

RWANDA / JUDGMENT

BAYINGANA ET AL v NDABAMENYE

RLR V.1-2022

COURT

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Text

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BAYINGANA ET AL v NDABAMENYE [Rwanda SUPREME COURT - RS/INJUST/RC 00012/2019/SC (Mukamulisa P.J, Nyirinkwaya, Hitiyaremye, Karimunda and Muhumuza, J.) July 22, 2022] Civil procedure – Contract – Representation contract – Advocate – Contract of representation in court – Even if an Advocate is presumed to have a power of attorney to represent his or her client, in case the power of attorney he or she was entitled to is doubted, he or she has to prove the entitled mandate for good conduct of the trial. Civil procedure – Contract – Contract of representation of the litigant – Consequences of representing the litigant who did not give you the power of attorney – Those who represent others in courts do it under the power of attorney given to them – When an advocate has pleaded a case without being given the power of attorney, all his or her acts are declared null and void, and consequently, all things regain their status quo as before the hearing of those cases. Facts: Bayingana bought a plot of land from Ndabamenye through public auction, and the plot was later registered on him and his wife called Bazigaga, but after, Ndabamenye filed a claim before the Intermediate Court of Nyarugenge requesting the latter to hold that the disputed plot of land and all assets on it belong to him and requested also to invalidate and deregister the title deed registered to Bayingana and Bazigaga. The Court found

the claim baseless because the respondents got that plot in accordance with the law. Ndabamenye appealed against the rulings to the High Court stating that the Intermediate Court did not examine the objection relating to the fact that the issue in question was litigated in another case and that he was deprived of the right to confrontation. The High Court held that the disputed plot of land belongs to Ndabamenye, thus, the plot n° 17 with UPI: 1/01/09/03/1077 belongs to him. During the hearing, the Court held that it will conduct investigation by going to the location of the subject matter, such investigation was conducted and Counsel Rudakemwa Jean Felix requested that the person called Zigirababiri Protais be interviewed as witness. In his interview, such witness informed the Court that Ndabamenye Eraste passed away in February 2020 in South Africa. After being informed of the probable death of Ndabamenye while the Counsel who pretends to represent him did not inform the Court, the latter, after examining the documents in the case file and found that therein there are confusing information especially those relating to the identification of Ndabamenye, found that there is a doubt as to the power of attorney given to Counsel Rudakemwa Jean Felix claiming to represent him, and this as an issue of public order which must firstly be examined and decided on. The Court requested Counsel Rudakemwa to produce evidence of the power of attorney he was given; and to find and submit, together with the family of Ndabamenye, the death certificate for Ndabamenye. The time-limit of bringing such certificate expired with no result and this caused the Court to firstly examine whether the Legal Counsel was really given the power of attorney to represent Ndabamenye. Counsel Rudakemwa avers that he has such power to represent Ndabamenye from the previous cases and that he is paid thereof. He added that he lastly talked to him in early 2019.

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The applicant for case review on ground of injustice finds Counsel Rudakemwa Jean Felix's behaviour suspicious and that it is even hard to believe that what he tells to the Court as to the death of his client is true, that behaviour however put much weight on the issue presented in the High Court as to the fact that he had no power of attorney to represent Ndabamenye Eraste because in the previous hearings of the lower courts, it was evident that he was not fully informed about his client and the subject matter. Held: 1. Even if an Advocate is presumed to have a power of attorney to represent his or her client, in case the power of attorney he or she was entitled to is doubted, he or she has to prove the entitled mandate for good conduct of the trial.as

2. When an Advocate has pleaded a case without being given the power of attorney, all his or her acts are declared null and void, and consequently, all things regain their status quo as before the hearing of those cases. RC 00276/2016/TGI/NYGE & RCA 00367/2016/HC/KIG are quashed. Statutes and statutory instruments referred to: Law n° 32/2016 of 28/08/2016 governing persons and family, article 15; Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, article 2 and 47; Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 9 and 121. Cases referred to: Uwitonze et al v Rwigema, RCAA0028/11/CS rendered by the Supreme Court on 11/05/2012, Rwanda Law Report, book 3, n° 14, July, 2012,

P.58-60; Nyamuhungu v Rusenyi Coffee Growers, RS/REV/RCOMA003/12/CS rendered by the Supreme Court on 06/09/2013; Prosecution v RWIGASS CIGARETTE COMPANY SARL et al, RPAA 0056/06/CS - RPAA0155/06/CS rendered by the Supreme Court on 30/05/2008. Authors cited: Serge Guinchard, *Droit et Pratique de la procédure civile*, 8 éd, Paris, Dalloz, 2014/2015, p.544; Natalie Fricero and Pierre Julien, *Procédure civile*, 5e édition LGDJ, Extensio éditions, Paris, 2014, page 54-55; H. Solus-R. Perrot, *Droit Judiciaire Privé*, t.3: *Procédure de première instance*, Sirey, *Revue internationale de droit compare*, 1991, P.45; D. Cholet, "Représentation et assistance en justice", *Rép.pr.civ*, 2012 (actualisation Juin 2016); D. Cholet, "Représentation et assistance en justice", art.cit. Spéc. n° 72; Antoine Bolzele, *Règles du mandat ad litem: inapplication au tiers qui mandate un avocat*, <https://www.dalloz-actualite.fr/flas/regles-du-mandat-ad-litem-inapplication-au-tiers-qui-mandate-un-avocat>, 10 January 2019, consultee le 07 juin 2022.

Judgment

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I. BACKGROUND OF THE CASE [1] On 13/07/1996, Bayingana Ntango Théodomir bought from Ndabamenye Eraste, through public auction, the plot of land and the houses built on it, located in Kiyovu Cell, Nyarugenge Sector, at a price of 12,600,000 Frw basing on decision n° 285/96 of 04/04/1996 selling in a public auction the property of Ndabamenye Eraste in order to settle the debt he owed to the Bank formerly called BACAR S.A. [2] Ndabamenye Eraste seized the Intermediate Court of Nyarugenge requesting the latter to hold that the plot n° 1077 and all assets on it belong to him, requesting also to invalidate and deregister the title deed given to Bayingana Ntango Théodomir and Bazigaga Adèle. [3] In the judgment RC 00276/2016/TGI/NYGE rendered on 27/07/2016, the Intermediate Court of Nyarugenge held that the claim filed by Ndabamenye Eraste is baseless, that the disputed plot belongs to Bayingana Ntango Théodomir and his wife Bazigaga Adèle because they owned it in accordance with the law and that there is no reason for invalidating their property title deed. [4] Ndabamenye Eraste appealed against that judgment to the High Court stating that the Intermediate Court of Nyarugenge did not examine an objection relating to the fact that the issue in question was litigated in other case and that he was deprived of the right to confrontation. [5] In the judgment RCA 00367/2016/HC/KIG rendered on 12/01/2018, the High Court held that the appeal by Ndabamenye Eraste has merit, that the plot which formerly had n° 17 with now UPI: 1/01/09/03/1077 belongs to Ndanbamenye Eraste. [6] Bayingana Ntango Théodomir wrote to the President of the Court of Appeal requesting the latter to examine the injustice he suffered in that case, hence review it in case it is approved by the President of the Supreme Court. In the decision n° 212/CJ/SC of 05/12/2019, the President of the Supreme Court approved the review of the judgment RCA 000367/2016/HC/KIG, and the application was registered on RS/INJUST/RC 00012/2019/SC. [7] The case was heard in public on 12/10/2020, Bayingana Ntango Théodomir being represented by Counsel Mbarushimana Aimé, Bayingana Ntango Christine represented by Counsel Rukarishya Philemon whereas Ndabamenye Eraste was represented by Counsel Rudakemwa Jean Felix. The Court first examined a statement

presented by Bayingana Ntango Théodomir indicating that he had a case with his deceased wife called Bazigaga Adèle. After finding out that the case file reveals that they were legally married and that they co-owned the property in litigation, the Court found, on the side of the claimant, that the case must be followed up only by Bayingana Ntango Théodomir. [8] The Court examined the objection raised by Counsel Rudakemwa Jean Felix representing Ndabamenye Eraste who stated that Bayingana Ntango Théodomir did not abide by the deadline for the application for the case review on ground of injustice, and the Court found it ungrounded after finding that Bayingana Ntango Théodomir filed his application prior to 30 days provided under article 56, paragraph one of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts.

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[9] With regard to the fact that Bayingana Ntango Christine requested to be excluded from the instant case because she has no interest in it, the Court found no reason to exclude her from it since article 63, paragraph one of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that when the Supreme Court approves an application for review of a judgment on grounds of being vitiated by injustice, the case is heard anew and in the presence of all parties. [10] In the hearing of 12/10/2020, the Court declared that it will visit the location of the subject matter to carry out investigation, and on 29/12/2020, the investigation was conducted, and Counsel Rudakemwa Jean Felix requested the Court to interview Zigirababiri Protais as witness. In his interview, that witness informed the Court about the death of Ndabamenye Eraste in South Africa in February 2020. [11] After being informed of the probable death of Ndabamenye Erastewhile the Counsel who claims to represent him did not inform the Court, after examining also the documents in the case file and realizing that there is confusing information, especially with regard to the identification of Ndabamenye Eraste, the Court found the doubt as to the mandate he probably gave to Counsel Rudakemwa Jean Felix who claims to represent him, it found it as an issue of public order which must be first examined. [12] The instant case was reheard on 06/01/2021, the litigants being represented as before, each party replied on the information in hand about the probable death of Ndabamenye Eraste and to know whether he mandated Counsel Rudakemwa Jean Felix to represent him. [13] After those debates, the Court, basing on the issues that arose from the case as above mentioned, ordered Counsel Rudakemwa Jean Felix to present the evidence of the probable power of attorney he was given not later than 20/01/2021, he was also ordered, with the aid of the family members of Ndabamenye Eraste, to look, not later than 08/03/2021, for his death certificate and a document issued by a competent authority that shows the successors of Ndabamenye Eraste who must take over with the case. [14] The case was called afresh on 19/10/2021 with all parties represented as before. After finding that the order of the Court was not followed, the Court held that it must first examine the issue relating to determine whether there is a mandate given to Counsel Rudakemwa Jean Felix to the representation of Ndabamenye Eraste, informing the litigants that the decision on that issue will be made on 29/10/2021. [15] In the course of examination of the case, on 27/10/2021, the Court found documents of Mushimiyimana Pauline,

Nyirabagenzi Pelagie and Mukasine Marie Louise which Counsel Jean Felix Rudakemwa put in the casefile stating that they are heirs of Ndabamenye Eraste, and that they gave him a power of attorney to represent them in the case. This caused the Court to render the interlocutory judgment of 29/10/2021, holding to reopen the case, and the hearing to be resumed on 11/01/2022. [16] On the same date, Counsel Rudakemwa Jean Felix inserted in the casefile a document issued in Swaziland (Eswatini) which shows that Ndabamenye Eraste passed away on 04/02/2020 in Mbabane. This document reads that it was issued upon application by Nyirabagenzi Pelagie on 05/02/2020.

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[17] After finding that the document in question was issued abroad and that it was not certified through Rwandan Embassy, the Court, basing on article 15 of Law n° 32/2016 of 28/08/2016 governing persons and family as revised as today¹ ordered Counsel Rudakemwa Jean Felix to submit to it not later than 10/03/2022, the death certificate issued by the competent authority showing that Ndabamenye Eraste has died. Such document was never submitted to the Court. [18] The case was reheard on 16/05/2022, Bayingana Ntango Théodomir being represented by Counsel Ndahiro Isaac, Bayingana Ntango Christine represented by Counsel Rukarishya Philémon, Ndabamenye Eraste was not represented, but Counsel Rudakemwa Jean Felix who claims to represent him has sent Counsel Habiyambere Aphrodis to request on his behalf the adjournment of the case on ground that he has had other case in the Primary Court of Kicukiro. [19] On that date, again the representatives of Bayingana Ntango Théodomir and Bayingana Ntango Christine submitted to the Court a document issued by the Government of Eswatini (Ministry of Home Affairs) which mentions different things including the death certificate of Ndabamenye Eraste already submitted to the Court, which states that “the said certificate is not authentic. The Court notified the litigants that it will examine that document later if the case is resumed. [20] With regard to the request of Counsel Rudakemwa Jean Felix to adjourn the case , the Court found it baseless on ground that he was aware of the date to which the hearing was rescheduled, it reminded also that in the instant case there were issues which delayed the hearing, the first one being to know whether Counsel Rudakemwa Jean Felix was given the power of attorney to represent Ndabamenye Eraste, and an issue of not submitting to the Court a legally issued death certificate proving that Ndabamenye Eraste has died. It decided to first examine the first issue whose outcome will determine whether the hearing of the case will be resumed. II. ANALYSIS OF LEGAL ISSUES IN THE CASE

1. Whether Counsel Rudakemwa Jean Felix was mandated to represent Ndabamenye Eraste [21] Counsel Rudakemwa Jean Felix avers that he was mandated by Ndabamenye Eraste to represent him from the previous cases and that there is no issue with payment. He states that he lastly talked to his client in early 2019, that he would give him the report after the case is over. He also states that he talks about this case with the siblings of Ndabamenye Eraste who informed him of the death of Ndabamenye Eraste in February 2020, but he is not yet given his death certificate due to the Covid-19 pandemic in different countries

occasioning lockdown measures, thus preventing them from looking for it. [22] He added that in case there is no evidence proving that Ndabamenye Eraste has died, he still has the right to represent him in the case. After submitting the death certificate of Ndabamenye

1 It provides that the proof of death is established by a death record issued by the competent authority except where the law provides for any other form of proof.

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Eraste to the Court, he was asked if he still represents him, and responded that the Court itself will decide on it. [23] The Court asked him if he has a proof that he usually communicated with his client, such as through writing and messages or through other means, and he responded that it was only on the telephone. [24] Counsel Mbarushimana Aimé assisting Bayingana Ntango Théodomir and Counsel Rukarishya Philemon assisting Bayingana Ntango Christine state that it is so sad for Counsel Rudakemwa Jean Felix to know the death of Ndabamenye Eraste whom he pretends to represent and opted to remain silent until it was known by the Court itself through investigation. They state that the information in question which was not given before occasioned a legal issue in the instant case because it cannot continue when it is said that the litigant has demised. They added that by the time Counsel Rudakemwa Jean Felix got that information, he had to reveal it and provide the death certificate of his client as Counsel Mbarushimana Aimé did upon the demise of the wife of Bayingana Ntango Théodomir. [25] They find also the behaviour of Counsel Rudakemwa Jean Felix to be worrying, that it is even difficult to believe that his statements before the Court with regard to the death of his client, to be true, that behaviour is instead supporting the issue they highlighted in the High Court that he was not given the mandate of representing Ndabamenye Eraste since it was evident, in the previous hearings in the lower courts that he was not fully informed about his client and about the subject matter. They state however, that the High Court did not consider their worries, now that issue in question continues to persist before the instant Court, it should be taken account of. They requested the Court to hold that Counsel Rudakemwa Jean Felix was not given the mandate, thus, what he did without being mandated to be null and void. DETERMINATION OF THE COURT [26] Article 2, paragraph one, subparagraph 1, a. of Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, reads that an Advocate is a person in the legal profession charged with assisting and representing litigants before administrative entities, courts, and other decision-making organs, whereas article 47 of that law reads that only advocates shall be entitled to plead before courts, and that an advocate pleads as authorized representative without justifying any other power of attorney, unless the law requests a special mandate. [27] The legal expert D. Cholet emphasizes also that an advocate is not obliged to justify that he was mandated to represent a litigant before the courts, because there is a principle that he or she is presumed to have the power of attorney when he or she comes to court wearing a dress of advocate. He states also that the principle in question has exception because it is not always abided by when there is evidence as to suspecting that an advocate has no mandate (...l'avocat n'a pas à prouver qu'il a reçu mandat du plaideur pour le représenter et l'assister en justice, l'existence de ce mandat est présumée. Cette dispense est traditionnelle et provient du

fait que les avocats

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sont crus « sur leur robe ». Il s'agit néanmoins d'une présomption simple qui peut être combattue par la preuve contraire).² [28] With regard to the representation, other legal expert Antoine Bolzele puts that it is not a must for an advocate to justify that he/she was given a power of attorney by his or her clients because there is always a presumption that he or she was mandated. He says that the issue related to the mandate is usually raised by the person who has given the mandate, but the presumption that an advocate has the mandate may be questioned by the other party in the case basing on different grounds such as death certificate or identification which is different from the identification of the litigants whom he or she represents. (Grâce au mandat ad litem, il (l'avocat) n'aura pas à demander à toutes les personnes qu'il représente de lui remettre un mandat, il bénéficie d'une présomption simple qui peut être renversée ...).³ [29] Other legal scholars like T H. Solus and R. Perrot sustain that the presumption granted to auxiliaries of justice makes it possible to reduce the hypotheses of irregularity of representation within the framework of the mandate ad litem. Indeed, in the context of legal representation, although the possible representatives are designated by law, the representation is only conventional, the mandate ad litem is always contractual (La présomption accordée aux auxiliaires de justice permet de réduire les hypothèses d'irrégularité de la représentation dans le cadre du mandat ad litem. En effet, dans le cadre de la représentation en justice bien que les possibles représentants soient désignés par la loi, la représentation n'est que conventionnelle, le mandat ad litem est toujours contractuel).⁴ [30] Linking the provisions of the aforementioned law with the explanations of legal scholars highlights the following important points: i. There is a simple presumption (Présomption simple) that in the Court, an advocate is presumed to have a power of attorney without justifying it; ii. That principle may be reversed (renversée) if the mandate is doubtful, iii. If this is the case, advocates are obliged to justify that they have the mandate of representation before the Court.

2 D. Cholet, « Représentation et assistance en justice », Rép.pr.civ, 2012 (actualisation juin 2016). 3 Antoine Bolzele, Règles du mandat ad litem: inapplication au tiers qui mandate un avocat, <https://www.dalloz-actualite.fr/flash/regles-du-mandat-ad-litem-inapplication-au-tiers-qui-mandate-un-avocat#>. YsVy2HZBzIU, 10 janvier 2019, consultée le 07 Juin 2022. Affaire Civ. 1re, 12 déc. 2018, FS-P+B, n° 17-19.387 rendue par la cour de cassation, première chambre civile entre l'Association française d'épargne et de retraite (l'AFER), constituée par Gérard C... et André D. contre Mme Catherine C... et M. Pascal C..., et contre Mme Claude E..., veuve D.: " En général, l'intérêt de soulever l'absence de mandat provient du mandant, quand celui-ci entend contester les actes réalisés par son mandataire. Ici l'attaque vient de l'adversaire à l'instance qui estimait par une série d'indices tirés de décès et de mauvaises adresses que la procédure était engagée à l'insu d'un certain nombre de plaideurs ou de leurs héritiers, 4 H. SOLUS – R. Perrot, Droit judiciaire privé, t.3: Procédure de première instance, Sirey, Revue internationale de droit comparé, 1991, P.45.

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[31] Those important points were referred to in the case of *Uwitonze Nasira et al* against *Rwigema Jeanne Chantal*, where the Supreme Court explained that even if an advocate is not ordinarily obliged to justify his or her mandate, if need be, the Court may ask him or her for that in a bid of the good administration of the case. The same Court also stated that even if an advocate has the power to plead before the courts without being asked to justify his/her mandate, it does not mean that he or she may represent a person without being mandated, and even if he or she is not obliged to justify it, this does not mean that he or she cannot justify it when asked to do it, and show its scope, be it in the courts or out of the courts, because practicing the profession of advocates grants only a simple presumption (*Présomption simple*).⁵ [32] The foregoing was again upheld by the Supreme Court in another case of *Nyamuhungu Natukunda Jane and Rusenyi Coffee Growers*, where it stated that even if there is nowhere in the laws that the court is obliged to ask for the justification of the mandate of an advocate only on condition that he/she wears a dress of advocates, practicing the profession of advocates grants only simple presumption, but if need be, he or she should justify it.⁶ [33] Again in the judgement of *Prosecution, RWIGASS CIGARETTE COMPANY SARL and Pierre Marie Noah*, the Supreme Court held that an advocate is not allowed to represent the litigant because it is clear that they no longer have any contact, they never communicate, because in that case, the advocate stated that he/she does not know his or her client address, and he or she does not even present the mandate for representation of his client before the Supreme Court, which implies that he or she was no longer presumed to have the mandate of representation.⁷ [34] All above given explanations are in conformity with the decision in the instant case which this Court has taken right away on the bench in the hearing of 6/01/2021, where it explained that even an advocate is usually presumed to have the mandate of representing his or client, if his or her probable mandate is doubted, he or she is obliged to justify it for the good administration of the case. It is against this background that Counsel Rudakemwa Jean Felix was asked to justify it. Stating that he has no issue with his client because she/he pays him well, it is not enough for the Court to confirm that he has the mandate, because, as it was explained, if need be, an advocate is obliged to justify the power of attorney from his or her client. [35] The Court finds that, regarding the instant case, as it was mentioned, there were different things that occurred in it which occasioned the doubt about the power of attorney which Counsel Rudakemwa Jean Felix was probably given by Ndabamenye Eraste to represent him as it is explained in the following paragraphs. [36] Counsel Rudakemwa Jean Felix admits that in February 2020 he had information that the death of Ndabamenye Eraste probably occurred in the same period, but he did not reveal it to the Court nor inform other litigants, it went on from that date until the schedule of the pre-trial meeting on 30/07/2020, it was postponed to 08/09/2020, he kept secret that information until the pre-trial conferences were over. Additionally, the hearing started without informing the Court of the

5 See RCAA0028/11/CS Nasira Uwitonze, Rwagasana Jean Paul, ECOBANK RWANDA/Rwigema Jeanne Chantal rendered on 11/05/2012, Rwanda Law Reports, Book 3, N° 14, July,2012, P.58-60. 6 See the judgement RS/REV/RCOMA003/12/CS Nyamuhungu Natukunda Jane, Cooperative CACAM and BCR, Rusenyi Coffee Growers and BIGIRIMANA Robert decided on 06/09/2013, par.23 7 See the judgement RPAA 0056/06/CS-RPAA 0155/06/CS of 30/05/2008

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probable death of one of the litigants who was called to appear. The first hearing was on 12/10/2020, Counsel Rudakemwa Jean Felix appeared as a representing Ndabamenye Eraste, but he did not inform the Court that the person whom he represents has probably died, however he was surely aware of the resulting severe consequences on the proceedings considering the provisions of article 121 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure.⁸ [37] As it was again reminded, the Court was unexpectedly informed of that when it went to the location of the subject matter for investigation purpose, in Nyarugenge District, by one of the witnesses given by Counsel Rudakemwa Jean Felix named Zigirababiri Protais. [38] The Court reminds that it had ordered Counsel Rudakemwa Jean Felix to submit to the Court the power of attorney he was given not later than 20/01/2021, but as it was already stated, until now, he did not bring any evidence in relation to that power of attorney, such as showing its nature and scope, or any other evidence showing his collaboration with Ndabamenye Eraste. [39] Besides the fact that there is no message which counsel Rudakemwa Jean Felix revealed to the Court even though he was asked to do so, the fact that he states that he lastly talked to Ndabamenye Eraste in early 2019, indicates that he had no information about him for the whole year and in addition to this, he stated that he had no clue about his client whereabouts. After stating all these, it is hard to believe that there was a collaboration between them. The fact that Counsel Rudakemwa Jean Felix has known that Ndabamenye Eraste has died in February 2020 but nevertheless he continued to appear before the Court as his representative, this supports the fact that what he did in the instant Court, he did it without being mandated by Ndabamenye Eraste, therefore, he was not competent to do so. What remains is to examine whether in the previous cases he was mandated by whom he has represented. [40] The Court has examined the indictment on the first instance, and found, as it appears in IECMS in originating cases, that the claim started in the Intermediate Court of Nyarugenge on 05/02/2016, the claimant being Ndabamenye Eraste, son of Ndimurwango Michel and Nyirashamuka, Esther, ID:119808001009806, email: ndabamenyeraste@gmail.com, Tel+250788559057. [41] The above identity card number indicates that Ndabamenye Eraste was born in 1980, however other documents which Counsel Rudakemwa Jean Felix put in the casefile indicate that he was born in 1937. [42] When the Court tried to relate the information in IECMS and that of NIDA (National Identification Agency)⁹ the system showed that the ID number presumed to be of Ndabamenye Eraste does not exist (invalid). It is evident that Ndabamenye Eraste of whom it is said to have

8 If the judicial proceedings are not yet closed and the court finds that an objection regarding the change of civil status, termination of employment or the death of one of the parties, the surviving party informs the court of those having capacity to take over the case and these are summoned according to the summoning procedure. If the summoned persons referred to in Paragraph One of this Article do not appear to take over the case within the time-limit allowed, the case is tried in default in accordance with laws applicable to parties having refused to appear before court.

9 Courts are authorized in order to be able to verify if the identifications given by the parties are true.

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filed the claim, is different from the one Counsel Rudakemwa Jean Felix states he represents because there is a difference of 43 years between them. [43] Additionally, the appeal submissions indicate that the appellant was Ndabamenye Eraste, having ID: 1196780003189009, which shows that he was born in 1967. Notwithstanding the difference between this birth year from the one presented in the Intermediate Court, the verification in IECMS which had the purpose of relating the information from the system to that from NIDA, it was evident that the ID number purported to be of Ndabamenye Eraste is instead registered on Counsel Rudakemwa Jean Felix. [44] What is clear is that the identification of Ndabamenye Eraste given by Counsel Rudakemwa Jean Felix contains false information as it has been shown and the information in question is contradictory. [45] The foregoing explanations lead the Court to decide that there is no evidence proving that it is Ndabamenye Eraste who mandated Counsel Rudakemwa Jean Felix to represent him in the previous cases. [46] Basing on all the foregoing, the Court finds, from the outset of this case up to the instant Court, that Counsel Rudakemwa Jean Felix has represented Ndabamenye Eraste but without being mandated, he was not competent to do what he did. The following issue is about determining the resulting consequences.

2. To determine what happens when it is proven that an advocate represented the person before the court without being mandated [47] The laws of Rwanda are silent about the consequences resulting from the acts of an advocate who was not given the mandate, including the cases which he pleaded without being mandated by the person he or she represented. [48] Even if it is the case, basing on article 9 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure¹⁰ in resolving the issue, other methods can be used, including the opinions of legal scholars. In the same vein, Serge Guinchard, a legal scholar, states that whenever there is a representation before the court by the person who is not competent to do so, the resulting consequences is to invalidate the indictment and all subsequent acts which were done in the merit of the case (*En cas de représentation par une personne non habilitée, la sanction est une nullité de fond qui atteint l'acte introductif d'instance et toute la procédure subséquente*)¹¹. [49] What is said by that a legal scholar is reiterated by others like Natalie Fricero and Pierre Julien, where they explain that those who represent others before the court do it in the scope of their mandate, when there is no mandate, all acts which were done thereof are invalidated. (*Les auxiliaires*

de justice représentent et assistent les parties dans le cadre d'un mandat ad litem

10 That article says that a judge adjudicates a case basing on relevant rules of Law. In the absence of such rules, the judge adjudicates according to the rules he or would establish if he or she had to act as a legislator, relying on precedents, customs, general principles of law and doctrine. 11 Serge Guinchard, Droit et pratique de la procédure civile, 8 éd., Paris, Dalloz, 2014/2015, p. 544.

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obligatoire ou facultatif Le défaut de pouvoir du représentant, est sanctionné par une nullité pour irrégularité de fond).¹² [50] D. Cholet also emphasizes that if an advocate has pleaded without the mandate, all he or she has done are invalidated (La conséquence sera alors la nullité de tous les actes de la procédure effectués par un mandataire qui n'était pas habilité...).¹³ [51] Regarding the instant case, the Court, basing on the foregoing explanations, finds that in case it was shown that Counsel Rudakemwa Jean Felix represented Ndabamenye Eraste from the Intermediate Court of Nyarugenge up to this level without being mandated, he was not given the power of attorney by Ndabamenye Eraste of representing him in litigation, therefore, he was not competent to do what he did. III. DECISION OF THE COURT [52] Holds that there is no mandate given to Counsel Rudakemwa Jean Felix by Ndabamenye Eraste to represent him in the cases, thus he was not competent to do what he did; [53] Orders that the judgment RC 00276/2016/TGI/NYGE rendered by the Intermediate Court of Nyarugenge on 27/07/2016 and judgment RCA 00367/2016/HC/KIG rendered by the High Court on 12/01/2018 in which Counsel Rudakemwa Jean Felix represented Ndabamenye Eraste are quashed, things regain their status quo as before the hearing of those cases.

12 Natalie Fricero and Pierre Julien, Procédure civile, 5ème édition, édition LGDJ, Extensio éditions, Paris, 2014, page 54-55 13 D. Cholet, « Représentation et assistance en justice », art.cit. Spéc. n° 72

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