# NTEZIRYAYO v. GOVERNMENT OF RWANDA

[Rwanda URUKIKO RW'IKIRENGA – 2013SC – RADA 0010/12/CS (Mukanyundo, P.J., Hatangimbabazi and Gakwaya, J.) November 15, 2013]

*Laws determining jurisdiction of courts – Jurisdiction of Courts – Informal appeal – Irrelevance of recourse to the immediate superior administrative authority – If the purpose of the plaintiff's claim is not to request for annulment of administrative act, the recourse to the immediate superior administrative authority could not affect his claim – Organic Law N° 07/2004 of 25/04/2004 determining the organisation, functioning and jurisdiction of Courts, article 93 – Organic Law N° 02/2013 of 16/06/2013 determining the organisation, functioning and jurisdiction of Courts as modified and complimented to date, article 12.*

*Administrative procedure – Nullification of the appealed judgment – Transfer of nullified judgment – Initiation of a new claim – Immediate enforcement of new rules of procedures on cases initiated before their enactment – The court which annuls the appealed judgment shall not hear it in its merits, but parties may, instead, file a new claim at the first instance court when there is possibility of correcting errors made – Law N° 21/2012 of 14/06/2013 relating to the civil, commercial, labour and administrative procedure, article 172 – – Law N° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure, article 339.*

**Facts:** The appellant initiated a case against the Government of Rwanda before the High Court claiming to be compensated on his car and be paid related indemnities. He also forced two individuals, who were gendarmes at the time and requisitioned his vehicle, to intervene in the case. The High Court ruled that the claim was inadmissible on ground of objection of inadmissibility based on delayed recourse to the immediate superior administrative authority raised by the Government of Rwanda and intervening parties. He appealed to the Supreme Court arguing that the High Court should not have based its decision on the objection of the plaintiff and intervening parties, since his claim did not relate to the invalidation of administrative decision.

**Held:** 1. Some of administrative cases are comprised by actions for annulment of administrative decisions and actions for damages for other administrative acts. Consequently, if the purpose of the plaintiff's claim is not to request for annulment of administrative act, the recourse to the immediate superior administrative authority could not affect his claim as he had a right to initiate an administrative action based on another cause of action provided for by the Organic Law determining the organisation, functioning and jurisdiction of Courts.

2. The appealed judgment is quashed and a new claim should be initiated to the first instance Court for trial.

**Appeal granted**
**The appealed case nullified.**
**The appellant has a right of reinitiating an action to the first instance Court.**
**Court fees to be paid by the state.**

**Statutes and statutory instruments referred to:**

Organic Law N° 02/2013 of 16/06/2013 determining the organisation, functioning and jurisdiction of Courts as modified and complimented to date, article12.

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 172.

Organic Law N° 07/2004 of 25/04/2004 determining the organisation, functioning and jurisdiction of Courts, article 93.

Law N° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure, article 339.

**No case law is referred to**

# Judgment

## I. BRIEF BACKGROUND OF THE CASE

[1] Nteziryayo Victor initiated a case against the government of Rwanda before the High Court on the ground that on 10/10/1995, his Mazda truck with a plate number EB 0448 was requisitioned by gendarmes without his consent and that he always made a claim in order to be given back to him but in vain, therefore claiming a compensation of worth 17,000,000Rwfs, 155,520Rwfs of damages calculated from 10/10/1995; 1,000,000Rwfs of court proceedings, and 5,000,000Rwfs of counsel fees. Gatete and Gacinya Gendarmes have been forced to intervene in the case.

[2] In the course of hearings, the State Attorney and advocates for Gatete and Gacinya raised an objection of inadmissibility of the action of Nteziryayo Victor pursuant to article 339 paragraph 3 and 4 of the Law N° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure as partially modified to date, contending that time limit provided for in this provision had elapsed.

[3] They explained that on 06/06/2005, the Minister of internal security wrote to Nteziryayo Victor in response to his letter of 22/11/2004, but still he filed the case two years later on 16/01/2007, whereas the law provides that he could not exceed the period of 8 months.

[4] The High Court, pursuant to article 339 mentioned above, admitted the objection raised by the Government of Rwanda and declared inadmissible the claim filed by Nteziryayo on grounds that, after his recourse to superior administrative authority he has not initiated an action in the time limit as provided for by article 339, but opted for a recourse to the Ombudsman, something which is not likely to suspend the computation of time limits in accordance with article 339 cited above.

[5] Nteziryayo Victor appealed to the Supreme Court alleging the High Court to have disregarded the fact that it should not have relied on article 339 mentioned above, because his action did not intend to claim for annulment of an administrative act.

[6] The court conducted the hearing of the case on 15/10/2013, Nteziryayo was represented by counsel Rutareka Gaetan, the Government of Rwanda was represented by the State Attorney Mbarushimana Jean Marie Vianney while Gatete Cyprien and Gacinya were represented by counsel Zitoni Pierre Claver.

## II. ANALYSIS OF THE CASE ISSUE

**To determine whether or not the action initiated by Nteziryayo would not be admitted by the High Court.**

[7] The counsel for Nteziryayo declares that, his client appealed because the High Court decided that he filed his claim out of time prescribed and based its grounds on article 339 of the law relating to the civil, commercial, social and administrative procedure, whereas the subject matter of the litigation was damages arising from requisition of his property. Therefore his claim was different from that based on, in quashing of an administrative decision and thus, the Court could not apply the same provision.

[8] He alleged that the recourse to superior authority provided for in that article is not what has been done by him when he applied for justice to be done, but without reaction by authority on his complaint; and therefore finds that his case is not administrative in nature as it was affirmed by the High Court in its interlocutory judgment.

[9] The State attorney avers that the fact for this case to being registered in administrative cases, confirms that it is an administrative one, and that Nteziryayo does not deny it since in his submitted conclusions, he affirmed his vehicles to have been taken for safeguarding general interest, and based on his arguments on article 29 of the Constitution and to the article 93 of the Organic Law determining the organization, functioning and competence of courts, that was the reason of his claim before the court with disregard of the value of the subject matter of the litigation.

[10] The counsel for Gatete Cyprien and Gacinya argues that the claim initiated by Nteziryayo is of administrative nature because the latter affirms his car was taken in the context of "requisition", but does not show the institution and the civil servant who requisitioned it in order to identify the manner in which Gatete Cyprien and Gacinya should be forced to intervene in this case.

[11] He continues alleging that Nteziryayo exercised two inconsistent remedies since he claimed before the military prosecution and later claimed for damages in this lawsuit instead of opting for one remedy.

[12] He claims that Nteziryayo filed a claim for damages in ordinary courts; to the contrary, such a claim was administrative in nature, which also ought not to be an admitted because it was time-barred.

## OPINION OF THE COURT

[13] Article 93 of Organic Law N° 07/2004 of 25/04/2004 determining the organisation, functioning and jurisdiction of Courts which was in force at the time Nteziryayo initiated a claim before the High Court provides for the following:

> "The High Court of the Republic shall have jurisdiction to hear the following administrative related cases:
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> 1° Application to set aside administrative decisions for violation of substantive or procedural rules, for lack of jurisdiction or, exceeding authority, when, such decisions have been finally made by Public and administrative authorities from the level of the Province to that of the President of the Republic;
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> 2° actions seeking nullification of administrative decisions or seeking damages arising from non compliance with the general statute governing public servants and public service institutions;
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> 3° actions based on grounds other than contractual or quasi-contractual acts, acts involving damage caused by the acts or omissions of administration or damaged by acts of public interest;
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> 4° actions concerning administrative contracts other than those based on civil law
>
> 5° actions concerning labour disputes between individuals and the State or its corporations.
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> 6° claims concerning incompatibility between elective and none elective public service and other types of employment;
>
> 7° claims concerning seizure in general public interest of movable or immovable property.
>
> 8 claims arising out of expropriation of people in public interest".

[14] It is apparent to court from the above cited provision, which says that there are several grounds on which an individual may file a claim against the government and any of them is sufficient for the claim to be characterized as administrative case, and among them, are those stipulated in points 1°and 2° related to actions seeking nullification of administrative decisions and in point 3°, claims involving damages based on other grounds.

[15] Regarding the admission of complaints stipulated in point 1° and 2° seeking nullification of administrative decisions, article 339 of the Law nº 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at the time when the High Court rendered the decision, provides that "The action for annulment of administrative decision shall be accepted only if it relates to an explicit or implicit decision of an administrative authority; that before filing it, the aggrieved party who is against the administrative decision shall be required to first lodge an informal appeal with the one who took the concerned decision, and who at turn shall be required to respond in a period of two (2) months which runs from the date he / she received the informal appeal. If he / she do not respond, the request is deemed to be rejected.

> In case the applicant is not satisfied with the decision, he/she has a period of six (6) months to file a claim before the Court who runs from the date when he/she received the response…..".

[16] The above mentioned stipulations of article 339 of the Law nº 18/2004 of 20/06/2004 relate to such claims seeking annulment of administrative decision.

[17] However, as it was evident in article 93, there are other administrative decisions which do not relate toarticle 339 cited above, especially those stipulated in point 3° of that article 93 relating to damages based on grounds other than contractual or quasi-contractual acts, acts involving damage caused by the acts or omissions of administration or due to acts carried out in public interest.

[18] As it is evident in interlocutory decision of the High Court rendered on 10/11/2011 regarding the objection for lack of jurisdiction, the Court asserts on page three, paragraph 9 of the decision, that in his claim, NTEZIRYAYO relied on one of the reasons specified in article 93, whereby he explained that his car has been requisitioned by gendarmes and used by Gatete in civil services, a statement which coincides with the stipulations of point 3° of article 93 stating that " the High Court of the Republic shall have jurisdiction to hear actions based on grounds other than contractual or quasi-contractual acts, acts involving damage caused by the acts or omissions of administration or due to acts carried out in public interest"

[19] The Court considers therefore that, if Nteziryayo did not file his claim with intention of seeking annulment of administrative decision, the provision of article 339 of the Law n° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure which was in force at the time the High Court delivered the decision, would not affect him because he had an option of filing an administrative action based on another reason as provided for by article 93 of Organic Law N° 07/2004 of 25/04/2004 determining the organisation, functioning and jurisdiction of Courts which was in force at the time he filed that claim.

[20] Considering the explanations provided, the Court finds that there was no grounds for inadmissibility of his claim in the High Court, and consequently, his appeal is admitted, the appealed judgment has to be nullified due to its inconsistency with the provision of article 93 stated above.

[21] The Court notices that, since Nteziryayo's claim has not been examined on the first instance in accordance with article 93 of the Organic Law N° 07/2004 of 25/04/2004 determining the organisation, functioning and jurisdiction of Courts, then it has to be referred to a court of first instance for trial, as provided for by article 93, point 3° mentioned above as it was in that Court's ruling of 10/11/2011.

[22] The Court finds however that, claims mentioned in article 93, point 3° stated above are within the jurisdiction of Intermediate Courts in accordance with article 12 of Organic Law N° 02/2013 of 16/06/2013 determining the organization, functioning and competence of Courts, therefore the court having jurisdiction to hear this case at the first instance is the intermediate Court of Nyarugenge.

[23] Article 172 of the Law N° 21/2012 of 14/06/2013 relating to the civil, commercial, labour and administrative procedure states that "The court which annuls the appealed judgment shall not hear it in its merits, but parties may, instead, file a new claim at the first instance court when there is possibility of correcting errors made"

[24] Pursuant to this article, the Court finds that once Nteziryayo wishes to pursue his filed claim, he has a right to file it before Intermediate Court of Nyarugenge which has jurisdiction to hear his claim at first instance level as stated above.

## III. DECISION OF THE COURT

[25] Court decides that appeal of Nteziryayo is valid.

[26] Court decides that appealed judgment is nullified.

[27] Court ecides that Nteziryayo Victor has the right to file a new action to the Intermediate Court of Nyarugenge which has jurisdiction to hear his case at first instance level.

[28] Court orders that court fees be paid by the state.