

Re MUNYANEZA (PETITION FOR DISQUALIFICATION OF JUDGE)

[Rwanda SUPREME COURT – RS/RECUS/Civ 0001/13/CS (Mugenzi, P.J., Hatangimbabazi and Munyangeri N., J.) April 18, 2013].

Civil procedure – Objection – Disqualification of a judge – Application for disqualification of a judge should be done in the course of hearing but before the closing of hearings – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 102.

Facts: When it was pending delivery of the judgment RCAA 0028/12/CS of which hearings were closed on 2 April 2013, through which Munyaneza filed a case against SONARWA and Special Guarantee Fund to the High Court for the payment of indemnities relating to the accident he committed, he thereafter notified the President of the Supreme Court about the disqualification request of one of the members of the bench which heard his case called Mukandamage Marie Josée because she had been one of the members of the panel which heard his case in the High Court.

He based his request on *littera* 7° of article 99 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, and explains that even after the closure of the hearings but before the judgement is pronounced, the disqualification request should be admitted. He adds that though the law is silent; the judge can adjudicate as permitted by the provision of article 6 of the aforementioned Law n° 21/2012.

Held: Application for disqualification of a judge should be done in the course of the hearing but before the hearing is closed.

**Disqualification request not admitted.
The trial bench remains unchanged.**

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 102.

No case law referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Through the correspondence addressed to the Court on 4 April 2013, Munyaneza Aaron informed the President of the Supreme Court about the disqualification of Justice Mukandamage Marie Josée one of the members of the bench which heard the case RCAA 0028/12/CS closed on 2 April 2013 but pending the judgement.

[2] Munyaneza explains the ground for his request relying on the fact that the said Justice to disqualify was one of Judges in the High Court that heard and tried his case RPA 0024/05/HC/KIG on 5 October 2005, in which he was requesting for the payment of accident related damages from SONARWA and Special Guaranty Fund. He further argues that the disqualification relies on *litera* 7 of article 99 of the Law relating to civil, commercial, social and administrative procedure stating that “Any judge may be disqualified if he/she has already intervened in the case as a judge, mediator, prosecutor, judicial police officer, party, witness, arbitrator, interpreter, expert or public servant”.

[3] The public hearing on the disqualification was conducted on 17 April 2013, where Munyaneza was represented by Counsel Uwimana Gisèle.

II. ANALYSIS OF THE LEGAL ISSUE

[4] Pursuant to article 103 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, which stipulates that the court to which the disqualified judge belongs shall immediately examine the admissibility of the application; therefore, the Court shall examine the admissibility of the disqualification request of Justice Mukandamage Marie Josée before the examination of its merit.

[5] Article 102, paragraph 1 of the aforementioned law n° 21/2012 provides that a person who wants to disqualify a judge at any stage of the proceedings shall raise it in the course of the hearing.

[6] Asked why the disqualification request was submitted after the closure of the hearing; Munyaneza and his counsel replied that even after the closing of the hearing but before the pronouncement of the judgment, the disqualification request should be admitted based on the fact that, the law is silent about that. Therefore, the judge is not forbidden to fill such a lacuna which is manifested in the law, as permitted by article 6 of the above mentioned Law n° 21/2012.

[7] Pursuant to article 102 the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, the Court finds that the disqualification request initiated by Munyaneza was not done in the course of the hearing as provided for by this article because he submitted it on 4 April 2013 while the the hearing was closed on 2 April 2013 pending pronouncement. Consequently, his request should not be admitted because it was submitted beyond the specified time limit.

[8] Concerning the admissibility of the disqualification request in the context of filling the lacuna in the law, the court finds that there exists no lacuna in the aforementioned article 102, therefore, the default to apply it as it reads is perceived as infringement of the Law.

III. DECISION OF THE COURT

[9] Court rejects the disqualification request raised by Munyaneza because it was applied for beyond the time limit specified by the law.

[10] Court decides that the trial bench which heard the case RCAA 0028/12/CS should continue its deliberation.