

UWIMANA v. MUGABO

[Rwanda SUPREME COURT – RCAA 0069/11/CS (Mutashya, P.J., Mukanyundo and Rugabirwa, J.) May 03, 2013]

Law determining the jurisdiction of Courts – The jurisdiction of the Supreme Court – Objection of inadmissibility of the claim – Determination of the value of the subject matter – The Value of the subject matter is determined by the plaintiff in his/her plaint and it cannot be changed by one of the parties or the Court at appeal level – Law N° 001/2004 of 29/04/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, article 43(7).

Facts: Uwimana raised her issue to the commission which has in its attributions, to resolve land disputes, stating that Mugabo seized her plots 4AB that she was given in the program of TTP (Temporary Tent Permanent) on the ground that he was executive secretary of Kimironko Sector. Then that commission gave her back her two plots she requested for.

Mugabo was not satisfied with that decision and filed a claim at the intermediate Court of Gasabo requesting to be given those plots back. He states that Uwimana lied to the commission and misled it and therefore it awarded the plots to her while they do not belong to her. The Intermediate court of Gasabo held that the claim has no merit and maintained that the plots belong to Uwimana.

Mugabo appealed to the High Court stating that the judge did not analyse well, and he disregarded the evidence which he submitted to court and the High Court ruled that his appeal has merit, and ordered that the plots 4AB be given back to Mugabo, and ordered Uwimana to also pay moral damages and the lawyer's fees.

Uwimana appealed to the Supreme Court claiming that the high court judge was extremely biased when he confirmed that she lied to the commission and ruled that there was disregard of the evidences which were submitted by Mugabo. She declares however that those evidences have a defect because they were gotten through unlawful procedure and the other ground is that the judge denied interrogating the witnesses she presented, and the court disregarded the evidences she produced demonstrating that she is the native of area where the two plots are located.

Before the commencement of the hearing, Mugabo raised the objection of inadmissibility of appeal of Uwimana because it does not fall into the jurisdiction of this Court according to the value of the subject matter. He bases on the fact that the plots Uwimana filed for accommodate six rooms of school while it is not those rooms themselves which are in litigation and the value of that plots does not reach 20,000,000Frw because in the year 2007 it was sold to 4,500,000Frw.

In her defence on that objection, Uwimana states that the value of the subject matter is determined by the plaintiff in his/her plaint and also that there was no debate on its value, moreover it cannot be changed on appeal level.

Held: The value of the subject matter is determined by the plaintiff in his/her plaint and at the appeal level the Court or one of the parties could not change it, therefore the objection raised by Mugabo that the value of the subject matter does not fall into the jurisdiction of the

Supreme Court has no merit because it is indicated in the plaint that the value of the subject matter equals 40,000,000Frw.

**Objection lacks merit.
Court fees suspended.**

Statutes and statutory instruments referred to:

Law N° 001/2004 of 29/04/2004 determining the organisation, functioning and jurisdiction of the Supreme Court, article 43(7).

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Uwimana Falida had a problem with Mugabo Casimir in which she was stating that he seized her plot 4AB that she was given in the program of TTP (Temporary Tent Permanent) with the pretext that he was the executive secretary of Kimironko Sector. She submitted the issue to the Commission which has in its attribution to resolve land problems, and it gave back to her the two plots she requested. Mugabo Casimir did not satisfy with that order and then he filed acclaim to Intermediate Court of Gasabo for requesting to be given back those plots in stating that Uwimana Falida lied the commission that led it to commit the mistake of giving them to her while they do not belong to her.

[2] The Intermediate Court of Gasabo rendered the judgment and held that the claim of Mugabo Casimir has no merit, that the two plots which are in litigation belong to Uwimana Falida. Mugabo Casimir appealed against that judgment at the High Court claiming that the judge did not discern well, and he disregarded the evidence submitted to him, which demonstrates that those plots belonged to him.

[3] The High Court rendered the judgment and ruled that the appeal of Mugabo Casimir has merit and ordered that the plot 4AB be given back in possession of Mugabo Casimir. It ordered Uwimana Falida to pay 2,700,000Frw to Mugabo Casimir which includes Moral damages and lawyer's fees.

[4] Uwimana Falida appealed against the judgement in the Supreme Court claiming that the judge was extremely biased in confirming that she lied to the commission. She states also that the judge of the High Court ruled that there was disregard of the evidences which were submitted by Mugabo Casimir yet those evidences had the defect, because they were got through unclear procedure. She also states that the judge of the High Court denied interrogating the witnesses she presented and he also disregarded that she produced the evidences demonstrating that she is the native of where the two plots were located.

[5] The hearing of the case was conducted in public on 26 March 2013, Uwimana Falida assisted by Counsel Musonera Alexis whereas Mugabo Casimir was represented by Counsels Buhuru Pierre Celestin, Bugabo Laurent and Ndegeya Shaban. Mugabo Casimir and his Counsels requested the court that before saying anything about the appeal of Uwimana Falida, the Court should examine the jurisdiction of the court because they thought that it

could not be admissible in the Supreme Court due to lack of jurisdiction based on the value of the subject matter agreed upon by the parties.

II. ANALYSIS OF THE LEGAL ISSUE

➤ Determining whether the appeal of Uwimana Falida falls into the jurisdiction of the Supreme Court as the pre-screening judge ruled.

[6] Counsel Buhuru Pierre Célestin states that the appeal of Uwimana Falida does not fall in the jurisdiction of the Supreme Court, basing on what the parties agreed upon on the subject matter at High Court level, the issue is that Uwimana Falida filed a claim for the plot which has a school of six rooms but it is not those rooms which she pleads for, the subject matter is the plot which Uwimana Falida states that was taken from her but the project on it belong to Mugabo Casimir which she does not claim for. He continues to argue that the value of the subject matter was not confirmed, and basing on when the problem arose in 2007 the value of the plot was not worth 20,000,000Frw because by then, the plot with the measures of 20m by 30m was worth 4,500,000Frw, but he states that for them, they got the plots on 100,000Frw.

[7] Concerning the value of the subject matter which is 40,000,000Frw submitted at Intermediate Court of Gasabo, Counsel for Mugabo Casimir state that that value is the total of the whole project of Mugabo Casimir, which should not be confused with the value of the subject matter, because Uwimana Falida herself know that all the seven plots do not belong to her, that what she pleads for are only two plots which she claims were taken from her, and also the judge of the High Court motivated so well and the decision taken was never appealed against.

[8] Musonera, Counsel for Uwimana Falida, states that the whole property which Mugabo Casimir took from her has value of 40,000,000Frw and that the value of the subject matter shall be determined by the plaintiff not the defendant or the Court. Therefore even if it was recorded in the judgement rendered by the High Court, the judge said what Uwimana did not say, the value of the subject matter cannot be changed in any way at the appeal level as provided for by article 4 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure Even if the parties agreed upon it, it cannot be possible because they are not allowed to change what is provides for by the Law.

[9] Counsel Musonera was questioned on whether they have ever agreed upon the value of the subject matter with the other party to the case and he responded that the value of the subject matter is determined by the plaintiff. To change the value of the subject matter cannot be possible at appeal level and it has never been debated upon. He added that if there was a debate on the same, it will be the occasion to demonstrate the value of the subject matter, which has never happen. He concludes by stating that the subject matter is the property of Uwimana Falida which has the value of 40,000,000Frw which has been taken from her by Mugabo Casimir.

VIEW OF THE COURT

[10] Article 43(7) of the Law N° 001/2004 of 29/04/2004 determining the organisation, functioning and jurisdiction of the Supreme Court that was in force when this judgment was appealed provides that the Supreme Court shall also have appellate jurisdiction over cases

heard and decided upon in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases involve a judgment in respect of which there was an award of damages worth or exceeding 20,000,000Frw without considering their nature or its value which was determined by the plaintiff in the letter filling the case or awarded by the judge in case of dispute, which is worth or exceeding 20,000,000Frw.

[11] In the submission while filling a claim at Intermediate Court of Gasabo on 18th January 2007 by Mugabo Casimir filling against Uwimana Falida, the claim was put in these words “the fact that Uwimana Falida possessed my plot in which I built the rooms of private school. Uwimana gave to herself the plots on the part reserved for a playground for the school; therefore she prevented the project of a school of six rooms which were already built in that plot. The whole property which she possessed has the value of 40,000,000Frw”.

[12] The Court finds that the plaintiff himself determined the value of the subject matter at first and the respondent agreed upon it without a debate on that level in order to be determined by the judge as it is provided for by article 43(7) of the Organic Law N° 001/2004 of 29/04/2004 mentioned above.

[13] On the issue of what the Counsel for Mugabo Casimir states about the value of the subject matter which he said changed at the appeal level and that the parties agreed upon it, the Court finds that according to article 43(7) of the Organic Law N° 001/2004 of 29/04/2004 mentioned above, the value of the subject matter which was determined in the case file and there were no debates about it, the Court of appeal or one of the parties in that Court cannot change it, only that there is nowhere in the file where it is indicated that the parties agreed upon the change of the value of the subject matter.

[14] [13] The Court finds that as the screening judge ruled, the fact that Uwimana Falida pleaded at the first instance stating that the plot has the value of 40,000,000Frw as it is indicated in the file, that is the reason why the Supreme Court has the jurisdiction for hearing the appeal submitted by Uwimana Falida, therefore the objection raised by Mugabo Casimir has no merit.

III. DECISION OF THE COURT

[15] Court decided to admit the objection raised by Mugabo Casimir, because it is lawful filed.

[16] Court decided that the objection has no merit.

[17] Court decided that the appeal of Uwimana Falida falls into the jurisdiction of the Supreme Court.

[18] Court decided that the hearing of the case will be re-opening on the day which the parties will be communicated by the Court clerk.

[19] Court Suspended the Court fees.