

RWANDA / JUDGMENT

GATO v. NSABIMANA ET AL

RC0007/15/CS

COURT

Supreme Court

DECIDED

12 February 2016

CASE / FILE NUMBER

RC0007/15/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

GATO v. NSABIMANA ET AL

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-02-12
- Case/document no.: RC0007/15/CS
- Collection: Supreme Court

Text

Page 1

GATO v. NSABIMANA ET AL [Rwanda SUPREME COURT – RC0007/15/CS (Nyirinkwaya, P.J., Mukandamage and Nyirandabaruta, J.) February 12, 2016] Law determining jurisdiction of Courts – Jurisdiction of the Supreme Court – Petition for the resolution of contradictory judgement decisions at the last instance – Parties in the petition for the resolution of the issue of contradictory judgements – Contradiction between judgment decisions arises when it concerns decisions taken on same subject matter of the case, same parties from one or different courts – Albeit the Law is silent with regard to the initiation of the petition for the resolution of contradictions that arise among judgement decisions, especially for parties who should be involved; the Supreme Court finds it necessary for all parties in the judgments in contradiction to be sued in petitions for the resolution of their contradictions – Organic Law No03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 29(12). Damages – damages requested through counterclaim – Procedural expenses – Moral damages – Counsel fees – A counterclaim is any claim filed by the defendant, seeking judgement against the plaintiff – Any act committed by a person which causes damage to another obliges him by whose fault it happened to repair it – Law N°21/2012 of 14/06/2012 relating to civil,

commercial, labour and administrative procedure, article 106 – Law of 30/07/1888 relating to contracts or conventional obligations, article 258. Facts: Nzagezahe and Basoma Nzagezahe Assoumani jointly purchased the land N° 200 situated in the commercial area in Ruhengeri City and contributed to build a house with two apartments in the same plot. They remained in the co-ownership before the general registration of land. In the course of the general land registration, their successors partitioned it in two plots and one was given N° 1526 and awarded to Nzagezahe's heirs and another one was given N° 1527 and awarded to Basoma's heirs. After the partitioning for both plots, Gato desired to buy them and concluded a provisional contract with Ngezehe and Basoma's heirs but he finally acquired the portion belong to Basoma's heirs because Uwera Aisha who is one of the heirs of Nzagezahe initiated a claim before the Intermediate Court of Musanze alleging that the house of his parent Nzagezahe located in Commercial area in Ruhengeri Town was provisionally sold on 18 June 2011 at 55,000,000Frw unknowingly. This Court rendered the judgment RC0054-0056/12/TGI/MUS on 21 September 2012 and held that the provisional sale contract concluded on 18 June 2011 is void with regard to Nzagezahe's family. After the judgment was rendered, Gato petitioned for the transfer of the house with the value equivalent to 25,000,000Frw which is located on plot N° 1527/Mus/Muh and the heirs of Basoma who were represented by Hategekimana Dorothee were forced to intervene in the case whereby in the judgment RC0146/13/TGI/MUS rendered by the Intermediate Court of Musanze on 17 September 2013, this court found his claim with merit and ordered the house to be registered in his name. Gato pursued and initiated another case against Abdus Salaam Khassim Nsabimana and Ndayambaje Idrissa was forced to intervene. Gato alleged that they occupied by force his property constituted by the plot N° 1527/Mus/Muh with the value of 12,500,000Frw, and in the judgment RC0043/13/TGI/MUS rendered on 10 January 2014, the Intermediate Court of

Page 2

Musanze held that there exist no any part of Gato's property in the plot N° 1527 occupied by the heirs of Nzayigezahe Assoumani. Gato lodged an appeal against the judgment RC0043/13/TGI/MUS in the High Court, chamber of Musanze, and in the judgment RCA012/14/HC/MUS it rendered on 04 December 2014, , it was held that no evidence was disregarded in the appealed judgment, therefore his appeal claim lacks merit and the judgment J RC0043/13/TGI/MUS is upheld. After all those judgments, Gato submitted his case to the Supreme Court whereby he requested the resolution of contradiction between final judgments which are the judgments RC0054- 0056/12/TGI/MUS joined in the judgment RC0146/13/TGI/MUS rendered by the Intermediate Court of Musanze on 17 September 2013 and the judgment RCA012/14/HC/MUS rendered by the High Court, Chamber of Musanze on 4 December 2014. He states that they contradict each other because he was awarded the plot N° 1527 in the judgment RC0146/13/TGI/MUS and in the judgment RC0146/13/TGI/MUS while he was deprived of it in the judgments RC0043/14/TGI/Mus and appealed to RCA012/14/HC/Mus. At the beginning of the hearing, Counsel Nzayisenga Francis for Abdus Salaam Khassim raised an objection of inadmissibility of the claim stating that his client has no status to be sued personally because in the judgments Gato alleges to contradict each other; Abdus represented the heirs of Nzagezahe. Ndayambaje Idrissa

was represented by Counsel Counsel Uwimana Channy while the succession of Basoma was represented by Counsel Niyodusenga Gérald. Counsel Channy Uwimana and Counsel Niyoduseng Gérald states that the claim should not be admissible because there are parties sued in the judgments alleged to be contradictory by Gato but who did not appear in this case. On this objection, Counsel Gatware Ngango Edson for Gato states that Nsabimana Abdus Salaam Khassim appeared either in person in the judgment RC0054-0056/12/TGI/MUS or on behalf of his family, therefore he is linked to the case either personally or under family representation. He states in addition that he sued all parties in all cases and that in accordance with article 29(12) of the Organic Law No03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, the procedure for contradictory judgments does not provide for the summoning of all parties, especially that the objective in this case is to petition for contradictory judgments rather than suing parties, therefore he sued those closely involved in contradictory judgments. The defendants raised counterclaims in which they requested to be paid by the claimant various damages including moral damages, damages relating to being dragged into unnecessary lawsuits and counsel fee. Counsel Gatware Ngango Edson for the claimant, states that those damages requested for by the defendants are groundless because in the course of deliberation all judges did not mention any mistake. Held: 1. In case of contradictory judgments, parties should be identical and it is necessary for all these parties in the contradictory judgments to be sued in the case relating to the resolution of their contradiction. Therefore, the fact that parties in judgments alleged to be contradictory by Gato are not identical and that all of them were not summoned, his petition and requested damages are groundless.

2. The claimant should pay 800,000Frw of procedural expenses and counsel fees to each defendant because they spent some money for this case. However, other damages should not be paid because no related grounds were provided.

Page 3

Petition is without merit. Counterclaim with merit in parts. Court fees to the claimant. Statutes and statutory instruments referred to: Organic Law No03/2012/OL of 13/06/2012, determining the organisation, functioning and jurisdiction of the Supreme Court, article 29(12). Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 106. Law of 30/07/1888 relating to contracts or conventional obligations, article 258. Cases referred to: Nyirabikari v. Mukamugenzi et al., RC0003/15/CS, rendered by the Supreme Court, on 24/07/2015. Mukanoheri v. Butera, RC0002/15/CS, rendered by the Supreme Court, on 18/09/2015. Authors cited: JACQUES Boré, La cassation en matière civile, Sirey, Paris, 1980, pp.607, 611-613. http://encyclopedie_universelle.fracademic.com/83839/Contrari%C3%A9t%C3%A9_de_jugements, consulté le 05/02/2016.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Nzagezahe Assoumani and Basoma Antoine purchased jointly the plot of land N°200 located in commercial area in Ruhengeri town. They built a house with two (2) apartments on the plot which they owned in condominium before the first land registration. During the first land registration, their heirs partitioned it into two plots, and one was numbered N° 1526 and was awarded to the heirs of Nzagezahe while the other was numbered N° 1527 and awarded to the heirs of Basoma Antoine. [2] Gato John manifested the intention to buy both plots, and concluded a contract with the heirs of Nzagezahe Assoumani and Basoma Antoine, but he finally acquired only the one belonging to the heirs of Basoma Antoine and the plot belonging to the heirs of Nzagezahe Assoumani because Uwera Aisha seized the court alleging that her father's house located in the commercial area in Ruhengeri town was provisionally sold on 18 June 2011 on 55,000,000Frw without his knowledge. In the judgment RC0054 – 0056/12/TGI/MUS rendered on 21 September 2012, the Court held that the provisional sale contract of 18 June 2011 is void with respect to the family of Nzagezahe Assoumani. [3] Nyuma y'uho urwo rubanza ruciwe, Gato John yatanze ikirego kigamije gusaba ko haba iherekanya ry'inzu (mutation) ifite agaciro ka 25.000.000Frw iri mu kibanza N° 1527/Mus/Muh, agobokesha abazungura ba Basoma Antoine bahagarariwe na Hategekimana Dorothee, maze mu rubanza RC0146/13/TGI/MUS, rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 17/09/2013, hemezwa ko ikirego cyefite ishingiro, rutegeka ko icyo nzu imwandikwaho.

Page 4

[4] Again, Gato John submitted his claim against Abdus Salam Khassim Nzabimana and Ndayambaje Idrissa was forced to intervene whereby he alleges that they appropriated themselves with his property located in the plot N°1527/Mus/Muh with the value of 12,500,000Frw, and in the judgment RC0043/13/TGI/MUS delivered on 10 January 2014, the Intermediate Court of Musanze held that there exists no any part of Gato John's property included in the plot N° 1527 which the heirs of Nzayigezahe Assoumani appropriated. Afterwards, he initiated another case for the rectification of the judgment RC0043/13 /TGI/ MUS and it was held in the judgment RC Rect 0011/14/TIG/MUS rendered on 21 April 2014, that the judgment RC0043/13/TGI/MUS is rectified, therefore where the defendant is mentioned as Abdus Salaam Khassim Nsabimana be rectified and replaced by Abdus Salaam Khassim Nsabimana who represents Succession Nzagezahe Assoumani, but that the ruling of the judgment RC Rect 0011/14/TGI/Mus is not likely to impact on the ruling of the rectified judgment RC0043/13/TGI/MUS [5] Gato John lodged an appeal against the judgment RC0043/13/TGI/MUS to the High Court, Chamber of Musanze, which held in the judgment RCA012/14/HC/MUS rendered on 4 December 2014, that no evidence presented in appealed case was disregarded, therefore that his appeal lack merit and the judgment RC0043/13/TGI/ MUS is upheld. [6] After all those judgments, Gato John seized the Supreme Court requesting it to resolve the contradiction between final judgments RC0054-0056/12/TGI/MUS joined together, RC0146/13/TGI/MUS rendered by the Intermediate Court of Musanze on 17 Septemebre 2013 and the judgment RCA012/14/HC/MUS rendered by the High Court,

Chamber of Musanze on 4 December 2014. He alleges that they contradict each other because he was awarded the plot N° 1527 in the judgments RC0054-0056/13/TGI/Mus and RC0146/13/TGI/MUS while in the judgment RC0043/14/TGI/Mus he was deprived of it. [7] The hearing was conducted on 12 January 2006 in the presence of all parties, whereby Gato John was represented by Counsel Gatware Ngango Edson, Abdus Salaam Khassim Nsabimana was represented by counsel Nzayisenga Francis, Ndayambaje Idrissa was represented by Counsel Uwimana Channy while Succession Basoma Antoine was represented by Counsel Niyodusenga Gérard. II. ANALYSIS OF LEGAL ISSUES

- 1) Concerning the objection of inadmissibility of the claim based on the fact that it was sued a wrong person. [8] At the beginning of the hearing, it was examined the objection of inadmissibility of the claim raised by Counsel Nzayisenga Francis since his client Abdus Salaam Khassim Nsabimana has no statuts to be sued individually while in the judgments that Gato John alleges to be contradictory Abdus appeared on behalf of the heirs of Nzagezahe Assoumani. Counsel Channy Uwimana and Counsel Niyodusenga Gérard states also that the claim should not be admitted because there are parties sued by Gato John in the judgments alleged to be contradictory who are not present in this case, while Counsel Gatware Ngango Edson representing Gato John states that in the judgment RC0054-0056/12/TGI/MUS, Nsabimana Abdus Salaam Khassim appeared for his own and that in another instance he represented her family, therefore he is linked to the case either personally or through family representation. [9] In the decision pronounced immediately after the hearing, the court held that the grounds presented by parties whereby they allege that Gato John sued a wrong person, does not

Page 5

qualify as a ground of inadmissibility of the claim, rather, the claim is admitted and examined and this being likely a ground of loss of the case by the the claimant.

- 2) Whether the parties in cases relating to contradictions among judgments should be the same and be sued and summoned. [10] Counsel Me Nzayisenga Francis for Abdus Salaam Khassim Nsabimana states that Gato John sued him only while there are other persons who are members of Nzagezahe Assoumani's family. He states in addition that Abdus Salaam Khassim Nsabimana is one of this family members who has the right to the disputed property in the judgments alleged to be in contradictions, therefore that if other family members of Nzagezahe Assoumani family do not participate as parties in it till the end of this case, they would submit a third party opposition against the judgment or Abdus Salam Khassim Nsabimana would fraud them. [11] Counsel Uwimana Channy for Ndayambaje Idrissa states also that he finds that there are parties who were not sued by Gato John, and that Ndayambaje Idrissa should not be sued because he has not been a party in some of the judgments alleged to be contradictory. Counsel Niyodusenga Gerard for the heirs of Basoma Antoine states also that the grounds presented by his colleagues are grounded. [12] Counsel Gatware Ngango Edson for Gato John states that the statements of his colleagues are

groundless because in the judgment RC0054-0056/12/TGI/MUS, Abdus Salaam Khassim Nsabimana pleaded on his own, while he represented his family in other cases, therefore he has been involved personally or as a representative of his family, and that all persons he sued are apparent in all judgments. He states in addition that the hearing procedure of cases in relation to contradictory judgments does not provide for the summoning of all parties, reference made to article 29(12o) of the Organic Law No03/2012/OL of 13/06/2012, determining the organisation, functioning and jurisdiction of the Supreme Court, since the objective in this case is to attack the contradictions among judgments rather than suing parties, therefore he sued those he believed to have a close link with contradictory judgments. REASONS FOR COURT'S DECISION [13] Article 29 al.12 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court provides that this court has jurisdiction to resolve contradictions between final judgments. [14] The court finds that apart from the jurisdiction assigned to the Supreme Court to resolve the contradiction between final judgments, nowhere in this organic law or in other Rwandan laws it was provided for the meaning of contradictions between judgments. However, some law scholars wrote on the topic : " The contradictory judgments can be invoked when two decisions, even not final are irreconcilable and that none of them is subject to ordinary remedy which are on the same subject matter and between same parties "1. This reasoning is similar to the writings of other scholars which state that "The contradiction between judgments imply the

1 La contrariété de jugements peut être invoquée lorsque deux décisions, même non rendues en dernier ressort, sont inconciliables et qu'aucune d'elles n'est susceptible d'un recours ordinaire... Le jugement doit porter sur le même objet... Aucune contrariété de jugements ne saurait donc être invoquée s'il n'y a pas identité des parties entre les deux décisions...(JACQUES Boré : La cassation en matière civile, Sirey, Paris, 1980, PP.607, 611-613).

Page 6

opposition likely to exist between decisions on the same subject matter and between the same parties, from the same court or of different courts "2. [15] It is indicated in the documents of the file judgment RC0054/012/TGI/MUS - RC0056/012/TGI/MUS rendered by the Intermediate Court of Musanze, whereby the parties were Uwera Aisha, Hategekimana Dorothee, Iyamuremye Louis, Bazihizina Hassina, Ntabanganyimana Zainabu, Abdus Salaam Khassim Nsabimana and Gato John who was forced to intervene. In the judgment RC 0146/13/TGI/MUS which was also rendered by that same court, the parties are Gato John and succession basoma Antoine which was represented by Hategekimana Dorothee, while in the judgment RC0043/13/TGI/MUS in respect of which the appel was lodged and recorded to RCA012/14/HC/MUS of which Gato John states that it contradicts the aforementioned judgments, the parties were Gato John and Abdus Salaam Khassim Nsabimana who represented Succession Nzagezahe Assoumani and Ndayambaje Idrissa who intervened voluntarily to the case. [16] The court finds that as indicated in the previous paragraph, among people who were parties in the judgments RC0054/012/TGI/MUS - RC0056/012/TGI/MUS which were joined together, are different from parties in the judgment RC0043/13/TGI/

MUS appealed to RCA012/14/HC/MUS and these are also different from parties in the judgment RC0146/13/TGI/MUS all judgments being alleged to be contradictory by Gato. It finds also that among all parties indicated in the previous paragraph, the ones sued in this case are Abdus Salaam Khassimu Nsabimana who was sued in person, succession Basoma Antoine represented by Hategekimana Dorothée and Ndayambaje Idrissa who intervened voluntarily. All other parties were not sued (Uwera Ayisha, Iyamuremye Louis, Bazihizina Hassina, Ntabanganyimana Zainabu and Succession Nzagezahe Assoumani). [17] The court finds that even if the law is silent about the initiation of the petition for resolution of the contradiction between judgments, especially concerning the parties to the case, it should be referred to other cases rendered by this Court and be compared to the opinions concerning the notion of contradictory judgments in order to know if all parties in prior judgments alleged to be contradictory should be summoned:

- In the judgment RC0003/15/CS of Nyirabikari Xaverine, Semasaka Boniface and Mukamugenzi Anne Marie rendered on 24/07/2015, the Supreme Court was requested to resolve the contradiction issue between judgments RC0451/TGI/NYGE rendered on 24 April 2009 by the Intermediate Court of Nyarugenge, and the judgment RC 0062/13/TB/Nyb rendered by the Primary Court of Nyamirambo on 15 November 2013 which became final. If examined the persons who were parties in that case, it is found that in the judgment RC0451/TGI/NYGE, parties were Nyirabikari Xaverine, Semasaka boniface and Mukamugenzi Anne Marie who intervened voluntarily at appeal level (in the judgment RCA0092/09/HC/KIG rendered on 28/05/2010 and upheld the ruling of the judgment RC0451/08/TGI/NYGE), while in the judgment RC0062/13/TB/Nyb, parties were Mukamugenzi Anne Marie and Semasaka Boniface, which indicates that those who were parties in all these judgments were also parties in the judgment which addressed their contradiction issue, whereby the Supreme Court held that the judgment RC0062/13/TB/Nyb rendered by the Primary Court of Nyamirambo on 15 November 2013 is quashed;

2 La contrariété de jugements: opposition pouvant exister entre deux décisions rendues, sur le même objet et entre les mêmes parties, émanant d'un même tribunal ou de tribunaux différents (http://encyclopedie_universelle.fracademic.com/83839/Contrari%C3%A9t%C3%A9_de_jugements, consulté le 05/02/2016).

Page 7

- In the judgment RC0002/15/CS of Mukanoheri Gertrude and Butera Védaste rendered on 18 September 2015, it was requested the resolution of the issue of contradiction between the judgments RC0215/12/TB/Nmta and RC0138/13/TB/Nmta. In both cases, the parties were Mukanoheri Gertrude and Butera Védaste who were also parties in the judgments RC 0002/15/CS in which it was resolved the contradictions between those cases, whereby the Supreme Court quashed the judgment RC0138/13/TB/Nmta delivered by the Primary Court of Nyamata on 14 October 2013. [18] According to the analysis above, the court is of the view that those who have been parties in the judgments alleged to be contradictory should also be parties in the judgments relating to the resolution of such contradiction. The importance of

their appearance is that all those parties have interests to indicate whether or not the judgments involved are contradictory, especially that in case it is found that they are contradictory, the remedy becomes that one of them is quashed as specified above. This is also the position of the Law scholar Jacques Boré who stated that In case a claim is submitted in disregard of the existing judgment on the same subject matter, initiation of which results in the contradictory decision to the previous judgment, it is the latest decision which should be nullified as it disregarded the *res judicata* vested in the previous judgment (“...En cas de contrariété de jugements, le pourvoi normal pour violation de la chose jugée doit être dirigé contre la décision la plus récente, qui a méconnu l'autorité dont était revêtue la première...”)3. [19] Therefore, the court finds that in accordance to all above mentioned explanations and examples, the parties in the contradictory judgments should be the same and it is compulsory for the parties in claims relating to the resolution of contradiction between them to be sued. However, as indicated, the parties in the judgments that Gato John alleges to be contradictory are not the same and all have not been sued, therefore his claim is groundless and damages he requested are groundless. [20] The court finds that it is not necessary to examine other issues heard because they concern the contradiction between judgments while it held that no contradiction exists.

- 3) examination of counter claims raised by Abdus Saalam Khassim Nsabimana, Ndayambaje Idrissa and heirs of Basoma Antoine. [21] Abdus Salaam Khassim Nsabimana represented by Counsel Nzayisenga Francis requests to be paid by Gato John damages amounting to 3,000,000Frw including moral damages amounting to 1,000,000Frw, 1,000,000Frw for being dragged into unnecessary lawsuits and 1,000,000Frw of counsel fees. [22] Counsel Uwimana Channy states that in accordance to article 106 of the Law No21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure his client requests damages amounting to 3,000,000Frw detailed as moral damages amounting to 1,000,000Frw, damages for being dragged into unnecessary lawsuits amounting to 1,000,000Frw and 1,000,000Frw for counsel fees. [23] Counsel Niyodusenga Gérard for Succession Basoma Antoine states that Gato John should pay damages amounting to 5,000,000Frw for being dragged into unnecessary lawsuits and 1,000,000Frw of counsel fees.

3 Jacques Boré, op.cit, page 613.

Page 8

- [24] Counsel Gatware Ngango Edson for Gato John states that those damages requested by the respondents are groundless because in the deliberation of the case, judges did not invoke the occurrence of any mistake. VIEW OF THE COURT [25] Article 106 of the Law N°21/2012 of 14/06/2012 stated above, provides that the counterclaim is any claim filed by the defendant, seeking judgement against the plaintiff, while article 258 of the Law of 30/7/1988 relating to civil code book III states that any act committed by a person which causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it. [26] The Court finds that Gato John should pay 800,000Frw to each person

amongst Abdus Salaam Khassim Nsabimana, Ndayambaje Idrissa and Succession Basoma represented by Hatetgekimana Dorothee for procedural expenses and counsel fees because they spent some money in this case. Other damages should not be paid because no grounds were provided. III. COURT DECISION [27] Decides that the claim initiated by Gato John lacks merit; [28] Orders Gato John to pay 800,000Frw of procedural expenses and counsel fees to each of Abdus Salaam Khassim Nsabimana, Ndayambaje Idrissa and Succession Basoma Antoine represented by Hategekimana Dorothee, the total amount being equal to 2,400,000Frw. [29] Orders Gato John to pay court fees amounting to 100,000Frw.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/8170/8463>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/abdus-salaam-khassim-nsabimana-contradictoryjudgments-supreme-court-2016>

Prepared on 12 October 2026 · Esheria