

RWANDA / JUDGMENT

SIKUBWABO v RWANDA DEVELOPMENT BOARD ET AL (ADD2)

RLR V.3-2023

COURT

Supreme Court

DECIDED

15 July 2022

CASE / FILE NUMBER

RS/INJUST/RCOM 00007/2021/SC

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2022-07-15
- Case/document no.: RS/INJUST/RCOM 00007/2021/SC
- Collection: Supreme Court

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SIKUBWABO v RWANDA DEVELOPMENT BOARD ET AL (ADD2) [Rwanda SUPREME COURT-RS/INJUST/RCOM 0007/2021/SC (Cyanzayire, PJ, Nyirinkwaya and Hitiyaremye, J.) July 15, 2022]

Commercial procedure – Jurisdiction of Courts – Connexity of cases – Articles 94,98 and 100 of the Law N0 30/2018 of 02/06/2018 determining the jurisdiction of courts – Provisions of article 100 of the law N0 30/2018 of 02/06/2018 determining the jurisdiction of courts on matters pertaining to lis pendens shall as well apply to the issues related to the connexity of cases. Commercial procedure – Jurisdiction of Courts – Connexity of cases – When there are cases linked to one another pending before hierarchical different courts, the lower court transfers the concerned case to the superior court – A litigant who requests for combining the cases submits a related application to the lower court which transfers it to the superior court. Procedure for review of the judgment on grounds of being vitiated by injustice – Connexity of cases – A judgment filed for review due to injustice – A case filed in accordance with the ordinary procedure – Combining a judgment filed to review due to injustice with the case filed in accordance with the ordinary

procedure – The case filed for review due to injustice is a judgment that has exhausted all the appeal remedies, such judgment might even have been executed; it cannot be combined with an appealable judgment– Courts that have been seized in accordance with the ordinary procedure shall stay the proceedings pending the ruling of the courts seized for review of judgments due to injustice. Facts: In the context of reimbursing the loan owed by Sikubwabo to Bank of Africa, the Registrar General in RDB issued the certificate to auction the mortgage, he firstly issued the certificate to sell the property with UPI:1/02/09/01/844. Following the auction of such property, SIKUBWABO Raphaël filed a claim No RCOM 01971/2017/TC/NYGE before the Commercial Court of Nyarugenge seeking its invalidation, he sued Bank of Africa, and RDB and Umugiraneza who was the receiver intervened. Pending the judgment ruling, the Registrar General issued the certificate to auction the property with UPI:1/02/13/03/115, this led Sikubwabo to file a summary procedure requesting the suspension of the auction. In the judgment No RCOMA 00793/2017/CHC/HCC rendered at the appeal level, the Commercial High Court ruled for the provisional suspension of the auction of the property with UPI: 1/02/13/03/115, pending the Court decision on the case No RCOM 01971/2017/TC/NYGE. Case No RCOM 01971/2017/TC/NYGE became final on 06/05/2020, it was decided that there is no ground substantiating the invalidation of the auction on the property with UPI: 1/02/09/01/844. On 08/05/2020, Sikubwabo requested in writing the Registrar General to definitively suspend the auction on the property with UPI: 1/02/13/03/115 because the loan for which the auction was conducted was not indicated; on 20/05/2020 he lodged a claim before the Commercial Court. The claim was registered on No RCOM 00767/2020/TC, MUREGO who bought the property within the auction, and Umugiraneza who was the receiver voluntarily intervened, Bank of Africa which granted the loan forcibly intervened.

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Murego raised the objection requesting for the inadmissibility of Sikubwabo's claim because he filed it after the expiration of the time limit provided under the law; the objection was not admitted at the first instance, but it was declared founded at the first and second appeals. In the judgment N° RCOMAA 00061/2020/CA rendered on 18/12/2020, the Court of Appeal sustained the ruling of the Commercial High Court, it expounded that it should be lodged within 15 days calculated from the date when the judgment No RCOM 00577/2019/TC which determined the loan amount became final, meaning June 20, 2019, on basis of the provisions of the article 260, paragraph 4 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. Sikubwabo applied for the review of this judgment on the grounds of injustice. This Court has examined whether Sindikubwabo delayed filing a claim seeking the suspension of the auction of his property with UPI: 1/02/13/03/115 as per the provisions of article 260 of the aforementioned Law N° 22/2018 of 29/04/2018. After the analysis of the foregoing article, the Court found that Sindikubwabo Raphaël had complied with the requirement of paragraph 6 of the concerned article and the Court held that his claim was lodged within the time limit provided under the law. This Court held that the judgment No RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020 and the judgment No RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020 are quashed, but this Court sustained the

judgment No RCOM 00767/2020/TC rendered by the Commercial Court on 22/06/2020. The Court declared itself competent to examine the grounds of appeal submitted by Sindikubwabo Raphaël to the Commercial High Court. While pending the case hearing, Sindikubwabo Raphaël applied for summoning the parties to the case N0 RCOMAA 000024/2022/CA pending before the Court of Appeal which is linked with the claim he filed seeking for the invalidation of the auction of his property in UPI: 1/02/13/115 and combining it with this very case to avoid any eventual contradictory judgments since both cases are linked. He submits that he requests for combining this case with case No RCOMAA 00024/22/CA that is staying before the Court of Appeal with reference to the decision of this Court in the interlocutory judgment where this Court upheld that all matters that pertain to this very case should be jointly handled in a bid to avoid any related potential cases that might lead to judgment review. He argues that the case that is pending before the Court of Appeal relates to the approval by the RDB Registrar General of the auction of the property registered on UPI: 1/02/13/03/115, and this is the subject matter of this case, both cases must be combined as they are linked. The legal counsel of RDB notes that these cases cannot be combined since they are not linked, Sindikubwabo should not bring forth other matters different from the issues that he presented during the pre-trial conference. Other litigants state that, even if they had requested for separation of cases, after thorough analysis, they changed their position and they realized that both cases should be combined as they are linked. Held 1: Provisions of article 100 of Law no 30/2018 of 02/06/2018 determining the jurisdiction of courts on matters pertaining to lis pendens shall as well apply to the issues related to the connexity of cases.

2. When there are cases linked to one another pending before hierarchical different courts, the lower court transfers the concerned case to the superior court.

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3. A litigant who requests for combining the cases submits a related application to the lower court which transfers it to the superior court.
4. The case filed for review due to injustice is a judgment that has exhausted all the appeal remedies, such a judgment might even have been executed; it cannot be combined with an appealable judgment.
5. In instances where there is a connexity of cases, the courts that have been seized in accordance with the ordinary procedure shall stay the proceedings pending the ruling of the courts seized for review of judgments due to injustice for avoiding contradictory judgments. Application for summoning the parties to the case that is pending before the Court of Appeal and combining it with this very case should not be admitted for examination because it was not submitted in accordance with the law; The hearing of this case will be resumed. Statutes and statutory instruments referred to: Law No 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 94 and 100. Cases referred to: Case N0 RS/INJUST/RCOM 00005/2019/SC Kigali Ceramica & Furniture Ltd v Guaranty Trust Bank (Rwanda) Plc.

Judgment

I. BACKGROUND OF THE CASE [1] This case emanates from the permit to sell no 017-074833 issued by RDB Registrar General on 06/11/2017 for the auction of the property registered on the UPI: 1/02/13/03/115 for reimbursing the loan owed by Sindikubwabo Raphaël to Bank of Africa. That auction followed another one conducted on 09/06/2017 on the property registered on the UPI: 1/02/09/01/844 still for the repayment of the same loan. [2] Following the auction of 09/06/2017, Sindikubwabo Raphaël lodged the claim before the Commercial Court of Nyarugenge seeking the invalidation of the auction and repayment of the loan as per the terms of the concerned loan contract. The claim was registered as RCOM 01971/2017/TC/NYGE, the respondent was Bank of Africa, and the intervening parties were RDB and Umugiraneza Jean Michel who was the receiver. After filing the claim and pending the judgment ruling, Sindikubwabo Raphaël received from the Registrar General the permit to sell no 017-074833 06/11/2017 above mentioned together with the auction instructions about the mortgage of the property registered under UPI: 1/02/13/03/115. [3] While this second auction was not yet approved by the Registrar General, Sindikubwabo Raphaël who stated that he was not informed about the remaining loan after the payment from the first auction, he filed a summary procedure seeking the provisional suspension of the auction of the property under UPI: 1/02/13/03/115, pending the examination of the issues claimed in the

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principal claim. The case was docketed as RCOM 02265/2017/TC/NYGE and it was heard on 04/12/2017, and the Court held that there is no reason for the suspension of the auction of 05/12/2017. This ruling was appealed under the case RCOMA 00793/2017/CHC/HCC before the Commercial High Court and it was heard on 21/12/2017 whereby the Court held that all the activities in relation to the auction of the property registered under UPI: 1/02/13/03/115 should be temporarily suspended, pending the ruling of the case RCOM 01971/2017/TC/NYGE. [4] Following the ruling of the judgment RCOMA 00793/2017/CHC/HCC, Sindikubwabo Raphaël lodged the claim before the Commercial High Court requesting the intervention of the Registrar General to provide the reasons for the non-execution of the above judgment¹ and Murego Paulin, who bought the property in the suspended auction, was refunded his money. The case was registered as No RCOM 00024/2019/HCC and it was heard on 04/10/2019 the Court held that it lacks the jurisdiction to hear such cases as they fall under the administrative procedure. This judgment was appealed under No RCOMA 01016/2018/HCC before the Commercial High Court and it was heard on 14/02/2020, and the Court held that the claim was admitted and the Registrar General has duly accomplished his duty vis-à-vis the execution of the judgment No RCOMA 00793/2017/CHC/HCC as he temporarily suspended the approval of the auction on the property registered under UPI: 1/02/13/03/115. [5] The judgment No RCOM 01971/2017/TC/NYAGE (regarding the invalidation of the auction of 09/06/2017 on UPI: 1/02/09/01/844) which caused the provisional suspension of the auction of the property with UPI: 1/02/13/03/115, was rendered on 16/05/2018 and the Court held that there was no reason for invalidation of the auction. This judgment was appealed under No RCOMA 00443/2018/CHC/HCC before the Commercial High Court and it was

heard on 14/12/2018, and the Court sustained the appealed judgment. Sikubwabo Raphaël lodged a second appeal under No RCOMAA 00039/2019/CA before the Court of Appeal; the case was heard on 06/05/2020, and the Court held that the appeal was not admitted as it was filed after the expiration of the time limit. [6] After the judgment RCOM 01971/2017/TC/NYAGE had exhausted all its appeal remedies, Sindikubwabo Raphaël wrote to the Registrar General on 08/05/2020 requesting for the definitive suspension of the auction on the property registered under UPI: 1/02/13/03/115. On 20/05/2020 he lodged the claim before the Commercial Court seeking the definitive suspension of the auction on the property registered under UPI 1/02/13/03/115, because the loan amount underpinning the auction was not indicated. The case was registered as RCOM 00767/2020/TC, Murego Paulin who bought the property in the auction, and Umugiraneza Jean Michel, the receiver voluntarily intervened, whereas, the Bank of Africa which granted the loan forcibly intervened. [7] In the course of the hearing, Sindikubwabo Raphaël raised the objection requesting the Court not to admit the claims of the parties who voluntarily intervened as they had no interest in the case. Murego Paulin has as well raised the objection requesting the Court not to admit the claim of Sindikubwabo Raphaël as he filed it after the expiration of the time limit for applying for the invalidation of the auction. 1 He lodged the claim with reference to article 184 of Law n0 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure that provides the sanctions that apply to an administrative authority for non-execution of a judgment.

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[8] The case was heard on 22/06/2020 and the Court held that the objection raised by Sindikubwabo Raphaël has no effect on Murego Paulin as he bought the contested property in the auction, and he is legally entitled to intervene in the case. It decided that the objection of inadmissibility of the voluntary intervention of Umugiraneza Jean Michel is founded as it was not indicated that there were procedural irregularities related to the auction of the contested property and he has no personal interests that are prejudiced in the case. With regard to the objection related to the inadmissibility of the claim as he was lodged with delays, the Court decided to admit and hear it on the merits. With regard to the merits of the case, the Court held that the claim filed by Sindikubwabo Raphaël lacks merit, and it sustains the auction of the property on UPI: 1/02/13/03/115. [9] Sindikubwabo Raphaël appealed against the above ruling before the Commercial High Court and the appeal was registered as No RCOMA 00398/2020/HCC, he submitted that he appealed because the Commercial Court did not decide about the suspension of the contested auction while there were reasons that justify its suspension. He also requested the Court to examine whether judgments RCOMA 00793/2017/CHC2 and RCOM 01971/2017/TC/NYGE3 had effects on the very auction. In the course of this case, Murego Paulin raised the objection arguing that the claim was admitted at the first instance while it should not be admitted because Sindikubwabo Raphaël delayed filing the claim. Umugiraneza Jean Michel filed the cross-appeal requesting to determine whether the first court did not rule ultra-petita, and he claimed various damages. Bank of Africa has as well filed a cross-appeal and claimed

damages for expenses incurred at the appeal level. [10] The case was heard on 16/07/2020, the Commercial High Court held that the objection raised by Murego Paulin has merit, the claim filed by Sindikubwabo Raphaël before the Commercial Court was not admissible for the examination since it was lodged after the expiration of the time limit. The Court expounded that by filing the claim if the claimant referred to the ruling of the judgment No RCOM 00577/2019/TC rendered on 20/06/2019 which determined the loan he had to pay, it is evident that the auction that was suspended by the different judgments should be immediately resumed from the judgment pronouncement. Therefore, the fact that Sindikubwabo Raphaël filed his claim on 20/05/2020, eleven months after the auction should have been resumed, indicates that he delayed filing the claim, the latter should not be admitted for examination on the merits. [11] The Commercial High Court held that the cross-appeal lodged by Bank of Africa and Umugiraneza Jean Michel has merit, the Court held that the judgment No RCOM 00767/2020/TC rendered by the Commercial Court on the 22/06/2020 is quashed, it ordered to Sindikubwabo Raphaël to pay to Bank of Africa and Umugiraneza Jean Michel 500,000 Frw for dragging them into unnecessary lawsuits, 500,000 Frw for the counsel fee and 300,000 Frw for the procedural fee, the total is 1,300,000 Frw for each one. 2 In this judgment, it was held that an auction that was supposed to be conducted on the property with UPI: 1/02/13/03/115 be suspended pending the ruling of case No RCOM 01971/2017/TC/NYG. 3 The case in which SIKUBWABO Raphaël requested for the invalidation of the auction conducted on 09/06/2017 on the property UPI: 1/02/09/01/844, where it was held that he failed to justify his request and during the appeal, the High Court sustained the previous judgment.

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- [12] Sikubwabo Raphaël appealed against the above ruling before the Court of Appeal, requesting the latter to determine whether his claim was filed after the expiration of the time limit as it has been held by the Commercial High Court, while the ruling of the judgment No RCOMA 00793/2017/HCC rendered on 21/12/2017 had ordered for the temporary suspension of the auction of the property registered on UPI: 1/02/13/03/115, pending the Court decision on the case No RCOM 01971/2017/TC/NYGE. In the judgment No RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, the Court held that the appeal of Sikubwabo Raphaël lacks merit, and it sustained the appealed judgment. [13] Sikubwabo Raphaël petitioned the President of the Supreme Court seeking the review of judgment No RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020 as it was vitiated by injustice, he stated that the ruling of the judgment disregarded the laws and elements of evidence. The President of the Supreme Court decided that the judgment should be re-adjudicated by the Supreme Court and it was docketed as RS/INJUST/RCOM 00007/2021/SC. [14] The hearing was conducted in public on 13/04/2022, RDB was represented by Counsel Nkusi Fred, Bank of Africa by Counsel Kayiranga Cyrille, Murego Paulin by Counsel Munderere Leopold, Umugiraneza Jean Michel by Counsel Matimbano Barton and Sikubwabo Raphaël was assisted by Counsel Uwizeyimana Venuste. On that date, the Court

firstly determined whether the claim filed by Sikubwabo Raphaël before the Commercial Court seeking the definitive suspension of the auction of the property registered under UPI: 1/02/13/03/115 was lodged with delays. The Court notified the parties that the ruling on that issue will be pronounced on 29/04/2022. [15] On 29/04/2022, the Court pronounced the interlocutory judgment and held that: a. the claim filed by Sikubwabo Raphaël before the Commercial Court seeking the definitive suspension of the auction of the property registered under UPI: 1/02/13/03/115 should be admitted; b. the judgment No RCOMAA 00061/2020/CA rendered by the Court of Appeal on 18/12/2020, together with the preceding judgment No RCOMA 00398/2020/HCC rendered by the Commercial High Court on 16/07/2020 are hereby quashed. c. the case hearing on the appeal lodged by Sindikubwabo Raphaël before the Commercial High Court will be resumed on a date the Court's Registry shall notify the parties. [16] The hearing was rescheduled on 13/06/2022, all parties appeared assisted or represented as previously. The Court informed the parties of a letter that Sindikubwabo Raphaël submitted to the Court on 17/05/2022 requesting the Court to combine case No RCOMAA 00024/2022/CA4 pending before the Court of Appeal with this very case as they are linked. [17] Having heard the statements of each party on the request of Sikubwabo Raphaël, the Court closed the hearing and informed the litigants that the ruling on this issue will be pronounced on 15/07/2022. 4 That case has been suspended pending the decision of this Court.

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II. ANALYSIS OF THE LEGAL ISSUE Determine whether case No RCOMAA 00024/2022/CA pending before the Court of Appeal should be combined with case No RS/INJUST/RCOM 00007/2021/SC [18] Sikubwabo Raphaël argues that the reasons why he requests that this very case be jointly tried with the case No RCOMAA 00024/2022/CA which is stayed before the Court of Appeal are based on the decision taken by this Court in the interlocutory judgment where it upheld that all matters that pertain to this very case should be jointly handled in a bid to avoid any related potential cases that might lead to judgment review due to injustice. He explains that due to the fact the case that is pending before the Court of Appeal concerns the decision taken by the RDB Registrar General for approving the auction of the property registered with UPI: 1/02/13/03/115, while it is the subject matter of this case, the two cases must be combined since they are closely related. [19] Counsel Uwizeyimana Vénuste assisting Sikubwabo Raphaël argues that the two cases must be combined since they are closely related so that one case can affect another in instances where they are separately tried. He submits that based on paragraph 35 of the interlocutory judgment, he notes that trying this case separately with the case pending before the Court of Appeal, there can be some of its issues that would be raised before the Supreme Court in the course of the judgment review; thus it is better to combine those cases for jointly handling the issue. [20] Counsel Nkusi Fred representing RDB finds that the cases should not be combined, because they are not linked and Sindikubwabo should not bring forth other matters different from the issues that he presented during the pre-trial conference. [21] Umugiraneza Jean Michel and his legal counsel submit that, even if they had requested for separation of cases,

after thorough analysis, they changed their position and they realized that both cases should be combined as they are linked. They aver that on one side Sindikubwabo Raphaël requests for the suspension of the auction, on the other one he requests for its invalidation, he changes the wording, but the issue is the same; based on article 94 of Law N0 30/2018 of 02/06/2018 determining the jurisdiction of courts, they realize that both cases must be combined even if their nature is different as one is under review due to injustice and the other is about the ordinary appeal. They add that since the law is silent about the procedure applicable when the cases have different natures while the subject matter is the same, the Supreme Court should set the position accordingly. [22] They also submit that the claim that Sindikubwabo Raphaël lodged before the Court of Appeal has two issues, which are the invalidation of the auction on the property registered under UPI: 1/02/13/03/115, and the refund of the remaining sum of money from the auction of the first mortgage, both cases are closely related since the main issue is the auction invalidation and the secondary issue is the money refund, this fact cannot bar the combination of both cases. [23] Counsel Munderere Léopold representing Murego Paulin, though he had requested for the separation of the cases, he afterward realized that they should be combined as the claims are similar, Sikubwabo Raphaël only changed the wording, on one side he requested for the

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invalidation of the auction and on the other side he claimed for its suspension. He explains that it is better to jointly try the cases for the sake of speeding up the proceedings since the house was bought under the auction in 2017 and the buyer has no access to it. [24] He also avers that the fact that one case is under review due to injustice while the other is about the ordinary appeal is not an issue as the position was set in the interlocutory judgment pronounced on 29/04/2022 in the paragraph 35, it was held that the Supreme Court has to handle all the issues pertaining to this very case. With regard to the refund claimed by Sikubwabo Raphaël in the case before the Court of Appeal, he states that it is a result of the claim related to the auction, not a separate claim. [25] Counsel Kayiranga Cyrille representing Bank of Africa submits that he earlier had requested for the separation of the cases since the litigants were not the same, but having analyzed them and noted that they are the same, he requests that they can be combined as there can be no prejudice. DETERMINATION OF THE COURT [26] Article 94 of Law No 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that "Connexity occurs when many cases are linked to one another in a way that the decision in one case affects the other and if they are tried separately, they might be contradictory". [27] Article 98 of the above-mentioned law provides that "Several actions or subject matters to be heard by the jurisdiction of different courts may, upon a written decision of the president of the court or the president of the bench, be heard in a same trial if there is any connexity of offense." However, this article does not specify the President of the bench of which court among the seized courts has the competence of deciding about the combination of cases for a joint trial. [28]] With the Organic Law, No 51/2008 of 09/09/2008 determining the organisation, functioning, and jurisdiction of courts that were modified and completed by the current law in force, article 1535 specified a court that transfers the case to the

other, upon the request of one of the parties in instances where there is *lis pendens* or *connexity* of cases pending before different courts. The new Law no 30/2018 of 02/06/2018 determining the jurisdiction of courts specifies the articles that provide for the *connexity* of cases, and those relating to *lis pendens* of cases and thus the provisions of article 153 of the Organic Law No 51/2008 of 09/09/2008 are only limited 5 Article 153 provides that: When various claims of the same subject matter based on the same clause and between the same litigants are pending before different courts or if various related claims are pending before different courts such that the resolution of one may affect the others, any of the courts may upon request of any of the parties to the suit send such cases to another court according to the following procedure and manner and in respect of its sequence: 1° a Court which has decided on some preliminary issue other than on merits shall take precedence over that which has not taken any interim orders; 2° a superior Court shall take precedence over an inferior Court; 3° a Court before which the suit or suits were filed first shall take precedence over other Courts; 4° an ordinary Court shall take precedence over a specialized Court.

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to matters pertaining to *lis pendens*⁶. The Court finds that such fact results from omission, as there would be no reason for the legislator not to specify the court that transfers to another one the case when there is a *connexity* of cases before different courts. It is for this reason that this Court finds that the provisions of article 100 of the aforementioned law no 30/2018 of 02/06/2018 about the *lis pendens* should as well apply to the *connexity* of cases. [29] The above-mentioned article 100 provides that one of the seized courts transfers the case to another court, the subparagraph (30) stipulates that the higher court which takes precedence over a lower court is the one to which the case is transferred; meaning that it is the lower court that transfers the case to the higher court in instances where there is *connexity* of cases filed before both courts. This connotes that a litigant who seeks the combination of cases submits an application to the court that has to transfer the case, and that is the lower court. This Court finds that if the application is submitted to the higher court, the latter would transfer the case, while it is not the provision of subparagraph 30 of the above-mentioned article 100. [30] The Court finds that the stance of the foregoing paragraph is not a particularity of Rwanda, as indicated by articles 1017 and 1028 of the French code of civil procedure which provides that when different courts were seized of linked cases so that they should be jointly tried for the interest of justice, one court can be requested to transfer the case to another court. When the seized courts are not of the same level of jurisdiction, the application is submitted to the lower court. [31] Concerning this very case, Sikubwabo Raphaël petitioned the President of the Supreme Court on 13/05/2022 requesting to combine case No RCOMMA 00024/2021/CA with the case RS/INJUST/RCOM 00007/2021/SC because they are closely related. As the letter indicates, the applicant requested this Court to request for the transfer of the case pending before the Court of Appeal, while, as it is highlighted in the foregoing paragraphs, he should have requested the lower court, that is the Court of Appeal to transfer the case. [32] The Court finds that the statements of Sikubwabo Raphaël that he referred his request to the elucidations provided by this Court in paragraph 35 of the

interlocutory judgment rendered on 29/04/2022 which ruled that all issues of the case should be jointly handled by the superior court for avoiding potential cases that would be subject to review due to injustice are the misunderstanding of that paragraph as it cannot be taken alone into consideration without linking it to other paragraphs. The Court intended to highlight in that judgment that when the Court is seized for the judgment review because the lower courts did not admit the claim, and finds that it 6 Article 100 of the Law n0 30/2018 of 02/06/2018 determining the Jurisdiction of the Court provides that where a case is filed in two different courts with competent jurisdiction, one of the courts sends the case to the other by selecting: 1° a specialised court which takes precedence over an ordinary court; 2° an appellate court which takes precedence over a court of first instance; 3° a higher court which takes precedence over a lower court; 4° a court that has commenced the court process takes precedence over the one that has not yet decided on the case; 5° a court that was seized before any other court. 7 S'il existe entre des affaires portées devant deux juridictions distinctes un lien tel qu'il soit de l'intérêt d'une bonne administration de la justice de les faire instruire et juger ensemble, il peut être demandé à l'une de ces juridictions de se dessaisir et de renvoyer en l'état la connaissance de l'affaire à l'autre juridiction. 8 Lorsque les juridictions saisies ne sont pas de même degré, l'exception de litispendance ou de connexité ne peut être soulevée que devant la juridiction du degré inférieur.

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should have been admitted, it quashes the judgments that ruled for its inadmissibility and examines the merits the claim filed to lower court. In paragraph 35, the Court explained the rationale behind such a position⁹, it is not related to the fact that all other cases of Sikubwabo Raphaël pending before other courts, linked with the subject matter, should be combined with this case, as he intends to adduce it. [33] Based on the foregoing elucidations, the Court finds inadmissible the application filed by Sikubwabo Raphaël for requesting the transfer of case No RCOMAA 00024/2022/CA pending before the Court of Appeal and combining it with the case no RS/INJUST/RC 00007/2021/SC as they are linked, because it was not submitted in accordance with the law. [34] The Court finds that, in the context of setting the position useful for other courts, it must determine whether the cases under litigation based on the claims filed to the courts using the procedure of the judgment review due to injustice, can be combined with the cases filed before the courts using the ordinary procedure. [35] The claims filed to the courts using the procedure of the judgment review due to injustice are lodged in regards to the final judgments, using the extraordinary procedure for their hearing, provided under article 53 to article 62 of Law no 30/2018 of 02/06/2018 determining the jurisdiction of courts. Some of the provisions of the above articles state that there is the prior consideration conducted by the Presidents of Courts or the Inspectorate-General of Courts, based on the reasons provided under the law, and the final decision is taken by the President of the Supreme Court. [36] The Court finds that combining the cases under litigation based on the claims filed using such procedure and the cases under litigation on the claims filed using the ordinary procedure (without using the procedure provided for the judgment review due to injustice), which might even include cases that are under litigation at the first instance, it is inappropriate for the fair administration of

justice. The above stance is similar to the ruling of this very Court in the judgment No RS/INJUST/RCOM 00005/2019/SC10 in which the parties were Kigali Ceramic & Furniture Ltd v Guaranty Trust Bank (Rwanda) Plc. In the above judgment, the Court held that a judgment under review due to injustice is a judgment that has already exhausted all the possible appeal remedies and such a judgment might even have been executed; it cannot be combined with the appealable judgment. [37] The Court finds that the best way to avoid the concern of contradictory judgments between the rulings of cases under review due to injustice and the rulings on cases lodged under the normal judicial procedure is that the courts seized under the ordinary procedure should await the rulings of the courts seized under the procedure of the judgment review due to injustice. III. DECISION OF THE COURT 9 The Court motivated that: When the procedure of judgment review due to injustice was established, the legislator intended that a court which is seized under such a procedure would be allowed to examine all the issues of the contested decision, the legislator so thought to avoid a scenario of handling part of the submitted claim and then leaving the remaining issues to the lower courts, which issues might again accrue and end up in the injustice related review yet they could have been holistically handled by the superior court. 10 See the act of the proceedings for the hearing of 22/06/2020, p.11

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[38] Holds that the application by Sikubwabo Raphaël for requesting the transfer of case No RCOMAA 00024/2022/CA under litigation before the Court of Appeal and combining it with case No RS/INJUST/RC 00007/2021/SC is inadmissible for examination because it was not submitted in accordance with the law. [39] Holds that the case hearing will be resumed on the date that the Court's Registry shall notify the parties.

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Prepared on 12 October 2026 · Esheria