

## MUKARUBIBI v. UMUGIRE

[Rwanda SUPREME COURT – RS/REV/INJUST/CIV  
0005/15/CS (Mukamulisa, P.J., Rugabirwa and  
Hitiyaremye, J.) June 19, 2015]

*Evidence law – Legal action for paternity – Burden of proof – Expert evidence – The probative value of the result of DNA test – Legal effects of DNA test results on court decisions rendered before it regarding an action for paternity – Each party has the burden of proving the facts it alleges – Evidence by experts is that which is intended to give to the court explanations based on expertise as well as conclusions which is beyond the ordinary knowledge of a judge in his or her duties, depending on the underlying special expertise – The result of DNA Test should be considered as a conclusive evidence for the determination of the paternity of a child if performed by an Expert skilled in the matter and basing on DNA samples drawn from relatives from both the families of the mother of the child seeking paternity and of the alleged father as well as the child – All judgments which held that the respondent is the son of the alleged father and those that recognized his right of succession over his inheritance are hereby quashed – Law N°15/2004 of 12/6/2004 relating to evidence and its production, articles 3 and 76.*

*Damages – Moral damages – Damages for being dragged into law suits – Procedural costs and counsel fees – The respondent should not pay moral damages claimed by the appellant because he has the right to*

*seize the court in order to decide that the alleged father is his real father and be vested with the right to succeed his patrimony – The respondent should not be awarded damages for being dragged into lawsuits as long as he loses the case – If the party to a case requests excessive amount for damages, the court fixes and awards them at its own discretion – Law of 30/07/1888 relating to contracts or obligations, article 258.*

**Facts:** Umugire won the case before the Primary Court of Kacyiru which adjudicated that he was born in 1985 of Renzaho Froduard, who was assassinated in genocide perpetrated in 1994, and Mukanyandwi Jeannine. After winning the case, he filed the case for the succession of the property of Renzaho Froduard constituted by two houses which were succeeded by his mother named Mukarubibi who believed his son passed away without leaving any child because he was single.

Mukarubibi lodged a third-party opposition against that judgment; but the court sustained the initial judgment. He appealed against the judgment before the Intermediate Court of Gasabo which rendered the judgment RCA 0395/06/TGI/GSBO on 29 June 2007 and sustained the appealed judgment too.

Mukarubibi applied for review of the judgment RCA 0395/06/TGI/GSBO and his claim was recorded on RCA 0195/09/TGI/GSBO, and the court declared his claim without merit on the basis that the evidence she produces which is constituted by the document dated 15 september 2009 signed by the local government authorities and witnesses who include her family members, is not a new

evidence because those witnesses were present at the time of hearing of all the aforementioned cases and were heard.

On 7 February 2011, Mukarubibi addressed a letter to the National Public Prosecution Authority requesting for DNA testing in order to know whether Renzaho Froduard is the father of Umugire Alphonse. That test was carried out and proved that Renzaho Froduard is not the father of Umugire Alphonse and his sister Umurerwa Charlotte who pretend to be his children.

After getting the results of the DNA Test, Mukarubibi wrote to the Ombudsman Office requesting for review of the final judgment RCA 0195/09/TGI/GSBO due to injustice because that Court ruled that Umugire Alphonse is the son of Renzaho Froduard in disregard of the testimony provided by some of his family members, neighbors of Renzaho Froduard and Mukanyandwi Jeannine's neighbors in Gikondo, who confirmed that Umugire Alphonse was not fathered by Renzaho Froduard, rather, he is the son of Mukanyandwi Jeannine and Bucyabahiga Sylvère. She further argues that the said evidence was supported by the conclusive evidence of DNA Test obtained after the pronouncement of the judgment under revision due to injustice of which results indicated that Renzaho is not the father of Umugire Alphonse.

The Ombudsman Office wrote to the President of the Supreme Court requesting for the case review due to injustice because the Intermediate Court of Gasabo ruled the case in disregard of the testimony collected in the document produced by the administrative authority dated

15 September 2009 and that it failed to investigate at the place of residence of his parents in Gikondo in order to interrogate them. In addition, this testimony is supported by the results of DNA test which were obtained after the pronouncement of the judgment and indicates that Umugire Alphonse is not the son of Renzaho Froduard.

After the examination of the report drawn by the Inspectorate General of courts, the President of the Supreme Court ordered the transfer of the case to the Registry of the Supreme Court for its recording in cases's register for its review and was recorded under N° RS/REV/INJUST/CIV 0005/15/CS.

During the hearing of the case, Umugire and his counsel state that the document of 15 September 2009 of the local Authority does not constitute a new evidence nor authentic deed because it was not drawn in compliance with the law. Concerning the results of the DNA test, they state that it should not be considered because based on the statements of scholars, it is not mandatory for Umugire Alphonse to be of the same "Y Chromosomes" with his uncle Bihoyiki Augustin and the fact that his father Renzaho Froduard died, the samples should have been collected from his grandfather because they assume he is the one likely to conclusively share the same Y cromosomes with him. Therefore, they prayed the Court not to rely on this evidence as, according to the law, judges are not bound to follow the opinion of experts.

Basing on article 258 of Civil Code Book III, Mukarubibi requests to be paid by Umugire 4,000,000Frw in moral damages due to the deprivation of her rights over the house inherited from the deceased

since she cannot rehabilitate or mortgage it, 5,000,000Frw for dragging her into law suits they argued earlier including criminal ones and 2,000,000Frw of counsel fees.

Counsel Hakizimana representing Umugire argues that his client should not be liable to pay damages requested by Mukarubibi because she is the one who induced him to sue her before courts, and that she must rather pay 8,000,000Frw in damages to Umugire Alphonse.

**Held:** 1. The result for DNA test should be considered as a conclusive evidence because it was performed by an expert skilled in the matter basing on DNA samples collected from members of both families of Umugire Alphonse's mother, Renzaho Froduard and Umugire Alphonse himself.

2. The existence of testimony by Mukarubibi's family in which it is declared that Renzaho did not have a child since he died single, and this being supported by the testimony produced by Renzaho's neighbors, and all these supported by reliable and undoubtful result of DNA test; constitute decisive evidence indicating that Umugire Alphonse had not been fathered by Renzaho Froduard. Therefore, all judgments which ruled that Renzaho Froduard was the father of Umugire Alphonse and those which accorded him the inheritance right over properties left by Renzaho Froduard are hereby quashed.

3. The respondent should not pay moral damage to the appellant because it was in the respondent's right to appeal to courts in order to examine whether the alleged

father is his real father and recognize his right to inherit his properties.

4. The respondent should not be awarded requested damages in this case because he loses the case.

5. The appellants are, at the discretion of the Court, awarded 500,000Frw for procedural costs and 1,000,000Frw for counsel fees fixed in consideration of the number of lawsuits that opposed them and their duration.

**Application for case review due to injustice allowed.  
All prior decided judgments are hereby quashed.  
Court fees to the respondent.**

**Statutes and statutory instruments referred to:**

Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 78.

Law N° 15/2004 of 12/6/2004 relating to evidence and its production, articles 3 and 76.

Law of 30/07/1888 relating to contracts or obligations, article 258.

**No case referred to.**

## **Judgment**

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

[1] Renzaho Froduard was killed in the genocide perpetrated in 1994. His mother named Mukarubibi Marguerite inherited his two (2) houses because she thought he passed away without leaving any child since he was single.

[2] Later, Umugire Alphonse filed the case with the Primary Court of Kacyiru praying the Court to confirm that he is the child of Renzaho Froduard and Mukanyandwi Jeannine. On 5 July 2006, the Court rendered the judgment RC 0102/06/TB/KCY in which it confirmed he was born of Renzaho Froduard and Mukanyandwi Jeannine in 1985.

[3] Mukarubibi Marguerite filed a third-party opposition and the case was recorded to RC0129/06/TB/KCY and on 31 October 2006, the Court upheld the decision of the judgment against which the third-party opposition was initiated.

[4] Mukarubibi lodged an appeal against this judgment before the Intermediate Court of Gasabo which was recorded to RCA0395/06/TGI/GSBO and on 29 June 2007, it sustained the ruling of the appealed case.

[5] Mukarubibi submitted a case review claim for the judgment RCA0395/06/TGI/GSBO before the same Court and his claim was recorded to RCA0195/09/TGI/GSBO. This Court delivered the judgment on 20 August 2010 and found his claim without merit on the ground that the written document of 15 September 2009 signed by local authorities and witnesses who include even her family members do not

constitute new evidence since those witnesses were present at the time of hearings for all the aforementioned cases and were heard.

[6] Umugire Alphonse also filed a claim with Kacyiru Primary Court requesting to be vested with the right to inherit properties left by late Renzaho Froduard. On 13 September 2010, it rendered the judgment RC 0784/09/TB/KCY in which it held that Umugire Alphonse has right to inherit two (2) houses located in Rukiri I and Bibare Cells, in Kimironko and Remera Sectors respectively, Gasabo District in Kigali City which were left by his father Renzaho Froduard.

[7] Umugire Alphonse once again filed a claim with the Primary Court of Kagarama seeking a judgment substituting his birth certificate and on 7 January 2010, this Court pronounced the judgment RC 399/09/TB/KMA whereby it confirmed Umugire Alphonse who was born on 4 December 1985 to be the son of Renzaho Froduard and ordered the ruling of the judgment to be transmitted to the civil status registrar for its recording in the civil status registry.

[8] On 7 February 2011, Mukarubibi Marguerite wrote to the National Public Prosecution Authority asking for the DNA test to be carried out in order to determine whether or not Umugire Alphonse was fathered by Renzaho Froduard. On 17 May 2011, the National Public Prosecution Authority communicated the DNA test, results of 10 May 2011 to Mukarubibi which indicated that Renzaho Froduard is not the father



of Umugire Alphonse and her sister Umurerwa Charlotte who also claims to be the child of Renzaho Froduard.

[9] After getting the aforementioned result of the DNA test, Mukarubibi wrote to the Ombudsman Office requesting for the review of the final judgment RCA 0195/09/TGI/GSBO due to injustice because the Court decided that Umugire Alphonse is the child of Renzaho Froduard in disregard of the local authorities' written document of 15 September 2009 established basing on the testimonial statements made by some of his family members, Renzaho Froduard's neighbors in Ruturusu location, and the neighbors of Mukanyandwi Jeannine in Gikondo as well, who stated that Renzaho Froduard is not the father of Umugire Alphonse; but the latter was rather born of Mukanyandwi Jeannine and Bucyabahiga Sylvère. Moreover, that evidence was supported by irrefutable evidence constituted by DNA test results availed after the pronouncement of the judgment for which the review due to injustice was initiated, which decided that Renzaho Froduard is the father of Umugire Alphonse.

[10] On 20 December 2013, the Ombudsman Office addressed a letter to the President of the Supreme Court requesting for review of that judgment due to injustice because the Intermediate Court of Gasabo disregarded the testimony in the aforementioned document dated 15 September 2009 which mentions several names of witnesses who include neighbors of Umugire Alphonse's parents as well who confirmed that he is not the child of Renzaho Froduard and that he is rather a son of

Mukanyandwi Jeannine and Bucyabahiga Sylvère, and that this Court declined to conduct an investigation at the residence of his parents at Gikondo. In addition, this testimonial evidence is confirmed by DNA test results obtained after the pronouncement of the judgment which indicates that Umugire Alphonse is not the son of Renzaho Froduard.

[11] After the examination of the report of the Inspectorate General of courts, the President of the Supreme Court issued order n° 21/2015 ordering transfer of the case to the Registry of the Supreme Court and requested its recording in the court register for its retrial and it was assigned N° RS/REV/INJUST/CIV 0005/15/CS.

[12] The hearing was conducted in public on 12 May 2015, where Mukarubibi Marguerite was represented by his daughter named Nyirabasigurubariho Béatrice who was assisted by Counsel Kayiranga Prudent, while Umugire Alphonse was assisted by Counsel Hakizimana Gérard.

## **II. ANALYSIS OF LEGAL ISSUES**

### **1. Whether there exists evidence proving that Umugire Alphonse is the son of Renzaho Froduard.**

[13] Counsel Kayiranga for Mukarubibi states that there is injustice in the judgment n° RCA 0195/09/TGI/GSBO rendered by the Intermediate Court of Gasabo on 20 August 2010 because that Court

confirmed that Umugire Alphonse is the son of late Renzaho Froduard disregarding that the document established by the Executive Secretary of Kigarama Sector dated 15 September 2009 is a valid new evidence because it was established based on the investigation conducted in different Cells as well as in Ubumwe and Rutoki Villages where Mukarubibi's children declared that Umugire Alphonse was not the son of Renzaha Froduard since he died single.

[14] He states, in addition, that it is the son of Mukarubibi named Bihoyiki who plotted against his mother by stating that Umugire Alphonse is the son of Renzaho Froduard because his mother gave him twenty thousand (20,000Frw) from the sale price of a house left by the deceased; and Bihoyiki refused that amount on the ground that it is too small and told her that she will pay for consequences from the property of his young brother she has disposed of.

[15] He goes on stating that the Court disregarded that the aforementioned document of 15 September 2009, apart from being a new evidence, it was also an authentic deed as it was established by the Executive Secretary competent to perform civil status related functions, and that the Court disregarded that it contains testimonial declarations of Renzaho Froduard's neighbors who asserted that he was not the father of Umugire Alphonse since he was single.

[16] He states, in addition, that the Court disregarded the declarations of the neighbors of Umugire Alphonse's parents who resided in Gikondo who asserted that he is

the son of Mukanyandwi Jeannine and Bucyabahiga Sylvère. Moreover, this Court also refused to conduct an inquiry which was requested by Mukarubibi in order to hear those witnesses, and rather, took its decision basing on testimonial declarations of Gasana, Twagirayezu and Habyarimana who are not related to Mukarubibi.

[17] He further states that another evidence proving injustice Mukarubibi suffered from the judgment under review due to injustice is the DNA test results availed after the pronouncement of the said judgment, which shows that Renzaho Froduard is not the father of Umugire Alphonse and Umurerwa Charlotte; therefore the test result came to support the aforementioned testimonial declarations contained in the 15 September 2009 document indicating that Umugire Alphonse is not Renzaho Froduard's son.

[18] Umugire Alphonse and his counsel argue that the document of 15 September 2009 established by local authorities does not constitute a new evidence as held by the Intermediate Court of Gasabo, where it stated that the undersigning witnesses include those who asserted the father of Umugire Alphonse is Bucyabahiga who were present in the course of hearings of all the aforesaid cases between both parties and that they were interrogated at that time.

[19] In addition, they state that such a document is not an authentic deed because it was not established in compliance with the law, rather, it is an ordinary document signed by some of the relatives of the deceased on 3 August 2009, and was signed by Rutoki

Village administration on 4 August 2009, while it is not the birth place of Umugire Alphonse and that all those mistakes were reported by the administration of Kigarama Sector on 15 September 2009, while no investigation has been conducted to confirm it.

[20] Concerning the result of DNA test, they state that it should not be considered because, account taken of opinions of experts in DNA related matters, it is not mandatory for Umugire Alphonse to have in common Y chromosomes with his uncle Bihoyiki Augustin, rather, since his father Renzaho Froduard has died, they should have collected samples from his grandfather given that they ought undoubtedly to possess in common Y chromosomes. They pray the Supreme Court not to rely on this evidence since pursuant to the provisions of the law; judges are not bound to follow the opinions of experts.

## **OPINION OF THE COURT**

[21] Article 78 of Organic Law N° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court states that “The Supreme Court shall have exclusive jurisdiction over applications for review of final decisions due to injustice upon approval of the President of the Supreme Court”.

[22] In addition, article 3 of Law N° 15/2004 of 12/6/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges”. Also, article 76 of the same Law

provides that “Evidence by experts is that which is intended to give to the court, explanations based on expertise as well as conclusion which is beyond the ordinary knowledge of a judge in his or her duties, depending on the underlying special expertise”.

[23] The Court finds that there exist in the dossier the DNA test result delivered by the expert named Dr Christa Augustin who works in a Germany based centre known as Institute of Legal Medicine, Dept. of Forensic Molecularbiology, which indicates that Renzaho Froduard is not Umugire Alphonse and Umurerwa Charlotte’s father<sup>1</sup>, and that test was performed by that expert on DNA samples collected from Umugire Alphonse, Mukanyandwi Jeannine, Umurerwa Charlotte, Mukarubibi Marguerite, Bihoyiki Augustin and Nyirabasigurubariho Béatrice.

[24] The Court finds that the DNA test result should be considered because it was tested by a knowledgeable expert basing on DNA samples collected from the aforementioned people from two different families. Some are from the side of Umugire Alphonse’s mother and other from Renzaho Froduard side; therefore, it could be considered as a conclusive evidence concerning the issue of knowing whether Umugire Alphonse is the son of Renzaho Froduard.

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<sup>1</sup> Renzaho, Froduard could not be the father of Umugire, Alphonse and Umurerwa, Charlotte.

[25] The Court finds that the statements of Umugire Alphonse according to which the test result should not be considered due to the fact that since his alleged father Renzaho Froduard was deceased the DNA of his grandfather should have been tested instead of that of his paternal uncle is groundless, because the expert who tested the DNA samples collected from people mentioned above, has never doubted in his conclusion about the fact that Renzaho Froduard is not the father of Umugire Alphonse.

[26] The Court also finds that had the expert found that he could not reach a reliable result due to the lack of sufficient DNA samples as claimed by Umugire, he would have requested for collection of more samples, and since he did not but instead, he confirmed that Umugire Alphonse is not the son of Renzaho Froduard, the Court would have no basis to reject his conclusion.

[27] In addition, the Court finds that the case file contains testimonial evidence provided by Mukarubibi Marguerite family members indicating that Renzaho Froduard died single, except Bihoyiki Augustin who asserted that Umugire Alphonse is a son of Renzaho Froduard as a result of a conspiracy against her mother because he was not given enough amount of money from the proceeds of the deceased property sold by his mother. Those testimonies are contained in different reports available in the case dossier including that of 15 September 2009, established by the Executive Secretary of Kigarama Sector on the basis of different reports of local authorities which are in the file.

[28] The Court finds that, those testimonies are consistent with that provided by Renzaho Froduard neighbors from Remera and Ruturusu and that provided by Mukobwa Charlotte and Nsengiyumva Joseph who are neighbors of Mukanyandwi Jeannine at Gikondo, who assert that Umugire Alphonse is not the son of Renzaho Froduard, and that he is instead the son of Bucyabahiga Sylvère and Mukanyandwi Jeannine, and the same testimonies indicate that, even during the Gacaca process of information gathering in Rutoki village, Mukanyandwi Jeannine admitted herself that her husband was named Bucyabahiga Sylvère but died later.

[29] Therefore, the Court finds that the aforementioned reliable and undoubtful DNA test result supports the testimony stated above and all these constitute sufficient evidence indicating that Umugire Alphonse is not the son of Renzaho Froduard; therefore all the aforementioned judgments which held that Umugire Alphonse is the son of Renzaho Froduard and those which awarded him properties of late Renzaho Froduard should be quashed.

## **2. Whether or not Mukarubibi and Umugire Alphonse can be awarded damages they requested respectively.**

[30] Counsel Kayiranga representing Mukarubibi states that pursuant to the provisions of article 258 of the Civil Code Book III, Umugire Alphonse should pay her 4,000,000Frw in moral damages resulting from being deprived of her rights over the house inherited from her son because she could not rehabilitate it or mortgage it,



5,000,000Frw for dragging her into lawsuits in the past which include even criminal ones and 2,000,000Frw of counsel fees.

[31] Counsel Hakizimana assisting Umugire Alphonse states that he cannot pay damages demanded by Mukarubibi because she is the one who induced him to seize the courts, and it is rather her who has to pay him damages amounting to 8,000,000Frw.

## **OPINION OF THE COURT**

[32] Article 258 of Civil Code Book III states that “Any act of a person which causes damage to another obliges the one by whose fault it happened to repair it”.

[33] Pursuant to the provision of that article, the Court finds that Umugire Alphonse should not pay moral damages to Mukarubibi because, Renzaho had the right to seize the court as long as he believed Renzaho Froduard to be his father in order to seek for paternity and be allowed to succeed his properties.

[34] The Court finds that Umugire Alphonse should pay procedural costs and counsel fees to Mukarubibi but as those she requests are excessive, the Court awards her 500,000Frw for procedural costs and 1,000,000Frw for counsel fees, granted at court’s discretion account taken of the number of cases that opposed them and the time they spent in hearings.

[35] The Court finds therefore that Umugire Alphonse should not be awarded damages he requests because he loses the case.

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

[36] The Court finds that the application for review due to injustice filed by Mukarubibi Marguerite has merit;

[37] The Court holds that Umugire Alphonse is not the son of Renzaho Froduard;

[38] The Court declares quashed the ruling of the judgments RC 0102/06/TB/KCY, RC 0129/06/TB/KCY, RC 0784/09/TB/KCY, RC 399/09/TB/KMA, RCA 0395/06/TGI/GSBO and the judgment RCA 0195/09/TGI/GSBO rendered by the Intermediate Court of Gasabo on 20 August 2010 under application for review due to injustice.

[39] The Court orders Umugire Alphonse to pay 1500,000Frw including 5,00,000Frw of procedural costs and 1,000,000Frw of counsel fees to Mukarubibi Marguerite;

[40] The Court orders Umugire Alphonse to pay 100,000Frw of court fees.