

## **MBARUSHIMANA v. NKUNDABANYANGA**

[Rwanda Supreme Court – RCAA 00022/2016/SC-RCAA 0022/16/CS (Mugenzi P.J., Nyirandabaruta and Kanyange, J.) 03 July 2018]

*Law determining the jurisdiction of Courts – Land – Primary Courts try in first instance cases relating to disputes on land and livestock and their succession – Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, article 67.*

*Law determining the jurisdiction of Courts – Interpretation of Laws – Article 27,3° of the Law N° 30/2018 of 02/06/2018 must be completed as follows: Primary Court try in first instance, cases relating to immovable property composed of land reserved for agriculture and livestock which exceed the value of three million Rwandan Francs.*

**Facts:** Nkundabanyanga filed a claim to the Intermediate Court of Nyarugenge requesting for the annulment of the emphyteutic lease contract N°1020/KIC/GAT awarded to Mbarushimana on the land which she states that she inherited it from her late husband Birushyabagabo, she stated that in 2007 she travelled to Kenya for seeking medical treatment and when she came back she found that Mbarushimana registered that land on his name while he is not the owner, though Nkundabanyanga is the one who occupies it.

That Court held that the land in litigation belongs to Nkundabanyanga because she has witnesses who testify that the land belongs to Birushyabagabo who was her husband, then the Court ordered for the annulment of the emphyteutic lease contract on that land registered on Mbarushimana. It further ordered Mbarushimana to pay Nkundabanyanga procedural and counsel fees.

Mbarushimana was not contented with the rulings of that judgment and appealed before the High Court whereby it held that his appeal has no merit, and ordered him to give Nkundabanyanga counsel fees.

Mbarushimana was not contented with that rulings and appealed to the Supreme Court requesting to examine whether the Intermediate Court of Nyarugenge had jurisdiction to try the claim of Nkundabanyanga, he requested also the Court to examine whether his opponent has quality and interest to file a claim. SENCO Ltd intervened in this case.

Nkundabanyanga raised an objection of lack of jurisdiction of the Supreme Court which the Court overruled. The Court also rejected the intervention of SENCO Ltd because it did not comply with the decision of the Court which charged it a fine and the court decided that SENCO Ltd will be heard after proving that it has paid it.

Mbarushimana states that, considering that the object of litigation is a land reserved for agriculture and the provisions of the Law of jurisdiction of Courts N° 51/2008/OL of 09/09/2008 as modified to date, the cases related to properties of land are tried by Primary Courts, thus, if both Courts heard a case which is not in their competence, the decisions taken by those Courts should be quashed and the situation return to the way it was before filing the lawsuit.

Nkundabanyanga states that the statement of her opponent is groundless because he did not raise the objection of lack of jurisdiction before the Intermediate Court. It raised it before High Court

which overruled it because the object in litigation was not the land rather it was the annulment of emphyteutic lease contract awarded to the person who is not the owner of the property.

**Held: 1.** In the determination of the subject matter it is not enough to base on how the claim is written, rather it is determined by the claims of each party which are demonstrated by the document instituting proceedings and the defence submissions, even though the document instituting proceedings to the Intermediate Court indicates that the subject matter was the annulment of emphyteutic lease contract awarded to Mbarushimana who is not the owner of the property, but the purpose was to request the Court to hold that the property belongs to Nkundabanyanga. Therefore, the subject matter is a land, the claim should have been filed to the Primary Court in first instance, thus, the judgment rendered by the Intermediate Court of Nyarugenge even that one rendered in appeal by the High Court have to be quashed because they were rendered by incompetent Courts.

2. Article 27,3° of the Law N° 30/2018 of 02/06/2018 should be completed as follows Primary Court try in first instance, cases relating to immovable property composed of land reserved for agriculture and livestock which exceed three million Rwandan Francs (3,000,000Frw).

3. Damages for dairy income compensation are not awarded while the claimant is not proving that the case proceedings deprived him/her an expected income

4. Moral damages are not awarded while the claimant is not proving the fault of the defendant

**Appeal has merit.**

**The judgment rendered by previous Courts are quashed because it was rendered by incompetent Courts.**

**Statutes and statutory instruments referred to:**

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 6 and 158.

Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts, article 27.

Law N° 37/2016 of 08/09/2016 determining organisation, jurisdiction, competence and functioning of *Abunzi* Committee, article 10.

Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, article 67.

Decree -Law of 30/07/1888 relating to Contracts or conventional obligations, article 258.

**No cases referred to.**

**Authors cited:**

J.F Perrin, Les règles d'interprétation-Principes communément admis par les juridictions, Note bibliographique de Marie Malaurie, in *Revue Internationale de Droit Comparé*, 1990, 42-3, P.1054

## Judgment

### I.BACKGROUND OF THE CASE.

[1] Nkundabanyanga Eugénie filed a claim to Intermediate Court of Nyarugenge, requesting for annulment of emphyteutic lease contract N°1020/KIC/GAT because it was awarded to Mbarushimana Jean Pierre who is not the owner, rather she inherited that land from her deceased husband Birushyabagabo. She stated that in year 2007, she travelled to Kenya to seek medical treatment, and when returning she found her land was registered on Mbarushimana Jean Pierre though she is the one who occupies it.

[2] In judgment RC0055/15/TGI/NYGE rendered on 11/06/2015, the Court found that as Nkundabanyanga Eugénie proves that the land belongs to her basing on the reports of Nyanza cell authorities, whereby the local population explained that they are aware that the land belongs to Birushyabagabo who was her husband, this demonstrates that the land recorded on N° 1020/KIC/GAT belongs to Nkundabanyanga, thus, the emphyteutic lease contract awarded to Mbarushimana Jean Pierre is annuled, and it ordered him to pay 500.000Frw to Nkundabanyanga for procedural and counsel fees. .

[3] Mbarushimana Jean Pierre appealed to the High Court, which rendered the judgment RCA0393/15/HC/KIG on 29/01/2015, and found his appeal without merit, it ordered him to pay 500.000Frw to Nkundabanyanga for counsel fees.

[4] Mbarushimana Jean Pierre appealed to the Supreme Court requesting it to examine whether the Intermediate Court of Nyarugenge had jurisdiction to hear Nkundabanyanga's claim and whether his opponent has quality and interest for filing a claim while she does not exist according to the Law. SENCO Ltd intervened at this case at this instance.

[5] Before the examination of the intervention of SENCO LTD, it was examined firstly the objection of lack of jurisdiction of the Supreme Court raised by Nkundabanyanga Eugénie, in a Court order of 17/12/2017, the Court overruled that objection.

[6] The case on merit was heard in public on 29/05/2018, Mbarushimana Jean Pierre represented by Counsel Habimana Adolphe, Nkundabanyanga Eugénie was represented by Counsel Kalisa Evariste while SENCO Ltd represented by Karangwa Charles assisted by Counsel Ntirenganya Seifu Jean Bosco.

[7] After finding that SENCO Ltd failed to comply with the Court order of 06/02/2018 which ordered it to pay a fine of 100,000Frw and that it will be heard after proving that it has paid that fine, even the counsel who assists Karangwa Charles told the Court that he advised him to pay that fine instead of basing on the Law published after the Court order.<sup>1</sup> The Court took decision on the bench to reject the intervention of SENCO Ltd and the hearing continued without it.

---

<sup>1</sup> SENCO Ltd wrote stating that basing on article 119 Of the Law N°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure it will pay the fine it was charged in addition to what it will be ordered to pay by the Court in this case if any.

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

### **Whether the Intermediate Court of Nyarugenge had no competence to hear Nkundabanyanga's claim.**

[8] Counsel for Mbarushimana Jean Pierre argues that this case concerns the property of land reserved for agriculture as it is indicated on its deed, and article 67 of the organic Law N° 01/2015/OL of 05/05/2015 modifying and complementing the organic Law N° 51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of Courts provides that cases relating to property of land are in jurisdiction of primary Courts, while article 128 of that Law provides that cases concerning immovable property shall be heard by Courts situated where the property is located.

[9] He states that the High Court motivated that it has jurisdiction because the subject matter is about the annulment of emphyteutic lease contract, but the Court's rulings indicate that the judge wrote the land as the subject matter, thus, as both Courts tried a case which is not in their jurisdiction, the decisions taken can be nullified and the situation returns to the way it was before filing the case.

[10] Counsel for Nkundabanyanga Eugenie argues that the statement of her opponent has no merit because he did not raise the objection of lack of jurisdiction of Intermediate Court in that Court, that he raised it in the High Court, whereby it motivated that the subject matter was not a land rather the annulment of emphyteutic lease contract awarded to the person who is not the owner of the property, thus the subject matter is not a land because it is occupied by his client, she is requesting for the certificate of emphyteutic lease because it is registered on Mbarushimana Jean Pierre. He states further that there is a criminal case (RP 0475/14/TB/KGM) indicating that the daughters of Nkundabanyanga Eugénie sold her property, that sold property is part of the emphyteutic lease contract for which they are requesting for annulment, and basing on article 78 of the organic Law N° 01/2015/OL of 05/05/2015 aforementioned, the Intermediate Court is the one which has the jurisdiction over that issues.

## **VIEW OF THE COURT**

[11] The rulings of the appealed judgment indicate that, in deciding that the Intermediate Court had jurisdiction to hear this case, the High Court based on the fact that the subject matter concerned the annulment of emphyteutic lease contract awarded to a person who is not the owner of the property rather than a land.

[12] The Court finds that, though the document instituting proceedings before intermediate Court demonstrates that the subject-matter was the annulment of emphyteutic lease contract awarded to Mbarushimana Jean Pierre who is not the owner of the property, but the purpose was to request the Court to held that the concerned property belongs to Nkundabanyanga Eugénie, as

it is clear in her requests to the Court.<sup>2</sup> It is even clear in the decision taken by the intermediate Court and the High Court, which based on the evidence indicating that the land for which Mbarushimana Jean Pierre was given emphyteutic lease contract belongs to Nkundabanyanga Eugénie.

[13] The Court finds that, the subject matter is not determined by how it is written, rather by parties's respective requests as it is provided by article 6 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure<sup>3</sup>, it is determined by the document instituting proceedings and the defence submissions, it was motivated above that the purpose of filing a claim by Nkundabanyanga Eugénie was to request the Court to hold that the land belongs to her, this means, her rights over that land because though she states that she possesses that land, she has no right over it, as long as she has no emphyteutic lease contract. This is indeed reasonable because after re-establishing her rights, she can request to be registered on that land.

[14] The court finds, the fact that the subject matter is land, the claim should have been filed to the Primary Court basing on the provisions of article 67 of Organic Law N° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts which was into force at the time of filing the claim<sup>4</sup>, which provides that Primary Courts shall try on the first instance the cases related to the disputes of land and livestock and their succession; thus, basing on article 158, paragraph one, of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure<sup>5</sup>, the judgment rendered by the Intermediate Court of Nyarugenge as well as that one rendered by the High Court must be quashed, because they were rendered by the Courts which lack the jurisdiction, it is not necessary to examine other ground of appeal relating to quality and interests of Nkundabanyanga Eugénie, instead the Court should examine the basis of damages requested by Mbarushimana Jean Pierre.

[15] With regard to the new jurisdiction of Courts pursuant to the Law N° 30/2018 of 02/06/2018 relating to jurisdiction of Courts, article 27,3° provides that Primary Courts shall try at first instance "cases relating to immovable property other than land used for agriculture and livestock of a value of more than three million Rwandan francs (FRW 3,000,000), but which does not exceed twenty million Rwandan Francs (FRW 20,000,000) and succession in respect thereof as well as disputes between the emphyteutic lease and the so-called landowner with no certificate

[16] The phrasing of the article aforementioned does not allow expressly to know the will of the legislator as regards to the jurisdiction of Courts on immovable property, therefore, it is necessary to interpret in order to clarify the provisions of that article, by taking into consideration

---

<sup>2</sup> To hold that the land with emphyteutic lease contract N° 1020/KIC/GAT belongs to Nkundabanyanga Eugénie and to order its registration on her name.

<sup>3</sup> It matches with article 4 of the Law which was into force at time of filing a claim at first instance.

<sup>4</sup> It was filed on 04/12/2014

<sup>5</sup> When the appeal court finds that the first-instance court has been seized irregularly or the court seized is not competent, but the lower court has decided to decide on the case whereas it should not; the appeal court receives that appeal and motivates that the appeal case was irregularly filed at the first level, and the appellate court quashes all the decisions taken on the basis of this error; the interested party may file a new claim

that the principles of interpretation of Law, the spirit of phrasing is first considered, however it is needed to avoid the spirit which can contradict the will of the legislator.<sup>6</sup>

[17] In this regards the interpretation of article 27 aforementioned, the Court finds that it is not reasonable that the will of the legislator was to remove the land for the agriculture use in the jurisdiction of the Primary Courts, while they are the ones close to those properties across the country and they used to be competent to hear the cases related to property of land<sup>7</sup>, thus appropriate interpretation will be the one which suggesting that cases relating to Land used for agriculture are in the jurisdiction of Primary Courts regardless the value, notwithstanding the competence of *abunzi* committee over property not exceeding the value equivalent to 3,000,000Frw in civil cases as provided by article 10 of the Law N°37/2016 of 08/09/2016 on organization, jurisdiction, competence and functioning of *abunzi* committee

[18] The Court finds that according to that interpretation of article 27,3° of the Law N°30/2018 of 02/06/2018 has to be understood as follows:

Primary Courts try in first instance:

- cases relating to immovable property other than land used for agriculture and livestock of a value of more than three million Rwandan francs (FRW 3,000,000), but which does not exceed twenty million Rwandan Francs (FRW 20,000,000) and succession in respect thereof as well as disputes between the emphyteutic lessee and the so-called landowner with no certificate ;
- Cases relating to immovable property composed of land used for agriculture and livestock which value exceed three million Rwandan Francs (3,000,000Frw)

[19] The Court finds that with regards to this case, the object in litigation is a land (land reserved for agriculture) which value is above 3,000,000Frw as held by this Court in examination of its competence, the primary Court has competence in first instance, thus, basing on the provisions of article 158 of the Law N° 22/2018 of 29/04/2018 aforementioned, whoever has interest can file again a claim in that Court.

## **2. Regarding the damages requested**

[20] Counsel for Mbarushimana Jean Pierre requests on his behalf 50,000Frw for dairy income compensation for 30 days, equals to 1,500,000Frw, moral damages of 5,000,000Frw for being disturbed by Lawsuits, 1,000,000Frw for counsel fees at this instance and 500,000Frw for previous Courts.

---

<sup>6</sup>La lettre l'emporte sur l'esprit de la loi, mais elle peut être écartée si son application conduit à des résultats déraisonnables (Cour de cassation belge) ou "insoutenables qui contrediraient la véritable intention du Législateur"(tribunal Fédéral Suisse des assurances): J.F Perrin, *Les règles d'interprétation-Principes communément admis par les juridictions*, Note bibliographique de Marie Malaurie, in *Revue Internationale de Droit Comparé*, 1990, 42-3, P1054

<sup>7</sup> In this regards of interpretation of article 27 aforementioned, the Court finds that it is impossible that the legislature's intention was to withdraw the immovable property used for agriculture within the competence of Primary Courts, while they are the ones close to those properties across the country and they used to be competent to hear those cases related to property of land.

[21] Counsel for Nkundabanyanga Eugénie states that his Client should not be charged damages because she filed a claim for her property, instead she should be the one to be awarded 1,500,000Frw for counsel and procedural fees at this instance.

#### VIEW OF THE COURT

[22] The Court finds that the diary income compensation requested by Mbarushimana Jean Pierre are not awarded because he fails to prove how this case deprived him the income he should have earned within a month, and the moral damages he requests are not also awarded because he does not prove the fault committed by Nkundabanyanga Eugénie unless to sue him in pursuing her rights, article 258 of civil code book three provides that damages are awarded if the fault of the person to whom are claimed is proven.

[23] Regarding counsel fees, the Court finds that Mbarushimana Jean Pierre has to be awarded it, because it was necessary to pay for counsel services, in discretion of the Court he is awarded 500,000Frw at this instance because 1,000,000Frw he requested is excessive, and it awards 500,000Frw in its discretion for the High Court whereby he raised the objection of lack of jurisdiction of Intermediate Court which was overruled, because 1,000,000Frw requested is excessive , all damages are amounting to 1,000,000Frw.

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

[24] Finds with merit the appeal of Mbarushimana Jean Pierre;

[25] Decides that the judgment rendered by the intermediate Court of Nyarugenge and that one rendered in appeal by the High Court, are quashed because they were rendered by incompetent Courts;

[26] Holds that any person who has interest can file again a claim to the competent Court

[27] Orders Nkundabanyanga Eugénie to give Mbarushimana Jean Pierre 1,000,000frw for counsel fees at this level and at the High Court level ;

[28] Orders Nkundabanyanga Eugénie to pay the Court fees.