

RWANDA / JUDGMENT

MUKANKUBITO v NABIMANA

RLR V.3-2021

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MUKANKUBITO v NABIMANA [Rwanda SUPREME COURT – RS/INJUST/RC 00009/2019/SC Ntezilyayo, P.J, Nyirinkwaya, Cyanzayire, Mukamulisa, and Hitiyaremye, J.) 03 March 2020]

Evidence law – Civil marriage – A marriage certificate is the conclusive evidence forproving that the couples are married – In case of its loss or unavailability of the registers of marriage, it relies on testimony evidence – The fact that one of the partner is written on her or his cohabitants identity card as a wife or husband, does not consist of reliable evidence to prove that they are legally married. Facts: The case started before Nyarugenge Primary Court whereby Mukankubito requested a suppletive judgment for her marriage with Nabimana. The Court dismissed her case on the ground that she did not produce convincing evidence proving the civil marriage between her and Nabimana. Mukankubito appealed before Nyarugenge Intermediate Court indicating that the previous Court disregarded the evidence she produced proving that she is legally married to Nabimana. The Intermediate Court sustained her claim and decided that civil marriage was concluded between her and Nabimana. The court, therefore, reversed in whole the appealed judgment and decided to award to Mukankubito the suppletive judgment of marriage. The motivation of the court lied on the fact that nothing would prevent Mukankubito to be

awarded a suppletive judgment of marriage while she produced reliable elements of evidence of her marriage with Nabimana including photographs of the ceremony, marriage certificates issued by the Kacyiru sector, church

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certificate indicating that they were religiously married. It pursued that people could not get married religiously without civil marriage celebration before Commune and that it was quite impossible to register her name in the ancient identification card of her husband as his wife unless they were married. Nabimana came to learn about the decision of that judgment and lodged a third party opposition alleging that he cohabited with Mukankubito as spouses since 1978, because Mukankubito had not yet attained the majority age as she was only 17 years old and for this reason, they could not legally get married, thus, they concluded religious marriage in 1983. The Court found Nabimana's claim with merit and reversed the judgment in whole due to the lack of reliable evidence proving the celebration of civil marriage between Mukankubito and Nabimana. Mukankubito applied for review whereby she relied on a certificate issued by National Identification Agency (NIDA), but the Intermediate Court rejected her claim and upheld the decision of the judgment for which revision was formed. This Court motivated that the document issued by NIDA is not a new evidence discovered after the hearing, because its content is similar to that in the other document she produced before. Mukankubito submitted her application for case review due to injustice to the ombudsman office, which after its examination prayed to the President of the Supreme Court to entertain the application. After the scrutiny, the President instructed the revision of the case by the Supreme Court. Mukankubito indicated before the Supreme Court, that the Intermediate Court disregarded some provisions of laws that were applicable at that period because by the time they celebrated religious marriage in 1983, the Constitution and other laws into force recognised religious marriage as valid civil marriage. She

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continued stating that, there are various elements of evidence disregarded including Nabimana's ID card in which it is registered that they were legally married as well as their children and that the content of ID is copied from civil status registers, and this constitutes the substantive evidence of their civil marriage. Nabimana argues instead that the main claim filed before the Primary Court by Mukankubito consisted of praying the Court to render a suppletive judgment to the certificate of marriage celebrated in 1978, but that at the moment, they are indicating that the legal marriage to be declared valid is the one celebrated religiously in 1983, which they considered as the modification of the claim, which is not allowed, and the Constitution they referred to, does not provide so since the decree they relied on did not provide for that and was already repealed. Nabimana states in addition that, the Identification card is not reliable evidence on which to base the decision that someone is married to another and concludes his briefs by declaring that no provisions of the law were disregarded. Held: 1. Conclusive evidence for civil marriage is a marriage certificate. In case of its loss or unavailability of the registers of marriage, it relied on testimony. For this reason, other documents issued in Belgium produced by

Mukankubito indicating that she is married are not reliable in deciding that civil marriage was celebrated.

2. The fact that one of the partners in cohabitation is registered in the identification card of another does not consist of any evidence proving that they are legally married, thus the fact for Mukankubito to indicate that she was registered in Nabimana's Identification card is not evidence that they are married according to the Law.

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The case review due to injustice has no merit. The ruling of the case for which the application for review due to injustice was filed is upheld. Statutes and statutory instruments referred to: Constitution of 20/12/1978, articles 25 and 98 Constitution of 24/11/1962, article 28. Law No15/2004 of 12/05/2004 relating to evidence and its production, Article 11. Decree-Law N° 01/81 of 16 January 1981 relating to population's survey, Identification card, articles 5,6 and 7 Decree of 04/05/1985 instituting title one of civil code, book one, articles 18, 20 and 117 No cases referred to. Author cited: Ntampaka, Charles, Droit des personnes et de la famille, Manuel de droit rwandais, 1993, p. 108.

Judgment

I. BRIEF BACKGROUND OF THE CASE

This case originates from Mukankubito Daphrose's claim before Nyarugenge Primary Court, praying for a suppletive judgment of marriage certificate she celebrated with Nabimana Pierre whereby she argued that they were legally married on

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18/08/1978 in former Nyarugenge Commune, but that when she occurred to Nyarugenge sector to request for a marriage certificate, the registers for marriages celebrated during that period were missing.

On 02/04/2015, Nyarugenge Primary Court rendered the judgment RC 0088/15/TB/NYGE and held that there is no evidence produced by Mukankubito Daphrose indicating without a doubt that she married Nabimana Pierre on 18/08/1978. The Court elucidated that the marriage certificate of Nabimana Pierre and Mukankubito Daphrose issued by Kacyiru commune on 12/03/2003 is not likely to constitute persuasive evidence because it was issued in the past and the plaintiff failed to produce the original copy and the administration awarded it without relevant information thereto since she states that their marriage was celebrated before Nyarugenge Sector, whereas the marriage certificate (To Whom It May Concern) which was awarded by the administration of Nyarugenge sector indicates that the registry of marriage to prove that Mukankubito Daphrose and Nabimana Pierre are legally married is inexistent. The court also declared that the picture of their religious wedding could not also be sustained as reliable evidence because it does not indicate whether they were shot before a civil status registration officer holding national flag in

accordance with the Law, and in addition, land titles cannot be relied on because spouses may co-own land without being legally married. For these reasons, it found unreliable the documents indicating their religious marriage including pictures and titles issued by the Land center because the Law does not consider partners married religiously as legally married.

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Mukankubito Daphrose was not contented with that decision, then appealed before Nyarugenge Intermediate Court, arguing that the Court disregarded various evidence she produced before it to prove that she is legally married to Nahimana Pierre, which include his identification card where she is mentioned as her wife, a certificate issued by Kacyiru Commune on 12/03/2003 indicating that they are married, a parish card witnessing that Mukankubito Daphrose got married to Nabimana Pierre in Nyamirambo Parish, pictures of marriage as well as other documents supporting that they are considered married at their residence in Belgium. On 30/04/2015, that Court held in

judgment

RC 0076/15/TGI/NYGE, that Mukankubito Daphrose's appeal has merit, that the appealed judgment is reversed in whole, and ordered that Mukankubito Daphrose be issued suppletive judgment to a marriage certificate and the said decision be transferred to Nyarugenge sector.

The Court motivated its decision by explaining that there is no reason to prevent Mukankubito Daphrose from being awarded the judgment substituting marriage certificate because she produced to the Court convincing elements of evidence that she is legally married to Nahimana Pierre, which include the pictures indicating how Mukankubito Daphrose and Nahimana Pierre were married, certificates issued by Kacyiru sector and religious wedding certificate issued by Nyamirambo parish. It held that people could not celebrate a religious wedding without going through civil marriage and that it was impossible to be registered in her husband's old identification document in the capacity of a spouse without them being legally married.

Nahimana Pierre lodged a third party opposition against that case, arguing that he never legally married Mukankubito

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Daphrose, rather, they cohabited since 1978, especially that she was only 17 and minor, the reason why they could not get married in accordance with the law, therefore, they religiously tied the knot 1983 without getting civilly married. Nyarugenge Intermediate Court rendered the

judgment

RCA0076/15/TGI/NYGE on 18/05/2015, and found Nahimana Pierre's claim with merit by holding that there exists no convincing evidence indicating that Mukankubito Daphrose and Nahimana Pierre celebrated civil marriage.

The Court explained that elements of evidence relied upon in the case which is the subject of third party opposition consist of the documents Mukankubito Daphrose admit to having got in 1983 while celebrating the religious wedding. However, they do not prove that she got married in 1978 before the civil registration officer, rather, they prove that she concluded a religious wedding and she does not indicate any legislation entitling her the married status by the mere fact of being religiously married in 1983 ; thus, the evidence produced to the Court is not sufficient to hold that they were legally married.

The Court found also that, based on article 13 of the Law N°15/2004 relating to evidence and its production, the Court decided that the certificate of marriage of 12/03/2003 is an authentic document enforceable against everybody (*erga omnes*), whereas it was not issued in respect of required conditions by the competent civil servant. It motivated that Mukankubito Daphrose alleged they were legally married before the Nyarugenge sector, whereas the marriage certificate, which is not even original, was issued by the former Kacyiru commune, thus, the issuer had no basis to testify the civil marriage between Mukankubito Daphrose and Nahimana Pierre.

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The Court heard some witnesses who were their neighbors testifying that they have never legally been married, rather what they know is that they got religiously married, and they could not celebrate civil marriage without their knowledge. It found also that Mukankubito Daphrose does not present a witness who could testify her statement or indicate the civil registration officer who officiated their marriage.

Mukankubito Daphrose applied for a review of the judgment RCA 0106/15/TGI/NYGE arguing that, there is new evidence made of a document issued by NIDA on 05/10/2015. Nyarugenge Intermediate Court rendered the judgment RCA0222/15/TGI/NYGE on 15/12/2015, whereby it rejected her application and upheld the judgment RCA0106/15/TGI/NYGE rendered by Nyarugenge Intermediate Court. It, therefore, ordered Mukankubito Daphrose to pay 2,000,000 Frw to Nabimana Pierre in damages encompassing procedural and counsel fees.

The Court noted that the document issued by NIDA on 05/10/2015 is not a new evidence discovered after the closure of the hearing, because its content is similar to that of 21/05/2015, and were both requested by Mukankubito Daphrose, which implies that in the course of the hearings, Mukankubito Daphrose knew about their content but did not rely on them and indicate unforeseeable event which prevented her from producing that evidence. For these reasons, it held that the document issued on 05/10/2015 does not constitute a piece of new evidence.

Mukankubito Daphrose requested in writing to Office of Ombudsman for review of the

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RCA 0106/15/TGI/NYGE due to injustice; which, after scrutiny of the request, prayed to the President of the Supreme Court to review

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that judgment due to injustice. The President of the Supreme Court, after examination, instructed that the judgment RCA 0106/15/TGI/NYGE be registered in the court registry for review and the claim was assigned the docket number RS/INJUST/RC 00009/2019/SC.

Counsel Mugeni Anita states that Mukankubito Daphrose applied for review of the judgment RCA 0106/15/TGI/NYGE due to injustice because the Court disregarded the provisions of the laws and evidence indicating undoubtedly that she legally married Nabimana Pierre, which resulted in injustice.

The hearing of the case occurred in public on 05/02/2020 whereby Nabimana Pierre was assisted by Counsel Niyomugabo Christophe and Counsel Ndagijimana Emmanuel, whereas Mukankubito Daphrose was represented by Counsel Mugeni Anita. Before the analysis of legal issues of the case, the Court first examined the issue relating to the effects likely to arise between the judgment RCA 0034/03/2017/HC/KIG pending before the High Court, where Mukankubito Daphrose filed a claim praying this Court to order for the partition of matrimonial assets she co-own with Nabimana Pierre as spouses and the present case before the Supreme Court.

Concerning this issue, Counsel Mugeni Anita started explaining how that case aiming at sharing co-owned properties between Mukankubito Daphrose and Nabimana as spouses. She argues that the initiation of that case is the result of the fact that Mukankubito Daphrose noticed she had no other choice left, after realizing that Nabimana Pierre has started to deregister her name from the co-owned property. She states that this injustice-related case would have no effects on the pending case before the High Court because, after the release of the Ombudsman's decision,

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they requested the Court to stay that case until the Supreme Court's decision.

On the side of the counsel for Nabimana Pierre, they declare that they have raised that issue where they were wondering how Mukankubito Daphrose prays the Court to affirm that she is legally married to Nabimana Pierre on one side and the partition of co-owned property on the other side since this scenario implies that she acknowledges they are not legally married. They allege in contrast that it should be considered as judicial confession, admissible against the author, therefore, they find that the case of injustice should not have been admitted besides that case.

After hearing both sides on this issue, the Court withdrew for deliberation after finding that there exists a case RCA0034/03/2017/HC/KIG pending before the High Court whose subject matter is the sharing of the properties, it decided the stay of that case till the Supreme Court ruling in the interest of justice and avoidance of conflicting judgments.

Again, before the analysis of legal issues of the case, the Court examined the objection raised by the counsel for Nabimana Pierre, alleging that, if Counsel Mugeni Anita for Mukankubito Daphrose wishes to keep relying on the document issued by Nyamirambo Parish as evidence in the course of her pleading, they intend to challenge the document for forgery.

Counsel Mugeni Anita replied that, since the procedure to challenge the document as forgery delays, while she has explained that the concerned evidence is not so crucial, rather a piece of supporting evidence, she renounces to use that document

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issued by Nyamirambo Parish, and as a result, the hearing proceeded.

For the adjudication of the application for review of the judgment RCA0106/15/TGI/NYGE due to injustice, the Court finds that the following issues which are also raised by parties should be analyzed.

- i. Whether the judgment RCA0106/15/TGI/NYGE disregarded the applicable law at the time of the celebration of marriage between Mukankubito Daphrose and Nabimana Pierre ; ii. Whether the case RCA0106/15/TGI/NYGE disregarded elements of evidence produced by Mukankubito Daphrose which proves her marriage with Nabimana Pierre ; iii. Whether damages requested by parties to the case can be awarded. II. ANALYSIS OF LEGAL ISSUES - Whether the case RCA0106/15/TGI/NYGE disregarded the applicable law at the time of celebration of marriage between Mukankubito Daphrose and Nabimana Pierre.

Based on pleadings and court briefs of Counsel Mugeni Anita for Mukankubito Daphrose, the analysis of this issue should focus on determining whether the wedding celebrated between Mukankubito Daphrose and Nabimana Pierre before the church on 17/12/1983 was recognized by the Constitution of 20/12/1978 as civil marriage.

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Counsel Mugeni Anita declares that Mukankubito Daphrose and Nahimana Pierre admit that, they have cohabited since 1978 after celebrating civil marriage because their firstborn arrived in 1979. She also states that it was after Nahimana Pierre concealed their administrative documents proving the celebration of their marriage that Mukankubito Daphrose started collecting further evidence from the church where they got religiously married in 1983 as admitted by Nabimana Pierre who, at the same time alleges it was unlawful.

He explains that, in the case under review, the Judge disregarded the applicable legislation at that time providing that, religious wedding before Roman Catholic Church was legal. She states that article 28 of the constitution of the Republic of Rwanda of 24/11/1962 provided that marriage between one man and one woman celebrated before a civil registration officer or before the church is legally recognized by the Constitution and this Constitution was repealed by another one of 20/12/1978 of which its article 25 provides that: "Marriage of one man and one woman

celebrated before a civil registration officer is the only recognized legal marriage”, and it was this provision which was current while Mukankubito Daphrose and Nahimana Pierre tied the knot religiously in 1983.

She continues stating that, in general, among the laws governing marriage during that time, includes the decree of 04/05/1895 instituting civil code, book one. It was provided in its article 17 that Catholic missionaries were invested by colonial administration with the power to officiate marriage for the indigenous population, and that marriage was recognized legally by the administration, thus, the marriage of Mukankubito Daphrose and Nahimana Pierre before the Catholic Church

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occurred on 17/12/1983 is legal. She argues that the Court should have based on that and hold that they are married according to the law, especially that the article 26 of that decree and articles 476, 458 of the Law of 1988 (which repealed the Law of 1948 that repealed the 1895 decree too), saved pre-existing marriages, thus for these reasons, Mukankubito Daphrose prays the Supreme Court to award her a judgment in substitution of the marriage certificate.

She explains that, with regard to the judgment RC00258/2017/TGI/NYGE, for which Mukankubito Daphrose claimed the partition of the matrimonial assets she co-own with Nabimana Pierre, the Court should not consider it as evidence of an admission by her client of the absence of civil marriage celebration between her and Nabimana Pierre, since she filed that claim after she lost previous cases and the delay of her reply to application to the Office of Ombudsman delayed, whereas Nahimana Pierre had started deregistering her from their co- owned properties, and consequently, she opted to file it as her last resort.

Counsel Niyomugabo Christophe, for Nabimana Pierre, states that the origin of this case is the claim filed by Mukankubito Daphrose before Nyarugenge Primary Court requesting for the judgment substituting marriage certificate of 18/8/1978 pretending to have legally married Nahimana Pierre on this date, the claim which was recorded on RC0088/15/TB/NYGE. However, Mukankubito Daphrose does not indicate in the case RCA0106/15/TGI/NYGE that the Court disregarded the evidence supporting she married Nahimana Pierre in 1978; rather she produced the evidence of religious wedding in 1983, the act that he finds consists of the modification

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of the subject matter of the claim barred at this instance level by article 6 of Law n° 21/2018 relating to the civil, commercial, labor and the administrative procedure.

He continues stating that, concerning the statements of the counsel for Mukankubito Daphrose that article 25 of the Constitution of 1978 and article 17 of the aforementioned Decree Law of 04/05/1895 considered a religious wedding as a civil marriage ; Counsel Mugeni Anita mentions the provision of this 17 in part because it provides that catholic missionaries were given by colonial administration the power to officiate the marriage of indigenous population and be

considered as civil marriage. He also states that this article explains clearly the procedure following which catholic missionaries would officiate religious and civil marriage subsequently under the authorization of the Gouverneur General to be recognized as civil marriage.¹ In addition, not all missionaries had the power to officiate a marriage considered as official because there were requirements provided by article 17 and among others, the concerned missionary had to apply for authorization with terms and time

1 In each jurisdiction, he may also delegate to agents of the colony or private individuals, to draw up these acts within the territory and time limit and under the conditions, he shall determine. They shall perform these functions under the direction of the competent officer, who shall oversee that the deeds are regularly drawn up, note any irregularities and report them to the Governor General. The delegation referred to in the preceding paragraph will be granted on their request to Catholic missionaries with the power for them to officiate the civil marriage of indigenous whose religious union they have celebrated. Private individuals and Catholic missionaries will only be competent to receive delegation for the purpose of drawing up acts relating to indigenous (of the Congo or the bordering colonies).

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limits and officiate marriage for only people who got religiously married before. He adds that, after the wedding, he had to establish immediately the marriage certificate to be reported to the civil registration officer for transcription to official registers.

The counsels for Nabimana Pierre state also that, the provisions of article 17 of the aforementioned decree, was repealed by the Constitution of 1962 because article 28 provides clearly that "the marriage exists between one man and one woman religiously or before civil registration officer" implying that ministers of all recognized religious entities could officiate marriage and be valid without applying for permission or following solemnities prescribed by the positive law as it was provided by article 17 of 04/05/1895's decree.

Furthermore, they explain that the Constitution of 1962 repealed by the Constitution of 1978, which was into force in 1983 when Mukankubito Daphrose religiously married Nabimana Pierre, read in article 25 that "marriage between one man and one woman concluded according to positive law, is the one considered legal", and that its article 93 provided that "all legal instruments into force, which are inconsistent to it, and not repealed or modified, will remain applicable"; therefore all provisions of 04/05/1895's decree contrary to that Constitution were repealed including aforementioned article 17. They state also that, since 28/12/1978, the Law governing communes vested only bourgoumestres with the civil registration officers' power to officiate legal marriage according to positive law, and the religious ministers could only officiate religious weddings.

They add that, there exists also a legal position set by the Supreme Court in the judgment RS/ INCONST.PEN 0003/10/CS of Gatera Johnson and Kabarisa Teddy rendered on 07/01/2011,

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where this honorable Court decided that the monogamous marriage concluded before the civil registration officer is the one recognised ; a position taken based on article 26 of the Constitution of the Republic of Rwanda as revised to date. They pursue that article 25 of the Constitution of 1978 is clear when interpreted *mutatis mutandis* with regard to this article 26 of the current constitution given that both provisions are similar.

Also, the counsels for Nabimana Pierre states that the marriage of Mukankubito Daphrose and Nabimana could not be considered legal based on the form issued by Nyamirambo Parish. They explain again that whenever a Catholic missionary was permitted to officiate a marriage, he had to act in the capacity of a civil registration officer (*Officier de l'état civil*) and issue a marriage certificate. They argue that as long as Mukankubito Daphrose cannot produce a marriage certificate (*acte de mariage*) issued by the missionary which was signed by two witnesses and herself in compliance with article 202 and article 243 of 04/05/1895's decree; her statements she relies on the form issued by Nyamirambo Parish that she is legally married are groundless.

Basing on all their court briefs, the counsel for Nabimana Pierre declares that the Court did not disregard the Law by holding in the judgment RCA0106/15/TGI/NYGE that the religious wedding celebrated in 1983 between Mukankubito Daphrose and Nabimana Pierre does not imply that they were

2 The certificates of the civil registration are received in the presence of two witnesses. 3 The certificates are signed by the civil registrar, by the participants and the witnesses, or mention is made of the cause which prevents the participants and the witnesses from signing.

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legally married according to the Law which was into force during that period.

With regard to the case in which Mukankubito Daphrose filed a claim before the Court praying it to order for the sharing of all their properties due to their cohabitation, the counsel for Nabimana Pierre states that this supports that Mukankubito Daphrose admitted before the Court that they were not married, (*aveu judiciaire*), thus, she could not have desisted it and file this claim.

Concerning the above arguments by counsel for Nabimana Pierre; Counsel Mugeni Anita replies that the aforementioned decree of 04/05/1895 was not repealed by the Constitution of 1962, rather by the Law N° 42/1988 instituting part one of the book one of civil code. She argues in addition that about the religious wedding of 1983, the priests replaced missionaries in all their powers.

Regarding the argument that they modified their claim before the Supreme Court, she argues that it is groundless because, since the initial step of the trial, they were and maintained praying to be issued the judgment substituting the marriage certificate. Therefore, the judge shall examine whether they celebrated the marriage according to the Law. DETERMINATION OF THE COURT

Article 25 of the Constitution of 20/12/1978 which was in force in 1983 when Nahimana Pierre and Mukankubito Daphrose celebrated their religious marriage, was providing that “marriage between one man and one woman concluded according to the

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Law and the procedure provided by it, is the one recognised” whereas article 98 provides that, this Law repealed the Constitution of 24/11/1962 as it was modified.

The interpretation of the Constitution of 24/11/1962, especially aforementioned article 28, indicates that the legal marriage was the one concluded between one man and one woman before the public administration or before the religious congregation. This being confronted with the issue under determination, it implies that whenever a representative of a recognized religious organization in Rwanda officiated a marriage according to religious rites, that marriage was acknowledged legal. The aforementioned article 28 was not taken back in the Constitution of 20/12/1978, because its article 25 did not refer to religious marriage; rather, it only provided that only the marriage between one man and one woman concluded in accordance with the Law and the procedure provided is recognised.

Regarding the provisions of the Law governing the marriage in 1983 when Mukankubito Daphrose and Nahimana Pierre celebrated a religious wedding, Counsel Mugeni Anita states that the law which was into force is the decree of 04/05/1895 stated above, especially its article 17. In the hearing of the case held on February 5, 2020, she was requested to reconcile the provisions of article 17 and those of article 16 providing for the procedure to go through by the missionary to recognize the marriage by him officiated after obtaining the permission, and the religious wedding celebrated in 1983. The issue here consists of knowing whether the provisions of that article could also apply in 1983 for that religious marriage to be recognized by the Law, notably that the existing institution of the

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“Gouverneur Général” who was competent to permit the missionary to officiate the marriage in accordance with the law during the colonial period, was no longer present in 1983. Counsel Mugeni Anita did not even indicate whether someone else replaced him and acted as provided by aforementioned articles 16 and 17. In respect of this issue, the Counsel for Nabimana Pierre retorts that since 20/12/1978, the religious wedding was no longer considered civil marriage, because since then, only the bourgoumestre had the power to officiate the civil marriage basing on the Law governing communes of 1963.

The Law of 23/12/1963 governing communes, as modified by the decree of 26/09/1977 provides in article 58 that bourgoumestre was in charge of safeguarding civil status and census registry. In this context, he was in charge of gathering and transcription of all information relating to the population residing in his commune. That attribution belongs usually to the civil status officer. Regarding officiating marriage in particular, there is a Law scholar who states that in Butare, which was one of the country's prefectures, its governor instructed all bourgoumestres to

officiate all marriage in compliance with the provisions of the civil law. It was by the same occasion published an order instituting formalities to be followed. That practice spread to the whole country. He continues stating that the Law no 42/1988 of 27 October 1988 instituting preliminary title and book one of the civil code, in its article 87, confirmed bourgoumestres in that duty of being a civil registration office, whereas article 456 of that Law provided that all acts performed by the administration of prefectures and communes before the publication of that Law

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remain valid, despite the inexistence of a particular law vesting them with the capacity of the civil registration officer.⁴

The Court, basing on the holdings in previous paragraphs, finds that the arguments of Mukankubito Daphrose that the religious marriage with Nabimana Pierre celebrated in 1983 in Nyamirambo Parish should be considered legal, have no merit. - Whether the elements of evidence produced by Mukankubito Daphrose in the judgment RCA0106/15/TGI/NYGE, proving her marriage with Nabimana Pierre were disregarded.

a. The identity card of Nahimana Pierre

Counsel Mugeni Anita for Mukankubito Daphrose declares that in the case under review due to injustice, the Court disregarded the evidence including the identification document (I.D) of Nabimana Pierre indicating that they are legally married because it used to be filled in by the civil registration officer; thus, Mukankubito Daphrose being mentioned as his spouse including their both children constitute reliable evidence.

Counsel Niyomugabo Christophe states that among the pieces of evidence pointed out by the Office of Ombudsman to have been disregarded include the identification card indicating the marriage between Mukankubito Daphrose and Nabimana Pierre, but that they find it is not a piece of evidence to prove that a person is married to another, which even the judge clarified it

4 NTAMPAKA, Charles, Droit des personnes et de la famille, Manuels de droit rwandais, 1993, pages 17, 66 et 67

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in paragraph 18 of the case under review. He also states that the article 86 CCB.I. provides that the civil status of persons is proven and indicated by the documents issued according to this title, therefore that no other evidence apart from the marriage certificate “acte de mariage” or judgment substituting marriage certificate “jugement supplétif d’acte de mariage” is likely to be admitted to substantiate marriage.

In the course of the hearing of 05/02/2020, Nabimana Pierre was given the floor and argued that the identification card he had been using before 1994 was confiscated during the genocide against the Tutsis in 1994, thus, the one produced by Mukankubito Daphrose is a forged

document for traveling abroad, as it is not the only document she forged and in addition, she lied about her completion of secondary education at Karubanda, where she pretended to have been awarded a diploma no T-568/79 of 25/7/1979, whereas she completed only primary school. She also forged a traveling document (titre de voyage) stating that she is Congolese and changed her name to Caroline. His counsel also argues that in the case under review, the Court did not disregard the said identification card, rather as it is clear on page 9 paragraph 18 of the

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RCA0106/15/TGI/NYGE, it clarified that it could not constitute lawful evidence of civil status, because the legal evidence is the marriage certificate or suppletive judgment. Furthermore, she declares that their marriage took place in Nyarugenge whereas that identification card was issued in Kacyiru. DETERMINATION OF THE COURT

Article 117 of 04/05/1895 of the aforementioned Decree provided that the evidence of marriage is produced according to

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the title relating to civil status' certificates, whereas article 109 of that Decree provided about marriage officiating formality, where they stated that, after vowing to become spouses, the civil registration officer had to draw the marriage certificate. The content of these articles corroborates with the opinion of a Law scholar named Ntampaka Charles, who indicates that, in general, the indubitable evidence of marriage is a marriage certificate, unless it is lost or the registry of marriage is unavailable and in this case, they base on testimonial evidence.⁵

Basing on the reasons in the previous paragraph, the Court finds that the fact for Mukankubito Daphrose to be mentioned in Nabimana Pierre's identification card as his spouse could not be considered as evidence for proving they got civilly married because the marriage is evidenced solely by the marriage certificate.

Concerning the argument of counsel Mugeni Anita that, for a wife to be registered in her husband's identification card they had to be married; the Court finds it without merit because the Decree-Law N° 01/81 of 16 January 1981 relating to population's census, the identification card, the residence and the domicile of a person, particularly in articles 5, 6 and 7, provided for the requirements for a person to be awarded the identification card which includes being aged 16, possession of 2 passport photos of which one should be put on the identification card and the other

5 NTAMPAKA, Charles, Droit des personnes et de la famille, Manuel de droit rwandais, 1993, pge 108 : « En général la preuve du mariage est faite à suffisance par un extrait de l'acte de mariage. La preuve sera faite par témoins en cas de perte ou d'inexistence de registres de mariage (In general, the proof of marriage is made by an extract of the marriage certificate. The proof of marriage will be made by witnesses in case of loss or non-existence of marriage registers)».

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on the census form. Among the requirements, nowhere is provided that the applicant should first indicate that she is legally married to her husband. Rather, it is the annex of that decree which contains the information to be filled in identification card such as names of the spouse and children. The Court finds also that the identification card produced by Mukankubito Daphrose is a copy of which, she failed to produce the original from which she made the copy, and indeed, Nabimana Pierre does not admit it by declaring he lost it during the genocide.

The court is of the view that basing on the reasons provided in previous paragraphs and as decided by Nyarugenge Intermediate Court in the judgment for which Mukankubito Daphrose applied for review due to injustice; her argument that she was registered in Nabimana Pierre's identification card does not constitute a piece of conclusive evidence to decide that they are civilly married.

b. Marriage certificate

Counsel Mugeni Anita states also that another disregarded evidence is the marriage certificate issued in 1983 when Nabimana Pierre requested to be recorded as legally married to Mukankubito Daphrose in order to get Belgium documents. She states in addition that after acquiring Belgium nationality, the administration of Belgium communes issued various documents indicating that Nabimana Pierre is legally married to Mukankubito Daphrose but the Court disregarded them.

Counsel Niyomugabo Christophe states that primarily, the certificate of marriage issued on 12/3/2003 by Kacyiru commune should not be examined because the Office of

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Ombudsman did not consider it as disregarded evidence, however, if the Court finds it worthy to be examined, it should not be considered reliable to prove that Mukankubito Daphrose married Nabimana Pierre because it is not original, and does not comply with the provisions of article 11 of Law 15/2004 of 12/05/2004 relating to evidence and its production. He further states that this corroborates the view of the judge in paragraph 11 of the judgment RCA0106/15/TGI/NYGE, where he held that the concerned document should not be considered as an authentic document basing on the fact that it is not original, and does not comply with the provisions of the aforementioned article 11, because Mukankubito Daphrose alleges that their marriage was officiated in Nyarugenge whereas she applied for that marriage certificate in commune Kacyiru, implying that the issuer had no basis to affirm that Mukankubito Daphrose married Nabimana Pierre. He states also that, the concerned certificate should not be produced as evidence because it is very old as it was issued in 2003 with over 12 years.

During the hearing of 05/02/2020, Nabimana Pierre stated that he learned the concerned marriage certificate for the first time in Court when it was produced by Mukankubito Daphrose.

DETERMINATION OF THE COURT

Article 18 of the aforementioned Decree Law of 04/05/1985 read that in every office of civil registration, civil status acts are registered in civil status registries, whereas article 20 of the same decree provides that the civil status certificates should be issued in presence of two witnesses.

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After the analysis of article 18 mentioned in the previous paragraph, the Court finds that the legislator provided for the registration of civil status certificates in the registry to allow the civil registration officers to have reference and basis to issue duplicate certificates in case of loss or any dispute relating to marriage, and information contained in them be consulted to resolve those disputes.

The case file contains the marriage certificate issued by Kacyiru Commune on 12/03/2003 testifying that Nabimana Pierre and Mukankubito Daphrose concluded civil marriage before the Nyarugenge commune on 18/8/1978 and religious marriage on 17/12/1983.

The Court finds that, on the basis of Mukankubito Daphrose's statements, where she argues that she got married to Nabimana Pierre on 18/8/1978 before Nyarugenge Commune but that he concealed that certificate -the reason she filed a claim before the Court to be awarded a suppletive judgment of a marriage certificate - She did not indicate at least any witness of that marriage who would have accompanied them to receive that certificate in compliance with article 20 of the aforementioned decree, and in addition to that, in the Nyarugenge sector (which replaced the former Nyarugenge commune), which she alleged to have officiated their marriage, they indicated that the civil status registers of that period were lost, implying that the said administration issued the marriage certificate without basing on reliable information.

Basing on previous holdings, The Court finds that Nyarugenge Intermediate Court admitted the marriage certificate issued by Kacyiru commune on 12/03/2003 indicating that Nabimana Pierre and Mukankubito Daphrose concluded a civil

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marriage before Nyarugenge commune on 18/8/1978 but disqualified it because it was issued in contravention of the Law.

c. Various documents were issued by the administration of Belgium communes.

Counsel Mugeni Anita argues that another evidence lies in the fact that Mukankubito Daphrose traveled to Belgium in 1999 with all children, and that in order to benefit from family reunion (regroupement familial) Nabimana Pierre needed to prove that he is married to Mukankubito Daphrose, which he did and they are considered legally married in Belgium, and if he refutes this, it is up to him to demonstrate by which other means he acquired the Belgium nationality.

Counsel Niyomugabo Christophe argues that, primarily, this evidence should not have been examined because the Office of Ombudsman did not consider it as disregarded evidence, but if the Court finds it otherwise, the argument that Nabimana Pierre acquired Belgium nationality

basing on the fact they were married, is not the right scenario, and in addition, it should wonder that given that Mukankubito Daphrose argues that they were married in Belgium, why didn't she apply for marriage certificate "acte de mariage" there. He adds that their contents are just mere statements of Mukankubito Daphrose (Simples déclarations).

In the course of the hearing of 05/02/2020, Nabimana Pierre argued that, with regard to family reunion (regroupement familial), he prays the Court to instruct Mukankubito Daphrose to indicate the document proving where she requested it (regroupement familial) for him, and he explains that he used to travel in European countries to the extent that including him in

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family reunion (regroupement familial for him) schedule was not necessary and being mentioned on a household member document (composition de ménage) does not imply being a Belgium resident. He gives an example of Counsel Mugeni Anita who lives in Rwanda but appears on that (composition de ménage); therefore, he was also considered as residing in Belgium, which is not the case, and the family reunion (regroupement familial) never happened.

DETERMINATION OF THE COURT

The casefile includes various documents issued by Molenbeek commune in Belgium, on which it is written that Mukankubito Daphrose is married to Nahimana Pierre, those documents are the Certificat de résidence historique, légalisation, Composition de ménage, Avertissement-extrait de rôle Impôt des personnes physiques et taxes additionnelles.

The Court, pursuant to article 117 of the aforementioned 04/05/1895's decree and noting reasons of rejection of the marriage certificate to prove legal marriage between Mukankubito Daphrose and Nabimana Pierre as expressed in previous paragraphs, finds that the fact for them to appear on various documents issued in Belgium as married, does not substantiate that they are civilly married; thus, the Nyarugenge Intermediate Court did not err in dismissing them.

- d. Documents from National Identification Agency (NIDA) and Directorate General of immigration and emigration

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Counsel Mugeni Anita states that another dismissed evidence consists of the document issued by NIDA attesting that they concluded a civil marriage. She states also that, the Office of Ombudsman carried out an investigation to Immigration Office, where it found that among the documents filled in by Nabimana Pierre, he mentioned that he is married to Mukankubito Daphrose.

Concerning the documents issued by NIDA, the Counsel for Nabimana Pierre argues that they also cannot be relied on as evidence for reviewing the case due to injustice because their content that Nabimana Pierre is married to Mukankubito Daphrose, has been rectified in NIDA's database, where it is now clear that Nabimana Pierre is single as indicated by the certificate of

celibacy (attestation de célibat) issued to him on 20/4/2016 as well as the new one of 31/10/2019. With regard to documents in the custody of the immigration administration where Nabimana Pierre mentioned that he married Mukankubito Daphrose; they reply that he filled those documents in consideration of their religious marriage, but that apart from that he does not admit they concluded a civil marriage. DETERMINATION OF THE COURT

The court notes that Mukankubito Daphrose requested in writing to National Identification Agency (NIDA) information concerning Nabimana Pierre's civil status which, based on National ID Data, replied to her that he is married to Mukankubito Daphrose. Furthermore, on 18/12/2019, the Director-General of the National Identification Agency (NIDA) issued a "To Whom It May Concern" informing that Mukankubito Daphrose is married to Nabimana Pierre. In

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addition, on 28/12/2019, that Office addressed a note to the Executive Secretary of Kimihurura sector replying to his information inquiry about Nabimana Pierre that the latter is married to Mukankubito Daphrose. The Court considers these documents unreliable evidence to prove their civil marriage since they don't replace the marriage credential which was provided for by article 117 of the aforementioned decree Law of 04/05/1985. For this reason, the arguments of counsel Mugeni Anita, that the Intermediate Court disregarded those elements of evidence is groundless. - With respect to damages requested in this case -

Analysis

of damages requested by Mukankubito Daphrose and Nabimana Pierre

Mukankubito Daphrose argues that, since she suffered injustice in the case under review due to injustice, she prays the Court to order Nabimana Pierre to pay her judicial damages amounting to 15,000,000 Frw (for air tickets and accommodation) for each instance undertaken (Primary Court, High Court, Office of Ombudsman, the Supreme Court), and the Counsel fee equivalent to 1,500,000 Frw at each instance and the total of 13,500,000Frw for almost 9 trial instances it underwent.

Nabimana Pierre states that he prays the Court to order Mukankubito to pay him damages for dragging him in lawsuits equivalent to 10,000,000 Frw and judicial damages equivalent to 2,000,000Frw, as well as Counsel fees equivalent to 10,000,000 Frw. DETERMINATION OF THE COURT

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- Concerning damages for being dragged in an unnecessary lawsuit

The Court finds that damages requested by Nabimana Pierre for being dragged in unnecessary lawsuits should not be awarded given that Mukankubito Daphrose has the right to file her claim for the court to examine whether the injustice she pretends to have suffered from Nabimana Pierre's actions has merit. - Concerning procedural and counsel fees

The Court finds that Mukankubito Daphrose should not be awarded procedural and counsel fees because there was no injustice as a result of either the misinterpretation of the Law or disregarding the evidence presented in the judgment under review due to injustice.

The Court finds that Nabimana Pierre deserves to get paid for judicial damages and counsel fees, because it was incumbent to follow up the court claim filed by Mukankubito Daphrose against him, and hired legal counsel services to assist him. However, the Court finds that he should not be awarded 2,000,000 Frw he requests because he did not provide substantive evidence and finds it excessive, therefore, the Court awards him a discretionary amount of 300,000 Frw for judicial damages and regarding counsel fee, the Court finds that it could not award him 10,000,000Frw he requested because it is excessive and he failed to produce supporting evidence, and for this reason, he is awarded a discretionary amount of 500,000 Frw. III. DECISION OF THE COURT

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Decides that the application for review of the judgment RCA0106/15/TGI/NYGE rendered on 18/05/2015 by Nyarugenge Intermediate Court due to injustice, filed by Mukankubito Daphrose lacks merit;

Upholds the

ruling

of the

judgment

RCA0106/15/TGI/NYGE rendered by Nyarugenge Intermediate Court on 18/05/2015

Decides that the damages requested by Mukankubito Daphrose are without merit;

Orders that Nahimana Pierre should not be awarded damages for being dragged in unnecessary damages.

Orders Mukankubito Daphrose to pay 300,000Frw for procedural fees and 500,000Frw for counsel fees, the total being 800,000Frw.

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