

## MUKARUSHAKIRO ET AL v. GAHIRE

[Rwanda SUPREME COURT – RCAA0002/15/CS (Mugenzi, P.J., Gatete and Munyangeri, J.)  
January 20, 2017]

*Law determining the jurisdiction of courts – Jurisdiction of the Supreme Court – Appellate jurisdiction – Grounds of appeal – Inexistent law – The mistake in the form about the title of the law referred to should not be considered as relying on inexistent law or repealed law as long as its content is similar to that of the law which was supposed to be referred to.*

*Law determining the jurisdiction of courts – Jurisdiction of the Supreme Court – Objection of lack of jurisdiction – In case the amount of damages awarded by the court exceeds the amount fixed by the law for the admissibility of the appeal in second instance appellate jurisdiction, the appeal is admitted – Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28 litera 2.*

*Civil procedure – Rectification of judgment – Appeal – Statute of limitation – The fact for the law to have provided that the appeal regarding the interpreting or rectifying judgment is done at the same time with the main suit, should not be perceived as the right given to the party who did not lodge his/her appeal within the time limit against the main suit and therefore to constitute a loophole in his/her favour to lodge an appeal beyond the time limit through application for interpretation or correction – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 154, paragraphs 2 and 3.*

**Facts:** The heirs of Bagenzi Jean, namely Bagenzi Théogène, Mukarushakiro Gloriose and Mukangenzi Céline sued Gahire for having appropriated the house left by their father. Gahire argues that he bought it from one of the heirs known as Bagenzi at his majority age and that his mother Mukarushakiro witnessed the conclusion of the contract.

The Intermediate court of Nyarugenge nullified the sale contract of 5 November 1996 and of 4 November 1997 between Bagenzi and Gahire due to the fact that when it was concluded, Bagenzi lacked the capacity to enter into the contract, therefore it ordered the heirs of Bagenzi Jean to compensate Gahire of 191,713,088Frw before the release of the house because his purchase was devoid of bad faith especially that at the time of the sale by Bagenzi on 5 November 1996, he was with his relatives, while the contract of 4 November 1997 was concluded when Bagenzi already reached the majority age. Mukarushakiro, Bagenzi and Mukangenzi lodged an appeal to the High Court alleging that the Court ordered Bagenzi to be held liable and that Gahire purchased without bad faith while it subsequently held that Bagenzi concluded the contract while he was still a minor and the sold property did not belong to him. They allege in addition that the court relied on the valuation report without a cons-expertise.

Gahire appealed as well alleging that the Intermediate Court invalidated the sale contract whereas this was not a subject matter of the claim, that it disregarded the fact that when Bagenzi sold the house he was legally capable and that it did not decide on the objections which were raised.

The High Court found without merit the appeal of Mukarushakiro, bagenzi and Mukangenzi but with merit that of Gahire, therefore that the sale contract remains valid.

Mukarushakiro and Bagenzi appealed against this judgment to the Supreme Court on the same grounds they relied on before the Intermediate Court. However, Mukarushakiro alleged in addition that the court relied on an inexistent law.

After the appeals were lodged, Mukangenzi applied for rectification before the High Court, alleging that he was not included among the appellants. In the rectification judgment RCA0039/2016/HC/KIG rendered on 09/11/2016, it was held that his claim lacks merit given that no mistake likely to be corrected was made.

After the decision on this rectification application in respect to the judgment of the High Court, Mukangenzi lodged also an appeal to the Supreme Court alleging that the High Court was mistaken on facts and that it relied on foreign case laws which contradict Rwandan laws concerning the conclusion of the contract by a minor. She states in addition that it misapplied article 159 of the Law governing contracts in relation to the time limit for validation of the contract concluded by a minor and it relied on this to confirm that Gahire was not of bad faith.

Gahire raised an objection of lack of jurisdiction by the Supreme Court alleging that the appeal of Mukarushakiro and Bagenzi is at the second instance of appeal, whereas they do not indicate that their appeal fulfils the requirements of the law to fall within the jurisdiction of the Supreme Court. In addition, he raised an objection of inadmissibility of the appeal of Mukangenzi advancing that she applied for rectification of the judgment in order to fraudulently reach the appeal remedy while the time limit for appeal had already elapsed.

**Held:** 1. The mistake in the form about the title of the law referred to should not be considered as relying on inexistent law or repealed law as long as its content is similar to that of the law which was supposed to be referred to, therefore the ground of appeal relating to the fact that the court did not state the title of the law, and that the date it mentioned was different from the law which should have been applied, while it is evident that the provision of article 431 correlates with the provision of the same article of the then current Law N<sup>o</sup>42/88 of 27/10/1988 and that it corresponds to the subject matter of the claim, implies that it lacks merit.

2. Damages awarded in the appealed judgment amounts to 191,713,088Frw which exceed 50,000,000Frw provided for by the Law for the admissibility of the second instance appeal under the jurisdiction of the Supreme Court; therefore the objection of inadmissibility of the claim is overruled.

3. The fact for the law to have provided that the appeal regarding the interpreting or rectifying judgment is done at the same time with the main suit, should not be perceived as the right given to the party who did not lodge his/her appeal within the time limit against the main suit and therefore to constitute a loophole in favour of him/her to lodge an appeal beyond the time limit through application for interpretation or correction.

4. Pursuant to the general principle of the law which states that the fraud corrupts everything as well as law scholar opinions that the application for rectification and interpretation of the judgment should not serve to bypass the obligation to lodge an appeal within the time limit, therefore the procedure for the correction with the intention to lodge a subsequent appeal should not be admitted in case the time limit of appeal elapsed.

**Objection of lack of jurisdiction overruled.**

**Objection of inadmissibility of appeal sustained.  
Part of court fees to the appellant whose claim is rejected.  
The remaining court fees suspended.  
Hearing in merit shall resume.**

**Statutes and statutory instruments referred to:**

Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28 *litera* 2.

Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 154(2&3).

**No case referred to.**

## **Judgment**

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

[1] The heirs of Bagenzi namely Bagenzi Théogène, Mukarushakiro Glorioso and Mukangenzi Céline, represented by Mukarushakiro Glorioso sued Gahire Athanase to the Intermediate Court of Nyarugenge for having appropriated himself the house left as estate by their father, while Gahire alleges that he bought it from Bagenzi when he reached his majority age in presence of his mother Mukarushakiro as a witness.

[2] In the judgment RC0774/11/TGI/NYGE of 20 March 2013, the Intermediate Court of Nyarugenge found with merit the claim of Bagenzi's heirs whereby it nullified the sale contracts of 5 November 1996 and of 4 November 1997 between Gahire and Bagenzi and ordered the heirs of Bagenzi Jean to pay 19,713,088Frw to Gahire before the handover of the house.

[3] This Court explained that the said contract was concluded by Bagenzi before his majority age, but that Gahire purchased in good faith because when Bagenzi sold the house on 5 November 1996, his siblings were present, while the contract of 4 November 1997 was concluded when Bagenzi reached the majority age, and in the presence of Uwimana Monique, the mother of Mukarushakiro as a witness.

[4] Mukarushakiro, Bagenzi and Mukangenzi appealed to the High Court alleging that the judge ordered Bagenzi to pay the value added on the house whereas it decided that he concluded the contract without capacity and sold the property which does not belong to him. They allege in addition that it was relied on the valuation report without cons-expertise and that the Court contradicted itself whereby it decided that Gahire purchased without bad faith and at the same time that the contract is void.

[5] Gahire also lodged an appeal alleging that the Intermediate Court nullified the sale contract while this was not the subject matter of the claim, that it disregarded the fact that Bagenzi was of majority age because he was born on 1 January 1976 as evidenced by his Identity Card and birth certificate, and that this court did not examine the objections raised.

[6] In the judgment RCA0229- RCA0231/13/HC/KIG rendered on 27 June 2014, the High Court found without merit the appeal lodged by Mukarushakiro, Bagenzi and Mukangenzi, and that the appeal lodged by Gahire has merit, therefore it overruled the judgment RC0774/11/TGI/NYGE given that Gahire did not appropriate himself the property in dispute, therefore the said contract remains valid.

[7] On 27 July 2014, Mukarushakiro and Bagenzi lodged an appeal to the Supreme Court, stating that the judge in the High Court disregarded the fact that Bagenzi sold a third-party's property, considered the property valuation report without the cons-expertise being carried out, and that he/she decided that the first sale contract complements the second. They alleged also that the court decided that Uwimana Monique was present while not true and finally that Gahire purchased the property without bad faith.

[8] On 11 October 2016, Mukangenzi applied for rectification of the judgment in the High Court whereby he stated that he was not mentioned among the appellants. In the judgment RCA0039/2016/HC/KIG rendered on 09 November 2016 for rectification, it was decided that his application lacks merit because no mistake was made given that though his name was not mentioned on the exordium of the judgment, but he was mentioned as a party in the brief background of the case, in the motivation and decision parts of the judgment.

[9] After this decision on the application for rectification of the judgment rendered by the High Court, Mukangenzi also lodged an appeal to the Supreme Court stating that the High Court was mistaken on facts, since it decided that they did not follow the statute of limitation to claim for their property whereas no time limitation applies, and that it misinterpreted article 339 of the civil code book I(CCB.I), whereby it decided that Mukangezi who had been adopted by Gahire is not qualified to inherit while he had been recognized as a child.

[10] He states that the High Court relied on foreign case laws which contradict Rwandan laws concerning the party to the contract without majority age, and that it misinterpreted the provision of article 159 of the Law governing contract in relation to the statute of limitation for the validation of the contract concluded by a minor, and it relied on this to confirm that Gahire was not of bad faith.

[11] Gahire raised an objection of lack of jurisdiction of the Supreme Court with regard to the appeal of Mukarushakiro and Bagenzi and he raised an objection of inadmissibility of the appeal of Mukangenzi because he lodged it beyond the prescribed time limit.

[12] The hearing of the case was held in public on 06 December 2016, whereby Mukarushakiro was represented by Counsel Sebinezwa Evariste, Bagenzi Théogène represented by Counsel Sebinezwa Evariste and Semuhunga N. Silas, Mukagenzi Céline by Counsel Buhuru P. Célestin, while Gahire Athanase was represented by Butare Godefroid and Mbaga Tuzinde Mbonymbuga. It was firstly examined the objections raised by Gahire.

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

### **A. Whether the appeal of Mukarushakiro and Bagenzi fall within the jurisdiction of the Supreme Court.**

[13] Counsel Butare and Mbaga, for Gahire, state that the appeal lodged by Mukarushakiro and Bagenzi before the Supreme Court constitute the appellate jurisdiction while he does not indicate that it fulfills the requirements of the law to fall within the jurisdiction of the Supreme Court as provided for by article 28, *litera* 2 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.

[14] They explain that the appeal grounds alleged by Mukarushakiro concerning the fact that the judge relied on the inexistent law because it was relied on article 159 of the Law N°45/11 of 25/11/2011 governing contracts which is into force, therefore this ground does not correlate with the provision of article 28 stated above, especially that even in case the judge erred in interpretation of the provision of the law, it would not imply the inexistence of the law.

[15] Counsel Buhuru, for Mukangenzi states that according to paragraph 20 of the appealed judgment, the judge relied on an inexistent law given that he/she relied on the law enacted in 1963, which was repealed by the Law N°42/1988 of 27/10/1988.

[16] Counsel Sebinezwa and Semuhunga for Mukarushakiro and Bagenzi, state that as indicated in paragraph 20 of the appealed judgment, the High Court relied on the law of persons of 28/09/1963 which is inexistent and that in case the reference of the law is mistakenly indicated, it is considered that it was relied on inexistent law. They add that even though this ground relating to the jurisdiction of court is rejected, its jurisdiction would be relied on the amount of damages awarded in the judgment, which exceeds 50,000,000Frw.

## OPINION OF THE COURT

[17] As indicated in the 20<sup>th</sup> paragraph of the appealed judgment RCA0229-0231/13/HC, the judge mentioned that it was relied on article 431 of the Law of 28/09/1963 which provides that: “the age of majority is fixed to twenty one year old. A person having attained that age, is fully qualified for all acts involving civil life unless provided otherwise by other laws”. The content of this provision is however found in article 431 of the Law N°42/88 of 27/10/1988 instituting the preliminary title and civil code book I.

[18] The court found that even though the judge did not state the title of the Law, and the date mentioned being different from the real law, it is evident that the statements of the aforementioned article 431 are similar to those of article 431 of the then existing law N°42/88 of 27/10/1988 mentioned above which was current and correlate with the subject matter of the case which is the age of majority; therefore the mistake in the form would not be considered as if it was relied on inexistent law or existent law which was repealed later<sup>1</sup>.

[19] The Court finds however that though the objection of lack of jurisdiction by the Supreme Court based on the fact that the High Court relied on an inexistent law lacks merit, there is another ground which allows this court to have second instance appellate jurisdiction over the

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<sup>1</sup> Article 28, paragraph 2, *litera* 2 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court. This article provides that the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Court or by the Military High Court if such cases are based on non-existing law or repealed legal provisions.

appeal lodged by Mukarushakiro and Bagenzi, and this ground being the value of damages awarded by the appealed judgment, amounting to 191,713,088Frw which exceeds 50,000,000Frw provided for by article 28 paragraph 2, *litera 7* of the aforementioned Organic Law N°03/2012/OL<sup>2</sup>.

#### **B. Whether the appeal of Mukangenzi was lodged within the time limit.**

[20] Counsel for Gahire states that the appeal lodged by Mukangenzi should not be admitted because she lodged it beyond 30 days provided by the law. They allege that she defrauded through the application for correction of the judgment 2 years later in order to take part in the hearing of the case. They state in addition that the fact that the High Court upheld the ruling of the judgment implies that the judgment for which application for rectification was filed contained no mistake.

[21] They explain that as mentioned in the court submission presented by Counsel Buhuru in which he applied for correction of the judgment, he stated that after realizing that his client was not mentioned among the appellants before the Supreme Court, he applied for rectification of the judgment in order to lodge the appeal, therefore its fate would be questionable if, in order to participate in the judgment, the party who delayed to lodge his/her appeal would apply for correction of the judgment in accordance with article 153 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which provides that the judgment rectifying the previous judgment cannot be appealed against separately from the main suit.

[22] Counsel Buhuru states that no fraud was done while applying for correction, rather he used the prescribed remedy in order to rectify the mistakes in the judgment and he added that there is no fraud to use a prescribed remedy.

### **OPINION OF THE COURT**

[23] Article 154, paragraph 2, *litera 3* of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that the judgment interpreting or rectifying a previous judgement complementing the interpreted judgement shall not be subject to appeal unless it is done at the same time with the main suit and that the period for appeal on both cases runs from the day of delivering the judgement interpreting another one.

[24] The Court finds that the fact that the Law provided that the appeal regarding the interpreting or rectifying judgment is done at the same time with the main suit, should not be perceived as the right given to the party who did not lodge his/her appeal within the time limit against the main suit and constitute a loophole for him/her to lodge an appeal beyond the time limit through application for interpretation or correction. This position was even taken by the Court of Cassation in Belgium which held that the application for rectification and interpretation of the judgment should not result into the application of the cassation of the judgment by the party who exercised this remedy with delay, since the procedure for the interpretation of a

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<sup>2</sup> The Supreme Court shall have appellate jurisdiction over cases heard and decided in the second instance by the High Court if such cases involve judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000Frw).

judicial decision does not have the effect of opening a new time limit for appeal in cassation against the interpreted decision<sup>3</sup>.

[25] Concerning the issue that the fraud to reach the appeal remedy by a party to the case is not prohibited as advanced by Counsel Buhuru, the court finds that this fraudulent procedure should not be allowed considered the existence of the solid general principle of the Law which states that fraud corrupts everything<sup>4</sup>, and law scholars support it whereby they explain that the application for interpretation or rectification cannot be used to circumvent the need for exercising legal remedy<sup>5</sup>.

[26] Concerning Mukangenzi who applied for the rectification of the judgment two (2) years after it was delivered, and appealed two years later after the delivery of the judgment on 09 November 2016, the Court finds that the application for rectification made intended to reach the appeal remedy of the main suit which was not appealed against within the statute of limitation because there was nothing to be rectified as held by the High Court, and it was not even indicated in the appeal lodged to the Supreme Court the ground of appeal against the holdings of the judgment by the High Court with regard to the rectification of the judgment, rather, it seized the occasion to address the merit of the main judgment against which Mukangenzi had not lodged an appeal within the time limit. It is therefore undoubtedly clear that the appeal claim of Mukangenzi against the judgment RCA0229- RCA0231/13/HC/KIG delivered on 27 June 2014 was lodged beyond the time limit and consequently it should not be admitted.

### III. DECISION OF THE COURT

[27] Overrules the objection of lack of jurisdiction by the Supreme Court raised by Gahire Anastase concerning the appeal lodged by Mukarushakiro Gloriose and Bagenzi Théogène;

[28] Sustains the objection of inadmissibility of the appeal of Mukangenzi Céline raised by Gahire Anastase, therefore her appeal is rejected;

[29] Orders the resume of the hearing in the merit of the appeal lodged by Mukarushakiro Gloriose and Bagenzi Théogène on 14 March 2017;

[30] Orders Mukangenzi Céline to pay 1/3 of court fees and suspends the payment of the remaining 2/3.

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<sup>3</sup>La procédure en interprétation d'une décision judiciaire n'a pas pour effet d'ouvrir un nouveau délai pour se pourvoir en cassation contre la décision interprétée": Cass. 26 Avril 2001.

<sup>4</sup>"Fraus Omnia corrumpit"; "La fraude corrompt tout."

<sup>5</sup>"La voie d'interprétation ou de rectification ne peut donc être utilisée pour contourner la nécessité d'exercer une voie de recours": Georges DE LEVAL et autres, Droit judiciaire, Tome 2, Manuel de procédure civile, Editions Larcier, Bruxelles, 2015, p.670.