NYIRAHABYARIMANA ET AL v. NTEZIRYAYO

[Rwanda SUPREME COURT – RCAA 0086/11/CS (Mukanyundo, P.J., Rugabirwa and Gatete G., J.) January 30, 2015]

Civil procedure – Redress before the Supreme Court – Screening decision – The relevant date for computation of appeal period for the litigant who appeared in the last hearing and informed of the judgment delivery date, but which was postponed to a future date – Notification of the judgment – If the litigant appears in the last hearing and is informed of the judgment delivery date, the time for appeal shall be computed from the date of the pronouncement of the judgment even if he/she did not appear or was not represented – The default of the party at the day of judgment delivery does not prevent the delivered judgment to be considered as an adversarial trial – No provision provides that the party who appeared in the last hearing should be notified of the ruling even if the pronouncement was postponed on a future date – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 163(1) – Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court, article 47(1).

Facts: Nyirahabyarimana and her daughter Murekatete initiated a third-party opposition claim in the Intermediate Court of Muhanga against the judgment RC 5012/17/2003 rendered by the First Instance Court of Gitarama whereby it decided that Nteziryayo is the son of Uwamungu Azarias, and ordered that all his assets be divided, and ½ returning to Nyirahabyarimana and the rest allocated to the heirs of Uwamungu.

Nyirahabyarimana and Murekatete were not satisfied with the ruling and appealed against it in the High Court, Chamber of Nyanza; but it ruled that their appeal lacked merit, and they appealed again to the Supreme Court. The screening judge decided that their appeal is not admitted because it was belatedly submitted.

They complained to the President of the Supreme Court arguing that their appeal should have been admitted because they lodged it within the prescribed period because the date which should have been considered for computatiing appeal period is 27 April 2010, meaning the day they were notified of the ruling of the judgment by the Executive Secretary of Nyakabanda II Cell, instead of being 18 March 2010 as decided by the screening judge because the judgment they appealed against was heard on 18 January 2010 and the judge fixed the date of delivery on 03 /03/2010. However, it was not delivered on the very date and the delivery was rather adjourned on18 March 2010, the date which the parties were never notified of.

Held: 1. If a party appears in the last hearing and is informed of the judgment delivery date, the time limit for appeal shall be computed from the date of the pronouncement of the judgment even if he/she did not appear or was not represented as what is relevant is to have been informed of the date of judgment delivery.

2. The default of the party on the day of the judgment delivery does not prevent the delivered judgment to be considered as an adversarial trial, and he/she bears all related consequences.

3. No provision provides that the party who appeared in the last hearing should be notified of the ruling of the case even if the pronouncement was postponed to a future date, because a

party who is present during the decision delivery proceeding learns the new date. Thus, his/her failure to appear remains his/her fault of which he/she takes responsibility.

Appeal is not admitted.
Court fees to the appellants.

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 163(1).

Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court, article 47(1).

Cases referred to:

MAERSK RWANDA Ltd v. SONARWA SA, RCOMA 0134/11/CS, rendered by the Supreme Court on 3 May 2013

Prosecution v. Ntawiringiribyisi, RPA 0258/08/CS rendered by the Supreme Court on 30 November 2009,

Association Umwungeri v. Mushayija, RADA 00034/09/CS, rendered by the Supreme Court on 12 February 2010.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Nyirahabyarimana Marcelline and her daughter Murekatete Chantal sued Nteziryayo Dieudonné before the Intermediate Court of Muhanga in a third party opposition against the judgment RC 5012/17/2003 rendered by the First Instance Court of Gitarama which confirmed that Nteziryayo Dieudonné is a son of Uwamungu Azarias, and ordered that all his assets be divided and ½ returning to Nyirahabyarimana and the rest allocated to the heirs of Uwamungu.

[2] Nyirahabyarimana Marcelline and Murekatete Chantal were not satisfied with the ruling and appealed to the High Court, Chamber of Nyanza, which delivered the judgment RCA 0110/09/HC/NYA on 18 March 2010 whereby it declared their appeal without merit.

[3] Once again, Nyirahabyarimana Marcelline and Murekatete Chantal were not satisfied with the ruling and appealed to the Supreme Court. Their claim was recorded on nº RCAA 0089/10/CS and the judge designed for screening the case decided, in his decision nº RCIV 0045/Préx-ex/11/CS of 10 June 2011, that their claim is not admitted because it was belatedly filed.

[4] In motivating his position, the Judge stated that the appeal claim of Nyirahabyarimana and Murekatete did not respect the period of one month which is provided for by article 47 of Organic Law nº 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court, since the judgment appealed against was delivered on 18/03/2010 while they submitted their appeal on 25 May 2010.

[5] Nyirahabyarimana Narcelline and Murekatete Chantal were notified of that decision on 21 July 2011, and appealed against it on 3 August 2011, which means within 15 days

which were provided for by article 55 of Organic Law n° 01/2004, therefore their appeal should be admitted and examined because it was submitted within the prescribed period.

[6] The hearing of the case was conducted in public on 6 January 2015 where Nyirahabyarimana Marcelline and Murekatete Chantal were represented by Counsel Ingabire Gaudence while Nteziryayo Dieudonné was represented by Counsel Nizeyimana Boniface.

II. ANALYSIS OF LEGAL ISSUES

Whether the appeal of Nyirahabyarimana Marcelline and Murekatete was belatedly filed.

[7] Counsel Ingabire Gaudence representing Nyirahabyarimana Marcelline and Murekatete Chantal stated that the appeal of her clients should have been admitted because they filed it within the prescribed period since the date which should have been considered to compute the appeal period is 27 April 2010, i.e the time when they were notified of the ruling by the executive secretary of the Cell of Nyakabanza II, instead of being 18 March 2010 considered the screening judge because the judgement they appealed against was heard on 18 January 2010 and the judge scheduled the delivery on 03 /03/2010, the date on which it was not, however, delivered; but was rather adjourned on 18 March 2010. This new date was not notified to the litigants.

[8] Asked why her clients did not appear on the day of the judgment pronouncement while they were notified of the date of delivery and they did not even want to know the ruling afterwards, she replied that this was due to lack of money for transport and ignorance of the law.

[9] Counsel Nizeyimana Boniface for Nteziryayo Dieudonné argued that the appeal filed by Nyirahabyarimana Marcelline and Murekatete Chantal should not be admitted since it has been initiated after the prescribed period as they appealed on 25 May 2010 against the judgment delivered on 18 March 2010, that is beyond one month that was prescribed by article 47 of Organic Law nº 01/2004 of 29/01/2014 determining the organization, functioning and jurisdiction of the Supreme Court.

[10] He explained that Nyirahambimana Marcelline and Murekatete Chantal have no reason to argue that they should have been notified of the new judgment delivery date because they had appeared in the last hearing of the case whereby they were informed of the pronouncement date which was 3 March 2010 and signed to the minutes of the hearing. It is clear that they should have appeared for judgment delivery on that very day. The fact that the pronouncement initially scheduled on 3 March 2010 did not take place and was instead postponed on 18 March 2010 implies that no further notification was to be done because if they had appeared, they should have learnt the new date of 18 March 2010.

THE VIEW OF THE COURT

[11] The legal issues to be analysed in this case include that of determining the reference date for computation of appeal period for the party who appeared in the last hearing and informed of the date of judgment delivery which is not, however, delivered on the very date; but the Court drafts the minutes indicating reasons thereof and date on which judgment delivery is postponed. Another issue to be analysed is to know whether the party who

appeared in the last hearing and informed of the delivery date should be notified of the ruling of the case.

[12] Article 163, paragraph 1 of Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure as well as article 47, paragraph 1 of Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court which provide that "the time limit for lodging an appeal shall be one (1) month. That time shall start running from the day the final judgment was pronounced in presence of both parties or when the party did not appear after having been notified of the day of the pronouncement".

[13] The aforementioned legal provisions indicate that if the party was present at the last hearing and informed of the day of the pronouncement of the judgment, the time limit for appeal shall run from the day of the delivery of the judgment even if he/she failed to appear or was not represented because what is relevant is the notification of the judgment delivery date to him/her.

[14] As for the question of knowing the reference date for computation of appeal period for the party who appeared in the last hearing and is informed of the date of judgment delivery which is not, however, delivered on the very date; but the Court drafts the minutes indicating reasons thereof and date on which judgment delivery is postponed, the answer is found in the provisions of the aforementioned articles 163 and 47 because it is obvious that the party who appears in the pronouncement of the judgment shall clearly know whether the pronouncement took place or if it was postponed; and therefore be aware of the future date. The default of the party on the day of the judgment delivery does not prevent the delivered judgment from being considered as rendered in adversarial trial, and he/she is responsible for all related consequences.

[15] The Court finds that, on the issue of whether the party who was present at the last hearing and informed of the date of judgment pronouncement should be notified of the ruling of the case; the grounds submitted by Nyirahabyarimana Marcelline and Murekatete Chantal that the time limit for appeal for them should be computed from the day they were notified of the ruling of the case are without merit because no legal provision provides for the notification of the ruling of the case to the party who was present in the last hearing and informed of the pronouncement date even in case it is postponed to a future date because the present party learns the date on which the pronouncement is postponed. Therefore, Nyirahabyarimana Marcelline and Murekatete Chantal failure to appear on the day of pronouncement on 18 March 2010 is their fault of which they have to take responsibility.

[16] In addition, Nyirahabyarimana Marcelline and Murekatete Chantal cannot rely on their default on the date of judgment pronouncement and argue they should have been notified of the ruling by considering it as a judgment by default since they were informed of the date of pronouncement of the ruling of the case; but did not appear or send their representatives; especially that the said notification was not necessary and should not , therefore, impact on the computation of time period for appeal as they argue. This is also the position held by this Court in various cases[1] whereby it ruled that the reference date for

[1]Like in the case nº RCOMA 0134/11/CS, MAERSK RWANDA Ltd v. SONARWA SA rendered on 3/5/2013, In the case nº RPA 0258/08/CS, Ntawiringiribyisi Théoneste v. Ubushinjacyaha rendered on 30/11/2009, in the case nº RADA 00034/09/CS, Association Umwungeri v. Mushayija François rendered on 12/02/2010.

computing the period of appeal for the party who was informed of the pronouncement of the judgment in the last hearing should not correspond to the date the defaulting party was notified of the ruling while this notification was not necessary; but rather the day of its delivery where the judgment was delivered after the postponement of the pronouncement date decided in the public hearing without it being necessary to notify the decision to the defaulting parties.

[17] In light of the motivation above, the Court finds that the screening judge decision against which the appeal was lodged should not be modified because it was taken according to the law. Therefore, the appeal of Nyirahabyarimana Marcelline and Murekatete Marie Chantal is without merit.

III. DECISION OF THE COURT

[18] It finds without merit the appeal lodged against the screening decision by Nyirahabyarimana Marcelline and Murekatete Chantal.

[19] It orders them to jointly pay the court fees amounting to 100,000Frw, of which everybody shall pay ½; that is 50,000Frw.