

BUGIRIMFURA v. KIGALI CITY ET AL

[Rwanda SUPREME COURT – R.Ad.A.0033/11/CS (Mutashya, P.J., Mukanyundo and Kayitesi, J.) September 11, 2013]

Administrative procedure – Admissibility of the action for annulment of administrative decision – Before filing a claim, the aggrieved party who is against the administrative decision shall be required to first lodge an informal appeal to the author of the decision or the immediate superior authority before the expiry of the time limit for filing the case to the Court – The Law of 23/02/1963 establishing the Supreme Court, article 106 paragraph 6.

Facts: Bugirimfura Alfred states that he owned a plot of land in Gatenga Sector, Kicukiro District and was unlawfully dispossessed it by Kigali city which gave it to Fariyara John. On 4th November 1999, he lodged an informal appeal to the administration of Kigali City and was not given a response. Therefore, on 30th March, 2002, he filed a claim to the First Instance Court of Kigali. After judicial reform, that case was heard by the High Court on the first instance because it was the one which has jurisdiction to hear, and decided that the case is inadmissible on the ground that he filed the claim too late after his informal appeal. Bugirimfura appealed to the Supreme Court arguing that the judge of the High Court erred and upheld that the case was initiated in 2002, therefore decided that the claim was filed in delay while it is wrong.

Held: The fact that the aggrieved party who is against the decision has lodged an informal appeal to Kigali City on 4th November, 1999 of which a period of two months elapsed without being communicated a response implies that the appealed decision remains valid. Therefore, filing the case to the Court on April 30, 2002, meaning after three months provided for by the law during which he should have filed the case is a ground for inadmissibility of his claim because he lodged too late.

**Appeal dismissed.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 339.

Law of 23/02/1963 establishing the Supreme Court, article 106.

No case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Bugirimfura Alfred asserts that he had a plot of land in Gatenga sector, Kicukiro District and it was unlawfully dispossessed of him by Kigali city and allocated it to Fariyara John. Bugirimfura filed a complaint to the Intermediate Court of Nyarugenge; the Court declared itself without jurisdiction and referred the case to the High Court.

[2] Before the High Court heard the case on merit, it asked Bugirimfura if he had made an informal appeal to the authority which took the decision to dispossess him of the land, and he replied that he informally appealed to the authority on 4th November, 1999, he did not get a response, and begun to sue to Courts in 2001. The Court decided on the objection and dismissed Bugirimfura Alfred's claim because he did not follow the procedure of lodging an informal appeal.

[3] The Court found that, although Bugirimfura lodged an informal appeal before 2004, prior to the coming into force of the law which provided for six months, for those who are not contented to file a complaint to the Court and how they are counted, he did nothing after it came into force, to the extent that he filed a claim after seven years (7), while the law provides for six months (6) only.

[4] Bugirimfura Alfred appealed against the case to the Supreme Court, submitting that, the grounds for his appeal rely on the fact that the judge erred in holding that the case was filed in 2007, while it was filed in 2002, and that error led the judge to rule that he delayed filing the claim, while it is not the case.

[5] The hearing was scheduled on 2nd July, 2013, on that day all parties were present, Bugirimfura Alfred was represented by Hakizimana Aloys, the Counsel, and the heirs of Fariyara John were represented by Manirahari Nouredine, the Counsel and Kigali City by Rubango Epimaque, the State Attorney.

[6] The issue to be examined in this case is to determine whether Bugirimfura respected the time limit for filing a claim in Courts after the informal appeal.

II. ANALYSIS OF THE LEGAL ISSUE

[7] While explaining his appeal, Bugirimfura Alfred and his counsel, argued that the judge did not fully analyze the documents contained in the case file, because if he had fully analyzed them, he would have found that he did not file the claim in the Intermediate Court of Nyarugenge in 2007 as he states, but he initiated the lawsuit in the First Instance Court of Kigali on 30th March 2002 and the case was registered under RC 37.938/02. He further explains that the case lasted for four years without being heard, to the extent that the judicial reform happened before its trial and it was given another case number RADA 0016/07/NYGE.

[8] They further argued that due to the judge error on the time the case was filed, this lead him to rule that the time limit of six months (6) for the case to be filed after lodging an informal appeal to the authority which took a decision as provided for by article 339 of the Law n^o 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, was not respected.

[9] They also submitted that because of that error, the judge held that from 4th November 1999, when he lodged an informal appeal (Bugirimfura Alfred) to the Prefect of Kigali City Prefecture to 2007 when he filed the claim in the Intermediate Court of Nyarugenge, the above mentioned six months had elapsed. They submitted that, this law should not have been relied on, because it came into force after the case was filed.

[10] The Counsel, Manirahari Nouredine representing the heirs of Fariyara John submitted that Bugirimfura should have initiated a new process because the first one had ceased as he

filed the claim in 2001 and abandoned the case, and then everything returned to its usual status. Therefore, he should have lodged an informal appeal as the High Court held.

[11] The State Attorney, Rubango Epimaque representing Kigali city pleaded that both parties agree that the informal appeal took place in 1999, and that, if considering what Bugirimfura says that the lawsuit was initiated in the “Tribunal de canton” in 2001, and it continued in 2002 and even in 2007, the case must have been filed when the time limit had elapsed, starting from 4th November 1999 when he states he lodged the informal appeal, because basing on either the Law of 23/02/1963 governing the Supreme Court which was into force before 2004 or the Law n^o 18/2004 of 20/06/2004 which regulated the Civil, Commercial, Labour and Administrative Procedure, both laws stipulate for the informal appeal, the only difference being the duration of the time the claim had to be filed, computed from the time of informal appeal; therefore, the ruling of the High Court, that the time limit for filing a case after the informal appeal was not respected, should be sustained.

THE VIEW OF THE COURT

[12] The documents in the case file demonstrate that on 4th November 1999, Bugirimfura Alfred wrote to the Prefect of Kigali City Prefecture, informally appealing to him and requesting to get a redress and his right on the plot of land situated in Kanengwa cell, Gatenga sector, he was dispossessed by Kigali City Prefecture be restituted. In his submissions, Bugirimfura Alfred pleaded that the Prefect of Kigali City prefecture never replied to him, the reason why he filed a claim in the “*tribunal de canton*” of Nyamirambo on 24th April, 2001.

[13] Article 106 paragraph 6 of the Law of 23/02/1963 which regulated the Supreme Court at the time Bugirimfura Alfred lodged an informal appeal, stipulated that before appealing to the Administrative Court, the prejudiced person ought to first lodge an informal appeal to those who prejudiced them or to their superior in order to get redress, and it should have been done before the time limit of appealing to the administrative Court has elapsed.

[14] In its paragraph 7, it states that if the authority that has the capacity, to which the informal appeal has been lodged to, does not respond within two months, it is deemed as he/she rejected the informal appeal. Paragraph 8 of that article states that, the computation of the period of three months in the course of which the plaintiff should file a claim in the Court, begins when the prejudiced party receives a response rejecting his informal appeal, and it delays for long, that period begins at the end of the two months provided for by this article.

[15] Basing on that article, the Court finds that Bugirimfura lodged an informal appeal on 4th November, 1999, and on 24th April 2004 he filed a complaint in the “Tribunal de canton” of Nyamirambo, after almost a year and a half exceeding three months provided for by the law for him to have filed a claim, that is to say, even if he did not abandon the case as he did, the case and the process would have ceased.

[16] According to the Court, what Bugiramfura Alfred argues that he filed the claim in the First Instance Court of Kigali on 30th March 2001 basing on the informal appeal he lodged on 4th November 1999, cannot serve him, because he would have delayed to file a claim, since as stated above, the three months which the law provided for him to have filed a claim in the Court after the expiry of two months without a response from the authority, had already elapsed.

[17] For those reasons, the Court is of the view that, as the judge of the High Court considered it, the claim which Bugirimfura Alfred filed in the First Instance Court of Kigali on 30th March 2002 which was registered under RC 37.938/02 and tried at the first level by the High Court due to the judicial reform, was filed when the time limit had already elapsed, therefore, it should be dismissed.

[18] The Court is of the view that, although the judge of the High Court also had ruled that the claim should be dismissed, he should not have relied on the Law n° 18/2004 of 20/06/2004 which related to the civil, commercial, labour and administrative procedure, because it had not yet come into force but instead, he should have applied the Law of 23/06/1963 governing the Supreme Court, which was into force at the time Bugirimfura Alfred lodged the informal appeal.

III. THE COURT DECISION

[19] Adjudicates that the appeal of Bugirimfura Alfred has no merit;

[20] Orders him to pay the court fees amounting to 37,500 Rwf.