

RWANDA / JUDGMENT

PROSECUTION v UWIMANIHAYE

RLR V.4-2025

COURT

High Court

DECIDED

9 April 2024

CASE / FILE NUMBER

RS/INJUST/RP 00001/2022/HC/KIG

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Text

Page 1

PROSECUTION v UWIMANIHAYE [Rwanda HIGH COURT - RS/INJUST/RP 00001/2022/HC/KIG (Juru, P.J., Byakatonda, Mukakarisa, J.) 09 April 2024] Criminal procedure — Case review — All parties to the case under review must be summoned to appear to the review proceedings, and failure to summon any of the parties, even if it was a civil party in the case under review, constitutes a ground of injustice which may justify the review of the case on grounds of justice. Facts: Uwimanihaye Pierre Celestin applied for the review of the judgment no RP 01088/2018/TGI/NYGE, in which he had been convicted of fraudulently selling a RAV4 vehicle with plate number RAD 615P, arguing that there exist other separate judgments, specifically the judgment No RP 00759/2018/TGI/NYGE and the judgment No RPA 01524- RP1525/2019/HC/KIG in which other individuals, namely Ntihemuka Emmanuel and Hakizimana Daniel, were convicted for the fraudulent sale of the same vehicle along with other cars. He stated that he was wrongly convicted for an offense committed by others who were already prosecuted and sentenced. The Court declared founded the new ground he presented and decided that he was not held guilty of the offenses for which he had been convicted.

Page 2

Ntabaheje Théogène who had been the civil party in the case under review, argued that he should have been summoned in the review proceedings in which Uwimanihayé Pierre Celestin was acquitted. He subsequently applied for the review of that judgment on the grounds of injustice, claiming that the alleged injustice resulted from the failure to summon him while he should be summoned, and the Intermediate Court should not have admitted the application for the judgment review. Held: All parties to the case under review must be summoned to appear to the review proceedings, and failure to summon any of the parties, even if it was the civil party in the case under review, constitutes a ground of injustice which may justify the review of the case on grounds of justice. Therefore, the fact that case RP 01112/2021/TGI/NYGE was adjudicated without summoning Ntabaheje Théogène, who was a party in the case under review, amounts to injustice. The application for review due to injustice has merit. Statutes and statutory instruments referred to: Law n° 027/2019 of 19/09/2019 relating to the criminal procedure, article 195; Law n° 30/2018 of 2/6/2018 determining the jurisdiction of courts, article 55. Cases referred to:

Page 3

Special Guarantee Fund (SGF) v Uwanyirigira Josée et al., RS/REV/RC 00001/2022/CA, rendered by the Court of Appeal on 20/04/2023.

Judgment

BACKGROUND OF THE CASE

The Prosecution indicted before the Intermediate Court Gasangwa Innocent, Uwimanihayé Pierre Celestin and Hakizimana Daniel, accusing them of forgery and use of forged documents, as well as fraud. The Prosecution alleges that on several occasions, Gasangwa Innocent rented vehicles and handed them over to individuals involved in vehicle theft with him, who would then sell them or use them as collateral in “Lambert,” using falsified documents, afterwards, Gasangwa used search notice, reporting that the vehicles had been stolen, while he well knew that it was not the case.

It is alleged that Gasangwa orchestrated a scheme to defraud individuals in collaboration with his associates, namely Hakizimana Daniel and Uwimanihayé Pierre Celestin, by selling a RAV4 vehicle with plate number RAD 615P, owned by Ntabaheje Théogène. The fraudulent transaction was executed using a forged national identification card in the name of Uwimanihayé Pierre Celestin, though the photo did not match with his identity. They also fraudulently processed an ownership transfer from Ntabahejeje, since the vehicle was registered under Uwimanihayé’s name. These falsified

Page 4

documents were used without the owner's knowledge. Uwimanihayé, along with Hakizimana Daniel, one of Gasangwa's accomplices, went to Musanze to sell the car. After the sale to Ntabahejeje Théogène, Gasangwa promptly reported to the Rwanda Revenue Authority (RRA) and the police, falsely claiming that the car had been stolen by unknown individuals, despite having sold it himself. During the trial proceedings, the Prosecution requested the exclusion of Hakizimana from the case, stating that the acts under prosecution had already been adjudicated in another case, RP 00759/2018/TGI/NYGE and the Intermediate Court ruled that he should be removed from the case.

The Intermediate Court, based on the testimonies of witnesses including Isimbi and Rwamakambiza, found that Uwimanihayé Pierre Celestin committed the offenses of forging and using forged documents and official papers issued by competent authorities, as well as the offense of fraud. Consequently, the Court sentenced him to the imprisonment for a term of seven (7) years and a fine of three million Rwandan Francs (3,000,000 Frw).

GASANGWA Innocent and UWIMANIHAYE Pierre Celestin appealed to the High Court, and their case was registered under RPA 00028/2020/HC/KIG. The Court ruled that the appeal filed by Uwimanihayé Pierre Celestin was inadmissible for review because he had not paid the required court fees. It further held that GASANGWA Innocent's appeal was partially founded and, accordingly, the appealed judgment was partially reversed. The sentence previously imposed on him was

Page 5

reduced to the imprisonment for a term of three (3) years and a fine of three million Rwandan Francs (3,000,000 Frw). The amount of money previously awarded to NTABAHEJEJE Théogène by the lower court, 3,450,000 Frw for car rental, 60,000 Frw for a battery sale, and 200,000 Frw for tires, was overruled. The Court ordered to GASANGWA Innocent to pay to NTABAHEJEJE Théogène a sum of 500,000 Frw as legal representation fees at the appellate level.

After the

judgment

became final, UWIMANIHAYE Pierre Celestin applied for review of the case RP 01088/2018/TGI/NYGE in which he had been convicted. He claimed that he was accused of fraudulently selling the vehicle RAV4 bearing the plate number RAD 615P, while there were the judgments RP 00759/2018/TGI/NYGE and RPA 01524- RP1525/2019/HC/KIG, wherein NTIHEMUKA Emmanuel and HAKIZIMANA Daniel were convicted for fraudulently selling the same vehicle along with others. This, according to him, indicated that he had been convicted for an offence committed by others, who were already prosecuted and punished. Consequently, the application for review was registered under RP 01112/2021/TGI/NYGE.

In the case RP 01112/2021/TGI/NYGE, which constitutes a review of the case RP 01088/2018/TGI/NYGE, the Intermediate Court admitted the new ground presented by UWIMANIHAYE Pierre Celestin and held that, although he had been convicted of fraudulently selling the vehicle RAD 615 P, it had since

Page 6

emerged that other individuals admitted to having sold various vehicles through fraudulent means, including the said RAD 615 P. These individuals also explained the *modus operandi* they used, including forging a national ID under the name of UWIMANIHAYE Pierre Celestin but with a different photograph, in order to facilitate the fraudulent sale of the vehicle which, at the time, was registered in the name of UWIMANIHAYE Pierre Celestin. The Court ruled that UWIMANIHAYE Pierre Celestin is not held guilty of the offences for which he was convicted in the case RP 01088/2018/TGI/NYGE.

NTABAHEJEJE Théogène who was a civil party in the case RP 01088/2018/TGI/NYGE, argued that he should have been summoned in the case RP 01112/2021/TGI/NYGE under review, which acquitted UWIMANIHAYE Pierre Celestin. He therefore filed a motion to review the

judgment

RP 01112/2021/TGI/NYGE on grounds of injustice, asserting that the injustice is in the fact that he has not been summoned to participate in proceedings in which he had legal standing. He further contended that the Intermediate Court should not have admitted the new grounds on the basis of the existence of the judgments RP 00759/2018/TGI/NYGE and RPA 01524– RP1525/2019/HC/KIG, in which NTIHEMUKA Emmanuel and HAKIZIMANA Daniel were found guilty of fraudulently selling the vehicle RAV4 RAD 615P and others, arguing that UWIMANIHAYE Pierre Celestin had prior knowledge of the issues raised in the case RP 01088/2018/TGI/NYGE. He thus requested the High Court to rule that the review based on new ground in case

Page 7

RP 01088/2018/TGI/NYGE should not have been admitted, and to award him counsel and procedural fees.

The Prosecution argued that in case RP 01088/2018/TGI/NYGE, NTABAHEJEJE Théogène had filed a civil claim for damages, and that there was an injustice by not summoning him in case RP 01112/2021/TGI/NYGE, which was a review of case RP 01088/2018/TGI/NYGE. They further submitted that what was presented as "new grounds" did not constitute such within the meaning of the law, since UWIMANIHAYE Pierre Celestin was already aware, at the time of the original trial, of the existence of judgments RP 00759/2018/TGI/NYGE and RPA 01524– RP1525/2019/HC/KIG, in which NTIHEMUKA Emmanuel and HAKIZIMANA Daniel had been convicted for the same criminal conduct.

UWIMANIHAYE Pierre Celestin and his legal counsels stated that NTABAHEJEJE Théogène should indeed have been summoned in case RP 01112/2021/TGI/NYGE, since he had filed a claim for damages in case RP 01088/2018/TGI/NYGE, but it is not true to submit that UWIMANIHAYE Pierre Celestin was aware of the existence of cases RP 00759/2018/TGI/NYGE and RPA 01524–RP1525/2019/HC/KIG, wherein NTIHEMUKA Emmanuel and HAKIZIMANA Daniel were held guilty of the offences for which UWIMANIHAYE Pierre Celestin was accused.

The case was heard with the Prosecution duly represented, the civil party represented by Counsel

Page 8

KWIZERA Bernard, while the accused, UWIMANIHAYE Pierre Celestin, was assisted by Counsel KANANGA Protogene and Counsel KAYITANA Evode.

The issues to be analyzed are whether the failure to summon the civil party in the review constitutes a ground of injustice ; whether the existence of judgments RP 00759/2018/TGI/NYGE and RPA 01524– RP1525/2019/HC/KIG, in which NTIHEMUKA Emmanuel and HAKIZIMANA Daniel were convicted for the same offences with which UWIMANIHAYE Pierre Celestin was charged, qualifies as new ground; and whether the requested counsel and procedural fees should be awarded. II. ANALYSIS OF LEGAL ISSUES I. Whether the failure to summon the civil party in the review constitutes a ground of injustice

Article 195 of the Law N° 027/2019 of 19/09/2019 relating to the criminal procedure, as amended to date, stipulates that review means a procedure that aims to annul a judgment that has become final and re-try the case on the grounds provided under this Law. This provision implies that once new ground is accepted, the case is reheard anew, meaning that all parties to the original case must be summoned. It is not possible to conduct a rehearing on new grounds without summoning all the parties who were involved in the case under review.

Page 9

Article 55, paragraph one, subparagraph 2°, of the Law n° 30/2018 of 2/6/2018 determining the jurisdiction of courts provides the grounds upon which a case may be reviewed on grounds of injustice, including situations where during its judgment there was a disregard of applicable laws or evidence that is apparent to everyone.

UWIMANIHAYE Pierre Celestin and his legal counsel aver that since NTABAHEJEJE Théogène was claiming damages in case RP 01088/2018/TGI/NYGE, it was appropriate that he should be summoned to appear in case RP 01112/2021/TGI/NYGE, which was a review of the aforementioned case.

The Prosecution and Counsel KWIZERA Bernard, the legal counsel of the civil party, state that NTABAHEJEJE Théogène ought to have been summoned in case RP 01112/2021/TGI/NYGE, which was a review of case RP 01088/2018/TGI/NYGE, in which NTABAHEJEJE Théogène was claiming damages. DETERMINATION OF THE COURT

The Court finds that since it is impermissible for a case being reviewed to proceed without summoning all the parties to the original case as litigants, as provided under Article 195 of Law N° 027/2019 of 19/09/2019 referenced above, it follows that if in case RP 01112/2021/TGI/NYGE, which was a review of case RP 01088/2018/TGI/NYGE on the grounds of new ground, NTABAHEJEJE Théogène was not summoned although

Page 10

he was a party in the original case RP 01088/2018/TGI/NYGE, then the law was clearly violated. Therefore, in accordance with Article 55 paragraph one, subparagraph 2° of Law n° 30/2018 of 2/6/2018 mentioned earlier, an injustice was committed, and it is appropriate to affirm that injustice indeed occurred. II. Whether the existence of judgments RP 00759/2018/TGI/NYGE and RPA 01524– RP1525/2019/HC/KIG, in which NTIHEMUKA Emmanuel and HAKIZIMANA Daniel were convicted for the same offences with which UWIMANIHAYE Pierre Celestin was charged, qualifies as new ground.

In judgment No RS/REV/RC 00001/2022/CA, rendered by the Court of Appeal on 20/04/2023, the Court of Appeal established the legal position that new evidence is any piece of evidence that existed at the time the original case was being heard but which the litigant could not have known about or could not access during the trial, only discovering it afterwards. This legal position by the Court of Appeal clarifies that where a litigant was aware of the evidence and had access to it yet failed to present it during the proceedings, such evidence cannot under any circumstances be submitted later as new ground.

UWIMANIHAYE Pierre Celestin and his legal counsel argue that UWIMANIHAYE Pierre Celestin was not aware of the cases RP 00759/2018/TGI/NYGE and RPA 01524–RP1525/2019/HC/KIG, contrary to the

Page 11

claims made by the Prosecution and the civil party, who allege that he became aware of those cases on 08/06/2021.

The Prosecution and the legal counsel of the civil party argue that, in the case RP 01112/2021/TGI/NYGE which sought the review of the case RP 01088/2018/TGI/NYGE, the Intermediate Court should not have accepted presented grounds as “new” because in the original case RP 01088/2018/TGI/NYGE that was subject to review, reference had already been made to case RP 00759/2018/TGI/NYGE at the time it was mentioned that HAKIZIMANA Daniel could no longer be prosecuted since he had already been tried and convicted for the same offences.

In paragraph 3 of the

judgment

RP 01088/2018/TGI/NYGE, which was later subject to review, it was stated that Hakizimana was removed from the case because the acts alleged against him had already been adjudicated in case RP 00759/2018/TGI/NYGE. Subsequently, in paragraph 44 of the same judgment, the Intermediate Court confirmed that there existed a judgment, RP 00759/2018/TGI/NYGE, in which Hakizimana Daniel had been convicted for the same acts that were being pursued in the current proceedings, and thus he was removed from the case. However, UWIMANIHAYE Pierre Celestin at no point requested that he should not be prosecuted on the grounds that the acts he was accused of had already been committed and punished in respect of other individuals.

Page 12**DETERMINATION OF THE COURT**

The Court finds that in

judgment

RP 01088/2018/TGI/NYGE, it was stated that in case RP 00759/2018/TGI/NYGE, Hakizimana Daniel had already been convicted for the offence for which he was being jointly prosecuted with UWIMANIHAYE Pierre Celestin in case RP 01088/2018/TGI/NYGE. This implies that UWIMANIHAYE Pierre Celestin became aware that Hakizimana Daniel had already been sentenced for the offence in question, and thus, had he so wished, he could have petitioned the Intermediate Court to acquit him on the grounds that the offence he was charged with had already been committed by another individual who had also been punished. Consequently, it must be understood that from the moment the Prosecution stated that Hakizimana Daniel was removed from case RP 01088/2018/TGI/NYGE, in which he was being prosecuted alongside UWIMANIHAYE Pierre Celestin, UWIMANIHAYE Pierre Celestin became aware of the existence of judgment RP 00759/2018/TGI/NYGE and should have requested the Intermediate Court not to convict him, given that Hakizimana Daniel, who committed the offence, had already been identified and convicted. Accordingly, as established in the precedent set by judgment N° RS/REV/RC 00001/2022/CA, a newly discovered evidence is one that existed at the time the case was being adjudicated but was unknown or inaccessible to the party; hence, if

judgment

RP 00759/2018/TGI/NYGE existed and UWIMANIHAYE Pierre Celestin was aware of it, including the fact that

Page 13

Hakizimana Daniel had been convicted for the same offence he was charged with, then the alleged newly discovered evidence was already known to him and cannot be accepted as a new evidence.

The Court finds that during the investigation, UWIMANIHAYE Pierre Celestin was asked whether he knew Hakizimana Daniel, to which he replied that he did not; this implies that upon seeing him in judgment RP 01088/2018/TGI/NYGE, in which they were co-accused, and subsequently learning that there was a case RP 00759/2018/TGI/NYGE in which Hakizimana Daniel had been convicted for an offence similar to the one he himself was charged with, he should have understood that the true perpetrator had been identified and should have immediately raised this with the judge. However, given that during the investigation UWIMANIHAYE admitted to having travelled to Musanze to sell the vehicle, and given the existence of witnesses testifying against him, he was aware that even the existence of case RP 00759/2018/TGI/NYGE in which Hakizimana Daniel had been convicted would not absolve him of liability, since the investigation was treating him as someone who had acted in concert with Hakizimana Daniel. Therefore, this High Court finds that the Intermediate Court should not have accepted the presentation of judgments RP 00759/2018/TGI/NYGE and RPA 01524- RP1525/2019/HC/KIG as new grounds, given that UWIMANIHAYE Pierre Celestin was already aware of their existence and of the fact that his co-accused, Hakizimana Daniel, had been convicted in those cases for offences that were materially identical to those for which

Page 14

he himself had been prosecuted in case RP 01088/2018/TGI/NYGE, which was being reviewed.

With regard to the counsel's fees claimed by NTABAHEJEJE Théogène, the Court finds that since NTABAHEJEJE Théogène was represented by a counsel, it is evident that he is entitled to be awarded counsel fees in the amount of five hundred thousand Rwandan francs (500,000 Frw), as the representation was not provided on a pro bono basis. III. DECISION OF THE COURT

Holds that the

judgment

no 01112/2021/TGI/NYGE is vitiated by injustice.

Holds that the application for review of the judgment no RP 01088/2018/TGI/NYGE should not have been admitted.

Holds that the

judgment

no RP 01088/2018/TGI/NYGE is sustained.

Holds that UWIMANIHAYE Pierre Celestin shall pay to NTABAHEJEJE Théogène five hundred thousand Rwandan francs (500,000 Frw) as counsel fee.

Decides that the court fee paid covers the expenses incurred in the case proceedings.

This judgment was scheduled to be delivered on 08/04/2024, but because it was public holiday, it is pronounced on 09/04/2024.

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