

RWANDA / JUDGMENT

Re BIZIMANA

RLR V.2-2023

COURT

Supreme Court

DECIDED

27 July 2022

CASE / FILE NUMBER

RS/INJUST/RAD 00002/2021/SC

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Re BIZIMANA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2022-07-27
- Case/document no.: RS/INJUST/RAD 00002/2021/SC
- Collection: Supreme Court

Text

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Re BIZIMANA [Rwanda SUPREME COURT – RS/INJUST/RAD 00002/2021/SC – (Cyanzayire, P.J., Hitiyaremye and Karimunda, J.) July 27, 2022] Administrative law – Execution of the judgment – Enforcement order – Settlement agreement – It is a settlement agreement signed by the parties and the mediators made out of the court, which concludes the case without any further procedure, therefore, the provisions of the agreement are the ones enforced. Facts: Bizimana filed a claim before the Intermediate Court of Nyarugenge by way of unilateral application, requesting to have his rights on his plot of land following the decision taken for the road demarcation without being informed and the remaining part was reserved to public garden, he made a formal request to the District of Kicukiro requesting for the revocation of that decision but he did not get any response. The Court rejected his claim, it explained that his claim must not be lodged by way of unilateral application, given that such claim is filed and admitted when it is an issue that seems not to be controversial and not necessarily requiring the intervention of the other party. The claimant filed an appeal before the High Court which declared his appeal unfounded based on the same grounds as those provided by the lower Court and it added that the

fact that the claimant did not get any response concerning his claim does not mean that he has the right on his property. This led him to apply for the judgment review on grounds of injustice and the case was tried in the presence of the parties to the dispute. Both parties agreed that the dispute should be settled by way of mediation as the best way of handling it. Held: Settlement agreement is a settlement agreement signed by the parties and the mediators made out of the court, which concludes the case without any further procedure, therefore, the provisions of the agreement are executed. The settlement agreement shall be enforced as signed Statutes and statutory referred to: Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9, 178 and 241. No Cases referred to.

Judgment

I. BACKGROUND OF THE CASE

On 24/03/2017, Bizimana Jacques bought a plot of land from Batamuriza Yvonne on 4,550,000 Frw with UPI 1/03/01/1981, located in Kimena Village, Karembure Cell, Gahanga Sector, Kicukiro District, Kigali City. He states that a decision was taken during road demarcation without being informed and the remaining part was reserved for the public garden, when he was

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aware of the fact, he claimed in writing to the District of Kicukiro for the annulment of such a decision, but he did not get any response.

To that effect, he filed a claim before the Intermediate Court of Nyarugenge by way of unilateral application, requesting to recover his rights, the case was recorded on RAD 00208/2018/TGI/NYGE, and it was rendered on 06/12/2018. The Court declared inadmissible his claim, it explained that his claim must not be lodged by way of unilateral application, given that such a claim is filed and admitted when it is an issue that seems not to be controversial and not necessarily requiring the intervention of the other party. It also expounded that the provisions of article 178, paragraph 5 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure¹ cannot justify the claim inadmissibility as long as it seems controversial and there is no certain interest to be safeguarded which is evident to the Court.

Bizimana Jacques lodged an appeal before the High Court against the judgment, the claim was registered on RADA 00011/2019/HC/KIG, the judgment was rendered on 12/03/2019 and it was ruled that his appeal was ungrounded. The Court relied on the same grounds as those provided by the lower Court, it added that the fact that the claimant did not get any response concerning his claim does not mean that he has the right to his property, rather he is entitled to seize the courts seeking the ruling on his case.

Following pronouncement of the the judgment, Bizimana Jacques petitioned the President of the Court of Appeal seeking its review on the grounds of injustice, after its analysis, he prepared a report indicating that the judgment must be reviewed and he sent it to the President of the Supreme Court. By the decision number 0202/CJ/2021 of 10/08/2021, the President of the Supreme Court ordered for the registration of the application for being re-adjudicated; it was registered on RS/INJUST/RAD 00002/2021/SC, the parties were notified that it should be heard on 16/11/2021.

The hearing was held in public, Bizimana Jacques was assisted by Counsel Manirafasha Jean Paul, the City of Kigali was summoned and represented by Counsel Safari Vianney. On basis of article 9, paragraph 3 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure², the parties were asked if their dispute cannot be settled through mediation process, they agreed that it is the best way of handling their dispute, they agreed that their mediator would be Counsel Kavaruganda Julien.

Counsel Kavaruganda Julien received on 22/11/2021 the decision appointing him as the mediator in the case RS/INJUST/RC 00002/2021/SC, he was given a time until 31/12/2021 for submitting the report to all concerned parties. The case was again planned on the cause list of

1 Article 178, paragraph 5 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “The authority is required to respond in a period of one (1) month which runs from the date he/she received the informal appeal. If he/she does not respond, the request is considered as founded”. The paragraph 5 of the same article reads that “In case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the applicant to be reinstated in his/her rights. The claim is filed within one (1) month by way of unilateral request.” 2 A judge may encourage parties to use conciliation if he/she believes that conciliation is the most appropriate way to resolve the dispute. He/she may him/herself mediate between the parties or help them find a mediator of their choice and postpones the hearing for the entire duration of conciliation

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13/01/2022, but it was not heard because on 12/01/2022 the appointed mediator requested in writing the additional time at least until at 28/02/2022 for the report submission.

On 21/06/2022, the mediator submitted to the Court the report of the mediation findings of 17/06/2022, which indicates that the dispute between the parties relating to the plot of land registered on UPI:1/03/01/1981, located in Kimena Village, Karembure Cell, Gahanga Sctor, Kicukiro District, Kigali City was settled by mutual agreement.

The hearing meant for approval of settlement agreement was held on 27/07/2022, all parties were present, Bizimana Jacques was assisted by Counsel Manirafasha Jean Paul and the City of Kigali summoned was represented by Counsel Shema Gérard. The Court notified to the parties that it received the settlement agreement, they agreed that their dispute was completely settled and

there is no further issue to be analysed, they requested the Court to approve the settlement agreement. II. LEGAL ISSUE OF THE CASE AND ITS ANALYSIS 1. Whether the settlement agreement can be approved

Basing on the settlement agreement of 17/06/2022 which indicates that all parties to the case agreed on the dispute between them, the Court deems that this case must be concluded without any further procedure, therefore, the agreement content shall be enforced as provided under article 241, 7° of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. This article provides that the agreement contract signed by the parties and dispute mediation concluded out of court constitute an enforcement order. III. DECISION OF THE COURT

Holds that the claim filed to the Court in the case RS/INJUST/RAD 000002/2021/SC is settled as agreed by the parties through the settlement agreement of 17/06/2022 hereinafter attached.

Holds that the settlement agreement shall be enforced as signed.

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Prepared on 11 October 2026 · Esheria