

RWANDA / JUDGMENT

UTAMULIZA ET AL v. NTAHONSIGAYE

RCAA0019/14/CS

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Text

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UTAMULIZA ET AL v. NTAHONSIGAYE [Rwanda SUPREME COURT – RCAA0019/14/CS (Hatangimbabazi, P.J., Mukamulisa and Hitiyaremye, J.) January 29, 2016] Civil procedure – Appeal – Parties to the case at appeal level – Obligation to pay court fees – Parties in the case at first instance level are not barred from appearing at the appeal level in case they have interests and have never withdrawn from the case – Parties who did not lodge an appeal are not bound to pay court fees and they are not even concerned with the duties of the appellant party – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 360. Facts: For the execution of the judgment N° RC26.347/97 rendered by the First Instance Court of Kigali on 26 February 1999 between the heirs of Ruzindana represented by Nzamurambaho Salomon and Ntahonsigaye Ernest, the auction was conducted over the house belonging to Ntahonsigaye Ernest on 17 October 2009. This house was acquired by Muvunyi Patrick under the order issued by the President of the Intermediate Court of Gasabo. After the occurrence of this auction, Ntahonsigaye seized the same court with an *exparte* application whereby he requested its cancellation. His claim was registered on RAD0054/09/TGI/Gsbo. On 26 October 2009, the Intermediate Court of Gasabo decided on that *exparte* application where it

cancelled the order of the president of Intermediate Court of Gasabo because the publication of the public auction in 15 days has not been respected. Muvunyi Patrick the acquirer of the house through public auction and Nzamurambaho Salomon, the distrainer initiated a third party opposition claim against the judgment which cancelled the auction and their claims were registered on RAD0056/10/TGI/Gsabo and RAD0064/09/TGI/Gsabo. Those claims were joined and tried jointly and on 23 April 2010, the Intermediate Court of Gasabo held that the judge who took the decision to cancel the auction of 17 October 2009 was not competent because such decision falls into the attribution of the President of the Intermediate Court, consequently the order taken in the judgment RAD0054/09/TGI/Gsabo is overruled and the auction remains valid. After Ntahonsigaye realised that the auction becomes valid again, he lodged an appeal to the High Court and his claim was registered to RADA006/10/HC/Kig. This court upheld the decision of the appealed judgment. After Ntahonsigaye Ernest has lost the case at appeal level, he initiated another claim before the Intermediate Court of Gasabo where he requested again the cancellation of the public auction conducted on 17 October 2009. This Court rendered the judgment RC409/10/TGI/Gsabo on 13 September 2010 whereby it dismissed the claim because the judgments RAD0056/10/TGI/Gsabo and RAD0064/09/TGI/Gsabo which declared the auction valid have already become final. Ntahonsigaye Ernest appealed against the decision to the High Court where he blames it to have considered those judgments as final while litigants in them are different; therefore the judge should not have relied on them to reject his claim. In this case, Utamuliza Séraphine intervened in it and alleged that she has never been summoned in previous judgments while she was the owner of the auctioned house.

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The High Court rendered the judgment RCA00199/11/HC/Kig where it decided that the claim of Ntahonsigaye should have been admitted, and therefore transferred the case to the Intermediate Court of Gasabo for its examination in merits. Utamuliza Séraphine and Muvunyi Patrick lodged an appeal against this decision before the Supreme Court where they sued Ntahonsigaye Ernest only. At the beginning of the hearing, Counsel Ngarambe Raphaël and Gashagaza Philibert who represented Ntahonsigaye raised an objection of inadmissibility of the appeal claim lodged by Utamuliza Séraphine and Muvunyi Patrick alleging that it does not fall into the jurisdiction of the Supreme Court. However, this Court declared that the appeal falls into its jurisdiction. They raised another objection alleging that Nyirabihogo and the heirs of Ruzindana should not be parties to the case because they did not pay court fees and the fact that they did not lodge an appeal within the limited time indicates that they are not entitled the right to appeal and did not respect the obligation of the appellant to pay court fees. Counsel Buhuru Pierre Célestin representing Utamuliza Séraphine and Muvunyi Patrick states that the fact for his clients's appeal to have been admitted is sufficient to lead to the assertion that all parties in the appealed case to be and appear in the appeal claim, therefore he find that it is not necessary for other litigants to pay for court fees while they did not lodge an appeal as it is the case for the defendant. Counsel Numbumwe Jean Bosco who represents the heirs of Ruzindana states that the objection raised lacks merit based on the fact that since the initiation of the case, his clients were parties and have

also interest in it, the reason why the Court found that it was relevant to summon them to appear at appeal level. Counsel Buzayire Angèle who represents Nyirabihogo states that according to article 169 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which refers to the effect of an appeal consisting of returning to the former situation of a case, when the appellant was not satisfied with the decision of the court, his client should remain with the status of the respondent because he has not lodged an appeal. He states in addition that Nyirabihogo, as someone who was a party to the appealed case and the court bailiff who requested the conduct of the auction under trial, should be the party the case at appeal level because he was sued even in appealed

judgment.

Held: All parties in the case at first instance level are not barred from appearing at the appeal level in case they have interests and have never withdrawn from the case. Therefore, the court finds that the heirs of Ruzindana being the ones who applied for the conduct of the auction which was conducted by Nyirabihogo on the house belonging to Ntahonsigaye in the capacity of the court bailiff, and the fact that the court may need information from them as parties at first instance level; they should remain parties in the case at appeal level. The court finds also that Nyirabihogo and the heirs of Ruzindana should not be requested to pay court fees in compliance with article 360 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure since they did not lodge an appeal, and they are not even concerned with other obligations of the appellant. Objection overruled. Hearing of the case in merits to pursue. Court fees suspended. Statutes and statutory instruments referred to:

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Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 360. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] For the execution of the judgment N° RC26.347/97 rendered by the First Instance Court of Kigali on 26 February 1999, whereby Ruzindana represented by Nzamurambaho Salomon was opposed to Ntahonsigaye Ernest, the public auction was conducted on 17 October 2009 on the basis of the order of the president of the Intermediate Court of Gasabo over the house belonging to Ntahonsigaye. [2] After the conduct of the public auction, Ntahonsigaye filed an *exparte* application to that court where he requested the suspension of the execution of that public auction. This application was recorded on N° RAD0054/09/TGI/Gsbo. [3] On 26 October 2009, the Intermediate Court of Gasabo decided on the said *exparte* application where it decided that the order of the president of the Intermediate Court pf Gasabo is hereby nullified because the publication of the public auction within 15 days was not respected. [4] Muvunyi Patrick who purchased the house in the course of the public auction and Nzamurambaho Salomon filed a third party opposition claim against the judgment

which nullified the auction, and their claims were recorded to N° RAD0056/10/TGI/Gsabo and RAD0064/09/TGI/Gsabo. [5] Those claims were joined and tried together, and the Intermediate Court of Gasabo rendered the judgment on 23 April 2010. It decided that the judge who took the decision to invalidate the public auction conducted on 17 October 2009 was incompetent because such an order falls within the jurisdiction of the president of the Intermediate Court, therefore the decision taken in the judgment N° RAD0054/09/TGI/Gsbo is hereby invalidated and the public auction remains valid. [6] Ntahonsigaye appealed against the judgment to the High Court and the claim was recorded to N° RADA006/10/HC/Kig which also rendered the judgment on 10 September 2010, whereby it upheld the appealed judgment. [7] Ntahonsigaye Ernest seized the Intermediate Court of Gasabo again requesting the invalidation of the public auction over the house conducted on 17 October 2009. This Court rendered the judgment RC409/10/TGI/Gsbo on 13 September 2010 and it rejected the claim because the judgments RAD0056/10/TGI/Gsabo and RAD0064/09/TGI/Gsabo which became final validated the public auction due to the fact that the judgment which invalidated it was rendered by an incompetent court.

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[8] Ntahonsigaye Ernest appealed against the judgment before the High Court alleging that the judge held that the judgments were final while parties in those judgments were different, therefore he should not have relied on them to reject his claim. Utamuliza Séraphine intervened in the judgement and alleges that she has not been summoned to appear in the rendered judgments while she is the owner of the auctioned house. [9] The Court rendered the judgment N° RCA00199/11/HC/Kig and decided that the claim of Ntahonsigaye should have been admitted, therefore the appealed judgment decision is modified and it transferred the case to the Intermediate Court of Gasabo which shall hear it in merits. [10] Utamuliza Séraphine and Muvunyi Patrick appealed against the judgment to the Supreme Court whereby they sued Ntahonsigaye Ernest only, and the registrar of the Supreme Court dismissed the claim. The appellants complained to the President of the Supreme Court, and in his order N°223/2014 delivered on 27 October 2014, after the examination of the complaint, he invalidated the order N° 035/GCS on the admissibility of the appeal against the judgment RCA0199/11/HC/KIG taken by the Registrar of the Supreme Court on 11 September 2014. He therefore ordered the appeal claim against the aforementioned judgment RCA0199/11/HC/KIG to be recorded in the Supreme Court's register. [11] The judgment was heard in public on 26 May 2015, whereby Utamuliza Séraphine and Muvunyi Patrick were represented by Counsel Buhuru P. Célestin, Counsel Buzayire Angele representing Nirabihogo Jeanne d'Arc, the heirs of Ruzindana being represented by Counsel Nubumwe Jean Bosco, while Ntahonsigaye was represented by Counsel Ngarambe Raphaël and Counsel Gashagaza Philibert. [12] The Court initially examined the objection raised by Counsels Ngarambe Raphaël and Gashagaza Philibert who represent Ntahonsigaye which relates to the fact that the appeal claim lodged by Utamuliza Séraphine and Muvunyi Patrick does not fall into the jurisdiction of the Supreme Court. On 10 July 2015, this court decided on that objection and admitted the claim and ordered the hearing of the case in merits to

resume on 03 November 2015, and at the occurrence of the said date, it was postponed to 8 December 2015. [13] At this date of 8 December 2015, Counsel Ngarambe Raphaël and Counsel Gashagaza Philbert for Ntahonsigaye Ernest raised again an objection that Nyirabihogo and the heirs of Ruzindana should not be parties in this case. II. ANALYSIS OF LEGAL ISSUE Whether Nyirabihogo and the heirs of Ruzindana should not be parties to this case. [14] Counsel Ngarambe Raphaël and Counsel Gashagaza Philbert who represent Ntahonsigaye raised an objection relating to the fact that Nyirabihogo and the heirs of Ruzindana should not be considered as parties in the case since they did not pay for court fees. They alleges also that given that they did not lodge the appeal within the prescribed time limit as provided for by article 163 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure; it is clear that they did not exercise their right and the fact that they did

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not abide by the obligation of the party to a case and pay for court fees as prescribed by article 25 of the aforementioned law, imply that they should not be considered as parties to this case. [15] They states in addition that given that Nyirabihogo and the heirs of Ruzindana did not lodge an appeal, this indicates that they did not have interest, therefore they deprived themselves from the right to be parties in the case at appeal level. The counsels found again that given that they have not been sued at appeal level, there is no basis for them to become parties to the case. [16] Counsel Buhuru Pierre Célestin who represents Utamuliza Séraphine and Muvunyi Patrick states that given that his clients lodged an appeal which was admitted, this is enough for all those who have been parties in the appealed judgment to be also parties in the case at appeal level, therefore he finds that it is not relevant for other parties to pay court fees while they did not file the appeal as even the respondent is not bound to pay for it. [17] He states in addition that the reason they sued only Ntahonsigaye Ernest is that he is the only one who sued them from the beginning and won the case. He states also that Utamuliza Séraphine and Muvunyi Patrick appealed against all grounds of the judgment and that Nyirabihogo and the heirs of Ruzindana were parties to the appealed judgment the reason why the court summoned them, therefore for him this court did not make a mistake. He states again that the counsels for Ntahonsigaye misinterpret the provision of article 25 of the Law N°21/2012 of 14/06/2012; rather it should be referred to article 360 of the said law which relates to the court fees. [18] Counsel Nubumwe Jean Bosco for the heirs of Ruzindana states that the objection raised lacks merit because his clients have been parties to the case from the beginning of the case and they have interests in it, the reason why the court found it necessary to summon them to appear in the hearing. [19] Counsel Buzayire Angèle for Nyirabihogo states that pursuant to article 169 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative, in relation to the effect of an appeal to return to the former situation of a case; when the appellant was not satisfied with the ruling and lodges an appeal, his client maintain the status of the respondent as it is not him who lodged an appeal. He states in addition that given that Nyirabihogo has been a party to the appealed case and the distrainer of the auction in dispute, therefore she should part of the

litigants because she was even sued in the appealed judgment. REASONS FOR THE DECISION [20] The court finds that in order to know if the party who was involved in the first instance is would be barred from appearing in the hearing at appeal level; it should be examined the background of the whole case from the beginning up to this level. [21] As far as this case is concerned and as mentioned before, it derives from the public auction of the house belonging to Ntahonsigaye Ernest which was conducted for execution of the judgment RC26347/97 won by the heirs of Ruzindana. What is clear is that from the beginning of the mentioned public auction, Nyirabihogo Jeanne d'Arc was involved in the case as the court bailiff who conducted the public auction, and the heirs of Ruzindana were involved as the initial

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plaintiffs whereby they sued Ntahonsigaye Ernest for damages. The said public auction was performed to get payment of their loan. [22] The Court finds therefore that, according to the background of the case as referred to above, in case Utamuliza Séraphine and Muvunyi Patrick who acquired the house of Ntahonsigaye Ernest were not satisfied with the decision taken in the aforementioned judgment RCA0199/HC/KIG delivered by the High Court on 8 May 2014, there exists no reason to prevent all individuals who were parties to reappear in it at appeal level as long as they did not withdrawn themselves from it. [23] The court finds in addition that, given that the appeal was not lodged by Nyirabihogo and the heirs of Ruzindana, and in accordance to article 360 of the aforementioned Law N°21/2012 of 14/06/2012, they should not be requested to pay court fees, and they are not even concerned with the obligations of the appellant. III. COURT DECISION [24] It declares the objection raised by counsels for Ntahonsigaye Ernest without merit; [25] It holds that Nyirabihogo and the heirs of Ruzindana are the parties to this case; [26] It declares that the hearing of the case shall resume on 10 May 2016; [27] It declares the payment of court fees suspended.

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