the High Court, since in the paragraph 22 of the judgment under review due to injustice, the very Court reminded that experts who prepared the impugned report had been summoned in order to provide verbal explanations and before doing so, they took their oath. Therefore, the instant Court is of the view of the High Court that the raised defect of not swearing in was rectified by the said swearing in conducted during the hearing of the appealed case.

[27] The Court finds that the expert's report entitled Panel Expert's Technical Report done on 02/07/2019 reiterates what have been highlighted by Report of Geotechnical Investigation of June 2019, but this does not constitute a reason for the invalidation of the report prepared by experts appointed by the Court as requested by Murenzi Alphonse, since apart from nothing prevented the appointed expert to use any lawful means that could help him/her to perform his/her work or that could provide him/her with more elucidations on his/her duties, Murenzi Alphonse does not indicate any defect in the conclusions of the Report of Geotechnical Investigation.

[28] With regard to this kind of issue, the Court finds that, a legal scholar Serge Guinchard states that the Cassation Court of France found that the fact that the expert had recourse to the elements of another expertise to which the parties were foreign and refused to hold a meeting after communication of the report, this itself cannot lead to the invalidation of an expert's report, since nothing prevents parties to criticize it, after reception of it.⁶ With regard this case, Murenzi Alphonse simply states that he does not accept Report of Geotechnical Investigation without indicating its defects, and this itself is a proof that his statements are unfounded.

⁶ "...dans une espèce où l'expert a eu recours aux éléments d'une autre expertise à laquelle les parties étaient étrangères et a refusé de tenir une réunion après communication des rapports de cette expertise, la première chambre a rejeté le moyen tiré de la nullité du rapport en raison de la méconnaissance du principe du contradictoire aux motifs que l'expert a communiqué les documents aux parties, les invitants à formuler leurs observations... dès lors que (l'expert) a rendu compte aux parties, qu'il leur a communiqué les pièces ayant servi à l'élaboration du rapport et que les intéressés ont eu la possibilité de fournir à l'expert toutes les explications utiles, (ils ne peuvent pas encore demander la nullité du rapport d'expertise). Reba Serge Guinchard (sous la dir.), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p. 1063.

II.2. Determination of the cause of the collapsing of the wall of Mutabazi Abayo Jean Claude and Muhawenimana Joselyne

[29] Murenzi Alphonse and his Counsel Habyarimana Christine state that the High Court ruled that the collapsing of the wall of Mutabazi Abayo Jean Claude was caused by the pressure of the soils, hence disregarding the poor construction of the foundation made of stones for the said wall, in addition, the wall was too short and seemed to be made of seamless stones, and this has been approved by experts' report in the case file. They elucidate that water canals from the annexed houses of Mutabazi Abayo Jean Claude were heading to pits nearby the said foundation, and as time passed, water started to enter the wall until it began to crack, hence causing humidity to all houses of Mutabazi Abayo Jean Claude until they collapsed, and he was compelled to rebuild them. They aver that the waters became too heavy due to natural disasters as indicated by the various reports from the Ministry of emergency management as well as local administration authorities which confirmed that before the wall collapsed, they had been too heavy rains in a long period, and that rain caused many damages.

[30] In their conclusion, they state that the collapsing of the wall was not caused by waters from Murenzi Alphonse's house, because much of them were captured by tanks, and the remaining ones are kept by pits located in some meters far in the compound of Mutabazi Abayo Jean Claude. With regard to the soils alleged to have pressurized the wall until it collapsed due to heavier pressure, they find this untrue, rather, what they did was to prepare the land and then plant the garden, and they thus the injustice suffered was due to the fact that the High Court disregarded the poor construction of the wall by Mutabazi Abayo Jean Claude in way that such wall could not resist obstacles from outside, and the non consideration of the role of natural disasters in the collapsing of the wall.

[31] Mutabazi Abayo Jean Claude and his counsels, who also represent his wife Muhawenimana Joselyne, state that the casefile contains various elements of evidence, all indicating that the collapsing of the wall was caused by the soils loaded on his house by Murenzi Alphonse. They state that experts found out that the collapsing of the wall was not provoked by water pits as alleged by Murenzi Alphonse, because there was no water in those pits, they are far from the collapsed wall, and their location cannot allow the water to flow upward. They add that if the collapsing of the disputed wall was caused by such pits, the house should have also collapsed since it is nearer the pits as compared to the wall, and the disputed wall should have not resisted for the whole period of eight years.

[32] They add that the statement that the level of water increased due to natural disasters is found nowhere in the experts report and that all kind of rain cannot be considered as a disaster, because all natural disaster are classified and defined by the law, and till now, Murenzi Alphonse failed to prove that the collapsing of his wall was caused by the flooding caused by heavy rains, and there is no reason to compare his wall to roads or hills in various places countrywide damaged, since the report by Meteo Rwanda of 21 and 22/05/2018 indicates the level of rain fallen in their region, and the same report confirmed that such a rain cannot be considered as a natural disaster. They state that Murenzi Alphonse completed his building activities in 2017, and the collapsing of the walls happened in May 2018, that his mason named Nzabandora Elie, and videos from google confirm that there was no single water pit Murenzi Alphonse has put in his yard up to 22/05/2018.

[33] In their conclusion, they state that Murenzi Alphonse accepted before the Court that some mistakes were done during his building activities, and the same mistakes were confirmed by the report of experts appointed by Gasabo Intermediate Court, the report by Building Inspector in Gasabo District, various witnesses (including the person who sold a plot to him, the mason of the wall which collapsed, the person who build the foundation, among others), neighbors' statements during investigation including those whose buildings were destroyed by Murenzi Alphonse before the collapsing of the wall of Mutabazi Abayo Jean Claude, as well report from local authorities. For them, all the foregoing elements of evidence have been so duly examined that failure to consider them could lead to injustice.

DETERMINATION OF THE COURT

[34] Article 76 of the Law n° 15/2004 of 12/06/2004 on evidence and its production in courts reads that: "Evidence by experts is that which is intended to give to the court, explanations based on expertise as well as conclusion which is beyond the ordinary knowledge of a judge in his or her duties, depending on the underlying special expertise".

[35] The case file contains experts' report entitled Experts' Panel Technical Report indicate that the construction of the house of Murenzi Alphonse was completed in 2017, and at that time, the article that was applicable was 2.6.5.19.3 of Rwanda Building Code annexed to Ministerial Order n°04/Cab.M/015 of 18/05/2015 determining urban planning and building regulations, which provides that walls built to retain or support the lateral pressure of earth or water or other superimposed loads shall be designed and constructed of approved masonry, reinforced concrete, steel sheet piling or other approved materials within the allowable stresses specified in this Code and the subsoil drainage shall be required behind the retaining wall together with sufficient weep outlets in such wall in order to prevent the accumulation of water.⁷ And article 2.6.5.19.4 of the same Code reads that no surcharge of fill shall be permitted to be placed behind retaining wall within a distance equal to the height of the wall.⁸

[36] The case file indicates that, in ruling that the collapsing of the wall of Mutabazi Abayo Jean Claude was caused by construction failures by Murenzi Alphonse, the High Court based on the following elements of evidence:

- i. Analysis made by experts who prepared the report entitled Experts' Panel Technical Report confirmed that the wall of Mutabazi Abayo Jean Claude was strong enough, rather, its collapsing was caused by the pressure from the soils loaded on it by Murenzi Alphonse;
- ii. Analysis made by experts who prepared the report entitled Geotechnical Investigations confirmed that the wall of Mutabazi Abayo Jean Claude was strong but that it failed to resist what was loaded on it;

⁷ "Walls built to retain or support the lateral pressure of earth or water or other superimposed loads shall be designed and constructed of approved masonry, reinforced concrete, steel sheet piling or other approved materials within the allowable stresses specified in this Code and the subsoil drainage shall be required behind the retaining wall together with sufficient weep outlets in such wall in order to prevent the accumulation of water."

⁸ "No surcharge of fill shall be permitted to be placed behind the retaining wall within a distance equal to the height of the wall."

- iii. The report prepared by Sibomana Adolphe, Building Inspector of Gasabo district concluded that the collapsing of the wall resulted from substandard construction activities by Murenzi Alphonse because the soils he loaded for the backfill of his plot overweighed the wall of Mutabazi Abayo Jean Claude, hence causing its destruction;
- iv. The investigation by Gasabo Intermediate Court revealed that the house of Mutabazi Abayo Jean Claude is downside the plot of Murenzi Alphonse, and the collapsed wall was supported to the hillside, and that Murenzi Alphonse loaded the soils for the backfill of his plot, and the pits for containing waters from Murenzi Alphonse are at upward side at the back of the compound of Mutabazi Abayo Jean Claude;
- v. Parties' witnesses interviewed by Gasabo Intermediate Court during investigation confirmed that the collapsing of the wall was caused by the soils that Murenzi Alphonse loaded at the upside of the house of Mutabazi Abayo Jean Claude, and this was not the first time for this to happen, since there are other neighboring buildings which suffered the same fate, and Murenzi Alphonse rebuilt them.

[37] It is in the finding of the Court that the experts' report entitled Experts' Panel Technical Report indicates that stones making the wall of Murenzi Alphonse started at the level of bricks making the wall of Mutabazi Abayo Jean Claude, and those stones (of the wall of Murenzi Alphonse) were built using stable soil, on each other in the upward side, and the waters were channeled in two pits in the garden located in the backside of the wall of Mutabazi Abayo Jean Claude, therefore, the collapsing of the wall was caused by the following:

- i. The pressure from the soils that Murenzi Alphonse loaded in his plot for backfilling;
- ii. The foundation of the wall of Murenzi Alphonse which was sub standardly built and that was badly designed, build upwardly, which is contrary to the code and standards on building, and the fact that such wall had not steels to make it strong;
- iii. The clay silt soil used by Murenzi Alphonse become heavy once it absorbs water;
- iv. The fact that, in building his wall, Mutabazi Abayo Jean Claude was not expecting the clay slit soils to be loaded on his wall, hence not using reinforced concrete.

[38] The Court found that the report prepared by the Inspection of Gasabo district on 23/05/2018, a day after the collapsing of the wall, reads that: "...it is evident that the collapsing of the wall ... was caused by substandard construction activities of Mutabazi Abayo Jean Claude, because the backfilling of his plot overweighed the retaining wall built by Abayo Jean Claude while the retaining wall built by Murenzi had no weep outlets because he joined it with the wall in bricks that was previously built by Abayo".

[39] It is in the finding of the Court that Murenzi Alphonse does not criticize anything for the report by Gasabo district, and when such report is joined to Experts' Panel Technical Report, they both indicate that in building his wall, Murenzi Alphonse made the following mistakes which provoked the collapsing of the wall of Mutabazi Abayo Jean Claude:

- i. The foundation which does not reach the underneath of the ordinary level of the soil before starting building stones;

- ii. Building stones on the stable soil without putting there weep outlets for channeling water once entered the soil;
- iii. Loading soils that overweigh the wall previously built by Mutabazi Abayo Jean Claude, and retain such soils with a foundation in stones which is not deep enough and with no weep outlets.

[40] The Court finds that the Cassation Court of France found that when the mason has exceeded the maximum authorised loads on a retaining wall (dépassement des charges maximales autorisées sur un mur de soutènement), he/she has to be individually held liable of such mistakes, and no one else.⁹

[41] Based on all the foregoing reasons in the previous paragraphs, the Court finds that, since there is no report to support the statements of Murenzi Alphonse that the collapsing of the wall of Mutabazi Abayo Jean Claude was a result of the water from pits that entered the wall near those pits until it collapsed, and there exists no declaration from natural disaster management (déclaration de catastrophe naturelle) stating that there had been serious natural disasters in the area where the disputed wall is located proving that the collapsing of the wall might have been provoked by frequent previous heavy rains, the High Court was right in ruling that the collapsing of the wall of Mutabazi Abayo Jean Claude was caused by building failures by Murenzi Alphonse.

II.3. Determination of the value of damages caused by the collapsing of the wall of Mutabazi Abayo Jean Claude and Muhawenimana Joselyne

[42] Murenzi Alphonse and his Counsel Habyarimana Christine state that the experts' report referred to in awarding compensation does not indicate the real value of damages, that the Court awarded compensation based on emotional computing of damages, hence awarding excessive compensations and unreasonably increasing the wealth of Mutabazi Abayo Jean Claude, and they thus request that in case the instant Court decides to award compensations, such compensations have to be professionally computed by indicating the real value of damages.

[43] Mutabazi Abayo Jean Claude and his counsels, who also represents Muhawenimana Joselyne state that construction failures by Murenzi Alphonse are the real cause of the collapsing of both walls, and that both the previous Courts based on the experts' report appointed by the Court which indicated damages and their value on the side of Mutabazi Abayo Jean Claude. The aver that the statements that the value of damages was determined based on emotions instead of referring on experts' report, are untrue, especially since the annexed houses of which Mutabazi Abayo Jean Claude wished that they be compensated by Murenzi Alphonse, the Court removed them from damages to compensated. They state that Murenzi Alphonse did not criticize the experts' report at the first instance for it was professionally prepared, and even in the High Court, he did not appeal for it, because he was satisfied with the ruling of Gasabo Intermediate Court, therefore, he should not raise such an issue for the first time in the Supreme Court.

DETERMINATION OF THE COURT

⁹Cass. Civ. 3è, 26 mars 1997, N° 94-21, 808 Bull.Civ. III, N°69.

[44] With regard to the issue of the value of damages caused by the collapsing of the wall of the house belonging to Mutabazi Abayo Jean Claude and Muhawenimana Joselyne, as it is indicated in the case file, the ground of appeal lodged by Counsel Turatsinze Emmanuel representing Murenzi Alphonse in the High Court, stated that: “The fact that the Court awarded damages based on the collapsing of properties built contrary to the law (district report)”. In motivating this ground, he did not criticize the value of computed damages, rather, he stated that the report from Gasabo district confirmed that Mutabazi Abayo Jean Claude carried out construction activities contrary to the law, and therefore, he should not be awarded any compensation.

[45] The issue of whether decided issues which have not been appealed can be reintroduced during the review of the judgment due to injustice, has been examined by this Court in various cases including that of Ngizweninshuti Albert against Muhima Giovanni,¹⁰ where the very Court found that article 55, last paragraph,¹¹ and article 63¹² of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, both jointly read, they imply that any party entitled to ordinary of remedies of appeal but that fails to use such a right provided by law, deprives his/herself of the right to appeal procedure which could enable him/her to get his/her issues resolved at the appellate level, and such a party is not allowed to apply for review of a case he/she lost because of injustice, by disregarding other adjudicated cases, and then requests for the examination of the issues of injustice of which he/she him/herself refused to appeal against, since this is against the law.¹³

[46] It is therefore in the finding of the instant Court that since Murenzi Alphonse has not lodged an appeal against the issue of the value of damages caused by the collapsing of the the disputed wall before the High Court, the instant Court finds unfounded to analyse such an issue in the review due to injustice.

II.4. Whether Murenzi Alphonse and Uwamahoro Jacqueline should be held liable for damages claimed by SANLAM Assurances Générales Plc

[47] Murenzi Alphonse and his Counsel Habyarimana Christine state that they are not concerned with the contract concluded between Mutabazi Abayo Jean Claude and SANLAM Assurances Générales Plc, and they do not understand how they could be held liable of the damages caused by Mutabazi Abayo Jean Claude when deciding to park his cars near the wall with fractures that could seemingly lead to its collapsing.

¹⁰ See judgment N° RS/INJUST/RC 00024/2018/SC rendered by the Supreme Court on 21/02/2020, paragraphs 18-22. See also judgment N° RS/INJUST/RC 00007/2018/SC rendered on 13/03/2020, for Nditiribambe Samuel, Gatera Jason vs Nyamaswa Faustin and judgment N° RCOM RS/ INJUST/ RC 00004/2019/SC rendered on 28/07/2020, for Mukamana, Havugimana, Umuhoza vs Candali.

¹¹ “...any party entitled to ordinary and extraordinary remedies but that fails to assert his/her right within the time limit provided by law, is not allowed to apply for review of a case he/she lost because of injustice ... “

¹² “When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgement on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties”.

¹³ Article 170 of the Law n°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure that was applicable by the time of adjudicating this case, reads that: “The subject matter to be decided by the appeal court shall be limited to what is in the appeal. The court may only decide on the issues brought forth by the appellant and respondent at the appeal level”.

[48] Counsel Mafaranga Anastase, representing SANLAM Assurances Générales Plc states that Murenzi Alphonse and Uwamahoro Jacqueline should be held liable of the damages paid by SANLAM AG Plc because this company had provided insurance for accidents, and it therefore paid 2,183,000 Frw used for the reparation of the two cars damaged due to construction failures by Murenzi Alphonse, failures which lead to the collapsing of his wall and that of Mutabazi Abayo Jean Claude.

DETERMINATION OF THE COURT

[49] Article 32 of the Decree- Law no 20/75 of 20 June 1975 relating to insurances that was applicable at the time of filing a claim, provided that: “An insurer who paid damages for what he/she agreed to insure replaces the insuree, in accordance with the paid damages, on matters relating to rights and pursuing persons who made him/her pay because of their activities”.¹⁴

[50] The Court finds that the case file indicates that both Gasabo Intermediate Court and High Court awarded damages amounting to 2,183,000 Frw to SANLAM Assurances Générales Plc on ground that, as per the experts’ report, the accident that led to the damaging of cars belonging to Mutabazi Abayo Jean Claude was caused by construction failures by Murenzi Alphonse, and the latter failed to indicate before this Court the other cause of the damaging of the said cars other than the collapsing of the wall of Mutabazi Abayo Jean Claude provoked by the aforementioned construction failures.

[51] It is also in the finding of this Court that the statements that the damaging of the cars of Mutabazi Abayo Jean Claude was caused by the collapsing of the wall of Murenzi Alphonse, have been approved by the report by Nyirabwana village authorities. In that report entitled “Statements on what happened in Nyirabwana village”, this report confirms that the damaging of the said cars was provoked by the soils loaded on the wall of Mutabazi Abayo Jean Claude by Murenzi Alphonse, and such wall absorbed water until it collapsed. The statements that the wall had started to crack cannot be a reason for holding Mutabazi Abayo Jean Claude liable of the consequences of the soils loaded on his wall by Murenzi Alphonse. They had agreed that Murenzi Alphonse had to build weep outlets in the said soils, and did not, therefore, Mutabazi Abayo Jean Claude cannot be accused of poor forecasting since he could not predict when it would rain, the kind of that rain or its impacts on the loaded soils, so as not to park his cars in the ordinary parking for fear of the collapsing of the wall.

[52] The Court finds that Murenzi Alphonse should not be acquitted of the liability of damages by the fact that he is not a party to the insurance contract for the said cars, because since he is the one who caused the damaging of the cars, and he did not immediately pay for damages caused by his activities, he has the duty to refund SANLAM Assurances Générales Plc the amount paid for those damages as per article 32 of the aforementioned Decree- Law n° 20/75 of 20 June 1975.

II.5. Whether Murenzi Alphonse should not pay the expert fee

¹⁴ This Decree- Law was repealed by the Law N° 030/2021 of 30/06/2021 governing organisation of insurance business published in the Official Gazette of 02/08/2021.

[53] Murenzi Alphonse and his Counsel Habyarimana Christine argue that the experts appointed by the Court should be paid by both parties, but the party who will lose the case has to refund the winning party. They explain that this has not been the case since Mutabazi Abayo Jean Claude secretly negotiated with all experts on the expert fee, which is excessive and in US dollars, without communicating Murenzi Alphonse, and consequently, Mutabazi Abayo Jean Claude should be pay such a fee alone.

[54] Mutabazi Abayo Jean Claude and his counsels who also represent Muhawenimana Joselyne state that such an issue should not be examined at the level of the review due to injustice since it was not appealed in the High Court. They explain that in case that issue is analysed, the instant Court will find that the expert fee has been determined a team of experts in order to avoid that each expert concludes a contract with the person who hired him/her, and in that team includes Eng. Hirwa Eugène who was hired by Murenzi Alphonse. They state that e-mails and documents in the case file indicate how experts and parties negotiated on the expert fee, and they agreed on 6,173 USD, and each expert was given 1/3 of that amount, and Eng. Hirwa Eugène confirmed before the High Court that he received that amount. They further add that the statements that the expert fee is excessive, counted in US dollars, and that it was not agreed on by both parties, are untrue, and they thus pray the Court to hold that Murenzi Alphonse has to pay the expert fee since the collapsing of the wall was caused by his construction failures.

DETERMINATION OF THE COURT

[55] Article 273, paragraph 3, of the Law n°22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, reads that "... The losing party refunds to the winning party the honoraria paid to experts and interpreters..."

[56] The Court finds that, as per the content of the case file, during the hearing of 22/05/2019 before the Intermediate Court, Murenzi Alphonse stated that he does not refuse to pay the expert fee, rather, he wanted to negotiate the price with them, and in the hearing of 16/10/2020, he stated that Mutabazi Abayo Jean Claude secretly agreed with the experts on an exorbitant fee with the intention to come up with the report containing his opinions only, thus requesting to create a new team of experts allowing each party to have an expert of their choice, and later allow chosen experts to appoint the third expert, and then agree with parties on the fee. The Court found such point baseless, meaning that the statement of Mutabazi Abayo Jean Claude that such an issue has not been submitted to the High Court for examination, unfounded.

[57] The Court finds that in the paragraph 25 of the judgment under review due to injustice, the High Court found that Eng. Dr Nkurunziza Alphonse who was the team leader of the appointed experts at first requested 500 USD per day as expert fee, but after negotiations with Mutabazi Abayo Jean Claude, they agreed on 300 USD per day. Murenzi Alphonse is unable to prove the veracity of his statement that he negotiated with Eng. Hirwa Eugene Valery and agreed on a low price, while this one was representing the team of experts, especially since Eng. Hirwa Eugene Valery later on adopted the agreement reached on by the team leader of experts and accepted the price agreed on with Mutabazi Abayo Jean Claude on the behalf of the entire team.

[58] The Court further finds that the issue that the agreed price was in US dollars, this should not be a reason for Murenzi Alphonse to refuse to perform his obligations of paying an expert fee,

since both parties agreed on the duties of experts and their fee thereof, nothing can therefore prevent the execution of concluded agreement since such agreement are binding for parties to it.

[59] Based on the foregoing elucidations as well as the lack of merit for grounds on which Murenzi Alphonse bases the alleged injustice he suffered, it is in the finding of the Court that Murenzi Alphonse has to pay the expert fee as agreed on by parties and as decided by Gasabo Intermediate Court.

II.6. Determination of the merit of damages requested in this case

[60] Murenzi Alphonse and his Consel Habyarimana Christine state that, the fact that Mutabazi Abayo Jean Claude built with no construction permit, and did not built proper management of water from his buildings, which led to the collapsing of the wall of Murenzi Alphonse and Uwamahoro Jacquéline, and they thus request the instant Court to order him and Muhawenimana Joselyne to jointly pay them 4,000,000 Frw for the rehabilitation of the wall, 5,000,000 Frw as moral damages for the pain suffered by Murenzi Alphonse and his family, 1,000,000 Frw for procedural fee at all levels, 3,000,000 Frw for the Counsel fee at the level of Gasabo Intermediate Court and High Court, 5,000,000 Frw for Counsel fee at this level, as well as 80,000 Frw for court fees deposited for the appeal in the High Court.

[61] Mutabazi Abayo Jean Claude and his counsels who also represent Muhawenimana Joselyne find all damages requested by Murenzi Alphonse unfounded, since he is the one who provoked the collapsing of the wall as confirmed by all reports. They state that, instead, Mutabazi Abayo Jean Claude and Muhawenimana Joselyne should be the ones to be awarded damages amounting to 10,000,000 Frw, meaning 1,000,000 Frw for procedural fee and 3,000,000 Frw for counsel fee at the level of the Supreme Court.

[62] Counsel Mafaranga Anastase representing SANLAM Assurances Générales Plc, allege to be frequently dragged in unnecessary lawsuits, hence requesting the instant Court to order Murenzi Alphonse and Uwamahoro Jaqueline to pay them 1,500,000 Frw for procedural and counsel fees.

DETERMINATION OF THE COURT

[63] Article 111 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, reads that: “The claim for representation fees is an incidental claim to the principal claim aimingto repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted.

[64] The Court finds that all the damages requested by Murenzi Alphonse should not be awarded to him since he won nothing in this case.

[65] The Court further finds that the moral damages requested by Mutabazi Abayo Jean Claude in this case should not be awarded to him, because, apart from the fact that he is unable to explain how the collapsing of the wall of his house fence engrieved him, he cannot use the application filed by Murenzi Alphonse for the review of the judgment due to injustice, to submit any request while he was satisfied with the judgment under review.

[66] The Court finds that Mutabazi Abayo Jean Claude and Muhawenimana Joselyne deserve the requested counsel and procedural fees since they followed up the proceedings of this case and hired legal counsels to assist them. However, they failed to prove the use of 1,000,000 Frw for the procedural fee and 3,000,000 Frw requested at this level in this case, therefore, in its discretion, the Court awarded to them 300.000 Frw for procedural fee and 500,000 Frw for counsel fee.

[67] The Court further finds that 1,500,000 frw for the procedural and counsel fees requested by SANLAM Assurances Générales Plc should not be awarded since they failed to prove the use this amount at this level, therefore, in its discretion, the Court awards to them 300.000 Frw for procedural fee and 500,000 Frw for counsel fee.

III. DECISION OF THE COURT

[68] Holds that the application filed by Murenzi Alphonse for the review of the judgment n° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG rendered by the High Court on 19/02/2021, lacks merit;

[69] Holds that the ruling of the judgment n° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG rendered by the High Court on 19/02/2021, is sustained, and the decision to be executed is as follows:

- “78. Ruled that the judgment n° RC 00203/18/TGI/GSBO rendered on 8/11/2019 by Gasabo Intermediate Court is reversed in part;
- 79. Orders that 3,369,336 Frw for the value of the annexed houses and 2,183,000 Frw that was awarded to SANLAM AG PLC Ltd, are removed from damages awarded to Mutabazi Abayo Jean Claude and Muhawenimana Alphonsine¹⁵ at the first instance;
- 80. Orders Murenzi Alphonse and Uwamahoro Jacqueline to pay 740,000 Frw for counsel, procedural and court fees to Mutabazi Abayo Jean Claude and Muhawenimana Joselyne;
- 81. Orders Murenzi Alphonse and Uwamahoro Jacqueline to refund to SANLAM AG PLC Ltd 2,183,000frw used for the reparation of the car of Mutabazi Abayo Jean Claude and Muhawenimana Joselyne;
- 82. Holds that court fees deposited by Murenzi Alphonse and Uwamahoro Jacqueline for the appeal cover expenses incurred in this case;”

[70] Orders Murenzi Alphonse to pay Mutabazi Abayo Jean Claude and Muhawenimana Joselyne 300,000 Frw for procedural fee and 500,000 Frw for counsel fee at this level, all amounting to 800,000 Frw;

[71] Orders Murenzi Alphonse to pay SANLAM Assurances Générales Plc 300,000 Frw for procedural fee and 500,000 Frw for counsel fee at this level, all amounting to 800,000 Frw.

¹⁵ This is a typing error; it is Muhawenimana Joselyne.