

RWANDA / JUDGMENT

PROSECUTION v MAGARA ET AL.

RLR V.3-2023

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Text

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PROSECUTION v MAGARA ET AL. [Rwanda SUPREME COURT – RS/INJUST/RP 00001/2020/SC (Ntezilyayo, P.J, Cyanzayire, Hitiyaremye, Rukundakuvuga and Muhumuza, J.) January 18, 2021]

Review of a judgment on grounds of being vitiated by injustice – Applicant for the judgment review due to injustice – The procedure for the judgment review due to injustice is extraordinary procedure accorded to a person who blatantly suffered injustice, upon request in accordance with the law, and approval by competent organs on basis of the examination, it is different from other procedures of appeal. Parties who failed to abide by those procedures are not entitled to file incidental applications to the parties' review which has been approved, to request for some changes on the judgment of which they did not apply for the review, because they deprived themselves of such right. Review of a judgment on grounds of being vitiated by injustice – Reversing a decision made for parties who did not apply for the review due to injustice. – A decision taken for those who did not apply for the review due to injustice, who made incidental application, can only be changed when the Court finds that there is the indivisibility of offence commission with the parties who applied for the judgment review due to injustice so that the decision that can be made for applicants is likely to affect their interests. Review of a judgment

on grounds of being vitiated by injustice – Change of the decision of the President of the Supreme Court – The fact that the President of the Supreme Court has approved the application for the review of a judgment on grounds of being vitiated by injustice does not prevent the bench to analyze and decide on special issues considered as of public order. Review of a judgment on grounds of being vitiated by injustice – Scope of the subject matter – The scope of the subject matter in the case under review due to injustice is determined in relation to the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court. Facts: The Prosecution indicted before the Intermediate Court of Gasabo Karake who was the Chairperson of the Board of Directors in SONARWA, which is an insurance company; Mawadza who was the Managing Director of SONARWA, Bamiika who was its Technical Director, Magara and Kamanzi who successively occupied the position of Commercial Director as well as Nzaramba who was the Director of Planning and Policy in the Ministry of Infrastructure, accusing them to commit offences related to embezzlement and offering or accepting an illegal benefit in order to carry out an illegal act as well as issuing false documents. The very Court heard the case and convicted Bamiika and Magara for the offences of embezzlement, offering corruption and issuing false documents and the same Court sentenced them to imprisonment for a term of seven (7) years with a fine of 5,000,000 Frw for each one; Karake was convicted of the offences of receiving corruption and embezzlement and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw; Mawadza was convicted of the offence of

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embezzlement and approving false documents and sentenced to imprisonment for a term of five

- (5) years with a fine of 5,000,000 Frw; Nzaramba was convicted of receiving corruption and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw while Kamanzi was convicted of the offence of embezzlement and issuing false documents and sentenced to imprisonment for a term of four (4) years with a fine of 5,000,000 Frw. The very Court also ordered Bamiika, Mawadza, Kamanzi, Karake and Magara to jointly refund the money embezzled from SONARWA. Bamiika, Mawadza, Kamanzi, Karake and Magara were not satisfied with the ruling and therefore appealed before the High Court. The High Court found their appeal baseless and reversed the appealed judgment only on matters related to the term of imprisonment sentence imposed on each of the defendants. Kamanzi and Magara applied for case review but the Court found their application unfounded. Kamanzi and Magara were not satisfied with such a decision and therefore wrote to the President of the Court of Appeal requesting for the review of the impugned judgment on the ground of being vitiated by injustice, and the President of the Court of Appeal replied to such request by notifying to the applicants that there is no ground provided under the law that can substantiate the review of such judgment due to injustice. Once again Kamanzi and Magara were not happy with the ruling, so they wrote to the Office of the Ombudsman alleging that the High Court disregarded legal provisions in rendering the judgment. The Office of the Ombudsman wrote to the President of the Supreme Court requesting for the review of the

judgment for being vitiated by injustice. The President of the Supreme Court decided that the case be reviewed by the Supreme Court. On the hearing day, the Prosecutor raised the objection related to the inadmissibility of the application submitted by Bamiika, Karake, Mawadza and Nzaramba for analysing the injustice towards their issues because they did not apply for the review due to injustice for the cases they lost. The Prosecution requested for the inadmissibility of the application for judgment review filed by some parties, the latter stated that the objection raised by the Prosecution lacks merit, and based on legal provisions, though they did not apply for the review due to injustice for the cases they lost, they are entitled to file an incidental application for such review. They submit that in case the President of the Supreme Court decides that the case be reviewed due to injustice, such a case has to be reheard on its merits, and in addition, the case has to be heard anew, just like it was instituted at the first instance, and the parties in such case regain their rights previously held. They conclude by stating that it is their right to make the incidental claim to the application for the judgment review due to injustice and they request to be redressed in their rights as the position was set on those issues in the judgment rendered by the Supreme Court. Kamanzi and Magara supported the statements by the Prosecution and they submit that those who did not use the procedures provided by the law to apply for the review of their case due to

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injustice cannot file incidental claims to others' application, that they were satisfied with the judgment ruling. Held: 1. The procedure for the judgment review due to injustice is an extraordinary procedure provided for a person who blatantly suffered injustice, upon request in accordance with the law and approval by competent organs on the basis of the examination, it is different from other procedures of appeal. Parties who failed to abide by those procedures are not allowed to file an incidental claim to other parties' application for the review, which has been approved, in order to request for some changes on the judgment of which they did not apply for the review, because they deprived themselves of such right; therefore, Bamiika, Karake, Mawazda and Nzaramba are not entitled to file an incidental claim to others' application.

2. A decision taken for those who did not apply for the review due to injustice, who made incidental application, can only be changed when the Court finds that there is indivisibility of commission of offences with the parties who applied for the judgment review due to injustice so that the decision that can be made for applicants is likely to affect their interests; therefore, the request by Bamiika, Karake, Mawazda and Nzaramba cannot be admitted unless the Court finds that there is an indivisibility of subject matters in the case.
3. The fact that the President of the Supreme Court has approved the application for the review of a judgment on grounds of being vitiated by injustice does not prevent the bench to analyze and decide on special issues considered as of public order; therefore, the debates based on determining the rights of those who did not apply for the review of the case due to injustice, do not constitute special grounds.

4. The scope of the subject matter in the case under review due to injustice is determined in relation with the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court; therefore, the grounds on which Bamiika, Karake, Mawazda and Nzaramba base their request are unfounded. The raised objection has merit; The hearing of the case on the merits shall be resumed. Statutes and statutory instruments referred to: Law no 027/2019 of 19/09/2019 relating to criminal procedure, article 190; Law no 30/2018 of 29/04/2018 determining the jurisdiction of courts, articles 54 up to 63. Cases referred to: RS/INJUST/RC 00024/2018/SC, Ngizweninshuti Albert vs Muhima Giovanni, rendered on 21/02/2020; RS/INJUST/RC 00022/2018/SC rendered on 21/6/2019, Busoro Gervais vs Busoro Mugunga;

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RS/INJUST/RP 00004/2018/SC rendered on 28/02/2019, Ubushinjacyaha vs Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbat.

Judgment

I. BACKGROUND OF THE CASE

- [1] The Prosecution indicated that during the fiscal year 2013/2014, SONARWA attempted by all means to win an insurance tender for Government vehicles awarded by MININFRA, because it was awarded to COGEAR for so long. The Prosecution further submitted that the Ministry of Infrastructure used to pay invoices for such insurance, and SONARWA employees on their side used to prepare cheques for withdrawing the commission fee for a person who helped them to win such tender, and they bore the names of Rutagwabira Barnabas or Mbabazi Gerard, who were SONARWA agents, while they played any role in winning such tender, since it was an open tender.
- [2] The Prosecution submitted that before withdrawing the money on the cheque, a request note for such amount on the cheque had to be prepared and sent to the Director General, and after it was signed by all concerned people, then a cheque was prepared in the names of Mbabazi Gerard or Rutagwabira Barnabas as money recipients, and the latter signed on such cheques for receipt acknowledgment. After withdrawing the money, an amount of 15,000 Frw was given to each of them, and the remainder was to be sent to Nzaramba Stevenson for sharing the amount with those who played a role in awarding the tender, and the remaining amount had to be shared by SONARWA employees.
- [3] The Prosecution indicted before the Intermediate Court of Gasabo, Karake Mutsinzi Charles who was the Chairperson of the Board of Directors in SONARWA, which is an insurance company; Mawadza Nhamo who was the Managing Director, Bamiika Rumanyika Herbert who was its Technical Director, Magara Gahakwa John and Kamanzi Charlotte who successively occupied the position of Commercial Director as well as Nzaramba Stevenson

who was the Director of Planning and Policy in the Ministry of Infrastructure, accusing them to commit offences related to embezzlement and offering or receiving an illegal benefit in order to carry out an illegal act as well as issuing false documents.

- [4] Kamanzi Charlotte was accused of knowingly preparing false documents and complicity for embezzlement, while Karake Mutsinzi Charles was accused of complicity in offering an illegal benefit for committing an illegal act and complicity in embezzlement. Bamiika Rumanyika Herbert, Mawadza Nhamo and Magara Gahakwa John were accused of knowingly preparing false documents, offering an illegal benefit for committing an illegal act, and complicity in embezzlement.
- [5] The Intermediate Court of Gasabo, in the case RP 00538/2016/TGI/GSBO of 30/06/2017, held that:

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- a. Bamiika Rumanyika Herbert and Magara Gahakwa John are convicted of embezzlement, offering corruption and preparing false documents and they were sentenced to imprisonment for a term of seven (7) years with a fine of 5,000,000 Frw for each one;
 - b. Karake Mutsinzi Charles is convicted of receiving corruption and embezzlement and he was sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw;
 - c. Mawadza Nhamo was convicted of embezzlement and approving false documents and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw;
 - d. Nzaramba Stevenson was convicted of receiving corruption and sentenced to imprisonment for a term of five (5) years with a fine of 5,000,000 Frw;
 - e. Kamanzi was convicted of embezzlement and preparing false documents and sentenced to imprisonment for a term of four (4) years with a fine of 5,000,000 Frw.
- [6] Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John were ordered to jointly refund the money embezzled from SONARWA amounting to 163,843,336 Frw. The very Court also held not guilty Mbabazi Gerard and Rutagwabira Barnabas and ordered for their immediate release.
- [7] Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John were not satisfied with the ruling, they thus lodged an appeal before the High Court, and their appeal was registered under RPA 00669/2017/HC/KIG, RPA 00680/2017/HC/KIG, RPA 00684/2017/HC/KIG, RPA 00685/2017/HC/KIG, RPA 00686/2017/HC/KIG, RPA 00745/2017/HC/KIG.

- [8] Their appeals were joined in a single case, and on 27/04/2018, the High Court upheld their appeal unfounded and reversed the appealed judgment only on matters related to the term of imprisonment sentence imposed on each accused. The Court imposed on them the following sentences:
- a. Bamiika Rumanyika Herbert and Nzaramba Stevenson were sentenced to imprisonment for a term of three (3) years with a fine of 5,000,000 Frw for each one;
 - b. Magara Gahakwa John, Mawadza Nhamo, Kamanzi Charlotte and Karake Mutsinzi Charles were sentenced to imprisonment for a term of three (3) years suspended for one (1) year with a fine of 5,000,000 Frw each. The Court ordered Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte and Magara Gahakwa John to jointly refund the money amounting to 163,843,336 Frw embezzled from SONARWA.
- [9] Kamanzi Charlotte and Magara Gahakwa John applied for the review of that case, and the case was registered under RPA 00658/2018/HC/KIG, RPA 00661/2018/HC/KIG and the Court found their application inadmissible.
- [10] Kamanzi Charlotte and Magara Gahakwa John were not satisfied with the decision of the High Court, and they wrote to the President of the Court of Appeal applying for the review of the

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judgment RPA 00658-00661/2018/HC/KIG and RPA 00669/2017/HC/KIG -RPA 00680/2017/HC/KIG

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RPA 00684/2017/HC/KIG-RPA00685/2017/HC/KIG-RPA00686/2017/HC/KIGRPA00745/2017/ HC/KIG, and the President of the Court of Appeal replied to such request by notifying to the applicants that there is no ground provided under the law that can substantiate the review of that judgment due to injustice.

- [11] Kamanzi Charlotte and Magara Gahakwa John were not satisfied with that answer, they wrote to the Office of the Ombudsman alleging that the High Court disregarded legal provisions in rendering the judgment RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG –RPA 00685/2017/HC/KIG – RPA 00686/2017/HC/KIG-RPA 00745/2017/HC/KIG, hence they suffered injustice.
- [12] The Office of the Ombudsman wrote to the President of the Supreme Court on 25/09/2020 requesting for the review of the judgment RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG for being vitiated by injustice.

- [13] On 28/09/2020, the President of the Supreme Court, basing on the report from the Inspectorate of Courts, decided that the case be reviewed, and it was registered under RS/INJUST/RP 00001/2020/SC.
- [14] The case was called on 26/10/2020, but it was not heard on that date because Nzaramba Stevenson had submitted grounds for his absence, hence resulting in adjourning the hearing for 03/11/2020, and once again the hearing did not take place due to the illness of Bamiika Rumanyika Herbert, and the Court informed that the hearing date will be communicated by the Court Registry.
- [15] The hearing was scheduled on 03/12/2020, and it was conducted in public on that day, Kamanzi Charlotte being assisted by Counsel Musore Gakunzi Valery and Counsel Asiimwe Frank, Magara Gahakwa John assisted by Counsel Uwizeyimana Jean Baptiste and Counsel Bugingo John Bosco, Bamiika Rumanyika Herbert, via videoconference from the correctional facility, assisted by Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie, Karake Mutsinzi Charles assisted by Counsel Rutabingwa Athanase, Mawadza Nhamo represented¹ by Counsel Bandora Alfred, Nzaramba Stevenson, via videoconference from the correctional facility, assisted by Counsel Kanyambo Diogène while the Prosecution was represented by the National Prosecutor Uwombonye Hirwa Sudi.
- [16] At the hearing beginning, the Prosecution raised the objection related to the inadmissibility of the application submitted by Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, 1 Mawadza Nhamo requested legal representation instead of legal assistance, and after analyzing his grounds, which it found with merit, the Court gave such authorization.

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Mawadza Nhamo, and Nzaramba Stevenson for analyzing the injustice on their issues because they did not apply for the review due to injustice for the cases they lost.

- [17] Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, and Nzaramba Stevenson together with their legal Counsel, and the Legal Counsel for Mawadza Nhamo, stated that the raised objection has no merit, based on article 63 of the Law N° 30/2018 of 29/04/2018 determining the jurisdiction of courts, reading that "When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgment on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties". Based on the provisions of the foregoing article, they state that, though they did not apply for the review due to injustice for the cases they lost, they are entitled to make an incidental application for review.
- [18] Kamanzi Charlotte, Magara Gahakwa John and their legal counsel supported the statements of the Prosecution and stated that those who did not use the procedures provided by the law to request for the review of their case due to injustice cannot file an incidental application, since it appears that they were satisfied with the judgment. II. ANALYSIS OF LEGAL ISSUES Determine whether those who did not apply for the review of the judgment on grounds of

being vitiated by injustice can file incidental applications for making some requests on their behalf

- [19] The Prosecutor states that the co-accused of Magara Gahakwa John and Kamanzi Charlotte, should not file an incidental application because they have never raised the injustice they suffered based on article 55, paragraph 2, of the aforementioned Law, and they failed to abide by legal provisions for being redressed in their rights; therefore, they deprived themselves of the right to apply for the review of their case due to injustice.
- [20] The Prosecutor elucidated that there is no injustice in the ruling that convicted Nzaramba Stevenson, Bamiika Rumanyika Herbert, Mawadza Nhamo, and Karake Mutsinzi Charles on their issues, but if the Court finds it necessary, they should be heard only on the issues required by the Court without considering them as parties.
- [21] Counsel Bugingo John Bosco, Counsel Uwizeyimana Jean Baptiste, and their client Magara Gahakwa John emphasized the statements of the Prosecutor, they state that those requesting to file incidental application have no interest in the case because a party's interest in the case under application for review due to injustice refers to article 55 of the aforementioned Law n° 30/2018, and such interest is indicated by lodging an application within the time limit provided by article 56 of that Law; therefore, if the Court decides to examine the review due to injustice for those who did not apply for it, such decision would be inconsistent with such provisions. Counsel Bugingo John Bosco and Counsel Uwizeyimana Jean Baptiste find that all parties to the case are summoned only in the interest of justice in order for them to help the Court to know the truth.
- [22] Counsel Asiimwe Frank and Counsel Musore Gakunzi Valérie assisting Kamanzi Charlotte state that the fact that Nzaramba Stevenson and his co-accused failed to apply for the review of

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their case due to injustice means that they were satisfied with the judgment ruling. They explain that what the Legislator intended to mean in article 63 of the Law n° 30/2018 was not to review the case due to injustice for those who applied for it and those who did not, rather, the parties to such case are summoned with the intention to search for the truth on the issue submitted to the Court.

- [23] Kamanzi Charlotte states that there are some legal procedures she respected in requesting for the review of her case due to injustice, and it is in her finding that article 63 of the Law n° 30/2018 which is applied when there are parties who initiated such procedures and were allowed to do so, and it is by then that all parties in the case are summoned for them to plead; therefore, Nzaramba Stevenson and his colleagues should have respected procedures provided by the Law in applying for the review of their case due to injustice as regarding for their issues.

- [24] Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie assisting Bamiika Rumanyika Herbert state that when the President of the Supreme Court orders for the review of the case, the case is reviewed in its entirety, and all parties being summoned, and it is in this regard that Bamiika Rumanyika Herbert was also summoned as a party in the case. As it is provided in article 63 of the aforementioned Law n° 30/2018, they find that the case has to be reviewed in order to consider the injustice infringed on Bamiika Rumanyika Herbert. They aver that this is the position adopted in the judgment RS/INJUST/RCOM 00001/2019/SC, Ntegeye Bernard vs ECOBANK Rwanda Ltd and National Bank of Rwanda (BNR), where the Court stated that the purpose in establishing the procedure for review due to injustice is to rectify the injustice that may appear in the judgment due to a judge's mistake or error that is blatant to everyone and there is no other remedy to such injustice.
- [25] They elucidate that, according to legal scholars, the appeal lodged by one of the parties benefits the others in indivisible matters². Therefore, though an application to review the judgment on grounds of being vitiated by injustice is not an ordinary procedure of appeal, nothing prevents what is done during an appeal to be also done for this procedure since the outcomes are the same, especially since a decision that may be made for Kamanzi Charlotte and Magara Gahakwa John can affect the decision for other parties, and the Court can't decide on them without hearing them.
- [26] Counsel Gashagaza Philbert and Counsel Nyirangirimana Astérie also stated that article 63 of the Law N° 30/2018 should be understood based on the position adopted by the Court in the judgment RS/INJUST/RC 00022/2018/SC rendered on 21/6/2019, BUSORO Gervais vs Busoro Mugunga, where it was held that when a case is under application for review due to injustice, no objection can be raised unless a party manages to prove that an error has been made during the process of reviewing the judgment on grounds of being vitiated by injustice, therefore, based on the foregoing, the Prosecution cannot raise an objection. ² M.D. Dalloz, Ainé, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593. "L'appel interjeté par l'une des parties profite aux autres dans les matières indivisibles, c'est-à-dire toutes les fois qu'il y a impossibilité absolue d'exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé. »

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- [27] They also pray the Court to refer to the position adopted by the Supreme Court in the judgment RS/INJUST/RP 00004/2018/SC rendered on 28/02/2019, Prosecution vs Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbath, including Hotel des Milles Collines which filed a civil case, in paragraph 64, whereby the very Court held that the previous parties, be it those convicted or those declared not guilty and civil parties, an examination of injustice and its cause for criminal liability and compensation should concern all of them. They, therefore, find the instant case as a solution to the aforementioned article 63.

- [28] Counsel Kanyambo Diogène and Counsel Rutabingwa Athanase and their client Nzaramba Stevenson, state that, based on the provisions of article 63 of the Law N° 30/2018, they find that Nzaramba Stevenson should be a party in the instant case since he has been a party in the case under review due to injustice. They argue that when the President of the Supreme Court decides that a judgment has to be reviewed, he does so before dealing with the merits of the case, thus being unaware of the existence of other parties who suffered injustice resulting from the same judgment, and the impugned article 63 of the aforementioned Law N° 30/2018 intended to solve such issue so that no party is left out.
- [29] They also state that the foregoing is upheld by the judgment RS/INJUST/RP 00004/2018/SC, in which the Court held that Rutayisire Ruhinda Sabbat as well the civil party could be parties in the judgment under review on grounds of being vitiated by injustice, though they had not applied for such review. They elucidate that in paragraph 64 of the said judgment, Rutayisire Ruhinda Sabbat who was declared not guilty, with no reason to apply for the review due to injustice, the Court found it necessary to summon him. Based on the foregoing reasons, they request that Nzaramba Stevenson be a party in the instant case. They indicate that considering the way the offences were committed, it is not easy to separate the offender from the accomplice, the reason why the review of the judgment due to injustice should be considered in general.
- [30] Counsel Rutabingwa Athanase and his client Karake Mutsinzi Charles state that article 55 of the Law N° 30/2018 concerns the reasons based on in initiating an application for the review of the judgment on grounds of being vitiated by injustice, and the last paragraph prevents an applicant for review due to injustice who did not use other remedies of appeal, while article 56 provides for the time limit for initiating an application, and they, therefore, find those articles different from article 63 of the said Law since such article provides for the hearing period, that all parties to the case have to be summoned.
- [31] Counsel Bandora Alfred representing Mawadza Nhamo states that he concurs with the preceding speakers, but he adds that an application to review due to injustice is an extraordinary procedure of appeal which is legal, and prays the Court to refer to article 153 of the Law n° 22/2018 relating to civil, commercial, labour and administrative procedure, reading that those who have not appealed can take part in proceedings to protect their interests and allow Mawadza Nhamo to be a party in the instant case since the alleged injustice concerns the entire judgment.
- [32] Counsel Bandora Alfred elucidates that, though it is apparent that Mawadza Nhamo paid a fine imposed on him, it does not mean that he was satisfied with the ruling regarding his issues,

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rather, it was due to the fact that he had to go for medical care abroad, hence concluding an agreement with MINIJUST which permitted the release of his passport. DETERMINATION OF THE COURT

- [33] It is in the finding of the Court that parties summoned in the instant case are in two categories: those who applied for the review of the judgment rendered by the High Court for being vitiated by injustice and got approval, and those are Magara Gahakwa John and Kamanzi Charlotte, and the second category consists of those who were summoned in the case but did not apply for the review of the judgment due to injustice, and those are Nzaramba Stevenson, Karake Mutsinzi Charles, and Mawadza Nhamo. Those in the second category are those requesting the Court to examine their submissions and change the decisions made for them in the judgment under review due to injustice, based on article 63 of the Law N° 30/2018 of 29/04/2018 determining the jurisdiction of courts reading that the merits of the case are examined anew and in the presence of all parties. In the following paragraphs, it will be analyzed the definition of summoning all parties, examination of the merits of the case, and examination of the case anew.
- [34] Matters relating to summoning all parties to the case under review due to injustice raise debates related to the determination of the reason for the presence of parties who did not apply for the review of the judgment due to injustice, while they did not claim for suffering injustice. Can they file an incidental application to indicate the injustice they suffered, without respecting procedures provided for under articles 58-61 of the aforementioned Law N° 30/2018 of 29/04/2018?
- [35] The Court finds that the review due to injustice is an extraordinary procedure provided to a party who blatantly suffered injustice, upon request in accordance with articles 54,55,56 and 58 of the Law N° 30/2018 of 29/04/2018 upon approval by organs mentioned in article 58, after consideration through procedures provided under articles 59 and 62 of the said Law; and this is different from other procedures of appeal which do not require special analysis. It is in the finding of the Court that parties who failed to abide by such procedures are not authorized to file incidental claims to the others 'application lodged and admitted, in order to request for some changes on the judgment of which they did not apply for the review because they deprived themselves of such right.
- [36] In that regard, they are not accused in that case and they are not allowed to introduce any request thereof; they only speak when asked by the Court, or when they request to provide some explanations on the commission of an offence. This is not new in law since based on the provisions of article 190 of Law N° 027/2019 of 19/09/2019 relating to criminal procedure, the party claiming for damages appeals only with respect to the civil conviction, the Prosecution appears and is allowed to speak, but their right is limited since it cannot request for any change on an imposed sentence.

- [37] The Court finds that a decision made for those who did not apply for the review of the case due to injustice, and who filed incidental application, such decision may only change if the Court finds indivisibility relating to the commission of an offence with those who applied for the

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review of the judgment due to injustice, so that a decision made for those who applied for such review may affect the interests of those who did not apply.

- [38] With regard to those who request to file an incidental application for the review due to injustice, stating that when the President of the Supreme Court decides that a case be reviewed due to injustice, such case has to be examined on its merit, based on the judgment RS/INJUST/RC 00022/2018/SC of Busoro Gervais vs Busoro Mugunga Désiré, Twagirayezu Ildephonse and Mukankombe Chartine, the Court finds it baseless. It is true that in such judgment, the Court stated that the fact that the President of the Supreme Court decides that a case be reviewed due to injustice, does not prevent the bench to examine special issues, such as the respect of the time limit, among others, and decide on them.
- [39] The instant Court finds that special issues mentioned in that judgment should be construed as of public order. In the instant case, the debates are based on to determine the right of those who did not apply for the review of the judgment for being vitiated by injustice through the aforementioned legally provided procedures, the Court finds that this issue is related to the capacity of parties, and this consists of an issue of public order, which has to be examined by the bench before the merits of the case.
- [40] On matters relating to their statements that the case has to be examined anew, as it was at the first instance, so that those who have been parties in it may regain their rights previously held, the Court finds those statements baseless. Effectively, as it is in the position adopted by the Court, the case review should not be construed as if the case has to be examined regardless of previous judgments rendered before an application for its review due to injustice as if all previous judgments are declared null and void. Rather, the Court elucidated that the scope of the subject matter in the case under review due to injustice is determined in relation with the ruling of the first instance, the ruling of the judgment under review due to injustice and the submissions of the applicants for such review following the approval of the President of the Supreme Court. Such a position was adopted by the instant Court in the judgment RS/INJUST/RC 00024/2018/SC for Ngizweninshuti Albert vs Muhima Giovanni rendered on 21/02/2020.
- [41] With regard to the judgment RS/INJUST/RP 00004/2018/SC for Mbarushimana Jean de Dieu whereby those who filed incidental application allege that the Court set the position which entitles them such a right, the Court finds it untrue because it was not examined an issue relating to determine whether those who did not apply for the review of the judgment due to injustice can file an incidental application to pray the Court to examine injustice related to

their issues. The Court finds that the basis of the alleged injustice was on the fact that a party who applied for the case review got sentenced alone while there were other people who contributed to the commission of an offence, and who have neither been sued nor punished, hence leading him to bear alone the burden of paying damages. The Court decided to summon only those who have been parties to that case, namely Rutayisire Ruhinda Sabbat, who was sued by the Prosecution, together with Compagnie Rwandaise d'Hôtellerie et de Tourisme, Hôtel des Mille Collines, which filed a civil claim.

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[42] The Court finds that, though Rutayisire Ruhinda Sabbat and the civil party were summoned in that case, and were allowed to speak though they had not applied for the review of the judgment due to injustice, it did not decide on their issues, rather, a decision was made on the applicant for the review due to injustice, meaning Mbarushimana Jean de Dieu. Therefore, the fact that Nzaramba Stevenson, Bamika Rumanyika Herbert, Karake Mutsinzi Charles and Mawadza Nhamo and their respective legal Counsels refer to the said judgment to pray the Court to decide on their issues, such request is unfounded.

[43] Based on the foregoing elucidations, the Court finds that those who have been parties to the case under review due to injustice are summoned, for the Court to ask them some questions that may help in the adjudication of the case under review due to injustice or for them to provide some information, but being not authorized to request for modification of the judgment on matters relating to decisions made for them, unless the Court finds that there is indivisibility of subject matters, so that the Court cannot rule on the application initiated by those who applied for the review of the judgment due to injustice without affecting the decisions made for those who did not apply for such review and their interests. III.

DECISION OF THE COURT

[44] Held that the objection raised by the Prosecution has merit;

[45] Held that the injustice that has to be examined in the judgment RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG – RPA 00685/2017/HC/KIG- RPA00686/2017/HC/KIG-RPA 00745/2017/HC/KIG rendered by the High Court on 10/12/2018 is only related to Magara Gahakwa John and Kamanzi Charlotte, and the Court may decide on matters relating to other parties in case there is the indivisibility of subject matters;

[46] Held that the hearing of the instant case will be resumed on 18/01/2021.

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