

GATSIBO DISTRICT v. RUZABARANDE ET AL

[Rwanda SUPREME COURT – RADA0004/14/CS (Mutashya, P.J., Munyangeri and Gakwaya, J.) July 26, 2015]

Administrative procedure – Preliminary objection – Interest of the District to file an action – A district has powers to file an action in its name but its Mayor is summoned in the name of the district – Law N°21/2012 of 14/06/2012, relating to the civil, commercial, labour and administrative procedure, articles 3 and 31.

Laws determining the jurisdiction of the courts – Preliminary objection – The pecuniary jurisdiction of the Supreme Court as an appellate court basing on the damages awarded in the appealed judgment – In determining the appellate pecuniary jurisdiction, all damages awarded in the appealed judgment are the ones considered rather than considering separate damages awarded to each individual in the judgment – Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28.

Administrative procedure – Preliminary objection – Inadmissibility of the appeal – Similar grounds – A case lost by a party on the same grounds in the first and second levels of court cannot be appealed against in the Supreme Court – Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28.

Facts: Ruzabande and others filed a case against Gatsibo district in the Intermediate Court of Nyagatare claiming that it unlawfully dispossessed them from their land and then transferred it to COOPRORIZ – NTENDEZI without payment of compensation. In its defence, Gatsibo District adduced that this land has never belonged to the respondents; rather it was a marshland belonging to the District it repossessed.

That Court held that Gatsibo District unlawfully took the disputed land because it did not first compensate or pay the value of the properties which were on that land. It was therefore ordered to pay adequate compensation to Ruzabande and others for the value of the property and moral damages.

Both parties appealed against the judgment in the High Court, Chamber of Rwamagana whereby Gatsibo District claimed that the court charged it with damages whereas the land is among government's marshlands. Ruzabande and others argued that they were awarded inadequate damages. That Court held that the appeal of Gatsibo District has no merit and Ruzabande and others were awarded counsel fees in addition to the one which was awarded to each of them at the first instance level.

Gatsibo District appealed again in the Supreme Court, and at the time of hearing Ruzabande and others raised three preliminary objections on the point of law for inadmissibility of the appeal alleging that the district filed a case in its own name instead of filing in the name of its Mayor, the damages awarded in the appealed judgment do not amount to fifty million because the District is opposed to with 37 people whom each had filed his/her own claim and submission, and each paid the court fees, therefore even though the Court awarded damages amounting to 200,000,000Frw, no one was awarded damages amounting to 50,000,000Frw. Another one is that the District appealed against the judgment it lost on both the first and the second level based on the same grounds.

Regarding the first preliminary objection, Gatsibo District adduces that the law provides for the summoning not for the lodging of the claim, and on the second one it asserts that the subject matter is a government marshland, therefore the laws to be referred to should be those regulating marshland instead of basing on the value of money awarded in judgment and on the third objection, it states that the judge in the Intermediate Court held that the land is a marshland, which implies that it is a public property of the state and this decision does not appear in the decisions of the High Court, therefore the appeal does not rely on similar grounds.

Held: 1. A District has the status to file an action in its name but it is summoned in the name of its Mayor.

2. In determining the appellate pecuniary jurisdiction, all damages awarded in the appealed judgment are the ones considered rather than considering separate damages awarded to each individual in the judgment.

3. Both courts held that even though the disputed land is a marshland, it is not a ground for destroying the properties of Ruzabarande and others without adequate compensation while that land was given to them by competent authority, therefore it is apparent that the District lost on the first and second instance on the same grounds, thus the case cannot be appealed in the Supreme Court.

**The preliminary objection on inadmissibility of the claim based on the ground of losing the case on the same grounds has merit.
The appeal rejected.
Court fees to the appellant.**

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 28.

Law N°21/2012 of 14/06/2012, relating to the civil, commercial, labour and administrative procedure, articles 3 and 31.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] This case begun in the Intermediate Court of Nyagatare, where Ruzabarande and others filed a case against Gatsibo district for taking their land and later gave it to COOPRORIZ – NTENDEZI to grow rice, they requested the Court to order the district to compensate them with the value of the land and the property which was on that land. In the defence of Gatsibo District, it argued that it repossessed its marshland of Ntendezi. Judgment RADA0038 – 0076/TGI/NYG, was rendered by that court on 11/7/2013, where it ruled that Gatsibo District unlawfully possessed the land of Ruzabarande and others because it did not adequately compensate them, it ordered it also to pay them adequate compensation, the value of the property that was on the land and other related damages.

[2] Both Gatsibo District and Ruzabarande and others both appealed to the High Court, chamber of Rwamagana where Gatsibo District was arguing that the Court charged it damages while that was a marshland of the state and Ruzabarande and others were claiming that the court awarded them fewer damages, considering the time they were dispossessed from it.

[3] The court rendered the Judgment RADA0016/13/HCI/RWG - RADA0054/13/HCI/RWG on 17/1/2014, and ruled that the appeal of Gatsibo District has no merit but overruled the appealed judgment only with regards to the counsel fees, whereby each one being given 30,000Frw in addition to 100,000Frw of counsel fees which was awarded to each one of them at the first instance level.

[4] Gatsibo District was not contented with the ruling of the case and appealed to the Supreme Court. Counsel Rumenge Victor raised three preliminary objections on point of law, for the inadmissibility of the claim saying that; the district filed a case in its own name instead of filing it in the name of its Mayor, the damages awarded in the appealed court does not reach 50 million and the district lost on the same grounds on both on the first and second level.

[5] The case was heard in public on 19/05/2015 whereby the Court first examined the preliminary objections on point of law raised and, Ruzabarande and others were represented by Counsel Rumenge Victor, and Counsel Kayiranga Bernald was representing Gatsibo District.

II. ANALYSIS OF THE OBJECTIONS IN THIS CASE

A. Regarding the preliminary objection concerning the fact that Gatsibo District filed on its own instead of filing in the name of its Mayor.

[6] Counsel Rumenge Victor argued that the first objection relates to the irregularity in instituting the claim because Gatsibo district (moral person) instituted a legal claim on its own while it is a government organ, which had to file a case in the name of its Mayor. He explains that in general, when a government organ institutes a legal action it does so in the name of its administrator or in the name of a representative of that government institution.

[7] He argue that article 31 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, provides that the District (moral person) is summoned in the name of its Mayor and it should be in the same way when instituting a claim and this is emphasised in the first paragraph of article 2 of that law, where it provides for the requirements for the admissibility of the claim and states that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit. Hence, Gatsibo District does not have the capacity to institute a legal action.

[8] Counsel Kayiranga Bernald states that the objection has no merit, because the Mayor of Gatsibo District is the one who requested the State Attorney to institute an action and plead for the District on the appeal level in a case in which it was a party, therefore Gatsibo District instituted an action in the name of its Mayor, and even in the Intermediate Court the district was represented by its Mayor, thus the Mayor's signature was not necessary. He affirms that article 31 of the Law N°21/2012 mentioned above stipulates on how summons are served but not how claims are instituted.

THE VIEW OF THE COURT

[9] Article 3 of the Law N°21/2012 of 14/06/2012, stated above, provides that “only the interested parties can introduce an action, except when the law provides otherwise. They have the right at any time to withdraw their claim before the judgment or before its prescription in accordance with the law”. Article 31 of that law also regards the special procedure of summons where the Mayor of the district is summoned in the name of the district.

[10] Pursuant to those articles, the Court is of the view that the law maker established that whoever seeks to initiate an legal action has to submit a claim, but during the summoning of the parties, there are those who are summoned in a special procedure, and a district is not summoned as such, rather, it must be summoned in the name of its Mayor, which implies that it is not necessary for the district to institute a legal action in the name of its mayor but it is summoned in the name of its mayor.

[11] Pursuant to the explanations given above, the Court is of the view that the assertions of Counsel Rumenge Victor that Gatsibo district as an appellant in this case lacks the status, should not be considered. The preliminary objection of inadmissibility of the appeal of Gatsibo District on the ground that it was not lawfully lodged has no merit.

B. Regarding the preliminary objection of inadmissibility on the ground of lack of pecuniary jurisdiction due to the damages not amounting to 50 million.

[12] Counsel Rumenge Victor states that they realized the second preliminary objection later and they submitted it to the Court in the additional submission. It concerns that the Supreme Court has the pecuniary jurisdiction to hear cases rendered by the High Court if damages awarded are worth 50,000,000Frw or when the value of the case, as determined by the judge in case of a dispute, is equal to 50,000,000Frw; however, in this case Gatsibo district was sued by 37 people whereby everyone made his own submission, claim and paid his/her court fees, and everyone presented his/her prayers. Moreover, in the course of adjudication, the Court addressed the case individually and therefore it award to every person 50,000,000Frw of damages, which amount to 200,000,000Frw in total; the reason why they request for the rejection of the appeal. He concludes in presenting the case law to be referred to because the subject matter is similar, and that case is RADAA0012/12/CS rendered on 14/06/2013 between Gatsibo district vs Ntezirirazaza Adrien and others. In that case, this Court held that the claim of Gatsibo district should be inadmissible because it was appealed in both Courts on similar grounds.

[13] Counsel Kayiranga Bernard states that this preliminary objection is also baseless, because the subject matter is a marshland and that either abrogated laws or current ones, usually provides for several categories of land which falls into the category of the public domain, and the Court admits that the subject matter is a marshland but disregards the law governing the marshland (swamps) falling within the public domain; therefore it is impossible to base on the pecuniary value because the public domain cannot be evaluated as such. He continues arguing that the arguments of the Counsel for the respondents who filed against Gasabo District in respect of which his clients were awarded damages which are less than 50,000,000Frw, would result in the modification of the subject matter, because it is in public domain, and this is admitted by the parties; thus the appeal falls into the jurisdiction of the High Court as that objection is baseless.

VIEW OF THE COURT

[14] Article 28(7) of the Organic Law N°03/2012/OL of 12/06/2012 mentioned above provides that the Supreme Court shall have appellate jurisdiction over cases heard and decided upon in the first instance by the High Court, the Commercial High Court or by the Military High Court, if it involves the judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000Frw), or when the value of the case, as determined by the judge in the case of a dispute, is at least fifty million Rwandan francs (50,000,000Frw).

[15] The Court finds the damages charged to Gatsibo district at the High Court were awarded in one judgment RADA0016/13/HC/RWG - RADA0054/13/HC/RW, moreover they are exceeding 50,000,000Frw.

[16] Hence, the arguments in respect of which each individual on the plaintiff side was awarded damages not exceeding 50,000,000Frw cannot be based on for computation of damages awarded in that judgment, because the legislator provided for damages awarded in the judgment, rather than damages awarded to each individual in the judgment. Therefore according to the provision of article 28(7) of the Organic Law N°03/2012/OL mentioned above, the preliminary objection for lack of pecuniary jurisdiction relying on the amount of the damages awarded, has no merit.

C. Regarding the objection of lack of jurisdiction of the Supreme Court relying to the fact for the appellant to have lost the case on similar grounds at the first and second instance level.

[17] Counsel Rumenge Victor states that the third preliminary objection consists of lack of jurisdiction of the Supreme Court to hear the appeal of Gatsibo district because it lost the case at the first and second instance on similar grounds, and in support of that, article 28(9) of the Organic Law determining the organization, functioning and jurisdiction of the Supreme Court, provides that a case lost by a party on the first and second instances on similar grounds shall not be appealed for to the Supreme Court. He explains that at the first instance, the Intermediate Court of Nyagatare declared, on page nine, paragraph 24 in the judgment rendered on July 31, 2013, that even if the subject matter concerns a swamp land as it is explained, which the district repossessed in the public interest while it had given it to Ruzabarande Festo and others, the plaintiffs acquired it through custom, purchase or through the policy of land sharing; whereas at the High Court, Chamber of Rwamagana, it was declared on page eight paragraph eleven, that the land in litigation belongs to the people who filed against Gatsibo district and it was demonstrated the way they acquired it with a convincing motivation in respect of which some of them acquired it traditionally from their parents, others through purchase and land sharing policy.

[18] Kayiranga Bernard states that the preliminary objection of law concerning the ground that Gatsibo district lost the case on similar grounds at the first and second instance lacks merit because the judge of Intermediate Court held that the subject matter concerns a marshland, which implies it falls into the public domain and that decision does not figure among the decisions of the High Court, therefore, that objection has no merit.

VIEW OF THE COURT

[19] Concerning the jurisdiction of the Supreme Court, article 28(5) of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, provides that a case lost by a party to in the first and second instances basing on similar grounds shall not be appealed for to the Supreme Court. The court will examine whether the grounds which led Gatsibo district to lose the case at the first instance are the same with those which led it to lose it again at the second instance.

[20] After analysing the ruling of the judgment at the first instance, that is at the Intermediate Court of Nyagatare as well as the ruling of the judgment at appeal level in the High Court, Chamber of Rwamagana, the Court finds that in the course of the deliberation in respect of which Gatsibo district lost the case, it was held in both Courts that even if the land in litigation is a marshland, it would not be the reason of destroying their assets without paying them related compensation, yet they acquired that land from the competent authorities who gave them their titles deeds. Therefore, in case the district repossesses it, then fair compensation should be paid to them by the district.

[21] Basing on article 28(5) of the Organic Law N°03/2012/OL of 13/06/2012 mentioned above which provides that a case lost by a party in the first and second instances on similar grounds shall not be appealed to the Supreme Court; the Court finds that Gatsibo district lost the case for the first and second instance on similar grounds in both previous Courts, therefore the appeal lodged by Gatsibo district is inadmissible because it does not fall into the jurisdiction of the Supreme Court.

III. DECISION OF THE COURT

[22] Holds that the preliminary objection raised by the Counsel for Ruzabarande Festo and others has merit.

[23] Rejects the appeal of Gatsibo District.

[24] Orders that the Court fees be borne by the public treasury.