

RWANDA / JUDGMENT

KIGALI CITY ET AL v. KARIMBA

RLR V.2 - 2015

COURT

Supreme Court

DECIDED

28 March 2014

CASE / FILE NUMBER

RDAA 0040/11/CS – RADAA 0058/12/CS

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KIGALI CITY ET AL v. KARIMBA [Rwanda SUPREME COURT – RDAA 0040/11/CS – RADAA 0058/12/CS (Mugenzi, P.J., Kanyange and Munyangeri, J.) March 28, 2014] Administrative procedure – Irregularities in the form of an act instituting a claim – The nullity of a procedural act due to irregularities in the form – To write opposition instead of appeal against a judgment, is an irregularity in the form which cannot render the process of appeal null and void, when it has not been demonstrated that its voidance is undoubtedly provided for by law, there is any serious formality or of public order that is not respected or the party requesting for it indicates the loss he/ she may incur – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 92. Facts: Karimba brought a case against the Kigali City before the High Court requesting the annulment of the decision N° 2638/07.1.06/09 misappropriating him the plot no 1634 and gives it to Nkusi Rukeba, claiming damages and proceedings fee. That Court ordered a forced intervention of Nkusi Rukeba but he did not appear. It decided that the contested decision is null and void and ordered Kigali City to pay moral damages, proceedings fee and the counsel fees to Karimba. The City of Kigali appealed against that judgement before the Supreme Court and Nkusi Rukeba lodged an opposition against that judgement asserting that

he was unlawfully summoned. Karimba raised an objection of inadmissibility of the case RAD 0117/11/HC/KIG and prayed to be transferred to the Supreme Court because the judgment for which the opposition is lodged against (RAD 0136/09/HC/KIG) has been appealed against before the Supreme Court on number RADA 0040/11/CS. The Court decided to reject the objection, motivating that Karimba delayed to raise it. Karimba appealed against the decision of the High Court before the Supreme Court, but the High Court proceeded with the hearing of the case RADA 0117/11/HC/KG whereby it held that the judgment RADA 0136/09/HC/KIG is quashed. Karimba appealed against that judgment before the Supreme Court, claiming that cases RADA 0040/11/CS (the appeal of the City of Kigali against RAD 0136/09/HC/KIG) and RADA 0058/12/CS (his appeal against RAD 0117/11/HC/KIG) should be joined and be tried together. The City of Kigali argues that there is no link between those cases, because the litigants are different. The City of Kigali withdrew its appeal, and also Karimba withdrew his which was formed against the decision of the High Court of rejection to transfer the claim of opposition to the Supreme Court. Nkusi raised an objection of inadmissibility of Karimba's appeal on the ground that he used two remedies simultaneously, which are opposition and appeal. In his defence, Karimba asserts that there were irregularities in form, but that a letter rectifying that irregularity was written, thus their claim concerns appeal only. Held: The fact of mentioning opposition instead of appeal against a judgment, is an irregularity in the form which cannot render the process of appeal null and void, when it has not been demonstrated that its voidance is undoubtedly provided for by law, there is any serious formality or of public order that was not respected or the party requesting for it indicates the loss he/ she may have incurred.

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The objection overruled; The judgment on merit to proceed; Court fees suspended. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 92 and 93. No case referred to.

Judgment

I. BACKGROUND OF THE CASE [1] On 17 January 1992, a Burundian Sezoya Antoine was given a cadastral plan of a plot no 1634 which he bought from Habiyaakare Faustin on 12 February 1986. In the year 1994, Sezoya went back to Burundi after he had built a house on this plot. [2] On 15 January 1998, Karimba Gaetan requested to be allocated that plot by Kigali City. Kigali City requested him to first pay 424,599Frw for the assets which were in the plot. On 17 January 1999, they registered the plot on his name and got the cadastral plan, and on 28th February 2000 they both signed the lease contract of that plot for 3 years which had to end on 31st January 2004. [3] On 17 January 2007, Sezoya sold that plot to Nkusi Rukeka Daphy, he was represented by Uwizeye Marie Patricie to whom he had given the power of attorney on 26 December 2006. [4] On 17th January 2009, Mayor of Kigali City made an order REF N° 2638/07.1.06/09 giving back to Nkusi Rukeba the plot he had bought¹ which led Karimba to lodge the case to the High Court against Kigali City, requesting to nullify order no 2638/07.1.06/09 of 16 July 2009 mentioned above which deprives him the plot no 1634 and gave it to Nkusi Rukeba, and requested also damage of

4,000,000Frw and 600,000Frw of procedural costs. [5] On 12 August 2011, the Court rendered the judgment RAD 0136/09/HC/KIG in which Nkusi Rukeba forcibly intervened but he did not appear before the Court. the Court decided that order REF N° 2638/07.1.06/09 to be quashed, ordered Kigali City to pay Karimba 400,000Frw of damages and 600,000Frw for the procedural and counsel fees, under the motivation that Kigali City cannot contradict itself in its orders whereby it issued the certificates and later issues them to another person without following the lawful procedure and indicate that the previous ones have been nullified. [6] On 10 September 2012, Kigali City appealed against that judgment to the Supreme Court and the appeal was recorded on RADA 0040/11/CS. The appeal was screened and the screening judge held that it followed the legal procedure, but on 26 August 2011, Nkusi filed for an opposition against the case RAD 0136/09/HC/KIG arguing that he was unlawfully summoned, because he was summoned at false residence and also the summon did not bear 1Basing on the meeting of, the administrators of Kigali City, Nyarugenge District, Muhima Sector and the council for the residents of Rugenge Cell which was held on 10/09/2009 to analyze the issue of that plot.

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the names and profession of the one who summoned him. His claim was recorded on RAD 0117/11/HC/KIG. [7] On 28 September, the Court admitted the opposition claim of Nkusi Rukera against the judgment RAD 0136/09/HC/KIG. On 16 November 2012, it ruled on the objection raised by Karimba concerning the transfer of the case RAD 0117/11/HC/KIG to the Supreme Court because the judgment for which opposition was formed (RAD 0136/09/HC/KIG) was appealed against to the Supreme Court and recorded on RADA 0040/11/CS. The court rejected the objection because he delayed to raise it. [8] On 23 November 2012, Karimba appealed against that decision (concerning the case RAD 0117/11/HC/KIG) to the Supreme Court. The appeal was recorded on n° RADA 0058/12/CS, but the High Court proceeded with the hearing of the case RAD 0117/11/HC/KIG, then on 13 March 2013, it quashed the judgment RAD 0136/09/HC/KIG and decided that the order made by the administration of Kigali City which gave back the house to Nkusi Rukera was valid. [9] That court explained that the lease contract of the plot for 3 years entered into between Karimba and Kigali City had expired as he was not given permanent ownership. The declared that the contradiction of Kigali City which had told him that the plot was his has merit, because it found that some mistakes were made when it was given to him, because there is no way another person would get the right on the plot without being transferred by the owner Sezoya who sold it to Nkusi. It also held that Nkusi cannot be awarded the damages he claims for because he was not able to demonstrate the loss incurred. [10] On 11 April 2013, Karimba appealed against that judgment before the Supreme Court, the appeal was recorded on no RADA 0027/13/CS. In his letter dated 19 August 2013, he requested that the cases RADA 0040/11/CS9 (the appeal of Kigali City against RAD 0136/09/HC/KIG) and RADA 0058/12/CS (his appeal against RAD 0117/11/HC/KIG) to be joined and tried jointly, but the counsel for Kigali City argued that they are different because the litigants are not the same. [11] The hearing was conducted in public on 25 February 2014, the Kigali City was represented by Mbarushimana J.M.Vianney, the state attorney, Karimba was represented by Counsel Rwangabwoba Bernard, and Nkusi Rukeba was represented by Counsel

Ndondera Christian. [12] On that day, State attorney Mbarushimana, representing Kigali City, stated that it has withdrawn its appeal and even the counsel for Karimba also stated that Karimba has also withdrawn his appeal regarding the decision of the High Court concerning the refusal to transfer to Supreme Court the opposition claim. [13] After both parties agreed that the withdrawal of the claims of appeal were in conformity with the law, the Court admitted it pursuant to article 26 CCLAP, and the debate stayed on the objection raised by the counsel for Nkusi concerning the inadmissibility of the remaining appeal lodged by Karimba (RADA 0027/13/CS). Regarding the objection of inadmissibility of appeal lodged by Karimba. [14] Ndondera, the counsel for Nkusi raised an objection of inadmissibility of Karimba's appeal because he used two remedies which are opposition and the appeal simultaneously while it is prohibited by the law.

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[15] The counsel for Karimba adduces that even if there was an irregularity in form on their appeal, on which they wrote "opposition" and "appeal" at the same time, they wrote a letter which rectified those irregularities, in the away that it is obvious the claim was of appeal. [16] The counsel for Kigali City and the one for Nkusi claim that they did not get the letter for rectification of irregularities whereas Counsel for Karimba argues that there is an evidence of its reception by the Kigali City, and a court bailiff's writ indicating that the letter was delivered to Nkusi who refused to acknowledge receipt, whereas his Counsel claims that only his wife resides in Rwanda as he does not reside there. [17] The Court decided to suspend its proceedings in order to first examine the objection mentioned above concerning the inadmissibility of Karimba's appeal and it informed parties that the decision will be pronounced on 28 March 2014. THE VIEW OF THE COURT [18] Regarding the objection of inadmissibility of the Karimba's appeal on the ground that he exercised two remedies simultaneously which are prohibited by the law as the counsel for Nkusi claims whereby he explains that the appeal doesn't indicate the appellant intention as whether it is an appeal or an opposition; the Court is of the view that what must be examined is to determine whether it was really an irregularity in the form which could be rectified by the letter which the counsel for Karimba claims that it was written with the purpose of rectifying it. This should be addressed while taking into account the document regarding the appeal submission, the document which is purportedly for rectification and its notification to the opponents. [19] The case file indicates that the appeal of Karimba to the Supreme Court was filed in this way: RADA 0027/ 13 / CS, the subject matter of the claim being Appeal against the judgment RAD 0117/11/HC/KIG pronounced on 13 March 2013 - Opposition to the judgment RAD 0136/09/HC/KIG pronounced on 12 August 2011 - Annulment of the order of 16 July 2009 - Damages equivalent to 400,000Frw – Procedural and counsel fees = 600,000Frw. [20] In his letter dated 9 January 2014 which is contained in the file, and which was submitted to Kigali City on the same day as demonstrated by the seal of Kigali City and the signature of the person who received it at the reception and also submitted to Nkusi Rukeba that same day as confirmed by the court bailiff Rusunika Jonas who wrote and signed on the letter that he handed it to Nkusi but he refused to sign for its reception, the purpose of this letter was to explain that

even if in the application of appeal there was a word “opposition” but the claim filed is not of opposition, rather it concerns the appeal. [21] The court finds that there is no ground on which the claim that Karimba filed before the Supreme Court after he was not satisfied with the decision of the High Court, be considered as opposition rather than appeal against it. Instead, it is an irregularity in the form which was even rectified in the letter of 9 January 2014 (Article 93 CCLAP), which falls into the categories of irregularities unlikely to render the process of appeal null, when it has not been demonstrated that any of the requirements provided for by article 92 of CCLAP existed, such as; when the voidance is undoubtedly provided for by the Law, there is any serious

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formality or of public order that was not respected, or if the party requesting for it indicates the loss he/ she may incur. [22] Based on the explanations given above, the Court finds that the objection of inadmissibility of Karimba’s appeal raised by the Counsel for Nkusi is overruled. II. THE DECISION OF THE COURT [23] Decides that the objection of inadmissibility of Karimba’s appeal against the judgment RAD 0136 /09 / HC / KIG raised by Nkusi is overruled; [24] Orders that the hearing of the case on merit is scheduled on 14 April 2014; [25] Suspends the court fees.

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