

MWIZA v. KAYINAMURA

[Rwanda SUPREME COURT – RCAA 0001/13/CS (Mukanyundo, P.J., Hitiyaremye and Gakwaya, J.) December 13, 2013]

Law determining the jurisdiction of courts – Jurisdiction of the Supreme Court – The Supreme Court has appellate jurisdiction over cases heard and decided in second instance by the High Court without jurisdiction – Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28.

Law determining the jurisdiction of commercial courts – Contracts – The lease contract of a room between traders for commercial purpose is considered as commercial contract – Disputes arising from such a contract are heard by commercial courts – Organic Law n° 59/2007 of 16/12/2007 determining the organization, functioning and jurisdiction of Commercial Courts, article 3.

Facts: Kayinamura sued Mwiza Mutagoma in the Intermediate Court of Gasabo with the objective to get the payment of rent for his compartment used for commercial activities. The Court decided that the case was without merit due to the lack of evidence of the existence of the unpaid rent. Kayinamura appealed against that judgment to the High Court and Mwiza raised the objection of lack of jurisdiction, asserting that the contract upon which the due rent is based is of commercial nature and that the subject matter of the suit was already decided by Commercial Courts.

The High Court, in its interlocutory judgment, decided that this objection was inadmissible since the lease contract of a house, even for commercial use, is governed by civil law. Accordingly, on the merit of the case, the High Court ordered the respondent to pay the rent in dispute.

Mwiza Mutagoma appealed to the Supreme Court based on the objection of lack of jurisdiction of ordinary courts to hear this case as he had raised it in the High Court. Kayinamura in return raised an objection of lack of jurisdiction arguing that the Supreme Court lacks jurisdiction to hear the appeal of Mwiza because the subject matter's value is below the minimum specified by the law in order for the Supreme Court to hear the case tried on second instance by the High Court, and that the issue of lack of jurisdiction by ordinary courts has not been the subject of hearing in first instance courts.

Held: 1. The Supreme Court has jurisdiction to hear the appeal of Mwiza Mutagoma because it relies on the ground that the appealed case was tried by the High Court without jurisdiction while he raised that objection of lack of jurisdiction in the High Court and it decided on it.

2. The payment default of a compartment rent originating from the contract entered into between traders and that compartment being used for commercial activities, constitutes a commercial act due to the rapport that exists between such act and commercial activities habitually exercised by contracting parties.

3. The lease contract of that room should be considered as a commercial lease and disputes thereto should therefore be heard by commercial courts.

**Appeal granted.
Appealed judgment quashed.**

Costs to the respondent.

Statutes and statutory instruments referred to:

Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28.

Cases referred to:

Kayinamura v. Mwiza, RCOMA 0028/10/CS rendered on 27 April 2012.

Mwiza v. Kayinamura, RCOM 0333/10/HCC rendered on 22 March 2011.

Authors cited:

François Collart Dutilleul et Philippe Delebecque, Contrats civils et commerciaux, 8e édition, p.334.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Kayinamura Fidèle states he bought a house situated at Kimironko Sector known as “Medi Motel” from Mbabajimana Jean Bosco in 2007, but the latter concluded lease contract with individuals who used the house for business, including Mwiza Mutagoma. The contracts remained valid even after Kayinamura purchased the house but he and Mwiza did not manage to agree on its execution which resulted in much litigation. In some cases, Mwiza sued Kayinamura for breach of contract and in others, Kayinamura sued Mwiza. The case at hand was initiated by Kayinamura against Mwiza alleging that Mwiza defaulted in payment of the rent for 39 months equivalent to 26,300,000 Rwf as he ought to pay 700,000 Rwf a month.

[2] The Intermediate Court of Gasabo, the seized court heard the case in Mwiza Mutagoma’s default. It delivered the judgment RC0019/ 11/TGI/ GSBO on 14 October 2011. It held that the claim filed by Kayinamura lacks merit because he did not produce any evidence to prove the existence of the debt that Mwiza Mutagoma owed him.

[3] Kayinamura Fidèle appealed against the decision to the High Court and in that hearing Mwiza Mutagoma raised different objections including lack of jurisdiction, inadmissibility of a claim and connexity. Concerning the objection of lack of jurisdiction, Mwiza stated that the High Court was incompetent because the claim was submitted to the Commercial Courts before. In its interlocutory judgment RCA 0388/11/KIG rendered on 6th July 2012, the High Court, decided that Mwiza’s objection was inadmissible because even if the lease contract of a house relates to commercial activity, it is regulated by civil law. Thus it cannot be considered as commercial.

[4] Concerning the merit of the case, the High Court rendered judgment RCA 0388/11/HC/KIG on 9th August 2012 and ruled that the claim filed by Kayinamura had merit on some grounds. The High Court also quashed the appealed judgment and ordered Mwiza Mutagoma to pay Kayinamura Fidèle an amount of money equivalent to 24,830,000 Rwf, the payment of 993,200 Rwf related pro-rated fees, and court fees equivalent to 10,050 Rwf.

[5] Mwiza Mutagoma appealed to the Supreme Court, claiming that the trial of the case was characterized by manifest impartiality, the case did not fall under the High Court’s

jurisdiction, the motive upon which the judge based his determination of the rental rate was not figured out, and the judge disregarded some facts in deciding the case. The appeal launched by Mwiza Mutagoma has been screened and the Chief Registrar of the Supreme Court, in the order n° 0011/12/civ/GCS, held that his appeal is not within the jurisdiction of the Supreme Court. However after Mwiza's complaint, the screening of this file was commissioned to a judge who concluded that the appeal deserved to be admitted and examined.

[6] The hearing of the case was conducted in public on 5th November, 2013 Mwiza Mutagoma represented by Mutabazi Innocent, the Counsel, and Kayinamura Fidèle represented by Ndagijimana Emmanuel, the Counsel, who requested that before the hearing of the appeal of Mwiza, the court should examine objections raised by Kayinamura in his defense submissions relating to the lack of jurisdiction of the Supreme Court over the appeal of Mwiza Mutagoma. The Court consented and the hearing continued with the debate on the objection raised by Kayinamura Fidèle.

II. ANALYSIS OF LEGAL ISSUES

The objection raised by Kayinamura intend to demonstrate that the appeal filed by Mwiza Mutagoma is not within the jurisdiction of the Supreme Court in light of the provision of the law he referred to by stating that the Supreme Court is incompetent to hear the appeal he filed because the value of the subject matter did not attain the minimum amount of money required by the law. Kayinamura further declares that the statements made by Mwiza that the Supreme Court has jurisdiction basing on the lack of jurisdiction of the previous courts which rendered the appealed judgment (Intermediate Court of Gasabo and the High Court decided the case RCAA 0001/13/CS) lacks merit because the contract in dispute is civil.

Among the grounds of appeal filed by Mwiza, there is one which is related to the lack of jurisdiction in examining the objection raised by Kayinamura; therefore, the Court must examine, at any cost, this ground of appeal filed by Mwiza. For the Court to decide whether or not appeal filed by Mwiza is in its jurisdiction, it is of paramount importance to examine the provisions of the law upon which Mwiza has relied to justify Supreme Court jurisdiction in filing the appeal. The issue of knowing whether the High Court was competent to hear the case should be examined as well.

Whether or not the appeal filed by Mwiza Mutagoma falls into the jurisdiction of the Supreme Court:

1. Concerning the provisions of the law to which Mwiza Mutagoma referred to justify the jurisdiction of the Supreme Court to hear appeal he filed.

[7] Ndagijimana Emmanuel, Counsel for Kayinamura Fidèle, states that the appeal filed by Mwiza Mutagoma should not be admissible in the Supreme Court because it is inconsistent with the provisions of article 28 paragraph 2, point 7° of the Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court. That article stipulates that “the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, (...) if such cases involve a judgment yielding an award of damages of at least fifty million Rwandan francs (Rwf 50,000,000), or when the value of the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (Rwf 50,000,000).” since in the

case Mwiza Mutagoma was ordered to pay Kayinamura 24,830,000 Rwf in cumulative damages , the latter are below the damages provided for in the above mentioned article .

[8] Counsel for Kayinamura states again that Mwiza Mutagoma bases the jurisdiction of the Supreme Court to hear his appeal on article 28 paragraph 2 point 2° of the Organic Law n° 03/2012/OL of 13/06/2012 (...) stated above which provides that the Supreme Court shall have appellate jurisdiction over cases heard and decided in the second instance by the High Court (...) if such cases “are decided by a court that does not have jurisdiction.”; while MWIZA Mutagoma had never raised an objection of lack of jurisdiction and be overruled, therefore, the judge in charge of screening would not have relied on that in determination of the jurisdiction of the Court while it had not been debated in previous courts.

[9] Mutabazi Innocent, Counsel for Mwiza Mutagoma, states that the objection raised by Counsel for Kayinamura Fidèle which is based on stating that the appeal filed by his client does not fall in the jurisdiction of the Supreme Court because it is inconsistent with the provisions of article 28 paragraph 2 point 2° of the Organic Law n° 03/2012/OL of 13/06/2012 (...) as stated above, is not substantiated because the appeal submitted by Mwiza Mutagoma relies on article 28 paragraph 2 point 2° of the Organic Law n° 03/2012/OL of 13/06/2012 (...). He pleads that the appealed judgment has been decided by civil court instead of commercial court because the nature of the subject matter was commercial that should be heard by commercial courts.

[10] The Counsel for Mwiza explains that Mwiza Mutagoma did not raise the objection of lack of jurisdiction before the Intermediate Court of Gasabo because the case was heard in his default while pleading before the High Court in Kigali; Mwiza Mutagoma raised the objection of lack of jurisdiction. As a result, in the interlocutory judgment RCA 0388/11/HC/KIG rendered on 9th August 2011, the judge, without motivation, affirmed that the objection of lack of jurisdiction was inadmissible. Another submitted objection relating to powers of a decided case (*autorité de la chose jugée*) was also rejected as well.

THE VIEW OF THE COURT

[11] The Court finds that Counsel for Mwiza explains in his appeal submissions before the Supreme Court that he based his claim for the jurisdiction of this Court on article 28 paragraph 2 point 2° of the Organic Law n° 03/2012/OL of 13/06/2012, providing that the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases were decided by a court that did not have jurisdiction. Therefore, the statements of counsel for Kayinamura are unsubstantiated.

[12] The Court finds again that the allegation by Counsel for Kayinamura that Mwiza Mutagoma did not raise the objection of lack of jurisdiction before the High Court is also baseless because the copy of the interlocutory judgment RCA 0388/11/KIG rendered on 9th August, 2011 and the writings on the first page, paragraph 2 demonstrate that Mwiza raised the objection of lack of jurisdiction as evidenced by the following statement by the judge that: “Mwiza and Mutabazi, his Counsel declare that this case falls into the jurisdiction of Commercial Courts”. Additionally from page 2 to 3, it is obvious that, among the issues analysed by the High Court, the first one concerned the jurisdiction of the Court and it is Mwiza Mutagomwa who raised the issue. Ndagijimana, Counsel for Kayinamura at the time, presented his defense thereon and the Court decided subsequently that the contract of lease

of a house even when it is for commercial use is regulated by civil law and thus it cannot be considered as commercial," and then pleaded that the objection raised by Mwiza Mutagoma was groundless.

2. Whether the High Court (sitting in civil cases) has jurisdiction to hear disputes arising from the contract of lease of Kayinamura Fidèle's house used for commercial purposes by Mwiza Mutagoma:

[13] Mutabazi Innocent, Counsel for Mwiza Mutagoma, declares that previous Courts had no jurisdiction to hear the case submitted to them because the nature of the subject matter is commercial which ought to have been tried by Commercial Courts especially that both parties are traders. In addition to this, as he explained above, he raised an objection of lack of jurisdiction before the High Court contending that the subject matter was not within the jurisdiction of the High Court, because previously the litigious contract was submitted to commercial courts in the case RCOM 0333/10/HCC rendered on 22 March 2011 by the Commercial High Court and in the case RCOMA 0028/10/CS rendered on 27 April 2012 by the Supreme Court whereby, in both courts, Kayinamura raised the objection for lack of jurisdiction but those courts decided that they had jurisdiction to hear the case. Therefore, he realises that Kayinamura seized civil Courts after losing in Commercial Courts with the sole objective of frustrating Mwiza.

[14] Concerning the jurisdiction of the High Court which tried the appealed case, Ndagijimana Emmanuel, Counsel for Kayinamura Fidèle, declares that previous Courts had jurisdiction to hear this case since the contract of lease for the house concluded between Mwiza Mutagoma and Kayinamura is a contract normally regulated by civil law that issues arising from it should be tried by Civil Courts. Furthermore, he argues that another fact evidencing the civil nature of contract concluded between Mwiza Mutagoma and Kayinamura is that Mwiza Mutagoma is not a trader and would not conclude a commercial lease contract (commercial lease) because he is a soldier without business registration, the contract is a civil contract. Hence, issues arising from the contract would be tried by civil Courts as it was done.

THE VIEW OF THE COURT

[15] Regarding the hearing before the High Court held on 26th June, 2012, the Supreme Court finds that Mwiza Mutagoma and his Counsel, Mutabazi Innocent, raised three objections including lack of jurisdiction by the High Court explaining that it had no jurisdiction over his case because the subject matter was tried by the Commercial High Court in the case RCOM 0333/10/HCC, and the Supreme Court tried it on appeal level in the case RCOMA 0028/10/CS.

[16] The Court finds that the subject matter of the case concerns disputes emanating from the lease contract for Kayinamura's house in which Mwiza Mutagoma carries out his business. Kayinamura alleges that these disputes had to be heard by Civil Courts because the contract is civil since Mwiza Mutagoma concluded it when he was a soldier without a business registration.

[17] In the judgment RCOMA 0028/10/CS paragraph [7] decided by the Supreme Court on 27th April 2012, this Court decided that Mwiza Mutagoma is a trader because he proved he possesses a business registration; therefore the objection of lack of jurisdiction of Commercial Courts to hear the issue of payment arising from the lease contract based solely

on the fact that Mwiza concluded it when he was a soldier without a business registration is groundless. Thus, there is no doubt that the issue of default of rent payment arising from the contract between traders, Mwiza and Kayinamura, is a commercial act due to the relationship between the contract and commercial activities exercised pursuant to the provisions of article 3, paragraph 1 of the Organic Law n° 59/2007 of 16/12/2007.

[18] This decision is supported by law scholars, François Collart Dutilleul and Philippe Delebecque, who explain that a commercial lease envisaged for buildings used for trade may be concluded by individual traders, manufacturers registered in the business registry, or an entrepreneur registered in the directory of crafts whether or not they exercise commercial activities. (*“le statut des baux commerciaux à vocation s’appliquer aux baux des immeubles ou locaux dans lesquels un fonds est exploité, que ce fonds apparitionne soit à un commerçant ou à un industriel immatriculé au registre du commerce, soit à un chef d’entreprise immatriculée au répertoire des métiers accomplissant ou non des actes de commerce”*).¹ On the web site, other law scholars state that a commercial act must relate to commercial activities which a trader exercises permanently in his or her profession. There must be a differentiation between activity a trader exercises in his profession and that exercised in his/ her private life. They add that, for example when a trader purchases a family house, he or she performs a civil act but if he or she buys an apartment for business purpose, that act is qualified commercial and even Courts so ruled that contracts concluded by a trader as part of his or her profession are considered commercial, and obligations arising from civil torts or related acts done by a trader are also considered commercial acts.²

[19] Pursuant to the previous holdings, the Court finds that the contract is a commercial contract and all disputes arising from it must be heard by Commercial Courts because Mwiza was a trader with business registration and he used the leased room for business relating to his profession. Therefore Civil Courts which tried this case at the first and second instance in appeal lacked jurisdiction. Consequently, judgment RCA 0388/11/KIG rendered on 6th July, 2012 by the High Court is quashed.

III. DECISION OF THE COURT

[20] Decides to hear the objection raised by Kayinamura Fidèle since its submission complies with the rules of procedure.

[21] Decides that the objection is not valid;

[22] Decides that the appealed judgment is quashed.

[23] Orders Kayinamura Fidèle to pay the costs of this reference amounting to 25,750 Rwf, the default of which, in a period of eight days (8 jours) from the delivery of this judgment, that amount of money will be deducted from his assets through government coercion.

¹ François Collart Dutilleul et Philippe Delebecque, Contrats civils et commerciaux, 8e édition, p.334.

² <https://www.google.com/search>, cours de droit commercial, Daphnée Principiano, Sont commerçants ceux qui exercent les actes de commerce et en font leur profession habituelle. L’acte doit se rattacher à l’activité commerciale, cela implique une distinction entre la vie professionnelle du commerçant et sa vie privée qui ne sera soumise qu’au droit commercial. Si un commerçant achète une maison pour sa famille: c’est un acte civil, par contre si le même commerçant achète un local, c’est un acte commercial. Ne sont pas commerciaux les achats faits par un commerçant pour son usage particulier. La jurisprudence dit que tous les contrats passés par un commerçant pour les besoins de son commerce sont commerciaux, qu’également toutes les obligations qui peuvent résulter d’un délit ou quasi-délit peuvent être qualifiés d’actes de commerce.

