

RWANDA / JUDGMENT

KABAGWIRA ET.AL v SENEZA

RLR V.3-2024

COURT

Court of Appeal

DECIDED

12 February 2025

CASE / FILE NUMBER

RCAA 00039/2022/CA

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

KABAGWIRA ET.AL v SENEZA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2025-02-12
- Case/document no.: RCAA 00039/2022/CA
- Collection: Court of Appeal

Text

Page 1

KABAGWIRA ET.AL v SENEZA [Rwanda COURT OF APPEAL – RCAA 00039/2022/CA (Kamere, P.J.) 13 October 2023] Civil Procedure – Replacement of a judge – Pending case – When a judge replaces another in an ongoing case decides to resume the case from where the haring with the previous judge had reached, he/she cannot invalidate the decisions made by the previous judge. Facts: This case started from the Intermediate Court of Nyarugenge, Kabagwira and Uwamahoro sued Seneza by requesting to the Court to order to him to return back their family property he appropriated himself and pay various damages. They argue that they had been living in the claimed property whereby there were buildings in one part while in the other part there were no buildings; later they left the property in 1988 following the death of their father Kagyibwami, and when they came back in 2012, they found that Seneza has appropriated himself the property. Seneza states that the concerned property was lawfully acquired, and he possesses emphyteutic lease. In the judgment RC00648/2018/TGI/NYGE, the Court held that the claim filed by Kabagwira and Uwamahoro has no justification, and it decided that the disputed property should remain under the possession of Seneza. Kabagwira and Uwamahoro were not satisfied with the Court's decision, and the appealed against the ruling before the High Court. Seneza raised an objection

and prayed the Court to dismiss the claim, arguing that the time limit for lodging appeal provided under the law was elapsed. In the interlocutory judgment RCA 00088/2020/HC/ KIG, the Court held that Seneza's objection has no justification. Before the hearing of the case on the merits, one of the judges of the bench got replaced by another judge, and when the latter reopened the hearing, he decided that Kabagwira and Uwamahoro filed appeal when the time limit for lodging appeal was elapsed and held that their appeal is therefore not admissible. Kabagwira and Uwamahoro were not satisfied with the above decision, and they appealed against the ruling before the Court of Appeal, they state that the judge who adjudicated the case in the High Court is not the one who pronounced it. They submit that the judge who ruled about the objection on the claim inadmissibility is not the one who adjudicated it, while the judge who adjudicated it had taken the decision about it. Seneza pleaded that the High Court's decision of dismissing the appeal of Kabagwira and Uwamahoro is founded because they filed appeal before the Court of Appeal when the time limit for appeal was elapsed. Held: When a judge replaces another in an on going case decides to resume the case from where the hearing with the previous judge had reached, he/she cannot invalidate the decisions made by the previous judge.

Page 2

The claim must be admitted and be heard on the merits by the High Court without payment of any other court fee. Statutes referred to: Law n0 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure No cases were referred to.

Judgment

I. BACKGROUND OF THE CASE

In the judgment RC 00648/2018/TGI/NYGE, Kabagwira Epiphanie and Uwamahoro Berthilde sued Seneza Abias before the Court, and they prayed the Court to order to him to return back their family land together with its components which he appropriated himself and they claimed for damages for procedural and lawyer fees.

They argue that before 1988, they were living in the disputed property, a piece land located in Ubumanzi Village, Rugenge Cell, Muhima Sector, Gasabo District, City of Kigali where they had a plot with 46 m of width to 90 m of length whereby there were buildings in one part while in the other one there were no buildings. They argue that they left the property in 1988 following the death of their father Kagyibwami Gabriel, and they went to live in their mother's family in Ruhengeri and when they came back in 2012, they found that Seneza Abias has appropriated himself their property.

Seneza Abias avers that the property he owns is composed of a building and a carwash located in Ubumanzi Village, Rugenge Cell, Muhima Sector, Nyarugenge District, and it is registered under emphyteutic lease with UPI: 1/01/06/05/13, he states that it is a piece of land that he faithfully acquired since he bought it from different individuals and he merged the pieces. He argue that his land is not related with the plot claimed by the litigants, and he requests the Court to order to them to pay to his various damages.

On the 17/01/2020, the Intermediate Court of Nyarugenge heard the case and held that the plaintiffs' claim has no justification, and it moved that the disputed land should remain under the possession of Seneza Abias, and it ordered to the plaintiffs to pay to Seneza Abias a sum of 500,000 Frw for counsel fee.

Kabagwira Epiphane and Uwamahoro Berthilde were not satisfied with the Court's decision and they appealed against the ruling before the High Court, but Seneza Abias raised an objection and prayed the Court to dismiss the appeal arguing that the time limit for appeal was elapsed.

In the interlocutory judgment of 19/11/2021, the Court held that Seneza's objection has no justification, and it moved that the plaintiffs' appeal is admitted, and notified the parties that the hearing should continue on 13/01/2022 from 11h 30 am.

Page 3

The hearing of the case was resumed on 12/07/2022 but one of the judges of the bench was not present and had been replaced by another judge. The case was heard and closed and the pronouncement was fixed on 11/08/2022. It is on this date that the High Court pronounced the ruling and it held that the plaintiffs' appeal is not admitted since it was filed when the time limit for appeal was elapsed and it ordered to the plaintiffs to pay to Seneza Abias 100,000 Frw for the procedural fee and 250,000 Frw for counsel fee.

Kabagwira Epiphane and Uwamahoro Berthile were not satisfied with the judgement and they appealed against the ruling before the Court of Appeal; and they argued that the reason for their second appeal is due to the fact that the ruling on their case before the High Court was pronounced by a judge who never heard the case. They also added that a judge who decided on the appeal's inadmissibility had never heard the related objection and yet the judge who heard the raised objection had already decided on it; this fact led to two contradictory rulings at different occasions while the case is the same.

Seneza Abias contends that the High Court's decision on inadmissibility of the plaintiff's appeal was justified since they filed their appeal before the High Court when the time limit for appeal was elapsed as they lodged it in on 18/02/2020 yet the appeal deadline was fixed on 16/02/2020. He avers that when he raised such an objection before the High Court, the Court found it justified and held that their appeal is not admitted due to the fact that it was lodged when the time limit was elapsed.

Before the Court of Appeal, the plaintiffs' appeal was docketed as RCAA 00039/2022/CA, and the case hearing was fixed on 4/10/2023 whereby Uwamahoro Berthilde appeared assisted by Counsel Ilimubuhanga Jean de Dieu, who at the same time represented Kabagwira Epiphanie, while Seneza Abias was assisted by Counsel Mugemanyi Vedaste. On that date, the Court heard the parties' debate on the issue of whether the High Court's judge made an error when he declared the claim inadmissible over an objection he did not hear. The Court of Appeal also heard the litigants on the issue of whether the new judge had a right to overturn his colleague's decision over an objection he never heard; the Court has as well examined any adverse effects such a stance might have on this case.

From the parties' debate on the issue, the Court finds that the most important aspect is to determine whether the judge on the new bench decided to proceed with the case from where the previous judge had left it or whether he first invalidated the previous judge's decision, as a prior procedure that might have led him to a new decision of rejecting an appeal which his colleague had already admitted. It is only by this analysis that the Court of Appeal will find whether the appeal of Kabagwira Epiphanie and Uwamahoro Berthilde should have been admitted (with reference to the decision of the judge in the bench which firstly tried the case) or not admitted (with reference to the decision which was later taken by the judge in the bench that replaced the one which firstly heard the case)

The pronouncement of the Court's ruling on the above issue was fixed on 13/10/2023, the date on which the was pronounced in public. II. ANALYSIS OF THE LEGAL ISSUES OF THE CASE

Page 4

Determine whether the appeal filed by Kabagwira Epiphanie and Uwamahoro Berthilde before the High Court should have been admitted and the effects on the proceedings

Uwamahoro Berthilde and her legal counsel who, at the same time, represented Kabagwira Epiphanie, submit that the judge who firstly heard the case had rejected the objection related to the appeal inadmissibility raised by Seneza Abias; that at the end of the hearing, the parties were notified of the pronouncement date, which kept adjourning till later when the judge who had heard the case on the raised objection was assigned with some other duties, and the case was assigned to a new judge who, upon resumption of the case, declared that he would not re-examine the litigated matters, but while making the decision, he moved by confirming the raised objection and declaring the plaintiff's appeal inadmissible. They prayed the Court of Appeal to hold that the High Court erred when it overturned its decision which ended up bringing about two contradictory decisions on the same case.

Counsel Ilimubuhanga Jean de Dieu who assisted Uwamahoro Berthilde and represented Kabagwira Epiphane highlighted that the case hearing minutes of 12/07/2022 indicate that the judge in the new bench decided to proceed with the case from where the previous judge had stopped it. He submits that in case the Court finds that the second judge erred, the case should be refiled in the High Court for being heard since it has unlawfully disqualified itself from hearing the merit of the lodged case.

Seneza Abias and Counsel Mugemanyi Vedaste submit that even if the second judge resumed the proceeding from where the previous judge had stopped it, the second judge had all the file details at his disposal and nothing could prevent the judge from examining the case, more so that he took a decision of public order; arguing that such an approach cannot be interpreted as ignoring the plaintiffs' pleas. They submit that if this Court finds that the second judge erred, the case should be heard by the Court of Appeal, and examine on the merits the issue between the parties which is to determine the owner of the disputed property and if the case is so adjudicated, no law would be violated. DETERMINATION OF THE COURT

Article 74 of the Law n0 22/2018 of the 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides the following "when a judge or one of the judges having sat in a case is unable to continue to sit in the same case due to various reasons, he/she is replaced with another judge upon decision by the president of the court concerned. In such a case, the hearing resumes from where it had stopped and decisions taken in the proceedings remain valid. However, if a judge believes that there are acts performed in breach of the law, he/she may decide the reopening of the hearing or modify some acts after hearing parties and provide reasons therefor. A party who is not satisfied with such a decision may lodge an appeal against it together with the case on the merits".

Paragraph 2 of article 158 of the above mentioned law provides that: "However, if the appeal court finds that the seizure of jurisdiction at the first degree was lawful and that court declared it inadmissible when it was to receive and judge the case, the court of appeal hears the case and declares that it was of the competence of that lower court; it declares this judgement void

Page 5

and refers the case to the first instance court so that it hears it again on the merits, without payment of any other court fees".

The case file contains the hearing minutes of 12/07/2022, indicating that when the second judge resumed the case from where the previous judge had stopped it, he opened the proceedings as follows: "As you can see, this case had been heard by the previous bench, and the hearing had been closed. Let me read it for you to allow you to remember the facts, if anyone has anything to add, because we have all your previous pleadings and that is what we have read for you".

With reference to such a statement by which the second judge opened the hearing with, the Court found that it is clear that, as per the above mentioned article, the judge chose to resume the hearing from where the colleague had left it, therefore all the previous judge's decisions, including the admitted appeal, and the rejection of the raised objection were to remain valid.

The Court of Appeal finds that on 19/11/2021, the High Court decided on the objection raised by Seneza Abias for the inadmissibility of the appeal of Uwamahoro Berthilde and Kabagwira Epiphanie because it was allegedly lodged when the time limit was elapsed; whereby the Court held that the appeal filed by Uwamahoro Berthilde na Kabagwira Epiphanie is nonetheless admitted, while the adverse objection was admitted; that the objection on the claim inadmissibility as the time limit for appeal was elapsed, is unfounded, it held that the hearing on the case would continue on 13/01/2022 from 11h 30 am. The fact that the second judge took the decision of dismissing the appeal for having exceeded the time limit for lodging appeal and dismissed the ruling of the previous judge without indicating to the parties the errors committed by the previous and allowing them to debate on them, the Court of Appeal finds that such is contrary to the article 74 above mentioned. Therefore, since it is clear that the second judge took a decision of resuming the hearing from where the previous judge had stopped it, this Court finds that the High Court's decision of 19/11/2021 admitting that plaintiffs' appeal should stay, and the hearing should proceed with the examination of the merits of the grounds of the appeal filed Uwamahoro Berthilde and Kabagwira Epiphanie.

With regard to the determination of a competent court for hearing the merit of issues that remained unheard before the High Court due to the latter's error of dismissing an admissible appeal, the Court of Appeal refers to the provision of paragraph 2 of article 158 of the above mentioned Law n0 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, and holds that this case must be resent to the High Court for being heard on the merits of the first appeal without any other court fee deposited by the appellants.

III. DECISION OF THE COURT

Holds that the decision of dismissing the appeal of Uwamahoro Berthilde and Kabagwira Epiphanie as per the judgment RCA 00088/2020/HC/KIG rendered by the High Court on 11/08/2022, is quashed ;

Holds that the High Court had already admitted the appeal filed by Uwamahoro Berthilde and Kabagwira Epiphanie in the case RCA 0008/2020/HC/KIG, and it should be heard on the merits ;

Page 6

Orders to the Registry of the Court of Appeal to return the case n0 RCA 00088/2020/HC/KIG rendered by the High Court on 11/08/2022 to the High Court for being heard on the merits without depositing any other court fee ; Rules that the court fee deposited by the appellants at this instance covers the expenses of the proceedings.

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/8890/9226>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/kabagwira-epiphanie-v-seneza-abias-replacementofjudge-court-of-appeal-2025>

Prepared on 14 October 2026 · Esheria