

RWANDA / JUDGMENT

UDAHEMUKA v. KIGALI CITY

RADA 0036/11/CS

COURT

Supreme Court

DECIDED

23 May 2014

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Text

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UDAHEMUKA v. KIGALI CITY [Rwanda SUPREME COURT – RADA 0036/11/CS (Mutashya, P.J., Nyirinkwaya and Rugabirwa, J.) 23 May, 2014] Law of administrative procedure – Admissibility of intervention claims – the claim of forced intervention or voluntary intervention for it to be admitted it has to be connected with the initial claim and not likely to delay the ruling on the initial claim – The law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 119 and 120. Facts: Udahemuka instituted the claim before the High Court requesting that the decision of the City of Kigali to deprive him his plot of land be annulled and the case was registered on number RAD 053/07/HC/KIG. Yankuriye voluntarily intervened in that case asserting that that plot No 5411 is located in another plot No 5363 given to his husband Nteziyaremye and therefore requests that Udahemuka be expelled from the plot and thus be restituted to her, be awarded damages and also request that the District of Nyarugenge forcibly intervene in case and Kashugera Faustin and Kazayirwa François as well since they built houses in the plot N°5363. Aagain, Nyamwasa Pascal intervened in that case arguing that the plot claimed by Udahemuka is owned by him, requesting that it be regiustered in his names or he be awarded the compensation his activities thereon. In the meantime, before the case in the High

Court was decided, another case N° RC 0040/08/TGI/NYGE was instituted before the Intermediate Court of Nyarugenge where Nyamwasa sued requesting that the plot N° 5411 located at Muhima be deregistered in the names of Udahemuka, since he registered it in his names in bad faith and therefore be registered in his names, that case was heard in default of Udahemuka and the Court held the plot of land belongs to Nyamwasa and Udahemuka has to pay him damages due to not being loyal towards him and abuse of procedure. Udahemuka made opposition to that case on N° RC 0502/09/TGI/NYGE, and his claim was dismissed and appealed against that judgment before the High Court where it enrolled on N° RCA 00394/10/HC/KIG. The High Court joined the administrative case N° RAD 053/07/HC/KIG and the civil case N° RCA 00394/10/HC/KIG basing on connexity. In the former case, the court held not to admit the request of Yankurije of forced intervention of Nyarugenge District, it explained that it cannot be made forcibly intervene since the object matter in this case relates to the decision taken by the city of Kigali, and with regard to Kashugera Faustin and Kazayirwa François, explained that they cannot be made forcibly intervene due to the ground they have built houses in the plot N°5363 since what is concerned in this case is the decision taken in relation to the plot N°5411. The case in its merits, the court held that the claim of Udahemuka is not founded since the plot he claims is not his property, but instead it belongs to Nyamwasa, he got it registered in his names in bad faith and it also ordered the City of Kigali that it has to give Nyamwasa and Yankurije the compensation, since the ministry of infrastructure committed the mistake of giving the same plot to two different persons, Yankurije has to be given the compensation of the plot of land equal to 20a.61ca, and Nyamwasa given the compensation of the house built in that plot. With regard to the appeal of the judgment n° RC 0502/09/TGI/NYGE that dismissed the opposition against the judgment N° RC 0040/08/TGI/NYGE, the High Court held that it is not founded since Udahemuka did not prove a serious cause of his default.

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Udahemuka and Yankurije appealed against the decision before the Supreme Court, where Yankurije asserts that the High Court dismissed her request of making forcibly intervene Kashugera Faustin and Kazayirwa Faustin yet she wanted that they be condemned to payment of damages, as they built in the plot of her husband and Udahemuka in the preliminary meeting, he had requested that Kashugera Faustin and Kazayirwa François be summoned as witnesses for the purpose of proving that Yankurije has no sufficient documents entitling her to that plot. Held : The claim of forced intervention or voluntary intervention for it to be admitted it has to be connected with the initial claim and not likely to delay the ruling on the initial claim. Kashugera Faustin and Kazayirwa François must not be made intervene in this case. The hearing will be resumed on 02/09/2014; court fees are suspended. . Statutes and statutory instruments referred to: Law n 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, ° article 116 ,119 and 129. No case referred to.

Judgment

BACKGROUND OF THE CASE: [1] The judgment appealed against before this court emanates from the administrative case N° RAD 053/07/HC/KIG and civil case No RCA 0394/10/HC/Kig that were brought together before the High Court basing on their connexity. [2] The origin of an administrative case is the claim Udahemuka Silas instituted before the High Court on 09/04/2007 requesting that the decision of the city of Kigali to deprive him the plot N°5411 located at Muhima be annulled. [3] Yankurije Peruth intervened in this case voluntarily arguing that that plot N°5411 is located in another plot N°5363 given to her husband Nteziyaremye, claiming that Udahemuka be expelled from that plot and be restituted to her and be awarded damages for 15 years period in which the family of Nteziyaremye was deprived of their rights on that plot. [4] She also claimed that the district of Nyarugenge forcibly intervene since the district were given power over land plots and settlement and Kashugera Faustin and Kazayirwa François be made intervene forcibly since the built houses in the plot that was given to her husband without authorization in disregard of the regulations relating to building of city of Kigali. [5] Nyamwasa Pascal voluntarily intervened in this case asserting that the plot claimed by Udahemuka belongs to him, requesting the court to order the city of Kigali to register on him the plot or gives him the compensation for his activities thereon. [6] The origin of the civil case is the claim Nyamwasa instituted before the Intermediate Court of Nyarugenge claiming that the plot N° 5411 located in Muhima be deregistered on Udahemuka as she registered it on him in a fraudulent manner.

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[7] The intermediate Court of Nyarugenge in the case N° RC 0040/08/TGI/NYGE of 07/08/2009 heard the case in default of Udahemuka and held that the plot belongs to Nyamwasa and Udahemuka must pay him damages equal to 1,500,000 rwf due to disappointing him and abuse of procedure. [8] Udahemuka made opposition of the case on N° RC 0502/09/TGI/NYGE and his claim was dismissed and appealed against the judgment before the High Court on 16/12/2010 where it was registered on N° RCA 00394/10/HC/KIG. [9] The High Court brought together the administrative case N° RAD 053/07/HC/KIG and the civil case N° RCA 00394/10/HC/KIG basing on the connexity. [10] In the case preceding the other of 18/03/2011, the Court held to dismiss the request of Yankurije Peruth to forcibly make intervene the district of Nyarugenge, Kashugera Faustin and Kazayirwa François. With regard to the district of Nyarugenge, it explained that it should not be made intervene as the issue to be examined in this case relates to the decision taken by the City of Kigali and with respect to Kashugera Faustin and Kazayirwa François, it explained that they cannot be made intervene basing on the ground that they have built in the plot N°5363 as what is concerned is the decision taken on the plot N°5411. [11] The High Court rendered that judgment in substance on 30/06/2011 and held that the claim of Udahemuka is not founded as the plot he claim does not belong to him, instead it belongs and he got it registered on him fraudulently. [12] It ordered that the City of Kigali has to pay Nyamwasa and Yankurije the compensation as the Ministry of infrastructure erroneously gave the same plot of land to two different persons and it gave it without taking into consideration the urban planning of the City of Kigali,

Yankurije Peruth must be given the compensation of the plot of land equal to 20a.61ca and must be given the compensation the house built on the plot. [13] With regard to the appeal of the case n° RC 0502/09/TGI/NYGE that was dismissed the opposition of the judgment N° RC 0040/08/TGI/NYGE, the High Court held that it is not founded since Udahemuka failed to prove the serious cause provided under article 160 of the law No 18/2004 of 20/06/2004 relating to civil, commercial, labor and administrative procedure that he submitted to the first instance judgment that prevented him or his counsel to appear and plead in the case they were sued. [14] Udahemuka and Yankurije appealed against that decision of High Court on 28/07/2011 of 29/07/2011. [15] The hearing was publicly held on 22/04/2014, Udahemuka represented by his wife Mukarusanga Cécile assisted by Counsel Murenzi Eugène and Counsel Mutabaruka Jean, Nyamwasa Pascal represented by Counsel Ndagijimana Emmanuel, Yankurije represented by Counsel Nkezabo and the city of Kigali represented by Me Ntaganda Felix. [16] Prior to entering the substance of the case the court first examined the request of Yankurije to make intervene Kashugera Faustin and Kazayirwa François that she asserts that they have buildings in the plot N°5363 that was given to her husband Nteziyaremye. THE LEGAL ISSUE AND ITS ANALYSIS To know whether Kashugera Faustin and Kazayirwa François must be made intervene in this case

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- [17] Yankurije asserts that she requested the High Court that Kashugera Faustin and Kazayirwa François be made intervene in the case so that they can be condemned to payment of damages alongside the city of Kigali as they built houses in the plot given to her husband Nteziyaremye without being entitled to do that and those houses generate them monthly income. [18] She explains that Udahemuka took one portion of her plot and took away 12 a, Kashugera Faustin and Kazayirwa François took the other portion, 8a in which they raised building, the remaining portion was built on the road and she intervened in the case introduced by Udahemuka claiming that even those ones be made intervene in order that the dispute be settled at once. [19] She also assert that the plot she claims, her husband was given it in 1996, and the road was build in 2001, and Kashugera Faustin and Kazayirwa François built their houses in 2011, the reason why she did not sieze the courts earlier is that the city of Kigali promised her to sove her problem it has not been expeditious. [20] Counsel Nkezabo her counsel assert that the appeal of Yankurije does not aim at the restitution of the plot as she was given the compensation, but it aims at the request of damages of having been deprived of the right to possess the plot of land that was given to her husband. [21] Counsel Mutabaruka the counsel Mukarusanga Cécile who represents Udahemuka asserts that the plot that Yankuirje qualifies as hers has 12 ares of Nyamwasa, and the other portion is inhabited by Kashugera Faustin and Kazayirwa François since 1963 before the husband of Yankurije was given that area, and they requested in the preliminary that they also be summoned as witnmesses for the purpose of proving that Yankurije has not sufficient titles that give her that plot. [22] Counsel Murenzi, who is also the counsel of Mukarusanga Cécile asserts that he finds that Kashugera Faustin and Kazayirwa François should be made

intervene in this case as the city of Kigali would expel them out of the plot if it has to give the compensation to Yankuriye. [23] He also asserts that since Yankuriye requested from the first instance that Kashugera Faustin and Kazayirwa François be made intervene but that request was dismissed, and that is among the grounds of her appeal, he finds that it nowhere against article 118 of the law No 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure. [24] Counsel Ndagijimana Emmanuel the counsel of Nyamwasa Pascal asserts that the plot N° 5411 subject matter of this case is not related to the plot in which Kashugera Faustin and Kazayirwa François built their houses as they are separated by the road. [25] Counsel Nkezabo the counsel of the city of Kigali asserts the court may examine whether it is necessary to make Kashugera Faustin and Kazayirwa François intervene and be heard for the first and last instance in the Supreme Court or they can be sued separately in another case. THE VIEW OF THE COURT [26] As explained under article 116 of the law No 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure, the person can be forced to intervene in the case in which he or she is not a party in case he or she would oppose it as a third party, and there is a party who wishes to win him or her with their opponent jointly in the same case. [27] With regard to the requirement for the person to intervene be it voluntarily or forcibly, article 119 of that aforementioned law provides for that such a claim is admissible only if it is interconnected with the principal claim, and article 120 provides for that it cannot be admitted if it can delay the proceedings of the main claim that meets all requirements to be rendered, except if the

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separation of that claim with the principal claim can irremediably cause the damage on behalf of the new party. [28] With regard to this case, the Court finds that its origin is the plot subject of litigation between Udahemuka and Yankuriye, who both assert that it belongs to them and this issue is different from the dispute between Yankuriye and Kashugera Faustin and Kazayirwa François as the place she asserts they have built on is different from the plot she is claiming against Udahemuka,. [29] The Court thus finds that the fact that Yankuriye has the dispute with Udahemuka based on one party of the portion N°5363 and the dispute with Kashugera Faustin and Kazayirwa François as well based on the other party of that plot does not imply that both claims are interconnected to the extent that the settlement of one of them can affect the other, instead their intervention can delay the proceedings in the main claim she has against Udahemuka. [30] The court thus finds that request of Yankuriye to force Kashugera Faustin and Kazayirwa François to intervene in this case so that the dispute she has with them be settled jointly with the dispute she has with Udahemuka must not be admitted as it does not meet the legal requirements of admissibility. THE COURT DECISION: [31] It holds that Kashugera Faustin and Kazayirwa François cannot be forced to intervene in this case [32] It holds that the hearing shall be resumed on 02/09/2014.

[33] It holds that the court fee is suspended.

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