

## KANZAYIRE v. NYIRABIZIMANA ET AL

[Rwanda SUPREME COURT – RCAA 0070/12/CS (Kanyange, P.J., Mukandamage and Munyangeri, J.) June 21, 2013]

*Law determining jurisdiction of courts – Jurisdiction of the Supreme Court – Remedies in the Supreme Court – Admissibility of a third party opposition claim – The principle of non-retroactivity of the law – The law applicable to the issue of the admissibility of the third party opposition claim filed under the rule of a repealed law but of which the hearing is conducted under the rule of a new law; should be the one into force at the date of its initiation – Supreme court judgments are not subject to remedies, except that of revision of final judgment – The Constitution of the Republic of Rwanda of June 2003 as amended to date, article 144 – Organic Law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and competence of the Supreme Court – Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and competence of the Supreme Court, article 84.*

**Facts:** Kanzayire Epiphanie, Musoni Ndamage Thadée's spouse initiated a third party opposition against a Supreme Court judgment between Nyirabizimana Zilipa and Musoni Ndamage Thadée of which she was not aware, arguing that its ruling entitled Nyirabizimana with the right to manage the assets of Musoni Eliab which should also be transferred into the common property of Ndamage Eliab and Nyirabizimana.

Nyirabizimana Zilipa raised an objection of inadmissibility of the claim of Kanzayire Epiphanie arguing that the third party opposition remedy is barred before the Supreme Court and that it has been its position on such issue in the Judgment RCOM 0010/09/CS of Rusekerampunzi v. Rumanyika delivered on 30/04/2010. She further states that even if it was to be admitted, Kanzayire would not be allowed to file a third party opposition against a judgment her spouse Musoni has lost. He adds that even if the plaintiff relies on the fact that she lodged the claim under the rule of the Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and competence of the Supreme Court, the third party opposition against a judgment delivered by the Supreme Court was provided nowhere.

Kanzayire and Musoni Ndamage Thadée and their counsels state in turn that those objections lack merit and they emphasise that the Supreme Court is an ordinary court which should abide by ordinary court proceedings without setting aside any kind of remedy since it hears cases in merits as well. They state in addition that the judgment rendered by this court which the counsel for Nyirabizimana requests to be considered, is the sole judgment in which it was decided on the issue in litigation, and therefore should not be considered as a court precedent on that issue.

**Held:** 1. Concerning the law which should be applied in order to decide on the issue of the admissibility of the third party opposition filed under the rule of a repealed law but of which the hearing is conducted under the rule of a new law; there should be applied the law that was into force at the date of its initiation.

2. With the sole exception of the revision of final judgment, other remedies against the judgment of the Supreme Court are inadmissible; therefore the third party opposition claim against the Supreme Court judgment is rejected.

**Third party opposition rejected.  
Court fees to the plaintiff.**

**Statutes and statutory instruments referred to:**

Constitution of the Republic of Rwanda of June 2003 as amended to date, article 144.

Organic Law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and competence of the Supreme Court.

Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and competence of the Supreme Court, article 84

**Cases referred to:**

Khalid v. Ahmed et al., RC 0002/09/CS delivered by the Supreme Court on 19/03/2010.

State of Rwanda v. Karangwa, RADA 0001/09/CS delivered by the Supreme Court on 17/09/2010.

Kagoyire v. Abdallah et al., RC 0002/05/CS delivered by the Supreme Court on 25/10/2007.

Rusekerampunzi v. Rumanyika, RCOM 0010/09/CS delivered by the Supreme Court on 30/04/2010.

Rudasumbwa v. State of Rwanda et al., RADA 0031/12/CS delivered by the Supreme Court on 17/05/2013.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] On 29 April 2011, The Supreme Court delivered the Judgment RCAA 0015/09/CS between Nyirabizimana Zilipa and Musoni Ndamage Thadée whereby it decided that Nyirabizimana is entitled to the right to manage the assets on plots n° 579/Quartier Commercial and n° 710/Kacyiru and those assets be transferred to common property of Ndamage Eliab and Nyirabizimana, in addition to what has been decided by the High Court in the appealed judgment. Those plots had to be deregistered from Musoni Ndamage Thadée and recorded in the names of Nyirabizimana. It also held that the plot n° 711/Kacyiru remains the ownership of Musoni Ndamage Thadée.

[2] Kanzayire Epiphanie, the spouse of Musoni Ndamage Thadée filed a third party opposition against the judgment arguing that she was not aware of it while it is prejudicing her interests.

[3] Nyirabizimana Zilipa raised the objection of inadmissibility of Kanzayire's claim, stating that the third party opposition remedy is not admissible in the Supreme Court, and that even if it were admitted, Kanzayire is not allowed to file a third party opposition against a judgment her husband lost.

[4] She also states that Kanzayire is not qualified to sue Nyirabizimana because she is not among the heirs of Ndamage, and that the issue of time limit for filing the claim should be examined since she was aware of the case in which her husband was a party.

[5] Counsels for Kanzayire and Musoni argue that the objections raised by Nyirabizimana are groundless.

[6] The hearing was held in public on 09 May 2013, Kanzayire Epiphane represented by the counsels Rukangira Emmanuel and Twiringiyemungu Joseph; the Counsels Basomungera Alberto, Kayitare Serge and Mhayimana Isaie representing Musoni Ndamage Thadee while Nyirabizimana Zilipa was represented by Counsel Rwagatare Janvier.

## **II. ANALYSIS OF LEGAL ISSUE**

### **Whether the third party opposition claim of Kanzayire Epiphane against the judgment RCAA 0015/09/CS can be admitted.**

[7] Rwagatare Janvier, the Counsel for Nyirabizimana states that the claim of Kanzayire should not be admitted because the third party opposition remedy is not allowed before the Supreme Court.

[8] He explains that apart from the appeal, opposition and review which are permissible, the third party opposition is not provided for by the Organic Law 03/2012/OL of 13/06/2012 determining the organisation, functioning and competence of the Supreme Court as evidenced by its articles 31, 32 and 33.

[9] The Counsel for Nyirabizimana furthermore argues that even if the plaintiff relies on the fact that her claim was filed under the application of the former Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and competence of the Supreme Court, such remedy of third party opposition against the judgment of the Supreme Court was not provided for by that Organic Law as mentioned in its article 84; and that the Supreme Court has already made a precedent on that issue through the Judgment RCOM 0010/09/CS.

[10] Counsel Rukangira Emmanuel and Counsel Twiringiyemungu Joseph for Kanzayire, state that her third party opposition claim against the judgment RCAA 0015/09/CS deserves to be admitted because based on the date of its initiation on 26 June 2012, the aforementioned Organic Law 03/2012/OL of 13/06/2012 which entered into force on 9 July 2012 cannot be applied to this case, since there should be applied the Organic Law n° 01/2004 of 29/01/2004 mentioned above because its article 84 did not prevent third parties to a case to file a third party opposition.

[11] They explain that, the Supreme Court as an ordinary court which tries cases on merits should apply ordinary civil procedure which is usually applied by ordinary courts without setting aside any kind of remedy, therefore admits the claim of their client.

[12] They add that the case law delivered by this Court upon which the counsel for Nyirabizimana requests to be relied on, is the sole judgment on which the issue in litigation was decided upon, therefore it should not be considered as a court precedent thereon.

[13] Mhayimana, the counsel for Musoni Ndamage Thaddée states that article 144 of the Constitution bestows this Court with the jurisdiction to hear this case. Again he states that pursuant to article 143 of the Constitution, the Supreme Court is an ordinary Court which should

apply ordinary procedure applied by other ordinary courts because it also hears case on merits. He adds that article 8 of the Universal Declaration of human rights prohibits discrimination; therefore the fact that the third party opposition remedy is possible in other Courts, there is no basis to reject it in the Supreme Court.

## **THE VIEW OF THE COURT**

[14] Concerning the Law that should be applied in order to resolve the debated issue of admissibility for the claim of Kanzayire, the notice of claim indicates that the claim was filed on 11 June 2012 while the Organic Law n° 03/2012/OL of 13/06/2012 mentioned above entered into force on 9 July 2012. Therefore, the applicable law has to be the Organic Law n° 01/2004 of 29/01/2004 which was into force when the claim was filed.

[15] Concerning the remedies for judgments rendered by the Supreme Court; article 144 of the Constitution provides that “The Supreme Court is the highest court in the country. The decisions of the Supreme Court are not be subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision. Its decisions are binding on all parties concerned whether such are organs of the State, public officials, civilians, military, judicial officers or private individuals”.

[16] Article 84 of the Organic Law n° 01/2004 of 29/01/2014 determining the organization, functioning and jurisdiction of the Supreme Court which was into force at the time of initiation of the claim in examination provided that “Without prejudice to the procedures established by law for review of judgments against which no further appeal is possible, cases decided by the Supreme Court shall not be retried save only for the purpose of rectifying an error apparent on the record or clarifying a decision which is ambiguous or susceptible to divergent interpretations”.

[17] The Court finds that, considering the provision of the aforementioned articles, it is understandable that all other remedies intending the re-adjudication of the judgment rendered by the Supreme Court are prohibited save only the revision of a final decision.

[18] This has been the position adopted by this Court in various judgments whereby it indicated that the third party opposition against a judgment delivered by the Supreme Court is not allowed and indeed in accordance with Organic Law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, among the claims likely to be filed in the Supreme Court, the third party opposition against the decision rendered by the Supreme Court is not provided for.

[19] Pursuant to the aforementioned motivation, the Court finds that the third party opposition lodged by Kanzayire Epiphanie against the judgment RCAA 0015/09/CS delivered by the Supreme Court must not be admitted because it was filed contrary to the law. Therefore, it is not necessary to examine other raised issues.

## **III. THE DECISION OF THE COURT**

[20] Rejects the third party opposition lodged by KANZAYIRE Epiphanie against the judgment RCAA 0015/09/CS.

[21] Order him to pay 42,800 Rwf of court fees, the default of which within 8 days, that amount shall be deducted from his asset through government coercion.