

## MUSHINZIMANA v. RUTARINDWA

[Rwanda SUPREME COURT – RCAA 0026/12/CS (Kayitesi R., P.J, Rugabirwa and Mukandamage, J.) February 21, 2014]

*Law determining the jurisdiction of Courts – Jurisdiction of the Supreme Court – Substantive jurisdiction of the Court – The value bestowed in the registration of mortgage certificate cannot be based on to determine whether the appeal falls within the jurisdiction of the Court when it is not the value which was indicated at the time of the submission of the claim or determined by the judge after deliberation on parties submissions thereto – Organic law n° 01/2004 of 29/01/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, article 43(7).*

**Fact:** Rutarindwa sued Mushinzimana at Intermediate Court of Nyarugenge requesting that the sale contract of the house concluded between Mushinzimana and the wife of Rutarindwa should be cancelled because it was unlawfully concluded since she sold it without his consent. The Court held that his claim has no merit because he did not demonstrate to the Court the kind of the matrimonial regime he had with his wife, so that the Court determines whether he has a right on the sold house, and it ordered Rutarindwa to pay to Mushinzimana the counsel and procedural fees.

Rutarindwa appealed against that decision at the High Court which held that the sale contract is terminated because there is no evidence which demonstrates to the Court that Rutarindwa consented to that sale because his wife fled to Malawi just after she sold the house, and that it cannot examine the requests of Mbarushimana who prays to be reimbursed the price of the house, because it was not the subject of the claim in the first instance. It ordered him to pay the counsel fees to Rutarindwa.

Mushinzimana appealed to the Supreme Court then his appeal was screened and the judge declares that the appeal falls within its jurisdiction.

Rutarindwa raised the objection of lack of jurisdiction, requesting to reject the appeal of Mushinzimana because the value of the subject matter does not reach 20,000,000Frw amount as it was provided for by the law determining the organisation, functioning and jurisdiction of the Supreme Court that was into force at the time Mushinzimana appealed because the sale contract which was submitted at the time of the claim has the value of 4,500,000Frw, whereas Mushinzimana states that his appeal falls within the jurisdiction of the Supreme Court since the value of the subject matter amounts to 34,178,815Frw as it is demonstrated by the submitted certificate of registration of mortgage.

**Held:** The value bestowed in the registration of mortgage certificate cannot be based on to determine whether the appeal falls within the jurisdiction of the Court when it is not the value which was indicated at the time of the submission of the claim or determined by the judge after deliberation on parties submissions thereto.

**Objection of lack of jurisdiction has merit;  
The claim does not fall within the jurisdiction of the Supreme Court;  
With Court fees to the appellant.**

**Statutes and statutory instruments referred to:**

Organic law n° 01/2004 of 29/01/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, article 43(7).

**Cases referred to:**

Nyirantambara v. Mukasa et al., RCAA 0032/11/CS rendered by the Supreme Court on 14 December 2012

## **Judgment**

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

[1] Rutarindwa Isaïe sued Mushinzimana Emmanuel in Intermediate Court of Nyarugenge requesting that the sale contract of the house he concluded with his wife Mukankuranga Agnès should be terminated because it is unlawfully concluded since she sold it without his consent.

[2] The Court held that the claim of Rutarindwa Isaïe is groundless because he did not demonstrate the matrimonial regime he had with his wife, in order for the Court to determine whether he has the right on the house she sold. It ordered Rutarindwa Isaïe to pay 700,000Frw of Counsel Fees and 150,000Frw of the procedural costs to Mushinzimana Emmanuel.

[3] Rutarindwa Isaïe appealed to the High Court which held that the appealed judgment is overturned, that the sale contract is terminated and ordered Mushinzimana to pay 200,000Frw of counsel fees to Rutarindwa.

[4] The Court motivated that the sale contract is terminated because there is no evidence which demonstrates to the Court that Rutarindwa consented to that sale because his wife fled to Malawi just after she sold the house, and that it cannot examine the requests of Mbarushimana who prays to be reimbursed 4,500,000Frw the house price, because it was not the subject of the claim in the first instance.

[5] Mushinzimana Emmanuel appealed to the Supreme Court, his appeal was screened and the screening judge admitted that the appeal falls within its jurisdiction.

[6] Rutarindwa Isaïe raised the objection of inadmissibility of appeal of Mushinzimana Emmanuel because the value of the subject matter does not reach 20,000,000Frw, whereas Mushinzimana Emmanuel states that his appeal falls within the jurisdiction of the Supreme Court because the value of the subject matter is 34,178,815Frw as it is demonstrated by the certificate of mortgage registration of which he submitted to it.

[7] The hearing of the case on that objection was held on 21 January 2014, Mushinzimana Emmanuel represented by Counsel Mutabazi Abayo Claude, whereas Rutarindwa Isaïe was represented by Counsel Bimenyimana Eric.

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

**Whether the appeal of Mushinzimana Emmanuel is in the jurisdiction of the Supreme Court.**

[8] The Counsel for Rutarindwa Isaïe states that according to the provision of article 43(7) of the Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and jurisdiction of the Supreme Court which was into force at the time Mushinzimana Emmanuel appealed, he finds that his appeal does not fall within the jurisdiction of the Supreme Court because the value of the subject matter does not reach 20,000,000 Frw since his house was sold at 4,500,000Frw.

[9] He argues in addition that the Supreme Court cannot rely on that certificate of the mortgage registration which Mushinzimana Emmanuel was given by Rwanda Development Board (RDB) demonstrating that the house has the value of 34,178, 815 Frw in order to rule that his appeal falls within its jurisdiction, because it is the first time he submits it in this Court since the subject matter in the first and last instance was the termination of the sale contract as mentioned above.

[10] The Counsel for Mushinzimana Emmanuel states that his appeal falls within the jurisdiction of the Supreme Court according to the provision of article 43(7) of the Organic Law n° 01/2004 of 29/01/2004 mentioned above because the subject matter exceeds 20,000,000 Frw because the house has the value of 34,178,815Frw as demonstrated by the aforementioned certificate of mortgage registration.

[11] He explains that he bought the aforementioned house at value of 4,500,000Frw in 1998 but that Mushinzimana Emmanuel renovated it to the extent that in 2014 it has the value of 34,178,815Frw as showed by mortgage registration certificate mentioned above. Therefore, the Supreme Court should rely on this certificate instead of relying on the value mentioned into the sale contract and rule that his appeal falls within its jurisdiction.

## **THE VIEW OF THE COURT**

[12] Concerning the substantive jurisdiction of the Supreme Court, article 43(7) of the Organic Law n° 01/2004 of 29/01/2004 determining the organisation, functioning and jurisdiction of the Supreme Court which was into force at the time Mushinzimana Emmanuel lodged an appeal, provides that “the Supreme Court shall have appellate jurisdiction over cases heard and decided by High court of the Republic in the second instance if the case involves a judgment in respect of which there was an award of damages equal to or exceeding twenty million Rwandan francs (20,000,000Frw) irrespective of the nature of the case or where the value as determined by the originating motion of the plaintiff or as approved by a judge in the case of contestation that is equal to or exceeds twenty million ( 20,000,000Frw) Rwandan francs”.

[13] Regarding this judgment, the writ of summons before the Intermediate Court of Nyarugenge of 23 September 2008 indicates that Rutarindwa Isaïe requested the termination of the sale contract for the house on the price amounting to 4,500,000Frw which was concluded between his wife Mukankuranga Agnès and Mushinzimana Emmanuel on 19 July 2005 out of his consent.

[14] It is obvious in the file that the house was evaluated at 34,178,815Frw on mortgage registration certificate of 10 November 2011 which was submitted to the Supreme Court for the first time by Mushinzimana Emmanuel requesting that it should be the value to be relied on in order to admit that his appeal falls within its jurisdiction.

[15] The Court finds that in accordance with the provision of article 43(7) of the organic law n° 01/2004 of 29/01/2004 mentioned above, it is not the value of 34,178,815Frw bestowed in the registration of mortgage certificate which can be based on to determine whether the appeal of Mushinzimana Emmanuel falls within the jurisdiction of the Supreme Court because it is not the value which was indicated at the time of the submission of the claim or determined by the judge after deliberation on parties' submissions thereto.

[16] The Court finds in addition that the value is produced for the first time at the Supreme Court therefore it should not be based on for determining its jurisdiction, and this is similar to the ruling of the judgment n° RCAA 0032/11/CS, Nyirantambara Marina v. Mukasa Gonzalve and Twagirimana Viateur rendered on 14 December 2012, whereby the Supreme Court decided that the appeal of Nyirantambara Marina did not fall within its jurisdiction because the value of 51,760,500Frw accurate in property valuation which was produced at the High Court for the first time.

[17] The Court finds that the value of the subject matter which should be relied on, is the value of the house indicated in the sale contract of 19 July 2005 amounting to 4, 500, 000Frw because it is the value which the house has at the time the claim was submitted in the first instance. However, pursuant to the provision of article of 43(7) of the Organic Law n° 01/2004 of 29/01/2004 mentioned above, the Court finds that the appeal of Mushinzimana Emmanuel does not fall within the jurisdiction of the Supreme Court because the value of the subject matter does not amount to 20,000,000Frw. Therefore, the screening decision must be overturned.

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

[18] Decides that the objection for lack of jurisdiction of the Supreme Court raised by Rutarindwa Isaïe has merit;

[19] Decides that the appeal of Mushinzimana Emmanuel against the judgment RCA 0090/08/HC/KIG rendered by the High Court on 27 January 2012 does not fall within the jurisdiction of the Supreme Court;

[20] Decides that the screening decision is overturned;

[21] Orders Mushinzimana Emmanuel to pay the Court fees amounting to 44,600Frw, in addition to what he had been charged in the High Court, failure to pay within eight days, that amount shall be deducted from his assets through government coercion.