Re. MURANGWA

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00001/ 2019/SC – (Rugege, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and Rukundakuvuga, J.) November 29, 2019]

Constitution – Separation of persons – Much as people are equal before the law, the differentiation or categorisation thereof sometimes does not necessarily imply discrimination because differentiation or categorisation of persons may be necessary when there is a legitimate or rational purpose.

Constitution – Petition requesting to declare a provision of the Law or a Law unconstitutional – The petitioner challenging the constitutionality of the Law or its provisions is obliged to prove that it's implicitly or explicitly unconstitutional.

Facts: After the publication in the Official Gazette of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities, Murangwa filed a petition to the Supreme Court arguing that articles 16, 17, 19 and 20 are contrary to articles 15, 16, 34 and 35 of the Constitution of the Republic of Rwanda of 2003 revised in 2015. Before proceeding with the hearing on merits, the Court requested those who wish to intervene as Amicus curiae to apply for leave to do so through the Court Registry, thereafter the Court accepted the School of Law/University of Rwanda, Transparency International Rwanda, Counsel Dieudonne Nzafashwanayo, Counsel Twiringiyemungu Joseph and Ntibaziyaremye Innocent to be the Amicus Curiae.

The challenged articles are in the following three categories:

The first category is made up of two articles, 16 and 17, whereby the petitioner states that the provisions of article 16 are inconsistent with the Constitution given that apart from the fact that it oppresses those in the category of residential buildings, it also provides for high tax rate for the same category which is of low-income earners compared to the category of commercial and industrial buildings, to the extent that it can hinder the gorvnment policy of affordable housing. He further states that if someone opts to construct a residential building, another one opts to construct a commercial building and another to construct an industrial building, they should all be equally treated as investors, thus differentiating them for the purpose of imposing tax is immaterial yet all people are equal before the law, rather each one should pay tax basing on his/her income. He adds that all paragraphs of article 17 complement article 16 which discriminates individuals on basis of economic categories and property, he thus finds those articles do not treat people before the law equally, neither do they uphold equal protection as stated by articles 15 and 16 of the Constitution.

The School of Law/ University of Rwanda argue that article 16 violates the principle of building a State committed to promoting social welfare and establishing appropriate mechanisms for equal opportunity to social justice, because that article provides for high tax on residential buildings instead of commercial buildings which generate high income, the fact that it provides for high tax for residential houses will discourage the estate developers while the are still those in need of residential houses and it does not back up the national housing policy.

Transparency International Rwanda assert that article 16 indicates that the legislator focused on the promotion of investment, however it was not necessary to differentiate

residential and commercial buildings, because he disregarded the need for residential houses by most of Rwandans and the State commitment for affordable housing for all Rwandans by enabling them to access housing.

Ntibaziyaremye Innocent as Amicus Curiae states that the tax on residential buildings should not be different from that of commercial buildings given that each person opts among the two a business of his/her choice. He adds that the tax should gradually decrease in proportion to the depreciation rate of the building, and such tax be calculated after the owner has completely paid the loan incurred to buy the plot of land or for constructing the house or to determine the value of the property by deducting the construction loan incurred by the owner up to its full payment.

The State argues that there is no separation based on the wealth because categorisation concerns the buildings, not the owners and especially that for one family, one building whose owner resides in and its annexes in that residential plot are exempted from the tax while commercial and industrial buildings are not exempted from tax, the reason why other residential buildings can be considered as luxury.

Advocate Twiringiyemungu Joseph as Amicus Curiae states that any promulgated tax is legal because it is determined by a law providing for who will be the taxpayers and tax collection modalities to the degree that it is difficult to challenge constitutionality of such tax as its enactment is based on the Constitution. He submits that it is not mandatory that all laws shall always have a general scope.

The second category contains article 19 relating to the tax rate on land exceeding the standard size of plot of land which he

states that it is inconsistent with article 15 of the Constitution. On this issue in consideration of the different modalities of transfer of land rights in Rwanda which include gift, succession, inheritance, sale, there is no equal protection for those who acquire the land before after the publication of this Law.

The School of Law/University of Rwanda state that article 19 contravenes article 15 of the Constitution because imposing differentiated taxes on plots of land on basis of the period of acquisition by the taxpayer does not constitute a valid ground for the differentiation. Concerning the plot of land acquired before or after the application of the law, they argue that the principle of non-retroactivity of a law as a ground for differentiation of plot owners, such ground should not be envisioned in terms of the period the plot was bought or put to use, rather it should be approached in the light of the period when the right over land was effective (the time when the land was started to be used).

Transparency International Rwanda contends that this article is problematic to citizens as regards the procedure to follow in case of plot of land bought or inherited from its owner, whether the buyer or the inheritor must firstly proceed by subdivision and to reflect on the grounds upon which the legislator differentiates between the actual and potential owners of land, the owners of large and small land. That for it, this tax is considered as a penalty.

Counsel Twiringiyemungu Joseph states that the additional tax rate provided for under article 19 is a common practice; he cites an example of the income tax according to which a tax of 20% is imposed on a salary of 100.000 Frw and below, whereby a tax of 30% is imposed on a salary above 100.000 Frw. In that light whoever exceeds the standard size provided for by the law shall

be liable accordingly. Regarding the fact that article 19 states that the additional tax rate does not apply to the plot of land acquired before the commencement of the Law, he submits that this is in line with the protection of the inviolable right acquired before the publication of the law, that a new law cannot encroach on the right acquired before its commencement.

The State avers that the differentiation of taxpayers must not be considered as violation of the principle of equality before the law when there is legitimate and rational purpose to do so. It further states that the principle of equality before the law has other principles connected to it and these include the equal treatment in equal circumstances, the preferential treatment, the specificity and special rules.

The third category is made up of article 20 which relates to the tax rate for undeveloped plot of land, the petitioner states that the provisions of that article contravene articles 34 and 35 of the Constitution because it imposes 100% on undeveloped plot without considering if the owner has capacity to pay such tax, thus that tax is excessive and cannot be afforded by many individuals. Therefore, they submit that given that the right to immovable property and land is inviolable and taking into account the principles of taxation, they observe that article 20 of the law mentioned above which provides for the tax increase of 100% on the undeveloped plot of land irrespective of the reason for which the plot is not developed is inconsistent with the rights enshrined under articles 34 and 35 of the Constitution.

University of Rwanda/School of Law states that articles 19 and 20 seem to be punitive because they respectively provide for an increase of 50% and 100%, this is contrary to the legal general principles, given that one is punished in case of failure to perform an obligation legally stated or the performance of an act

legally prohibited, one wonders what the citizens in this case omitted or committed to be penalized. This violates the principles governing the social welfare and the citizen will bear the tax burden given that one who paid tax for his/her plot when selling the plot he/she will add the tax and the tenant will add the same tax, thus making the cost of living high and moreover the State to fulfil its obligation of ensuring the social welfare, but it cannot achieve the social justice when the citizens do not have the right to property, the equal opportunities and when they are not equal before the law.

Nzafashwanayo as Amicus curiae, argues that the provisions of article 20 contravenes articles 15 and 16 of the Constitution because it discriminates the owner of a developed plot of land from the owner of undeveloped plot who is requested to pay an additional tax, he further adds that it also 20 infringes on the rights provided for under articles 34 and 35 because the owner can be dispossessed of the plot of land when he/she fails to pay tax, therefore it was enacted without taking into account the effects it will have on the owners of undeveloped plots of land. He also states that such article was not mandatory to overcome the issue related to speculation on plots of land given that such issue is addressed by article 58 of the Law governing land.

Transparency International Rwanda as Amicus curiae states that article 20 violates the right to private property of the land because the tax provided for by that article is a burden to low-income earner, because it is like a penalty for those who has land which is undeveloped because of lack of means and in case he/she is unable to pay that tax, the consequence will be to auction his/her proprety including that land to recover the tax, and therefore he/she would be deprived of the right to property enshrined in the Constitution.

Ntibaziyaremye Innocent as Amicus curiae asserts that it is inappropriate to levy a tax of 100% on undeveloped plot of land because there are different reasons as to why it is undeveloped, especially lack of means. He further adds that when a land purpose is modified from agricultural to residential, the owner automatically pays tax while he/she no longer exploit it and he/she bears the burden of paying tax to the extent that he/she can give it as heritage to the children and they refuse to take it because they are not able to pay tax arrears.

The State argues that article 20 does not violate the right to the immovable property and the right to land enshrined in the Constitution because it differentiates the owners who exploit the land for the intended purpose and those who do not do so and the plots are kept undeveloped without being transferred to others who are able to develop them and moreover, the State is committed to boost its economy by exploiting the small land it has.

Held: 1. The petitioner challenging the constitutionality of the Law or its provisions is obliged to prove that it's implicitly or explicitly unconstitutional.

2. Much as people are equal before the law, the differentiation or categorisation thereof sometimes does not necessarily imply discrimination because differentiation or categorisation of persons may be necessary when there is a legitimate or rational purpose.

3. Much as article 20 of the Law N° 75/2018 is not inconsistent which the Constitution, it should be completed and the timelimit for which the land can spend without being exploited for it to be charged additional tax and also that tax is not imposed in case there is a legitimate ground as to why that land is not exploited.

Article 16 and 17 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities, is not inconsistent with 15 and 16 of the Constitution of the Republic of Rwanda.
Article 19 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities, is inconsistent with 15 of the Constitution of the Republic of Rwanda.
Article 20 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is not inconsistent with articles 34 and 35 of the Constitution of the Republic of Rwanda.

Statutes and statutory instruments referred to:

The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 164

The Universal Declaration of Human Rights of 1948, articles 7 and 17

International Covenant on Civil and Political Rights of 1966, article 26

African Charter on Human and Peoples' Rights, article 14.

Foreign legislation:

European Convention on Human Rights, Protocol No. 1, article 1

American Convention on Human Rights, article. 21

Cases referred to:

Re AKAGERA BUSINESS GROUP (ABG), RS/SPEC/0001/16/CS rendered by the Supreme Court on 23/09/2016

Cases from foreign courts:

Supreme Court of the United States, Regan v. Taxation with Representation of Wash., 461 U.S. 540.

Supreme Court of United States, BELL'S GAP RAILROAD COMPANY v. PENNSYLVANIA, 134 U.S. 232 (1890).

Madden v. Kentucky, 309 U.S. 83, 87-88 (1940)

Supreme Court of the United States, Nordlinger v. Hahn, June 18, 1992, 112 S. Ct. (1992).

Communication No 172/1984 S.W.M. Broeks v The Netherlands (views adopted on 9 April 1987) in UN Doc. GOAR, A/42/40 P.150.

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Erwin Chemerinsky, In Defense of Equality: A Reply to Professor Westin, 81 MICH. L. REv. 575, 578 n.17 (1983)

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Judgment

I. BACKGROUND OF THE CASE

[1] Murangwa Edward filed an application to the Supreme Court contending that after the publication in the Official Gazette of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities, he read it and noticed that the articles 16, 17, 19 and 20 are contrary to articles 15, 16, 34 and 35 of the Constitution of the Republic of Rwanda of 2003 revised in 2015. He submits that

he filed the petition in reference to article 43 of the Constitution of the Republic of Rwanda which states that "The Judiciary is the guardian of human rights and freedoms".

[2] According to Muramgwa Edward, the impugned articles sought to be repealed on the grounds that they are unconstitutional are four [4] divided in three categories: the first category comprises of two (2) articles: articles 16 and 17 of the Law N° 75/2018 mentioned hereinabove. Article 16 states that " The tax rate on buildings is determined as follows:
1^0 one per cent (1%) of the market value of a residential building,
2^0 zero point five per cent (0.5%) of the market value of the building for commercial buildings,
3^0 zero point one per cent (0.1%) of the market value of industrial buildings, buildings belonging to small and medium enterprises and those intended for other activities not specified in this article".

> The article 17 states that "Except for the tax rate of zero point one per cent (0.1%), the tax rates prescribed by Article 16 of this Law are applied progressively as follows :
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> 1º for residential buildings a progressive rate is applied as follows :
>
> a. Zero point twenty-five percent (0.25%) from the first year after the commencement of this Law ;
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> b. Zero point fifty percent (0.50%) from the second year after the commencement of this Law ;
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> c. Zero point seventy-five percent (0.75%) from the third year after the commencement of this Law ;

d. One percent (1%) from the fourth year after the commencement of this Law;

2º for commercial buildings a progressive rate is applied as follows:

a. Zero point two percent (0.2%) of the market value of the building is applied in the first year of the commencement of this Law;

b. Zero point three percent (0.3%) during the second year of the commencement of this Law;

c. Zero point four per cent (0.4%) during the third year of the commencement of this Law ;

d. Zero point five percent (0.5%) during the fourth year of the commencement of this Law.

Residential apartments having a minimum of four floors, including basement floors, benefit from reduction of tax rates, equivalent to fifty percent (50%) of the ordinary rate".

[3] Murangwa Edward avers that the provisions of the article 16 are unconstitutional given that aside from the fact that it oppresses those in the category of residential buildings, it also provides for high tax rate for the same category which is of low-income earners compared to the category of commercial and industrial buildings upon which a low tax rate is imposed while industry owners are high-income earners. He asserts that all paragraphs of article 17 complement article 16 which discriminates individuals on basis of economic categories and property, he thus finds those articles to unequally treat individuals before the law, neither do they uphold equal protection as stated by articles 15 and 16 of the Constitution.

[4] The second category includes the article 19 of Law n° 75/2018 mentioned herein above which states that "The tax rate determined by the District Council per square meter of land in accordance with the provisions of Article 18 of this Law[1] is increased by fifty percent (50%) applicable to land in excess to standard size of plot of land meant for construction of buildings. The standard size of plot of land meant for construction of buildings are determined by an Order of the Minister in charge of housing. Additional tax rate as referred to under Paragraph One of this Article does not apply to the plot of land acquired before the commencement of this Law". Murangwa asserts that the provisions of article 19, paragraphs 1 and 3 contravene article 15 of the Constitution which states that "All persons are equal before the law. They are entitled to equal protection of the law", in consideration of the different modalities of transfer of land rights in Rwanda which include gift, succession, inheritance, sale, there is no equal protection for those who acquire the land before the publication of the law N° 75/2018 against which a petition has been filed.

[5] The third category concerns article 20 of Law N° 75/2018 mentioned herein above which provides for the tax rate for undeveloped plot of land, it states that "Any undeveloped plot of land is subject to additional tax of one hundred percent (100%) to the tax rate referred to in Article 18 of this Law". Murangwa avers that the provisions of article 20 contravene articles 34 and 35 of the Constitution which state that the right

[1] The article 18 provides for the tax rate on plots of land and states that "The tax rate on plot of land varies between zero (0) and three hundred Rwandan francs (FRW 300) per square meter. The District Council determines the tax rate on square meter of plot of land based on criteria and standard rates set by an Order of the Minister in charge of taxes".

to immovable property and the right to land are inviolable and the first category of national resource is the citizens, the second category is the land they occupy, exploit and which is the source of their livelihood, he finds that the fact that this article imposes additional tax of 100% on undeveloped plot without considering if the owner has capacity to pay such tax indicates that it is excessive and outstanding for many persons.

[6] Article 34 states that "Everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law". Article 35 states that "Private ownership of land and other rights related to land are granted by the State. A law determines modalities of concession, transfer and use of land".

[7] The State Attorney contends that the assertion according to which articles 16 and 17 of Law N° 75/2018 of 07/09/2018 mentioned herein above encroaches the principle of the equal protection provided for by the Constitution is misleading because this is a tax imposed on property and what has been categorized is the property (buildings), not the owners, and the categorization of buildings for taxation does not constitute discrimination based on financial means.

[8] The State Attorney adds that article 19 does not violate the principle of equality before the law enshrined in article 15 of the Constitution and the principle of protection from discrimination provided under article 16 of the Constitution since article 19 highlights other legal principles including the right to fair justice and non-retroactivity of the law.

[9] The State Attorney avers that article 20 does not infringe upon the right to immovable property and the right to land provided under articles 34 and 35 of the Constitution as claimed by MURANGWA because article 20 serves to differentiate between the owners who use the land for the intended purpose and those who do not and the land is not transferred to the one with the willingness and capacity to exploit it cognizant of the State need to boost its economic development by rationally exploiting its small land.

[10] Before proceeding to the hearing on merits of the case, the Court notices that due to the importance of the legal issues to be examined in this case, it is imperative for individuals, public entities and non-governmental organisations who wish to intervene as Amicus curiae to apply for leave to do so through the Court Registry and file their submissions thereafter.

[11] Following the reception of submissions from different persons seeking leave to intervene in this case as Amicus curiae, The Court analysed them and decided that the following applicants meet the requirements and are allowed to intervene as Amicus curiae: School of the Law/University of Rwanda, Transparency International Rwanda, Counsel Dieudonne NZAFASHWANAYO, Counsel TWIRINGIYEMUNGU Joseph and NTIBAZIYAREMYE Innocent and filed their submissions on the petition of MURANGWA Edward as it will be demonstrated.

[12] The hearing was held on 1/11/2019, MURANGWA Edward represented by Counsel RUGEMINTWAZA Jean Marie Vianney and Counsel Bahati Vedaste, the State Attorney were Counsel Cyubahiro Fiat and Counsel Ntarugera Nicolas, the School of Law/University of Rwanda represented by

Turatsinze Emmanuel, Bagabo Faustin and Habimana Pie, Transparency International Rwanda represented by its Chairperson, Ingabire Marie Immaculée assisted by Counsel Habumuremyi Anglebert. Present also were Counsel Dieudonne Nzafashwanayo, Counsel Twiringiyemungu Joseph and Ntibaziyaremye Innocent.

II. LEGAL ISSUES AND THEIR ANALYSIS

Whether articles 16 and 17 of Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities contravene articles 15 and 16 of the Constitution of the Republic of Rwanda

[13] MURANGWA Edward and his Counsel argue that article 10, paragraph 5 of the Constitution of the Republic of Rwanda provides that "The State of Rwanda commits itself to build a State committed to promoting social welfare and establishing appropriate mechanisms for equal opportunity to social justice" and the paragraph 6 provides that "The State of Rwanda commits itself to a constant quest for solutions through dialogue and consensus". They aver that these principles are upheld in article 15 of the Constitution which stipulates that "All persons are equal before the law. They are entitled to equal protection of the law" and article 16 states that all Rwandans are born and remain equal in rights and freedoms without any form of discrimination[2].

[2] All Rwandans are born and remain equal in rights and freedoms. Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language,

[14] They explain that articles 16 and 17 of Law N° 75/2018 of 07/09/2018 aforementioned violate the fundamental principles enshrined in articles 15 and 16 cited above because apart from oppressing those in the category of residential buildings, they also provide for the high tax rate for the same category which is of low-income earners compared to the category of commercial and industrial buildings upon which a low tax rate is imposed while they are high-income earners, to extent that it can affect the national housing policy.

[15] They aver that if someone opts to construct a residential building, another one opts to construct a commercial building and another to construct an industrial building, they should all be equally treated as investors, thus differentiating them to impose the tax is irrelevant yet all people are equal before the law, rather each one should pay tax basing on his/her income because someone who developed an estate earns more than the owner of small industry.

[16] Murangwa Edward and his counsel add that the legislator under article 17 highlighted the modalities under which the annual tax rate will progressively apply, but he did not motivate the grounds underlying the tax increase, instead, the appropriate course of action would be to establish a person's profit for the first and second years and such profit would constitute the base for the tax progressive rate, otherwise the legislator's action tantamounts to the impoverishment of the citizens.

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economic status, physical or mental disability or any other form of discrimination is prohibited and punishable by law.

[17] Turatsinze Emmanuel, Bagabo Faustin, and Habimana Pie, on behalf of the School of Law/ University of Rwanda, argue that all State policies which do not uphold its commitment to promoting social welfare contravene the Constitution.

[18] They contend that article 16 violates the principle of building a State committed to promoting social welfare and establishing appropriate mechanisms for equal opportunity to social justice because that article provides for high tax on residential buildings instead of commercial buildings that generate high income. They submit that the fact that a residential house is constructed for income generation and a commercial building for rental purposes does not constitute a valid reason for imposing a tax on those buildings differently, especially that they are constructed for income generation. They further submit that the fact that such an article provides for high tax for residential houses will discourage the estate developers while the are still those in need of residential houses and it does not support the national housing policy.

[19] They aver that normally taxation policy should correspond to the rights of taxpayers-the citizens, and the distribution of national resources so that the tax should not become a burden to the citizens, but according to their analysis the tax for residential building is double of the tax for commercial building and ten times that of an industrial building and this is contrary to the principle of equal opportunity for social justice with equal rights; the taxation policy should not be perceived as a way of only collecting financial resources, instead, it should be a system of safeguarding the citizens' welfare. They contend that the reason of promoting cities and industries mentioned in the preamble of the law is not relevant

because even if such tax will be a burden to the developers of rental houses, it will not preclude a few to build such houses and it will be a burden to the tenants, also industrial and commercial buildings cannot contribute to the development of the cities when there is lack of residential houses.

[20] They refute the reason mentioned in the preamble that the grounds for the taxation policy is based on the fact that Rwanda is the one with the lowest tax rate in the Region because in the Region Rwanda is ranked fourth as regards to GDP, the increase of the tax rate while it is evident that a citizen has meagre income will deprive him/her of purchasing power. They give the example of Kenya where GDP per capita is 1507 USD per annum while it is 780 USD in Rwanda, and this demonstrates that the preamble is misleading.

[21] They maintain that the tax rate should be identical for taxpayers of the same category or with the same indicator, it is unfair to charge identical tax to the taxpayers of different categories when the tax administration did not indicate the serious grounds for differentiation among taxpayers.

[22] They assert that article 17 serves to implement the provisions of article 16 to the degree that the unconstitutionality of article 16 occasions the repealing of article 17 given that what it serves to implement is misleading. They conclude by submitting that both articles are contrary to articles 15 and 16 of the Constitution on the ground of discrimination among taxpayers and violate the principle guaranteeing the State commitment for equal opportunity for social justice.

[23] Ingabire Marie Immaculée and her Counsel on behalf of Transparency International Rwanda assert that they concur with

the petition against articles 16 and 17 of the Law n° 75/2018 mentioned herein above on grounds of discrimination among the owners of residential and commercial buildings because they contravene the principles guaranteed by the Constitution. According to them, the spirit of article 16 denotes that the legislator focused on the promotion of investment, however, it was not necessary to differentiate residential and commercial buildings, because he disregarded the need of most of Rwandans for residential houses and the State commitment for affordable housing for all Rwandans by enabling them to access housing. Therefore, the tax provided for by that article is excessive and detrimental to the citizens' welfare and the National Housing Policy of 2015[3], hence it is contrary to article 10, paragraph 5 of the Constitution.

[24] Moreover, they aver that the provisions of articles 17 are similar to those of article 16 mentioned in the preceding paragraph, which elucidates that it is also discriminatory and infringes upon the citizens' welfare because it provides for the taxation procedure. It is in that regard they advance that in case article 16 is repealed, article 17 should also be repealed because as such it will have no purpose to serve, consequently both articles should be repealed. It is in their stance that the legislator determined that the tax shall be paid in different rates is a piece of evidence enough to prove his awareness that the tax rate is high in contrast to Rwandans ability to pay, such procedure did not benefit Rwandans, and the right course of action would be to refrain from imposing such tax.

[25] Ntibaziyaremye Innocent asserts that the tax on residential buildings should not be different from that of

[3] Ministry of Infrastructure, National Housing Policy, 2015.

commercial buildings given that each person opts among the two a business of his/her choice. He adds that the tax should gradually decrease in proportion to the depreciation rate of the building, and such tax be calculated after the owner has completely paid the loan incurred to buy the plot of land or for constructing the house or to determine the value of the property by deducting the construction loan incurred by the owner up to its full payment. He says that the tax on a building should be proportional to its depreciation rate because, within 100 years, a person is likely to pay a tax higher than the value of the house he/she is paying the tax for, and thus he notices that such tax is excessive and detrimental to the citizens.

[26] He submits that several taxes (land tax, rental income tax, and property tax) should not be imposed on the same property given that many taxes harm the taxation system. He is of the view that a building itself is such a burden that it should not be taxed as provided for by Law n°75/2018, rather the tax should be imposed on the income it generates, especially in a case where a person may construct additional house purposely to assist indigents, for example, a house constructed by a child for his/her parents after studies as a way of acknowledging their efforts in underwriting for his/her tuition fees, but the house is not registered in the parents' names for avoiding its inheritance by others.

[27] In his response, the State Attorney rebuts the allegations according to which articles 16 and 17 of Law N° 75/2018 of 07/09/2018 mentioned above violate the principle of protection from discrimination provided for by the Constitution on grounds that this tax is the tax property and the categorization concerns the buildings, not the owners, moreover the categorization of

buildings for taxation purpose does not constitute discrimination based on the economic categories. The State Attorney adds that even if such is construed as taxpayers' categorization, it does not necessarily amount to discrimination, especially if such categories were determined for the achievement of reasonable, manifestly evident, and legitimate purpose and the grounds for such categorization underlie the public interest.

[28] He furthermore submits that it is baseless to allege that a high tax was imposed on residential houses in comparison to the commercial and industrial buildings while the owners of residential houses are low-income earners, for the following reasons:

> a) Those who support such allegations did not carry out a survey to demonstrate that the owners of residential houses are low-income earners in comparison to the owners of commercial buildings.
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> b) Even if the owners of residential houses are low-income earners, this cannot justify the allegations according to which this taxation policy is discriminatory because there are different taxation procedures (proportional, progressive, and regressive) in accordance to the taxation policy, the national economy and development goals.

[29] The State Attorney reminds that one building whose owner intends for occupancy for dwelling purposes and its annex buildings located in a residential plot for one family are exempted from the tax (art 12) while commercial and industrial buildings are not exempted from tax, the reason why other residential buildings can be considered as luxury, a piece of

evidence that he/she is wealthy so that he/she cannot be considered as a low-income earner.

[30] Counsel Twiringiyemungu Joseph asserts that any promulgate tax is legal because it is determined by a law providing for who will be the taxpayers and tax collection modalities to the degree that it is difficult to challenge the constitutionality of such tax as its enactment is based on the Constitution. He submits that not all laws need to always have a general scope; he gave the example of the law establishing the general statutes for public service that exclusively governs public servants employed permanently.

[31] He contends that taxation laws provide for the taxpayers' categories in accordance with the intended policy, for example, article 21 of Law Nº 016/2018 of 13/04/2018 establishing taxes on income states that the income earned from agricultural activities is exempt if the turnover does not exceed 12.000.000 Frw, while a lawyer who earns 12.000.000 Frw pays the tax, such procedure does not tantamount to discrimination, consequently, he finds that articles 16 and 17 do not contravene the Constitution.

DETERMINATION OF THE COURT

[32] In determining whether article 16 of Law n° 75/2018 of 07/09/2018 is contrary to articles 15 and 16 of the Constitution, it is necessary to analyze their spirit and difference. As held in the case No RS/SPEC/0001/16/CS pronounced by this Court on

23/04/2016[4], articles 15 and 16 of the Constitution are complementary to the extent that it is barely impossible to separately interpret their spirit. As motivated in that case, article 15 states that all persons are equal before the law and they are entitled to equal protection of the law. Implying that any form of discrimination that can hinder the equality before the law and the rights to which all persons are entitled is prohibited. Article 16 complements by providing how any kind of discrimination is prohibited by the Constitution. Both articles enshrine the same principle with two complementary points.

[33] The international conventions ratified by Rwanda uphold the complementarity of the principle of equality before the law and the principle of equal protection of the law. Article 7 of the Universal Declaration of Human Rights, 1948, states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and any incitement to such discrimination". Article 26 of the International Covenant on Civil and Political Rights, 1966, states that "All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinions, national or social origin, property, birth, or another status".

[34] In simple terms, equality before the law means that all persons are equally treated before the law without inequality,

[4] Case RS/SPEC/0001/16/CS AKAGERA BUSINESS GROUP (ABG), para. 15.

nor discrimination and the newly enacted law treats equally its subjects. Erwin Chemerinsky puts that "Things that are alike should be treated alike, and unalike things should be treated unalike in proportion to their unalikeness[5]".

[35] Much as people are equal before the law, the differentiation or categorization thereof does not necessarily tantamount to discrimination. Differentiation or categorization of persons may be necessary given the intent, legitimate or rational purpose. In that respect, the Human Rights Committee observed that "The right to equality before the law and equal protection of the law without any discrimination, does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26[6]".

[36] Even if the differentiation of persons is allowed as explained in the preceding paragraph, their differentiation on basis of the grounds laid down under article 16[7]the law of the Constitution is prohibited. The Human Rights Committee does not recognize the differentiation based on the grounds enumerated in article 26 of the International Covenant on Civil and Political Rights. The same was upheld in Muller and Engelhard v Namibia case "A differentiation based on reasonable and objective criteria does not amount to prohibited

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[5] Erwin Chemerinsky, In Defense of Equality: A Reply to Professor Westin, 81 MICH. L. REv. 575, 578 n.17 (1983).

[6]Communication No 172/1984 S.W.M. Broeks v The Netherlands (views adopted on 9 April 1987) in UN Doc. GOAR, A/42/40 P.150, para 13.

[7] Based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by

discrimination within the meaning of Article 26. Different treatment based on one of the specific grounds enumerated in Article 26, clause 2 of the Covenant, however, places a heavy burden on the State party to explain the reason for the differentiation[8]".

[37] Article 16 of Law N° 75/2018 of 07/09/2018 establishes the tax rate on residential buildings which is different from the tax rate on commercial, industrial buildings, and other buildings intended for other activities not specified in this Article. The Court finds that, according to the nature of article 16 indicated in this paragraph, there is a differentiation of tax rates levied on the buildings based on their purposes (residence, commerce, industry, and other). The State Attorney explained that such differentiation is based on the State policy of promoting commercial buildings more than residential houses.

[38] As held in the case RS/SPEC/0001/16/CS[9] pronounced by this Court on 23/04/2016, equality before the law and protection from discrimination does not mean that the differentiation of persons is always discrimination. Differentiation or categorization of persons can be necessary because of the objective, legitimate or rational purpose. In this case, the differentiation of tax rates is based on the State's policy of promoting commercial buildings more than residential houses as asserted by the State Attorney in his rejoinder in the hearing.

[39] As regards taxation, the legislator has the freedom to categorize taxpayers because he is in the right position more

[8] HRC, Muller, and Engelhard v Namibia (Communication No. 919/00), para 6.7.
[9] Case RS/SPEC/0001/16/CS AKAGERA BUSINESS GROUP (ABG)

than the judge to know the needs of the citizens and the State onto to which he bases himself to determine if the categories and rates of tax and he reserve all the discretion to do so unless it is manifestly clear that he did as a result of discrimination with the intent of harming particular persons. The similar statement was upheld by the Supreme Court of the United States in Regan v. Taxation with Representation of Wash case wherein the Court declared that "[T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it[10]". The Court finds that the promotion of commercial and industrial buildings is a valid and lawful reason as the applicant and supporting Amicus curiae did not demonstrate that the intent was the discrimination of taxpayers to the detriment of the owners of residential buildings.

[10] Supreme Court of the United States, Regan v. Taxation with Representation of Wash., 461 U.S. 540. See also Madden v. Kentucky, 309 U.S. 83, 87-88 (1940)

[40] For the public interest, the State can classify taxpayers to promote a particular category and discourage what is not needed, but such should be done in avoidance of the discrimination and the categorization which oppress particular persons. The similar statement was upheld the Supreme Court of the United States Bell's Gap Railroad Company v. Pennsylvania, whereby the Court declared that "It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property differently; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are unusual, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition[11]". This indicates that differentiation or classification in taxation is a practice that is not contrary to the Constitution unless it is done based on kinds of discrimination provided under article 16 of the Constitution.

[41] Concerning the submission of Murangwa Edward and supporting Amicus curiae who advanced that the imposition of the high tax rate on residential buildings will differently prejudice particular persons, the Court notices that this issue cannot be handled by analyzing the unconstitutionality of laws, but it should be assessed in the framework of public policy, an

[11] Supreme Court of United States, Bell's gap railroad company v. Pennsylvania, 134 U.S. 232 (1890).

attribution that falls under the responsibility of the State. The observations on that policy, the areas of improvement, the gaps therein, and other related issues should be submitted to the organ competent to decide on it. The Courts have the powers of adjudicating cases and other State branches have their powers provided for by the Constitution and other laws.

[42] In respect of the principle of the separation and independence of the three State branches[12], the Court cannot solely decide on the unconstitutionality of law based on different understandings, the criticisms, the unfair aspects of law, or its impugned articles that are sought to be repealed. The petitioner should prove that a law or its articles on categories are directly or indirectly unconstitutional. In this particular case, the Court finds that the tax rates on buildings have been determined in the framework of public policy implementation. The similar statement was upheld by the Supreme Court of the United States in Tax Commissioners v. Jackson case wherein the Court declared that "It is not the function of this Court in cases like the present to consider the propriety or justness of the tax, to seek for the motives or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified[13]".

[43] Concerning the fact that article 16 of Law n°75/2018 of 07/09/2018 is discriminatory, article 16 of the Constitution enumerates the grounds underlying the discrimination. Generally, discrimination is the differentiation of persons to

[12] Article 61 of the Constitution of the Republic of Rwanda of 2003 revised in 2015

[13] U.S. Reports: Tax Commissioners v. Jackson, 283 U.S. 527 (1931).

deprive some of their opportunities to the advantage of others. In this case, there are tax rates on residential, commercial, and industrial buildings. Among those categories, none of them is based on the grounds underlying the discrimination as enumerated in the Constitution.

[44] Even if article 16 enumerates the grounds underlying the discrimination, it adds the statement “or any other form of discrimination". Murangwa Edward does not indicate any other criterion of classification that would tantamount to discrimination. As explained, discrimination is the differentiation of persons to deprive some of their opportunities to the advantage of others. In this case, article 16 was not enacted to deprive particular persons of their opportunities and advantage others. As explained above, there were established different tax rates on building categories in order to promote commercial and industrial buildings. Such policy does not tantamount to discrimination to warrant a conclusion that article 16 of Law n° 75/2018 of 07/09/2018 is contrary to article 16 of the Constitution.

[45] Basing on the motivations provided in the preceding paragraphs, the Court finds that article 16 of Law n° 75/2018 of 07/09/2018 determining the tax rate on building categories denotes the differentiation based on the purpose of that building. As explained above, such differentiation is based on a legitimate ground related to the promotion of commercial buildings. Article 16 does not contain any form of discrimination. Consequently, the Court concludes that it is not contrary to articles 15 and 16 of the Constitution of the Republic of Rwanda.

[46] Much as the Court does not have the responsibility nor power to examine the grounds based on in determining the tax rate on residential buildings as explained, it would be prudent for the State to meticulously reconsider the various obstacles that would emanate from the enforcement of article 16 as indicated by Murangwa Edward and Amicus curiae who supported his stance. Among the obstacles to be examined include the fact that the rate of 1% of the value of a building is too high; the fact that the taxable value of a building is comprised of the value of the building itself and the value of the plot whereon the building is constructed while there is separate tax exclusive on land; matters related to the building constructed on outstanding loans; the houses constructed for parents; the buildings constructed but not in use or which cannot be used for particular reasons so that it is difficult to get the tax for such buildings; the fact that the building tax is imposed on basis of the market value without taking into account of its depreciation.

[47] Murangwa Edward prays the Court to repeal article 17 which serves to enforce the provision of article 16 which is contrary to the Constitution. The Court finds that to repeal or to maintain article 17 because of the unconstitutionality of article 16 is an issue related to legal drafting, not to the unconstitutionality.

[48] Article 17 provides that tax rates on buildings will be progressively applied, which is not contrary to the Constitution, rather it is a procedure set by the legislator for facilitating taxpayers to pay the new tax, starting by the low tax and the tax rates are progressively applied as provided for by that article. The Court finds that the tax on the building should be determined in respect of the principle of the equality before the

law provided for by article 15 of the Constitution, nothing precludes its payment according to the modalities provided for by article 17 of Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities.

Whether article 19 of Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities contravenes article 15 of the Constitution of the Republic of Rwanda.

[49] Murangwa Edward and his Counsel contend that article 19 providing for the tax rate on land exceeding the standard size of a plot of the land states that "The tax rate determined by the District Council per square meter of land in accordance with the provisions of Article 18 of this Law[14] is increased by fifty percent (50%) applicable to land in excess to standard size of a plot of land meant for construction of buildings.
The standard size of the plot of land meant for construction of buildings is determined by an Order of the Minister in charge of housing.
Additional tax rate as referred to under Paragraph One of this Article does not apply to the plot of land acquired before the commencement of this Law".

[50] They aver that such article contravenes article 15 of the Constitution which reads that "All persons are equal before the law. They are entitled to equal protection of the law", in consideration of the different modalities of transfer of land

[14] Article 18 states that "The tax rate on a plot of land varies between zero (0) and three hundred Rwandan francs (FRW 300) per square meter. The District Council determines the tax rate on a square meter of a plot of land based on criteria and standard rates set by an Order of the Minister in charge of taxes".

rights in Rwanda including gift, succession, inheritance, sale, there is no equal protection for those who acquire the land before and after the publication of Law N° 75/2018 against which a claim has been filed.

[51] They further adduce examples corroborating the unconstitutionality of such article, for instance, a child who got the plot of land as a gift and registered in his/her names in 2018 before the entry into force of this article and his/her relative who got and registered it in his/her names in 2019 after this article is into force. Even if they got the plots of land from their parents and those plots have the equal surface, both children are not subjected to pay the same tax, the child who got the plot of land in 2019 will pay the tax increment 50% provided for under paragraph 2 of article 19, meaning that they are not entitled to equal protection of the law pursuant to article 15 of the Constitution.

[52] They cite another example of the land managed by the guardian of minors where the land is registered on the guardian that in the due time when each child had had his/her plot of land registered on him/her (after 2019), and after the entry into force of this law, each child will be obliged to pay a tax of 50% for the land exceeding the standard size of a plot of land, while their relatives who were adult before the enforcement of this law are not concerned with an additional tax of 50%, thus ostensibly clear that this law does not guarantee them the equality and the equal protection as provided for by article 15 of the Constitution mentioned above.

[53] They conclude by pointing out that the provision of article 19 related to the fact that the law does not apply to persons who got the plot of land before its publication while a

published law applies collectively to everyone, one would wonder whether being born before the enactment of the law confers more rights above other Rwandans.

[54] Turatsinze Emmanuel, Bagabo Faustin, and Habimana Pie, on behalf of the School of Law/University of Rwanda, sustain that article 19 which is sought to be repealed contravenes article 15 of the Constitution because imposing differentiated taxes on plots of land on basis of the period of acquisition by the taxpayer does not constitute a valid ground for the differentiation.

[55] Concerning the plot of land acquired before or after the application of the law, they argue that the principle of non-retroactivity of law relied upon by the State Attorney as a ground for differentiation of plot owners, such ground should not be envisioned in terms of the period the plot was bought or put to use, rather it should be approached in the light of the period when the right over land was effective (the time when the land was started to be used).

[56] Ingabire Marie Immaculée and her Counsel, on behalf of Transparency International Rwanda, contend that article 19 is problematic to the Citizens as regards the procedure to follow in case of the plot of land bought or inherited from its owner, whether the buyer or the inheritor must firstly proceed by subdivision and to reflect on the grounds upon which the legislator differentiates between the actual and potential owners of land, the owners of large and small land.

[57] They uphold that article discriminates between the owners of large and small land. Irrespective of the acquisition modalities, large land ownership should not raise any problem,

instead of imposing a tax on the owner. They consider this tax as punishment and it is illegal because punishment follows the failure to discharge an obligation or the performance of a prohibited act.

[58] The State Attorney sustains that article 19 does not violate the principle of equality before the law provided for under article 15 of the Constitution and the principle of equal protection of the law provided under article 16 on backdrop that article 19 serves to emphasize other legal principles, mostly the principles of fair justice and non-retroactivity of a law.

[59] The State Attorney explains that the differentiation of taxpayers must not be considered a violation of the principle of equality before the law when there is a legitimate and rational purpose to do so. He submits that the principle of equality before the law has other principles connected to it and these include equal treatment in equal circumstances, the preferential treatment, the specificity, and special rules.

[60] Counsel Twiringiyemungu Joseph argues that the additional tax rate provided for under article 19 is a common practice; he cites an example of the income tax according to which a tax of 20% is imposed on a salary of Frw 100.000 and below, where a tax of 30% is imposed on a salary of and above Frw 100.000. In that light whoever exceeds the standard size provided for by the law shall be liable accordingly. Regarding the fact that article 19 states that the additional tax rate does not apply to the plot of land acquired before the commencement of the Law, he submits that this is in line with the protection of the inviolable right acquired before the publication of the law, that a new law cannot encroach on the right acquired before its commencement.

DETERMINATION OF THE COURT

[61] Article 19 includes the following ideas: (1) the standard size of a plot of land meant for construction of buildings[15] will be set; (2) the owners of plots of land which do not exceed the standard size will pay a tax varying between zero (0) and three hundred Rwandan francs (FRW 300) per square meter; (3) the tax rate for the land in excess to standard size will be increased by 50%; (4) additional tax rate of 50% does not apply to the plot of land acquired before the publication of the Law n°75/2018 of 07/09/2018 in the Official Gazette on 29/10/2018.

[62] According to Murangwa Edward who filed the application, the questionable part of article 19 is the one that is related to the fact that the tax rate of land in excess to standard size will be increased by 50% and the fact that the additional tax rate of 50% does not apply to the plot of land acquired before the publication of the Law n°75/2018 of 07/09/2018 in the Official Gazette on 29/10/2018. It is in this context that the applicant notices that this article is discriminator in as far as that it provides for differentiated tax on the plots of land with equal surface and that the owners of the land in excess to standard size acquired before the publication of the Law n°75/2018 of 07/09/2018 will not pay the additional tax rate of 50% which will be applied to those who will acquire the land in excess to standard size after the publication of the law.

[63] The issue for determination is whether the differentiation contravenes the principle of equality before the law provided for under article 15 of the Constitution. In other words, to determine whether paying for the land in excess to standard size

[15] It will be determined by an Order of the Minister.

a tax of 50% as additional tax rate in comparison to the tax paid for the plots of land which do not exceed the standard size and the fact that those who acquired the plots of land before the publication of the law do not pay the additional tax contravene article 15 of the Constitution.

[64] As explained in the preceding paragraphs, the differentiation based on legitimate and rational purpose is not considered as inequality before the law. Whether it is article 19 of Law n° 75/2018 of 07/09/2018 in general, there is no valid ground to justify the imposition of the additional tax rate for the land in excess to standard size. The arguments of the State Attorney that the differentiation intended to encourage the construction of buildings on the plots not exceeding the standard size to be determined and to uphold the principle of non-retroactivity of law are baseless because the non-retroactivity of a law insinuates non-payment of taxes effective from before the publication of the law. The payment of tax on the property owned before the publication of the law is not contrary to the principle of non-retroactivity of a law.

[65] Article 10 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda stipulates that "Private individual land shall comprise land acquired through custom or written law. That land has been granted definitely by competent authorities or acquired by purchase, donation, inheritance, succession, ascending sharing, and exchange or through sharing". This article indicates the modalities for land acquisition. The same modalities enumerated in article 10 apply for the acquisition of land meant for construction of buildings. In case of transfer of land exceeding the standard size based on one of the grounds enumerated in this article and performed

after the publication of the Law n° 75/2018 of 07/09/2018, only then the additional tax rate of 50% is applied.

[66] Article 19 of the Law n° 75/2018 of 07/09/2018 provides that the standard size of the plot of land meant for construction of buildings is determined by an Order of the Minister in charge of housing. This Order mentioned in article 19 can determine the standard size inferior to those determined before it enters into force. This elucidates that the difference of the standard sizes of the plots meant for construction depends on the development in the amendment of the laws on that issue. Any transfer performed on the plot of land exceeding the standard size provided for by the Order, but in respect of the law into force by the acquisition period, may warrant the owner to pay an additional tax rate of 50% occasioned by the reasons beyond his/her control, -reasons dependent on the evolution in the amendment of the law.

[67] For those who will acquire plots of land in accordance with the sizes determined by an Order of the Minister stated under article 19 of the Law n°75/2018 of 07/09/2018, it would be contrary to the principle of equality before the law if a differentiated tax is imposed on the plots with an equal surface, closely located in the same area, some being subjected to an additional tax rate of 50% solely on the grounds that they were acquired before or after the publication of the Law n° 75/2018 of 07/09/2018 in the Official Gazette.

[68] In the similar case Nordlinger v. Hahn rendered by the Supreme Court of the United States, the applicant filed a claim seeking the repealing of the law providing for the high tax for those who acquired houses after that law in comparison to those who already had them, the majority of judges decided that such

procedure cannot be considered as inequality. According to the dissenting opinion of Judge John Paul Stevens, […] "it is irrational to treat similarly situated persons differently based on the date they joined the class of property owners. [….] Similarly, situated neighbors have an equal right to share in the benefits of local government. It would be unconstitutional to provide one with more or better fire or police protection than the other; it is just as unconstitutional to require one to pay five times as much in property taxes as the other for the same government services. In my opinion, the severe inequalities created by Proposition 13 are arbitrary and unreasonable and do not rationally further a legitimate state interest[16] […]". This Court concurs with the dissent of Judge Stevens, the tax rate for plots of land meant for construction of buildings should be identical for the plots with the equal surface, located in the same area, regardless of the acquisition period. It is this kind of procedure that respects the principle of equality before the law.

[69] The Court finds that the fact that the Law n° 75/2018 of 07/09/2018 provides for the tax on plots of land meant for construction of buildings is not problematic because, pursuant to articles 3 and 18 of that Law, the tax on plots of land meant for construction of buildings is one of the sources of the revenue and property of decentralized entities. The Court observes that the tax rate should be identical and those with extra land should pay excessive tax given that the taxable land is also large. This procedure complies with the principle of vertical equity

[16] Supreme Court of the United States, Nordlinger v. Hahn, June 18, 1992, 112 S. Ct. (1992).

according to which those with higher income, or higher ability to pay, should pay a greater amount of tax[17].

[70] On basis of the explanations provided in the preceding paragraphs, the Court is persuaded that the imposition of additional tax provided for by the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities, does not equally treat the taxpayers without legitimate grounds, such procedure is contrary to the principle of equality before the law provided for under article 15 of the Constitution, consequently, that article has no effect pursuant to article 3 of the Constitution which states that any law contrary to the Constitution is without effect.

Whether article 20 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities contravenes the articles 34 and 35 of the Constitution of the Republic of Rwanda.

[71] Murangwa Edward and his Counsel aver that article 20 providing for the tax rate for undeveloped plot of land which states that "Any undeveloped plot of land is subject to an additional tax of one hundred percent (100%) to the tax rate referred to in Article 18 of this Law" is contrary to articles 34 and 35 of the Constitution which stipulate that everyone has the right to immovable property and land and it is inviolable, consequently such article should be repealed.

[72] They submit that Rwandans are the first category of a national resource, the second category is the land they occupy,

[17] Levell, P., Roantree, B., & Shaw, J.). Mobility and the Lifetime Distributional Impact of Tax and Transfer Reforms, 2016, p 32.

exploit and which is the source of their livelihood, therefore the fact that this article provides for an additional tax of 100% for the undeveloped plot without considering whether the owner can pay such tax, indicates that it is excessive and it will be outstanding for many persons. They argue that the fact that MURANGWA Edward filed a petition does not mean that he opposes the determination of such tax because he acknowledges that the tax is the source of national development as provided for under article 18 of the law mentioned above determining the sources of revenue and property of decentralized entities, nor does he question the increase from 0-80 Frw per square meter provided under the former law to 0-300 Frw per square meter provided under the new law, instead he challenges the additional tax of 100% for an undeveloped plot of land which was imposed without considering the reason for which the owner does not develop it because the owner of a plot of land can lack means to develop it.

[73] They further submit that the fact that the tax was increased to 300%, it was not necessary to increase it again to 100% without considering the reason for which the owner does not develop the plot. Concerning the argument of the State Attorney who sustains that the purpose of such tax is to discourage those who accumulate plots, Murangwa Edward and Counsel rebut that such procedure was not the appropriate one to be applied on Rwandans, especially given that there are instructions which dictate that an owner of the plot of land not developed for its purpose will be dispossessed of it, such instructions discourage the accumulation of plots of land and considering that Rwandans have modest means.

[74] They moreover sustain that the persons cited in the categories above will finally be unable to pay such tax, as consequence article 44 of the Law governing land in Rwanda which states that "In case the lessee does not comply with the lease contract obligations other than those stipulated in article 38 of this Law[18], the lessor may terminate the lease after a written warning notice of fifteen (15) working days, without any other formalities" will be applied, thus all those persons will be dispossessed of their land due to the tax arrears.

[75] They demonstrate that their argument is based on the Constitution which provides for the inviolable right to the property and that right is protected by the Constitution in articles 34 and 35. Article 34 states that "Everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law". Article 35 states that "Private ownership of land and other rights related to land is granted by the State. A law determines modalities of concession, transfer, and use of land".

[76] They aver that the fundamental principles of taxation including the ability to pay and tax certainty are important to enable taxpayers to willingly pay tax. Therefore, they submit

[18] The article 38 provides for servitudes as follows "The landowner shall not act against other people's rights. In that regard he/she shall not:
1° refuse passage to his/her neighbours leading to their parcels when there is not any other way. However, for other passage, this should be convenient for both parties;
2° block water that is naturally flowing through his / her land;
3° refuse other people to access water from a well found on his or her land unless he or she can prove that such a well has been dug by him or her."

that given that the right to immovable property and land is inviolable and taking into account the principles of taxation, they observe that article 20 of the law mentioned above which provides for the tax increase of 100% on the undeveloped plot of land irrespective of the reason for which the plot is not developed is inconsistent with the rights enshrined under articles 34 and 35 of the Constitution and the rights protected by the international conventions ratified by Rwanda (Universal Declaration of Human Rights, art.17, paragraph 1 which states "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property"). Hence, he prays the Supreme Court to use its discretion and powers bestowed on by the law to repeal article 20 which is inconsistent with the Constitution.

[77] They conclude by praying the Supreme Court that, in examining the petition filed by MURANGWA Edward, in its discretion, the impugned articles be analyzed in light with the Rwandan society livelihood, the essence of immovable property in Rwandan society, the value of the land in Rwandan society before the introduction of written laws and establishment of master plans, even the consequences of confiscation of the immovable property on Rwandans who are unable to pay the additional tax of 100%.

[78] Turatsinze Emmanuel, Bagabo Faustin, and Habimana Pie, on behalf of the University of Rwanda/School of Law, support that the principles enshrined in the Constitution mainly preserve the social welfare, especially article 10 which provides for building a State committed to promoting social welfare and equal opportunity to social justice, the State has the responsibility to ensure the social welfare as provided for under

laws and international conventions. They aver that the report of National Housing Policy indicates that 83% depend on rent, they wonder on the consequences of the tax increase on Rwandans because each landlord will increase the rent without disregarding that when a tax becomes a burden to the citizens, it also affects the State because properties are concealed and it is obvious that tax fairness facilitates tax payment.

[79] They point out that articles 19 and 20 seem to be punitive because they respectively provide for an increase of 50% and 100%, this is contrary to the legal general principles, given that one is punished in case of failure to perform any obligation legally stated or the performance of an act legally prohibited. One wonders what the citizens in this case omitted or committed to be penalized. This violates the principles governing the social welfare and the citizen will bear the tax burden given that one who paid tax for his/her plot when selling the plot, he/she will add the tax and the tenant will add the same tax, thus making the cost of living high.

[80] They maintain that the taxes are among factors that enable the State to fulfill its obligation of ensuring social welfare, but it cannot achieve social justice when the citizens do not have the right to property, equal opportunities, and when they are not equal before the law.

[81] Dieudonne Nzafashwanayo as Amicus curiae, argues that article 20 of the Law n° 75/2018 mentioned above contravenes articles 15 and 16 of the Constitution and it discriminates the owner of a developed plot of land from the owner of the undeveloped plot of land who is requested to pay an additional tax of 100%. He adds that article 20 infringes on the rights provided for under articles 34 and 35 because the

owner can be dispossessed of the plot of land when he/she fails to pay tax, therefore it was enacted without taking into account the effects it will have on the owners of undeveloped plots of land.

[82] He submits that through the enactment laws the State is empowered to obstruct the rights provided for under articles 15, 16, 34 and 35 of the Constitution through taxation purposely for its functioning, but he notices that article 20 does not serve that purpose, because if it was the intended purpose, the State would have provided for such tax in accordance with the ability of taxpayers. He further states that such an article was not mandatory to overcome the issue related to speculation on plots of land given that such issue is addressed by article 58 of the Law governing land which states that the land is confiscated when there are no tangible reasons of its not being exploited.

[83] He furthermore asserts that the issue of tax determination was settled by the African Court on Human and Peoples'Rights and its decisions corroborate the statements of Adam Smith in his book, *Inquiry into the Nature and Causes of the Wealth of Nations*[19], they concurred that tax is determined purposely to enable the State to address the citizens' needs and the tax should be determined in accordance with the ability of taxpayers; for that reason, he notices that the tax provided for under article 20 was determined without putting into consideration those opinions.

[84] He also argues that a plot of land can be undeveloped because of the regulation of master plan, without any relation

[19] Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, Lausane, 2007, p. 639.

with the owner's ability and article 20 should not have provided for the land to be confiscated for being unexploited while article 58, paragraphs 3 and 4 provides for the land which cannot be confiscated for not being exploited and its location. He states that the legislator can discourage a given behaviour through taxation, however, the tax should not be confiscatory nor a burden on the taxpayer.

[85] He asserts that the State can impose a tax for a legitimate purpose and use the adequate procedure for achieving the intended purpose. He concludes that if the Court puts into consideration those principles it will find that article 20 which is sought to be repealed can cause the deprivation of the right to the property for those who fail to pay tax.

[86] Ingabire Marie Immaculée, on behalf of Transparency International Rwanda as Amicus curiae, asserts that she generally supports the taxation as the tax benefits the citizens, but it should not be detrimental to their social welfare. Article 20 of the Law n° 75/2018 mentioned above violates the right to private property of the land because the tax provided for by that article is a burden to low-income earner as it seems to be a penalty for the owner of an undeveloped plot of land resulting from lack of means and in case he/she is unable to pay that tax, the consequence will be to auction his/her property including that land to recover the tax, and therefore he/she would be deprived of the right to property enshrined in article 34 of the Constitution.

[87] She advances that the legislator set the tax provided for by article 20 as a harsh sanction of 100% without taking into account the reason for which the plot of land is undeveloped to the extent that the provisions of that article encroach upon the

social welfare of the citizens, mostly the youth, because when a citizen earns some money he/she buys a plot of land and he/she has to wait to get other money for him/her to build a house, thus this tax will not allow him/her to build because the money saved will be used to pay tax. They argue that such tax will impoverish the citizens because if a citizen fails to pay such tax and if his/her plot of land is auctioned, he/she will be destitute, the citizens will lose their property, this will lead to most of them being in the first category of *ubudehe*.

[88] She furthermore avers that some citizens do not have residential houses due to the lack of financial means, thus the legislator did not consider them when enacting this article, nor does he consider a person who bought a plot of land, but later after the introduction of a master plan, the area in which that plot is located was meant for construction of storeyed buildings, the citizen is unable to construct a required building, that means that the plot will continue to be charged tax of 100% and such situation can finally be a loophole for corruption in decentralized entities. She also argues that the legislator did not take into account the reasons why a plot of land can remain undeveloped, which are many and varies. She concludes by praying the Court to repeal the impugned article 20.

[89] Ntibaziyaremye Innocent as Amicus curiae asserts that it is inappropriate to levy a tax of 100% on an undeveloped plot of land because there are different reasons as to why it is undeveloped, especially lack of means. He moreover adds that when a land purpose is modified from agricultural to residential, the owner automatically pays tax while he/she no longer exploit it and he/she bears the burden of paying tax to the extent that

he/she can give it as a heritage to the children and they refuse to take it because they are not able to pay tax arrears.

[90] The State Attorney contends that article 20 does not violate the right to the immovable property and the right to land provided for under articles 34 and 35 of the Constitution because it differentiates the owners who exploit the land for the intended purpose and those who do not do so and the plots are kept undeveloped without being transferred to others who can develop them. Moreover, the State is committed to boosting its development by exploiting the small land it has. He further argues that when a plot of land is developed, a low tax is charged due to depreciation, contrary to the undeveloped plot of land which does not depreciate, instead, its value can increase, this is the reason why these two categories cannot pay the same taxes.

[91] He avers that article 20 does not violate the right to the immovable property and the right to land provided for by the Constitution because the tax does not imply deprivation of the right to private property, nor encroaching upon that property. He submits that, even if it would be considered like that, that principle states that "The right to private property can be encroached upon in public interest and accordance with the provisions of the law", and it is obvious that tax serves the public interest given that it contributes to the development, consequently, imposing tax determined by the law on private property for national development, for developing infrastructures and other activities beneficial to all citizens should not be considered as a violation of the right to private property or the right to private land. He concludes that, based on

the explanations he provided, article 20 which is sought to be repealed is not contrary to the Constitution.

DETERMINATION OF THE COURT

[92] The legal issue to be analyzed in this part is to determine whether the additional tax rate of 100% imposed on an undeveloped plot of land violates the principle of the right to property in general and the right to land in particular.

[93] Article 34 of the Constitution states that "Everyone has the right to private property, whether individually or collectively owned.
Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law". Article 35 states that "Private ownership of land and other rights related to land is granted by the State. A law determines modalities of concession, transfer, and use of land". These two articles enshrine two complementary principles: the first one is the right to private property, the second one is related to the right to land.

[94] These principles are embedded in various international conventions, such as the Universal Declaration of Human Rights, article 17 which provides that "Everyone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of his or her property"[20], European Convention on Human Rights, Protocol No. 1, article

[20] Article 17, Universal Declaration of Human Rights

1[21], American Convention on Human Rights, article 21, African Charter on Human and Peoples' Rights, article 14[22].

[95] Article 20 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities provides that "Any undeveloped plot of land is subject to an additional tax of one hundred percent (100%) to the tax rate referred to in Article 18 of this Law". That article provides that "The tax rate on a plot of land varies between zero (0) and three hundred Rwandan francs (FRW 300) per square meter".

[96] Article 39, paragraph 1 of the Law N^{o} 43/2013 of 16/06/2013 governing land in Rwanda states that "Any person owning land shall exploit it in a productive way and in accordance with its nature and intended use". This article clearly indicates that the landowner has the obligation to properly exploit it. The owner of the undeveloped plot of land violates article 39 because the land should be exploited unless there is a reasonable and legitimate reason for its not being exploited.

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[21] "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

[22] "Everyone has the right to property. No one shall be deprived of his property except in the public interest and in accordance with the law (and upon payment of just compensation".

[97] The Court finds that the tax of 100% added to the standard tax rate emanates from the fact that the landowners do not fulfill that obligation. Exploiting the land is in the public interest of promoting economic sustainable development and social welfare of Rwandans. This concurs with the provisions of article 3 of the Law N^{o} 43/2013 of 16/06/2013 governing land in Rwanda which provides that "The land is part of the common heritage of all the Rwandan people: the ancestors, present and future generations. Notwithstanding the recognized rights of people, only the State has the supreme power of management of all land situated on the national territory, which it exercises in the general interest of all intending to ensure rational economic and social development as defined by law. […] ".

[98] The ground for imposing the additional tax on an undeveloped plot of land raised by the State is to discourage those who acquire plots which they do not exploit for speculation, the Court finds that such ground is reasonable and not contrary to the Constitution, it is also in line with the national policy of small land use and exploitation for the public interest.

[99] Regarding the issue of those who will fail to pay the additional tax of 100% leading to the auction of their land for tax recovery as stated by Murangwa and some of the amicus curiae, that issue can be analyzed in the general context when a taxpayer defaults on tax. As provided for under articles 63 and 64 of the Law N° 026/2019 of 18/09/2019 on tax procedures, if the taxpayer does not pay within the period referred to in the Law, the Tax administration may seize any movable or immovable property of the taxpayer, held by the taxpayer or a third person and such property shall be auctioned. If a taxpayer

fails to pay the tax land within the period referred to in the Law, the tax payment can proceed with the auction of such property that may be the taxable land. The Court finds that such a procedure does not violate the taxpayer's right to private property, instead, it is a common procedure for tax payment.

[100] According to the provisions of article 20 which is sought to be repealed, it should be noted that the auction is not a must. Also, there is no survey conducted which demonstrates that most of the owners who do not exploit their plots of land lack the means or they keep them for speculation.

[101] Article 31 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities states that "The concerned District Council can only waive the due immovable property tax in the following cases: 1° the taxpayer has provided a written statement of an inventory of his property justifying that he/she is totally indebted so as a public auction of his/her remaining property would yield no result; 2° the taxpayer proves that he/she is not able to pay immovable property tax. The taxpayer applying for a waiver of the immovable property tax liability must write to the tax administration. When the request is found valid, the tax administration makes a report to the executive committee of the competent decentralized entity which also submits it to the District Council for decision. The waiver of immovable property tax liability cannot be granted to a taxpayer who understated or evaded taxes". The provisions of this article indicate that the State took into account those who lack the means to pay the tax on the immovable property. Even the owner of the land referred to in article 20 who lacks the means to pay the tax due to grounds provided by article 31 of the Law

n° 75/2018 mentioned above can also apply for a waiver of immovable property tax liability. This clears the doubts raised by the petitioner and some of the amicus curiae who indicated that some will fail to pay that tax due to lack of means and their property be auctioned.

[102] Concerning the statement made by Murangwa that the additional tax of 100% provided under article 20 is excessively high, the Court reminds its motivation in the judgment N^{0} RS/SPEC/0001/16/CS rendered by this Court on 23/09/2016, where it held that "The Court cannot order that a law is contrary to the Constitution only on the basis that in its understanding the purpose of that law could be realized through other means. A party who challenges a law must demonstrate that the process set by the legislator is equivocal, unclear or it logically differs from the purpose of the law. This underpins the principle that the branches of government are separate, independent and they respect each other[23]". The Court finds that this legal position should be maintained even in this case, thus it cannot examine whether that tax rate is excessive or lower as asserted by the applicant and some of the amicus curiae and decide on its unconstitutionality because the matter related to the value of tax rate is under the responsibility and discretion of the Parliament[24].

[103] Generally, the owner of a plot of land meant for construction of a building has the full right to exploit it. If he/she is required to pay additional tax because he/she did not

[23] Case No RS/SPEC/0001/16/CS, AKAGERA Business, p.29

[24] The article 164 of the Constitution states that "Tax is imposed, modified or removed by law. No exemption or reduction of a tax can be granted unless authorized by law".

develop it, and defaulted on it, and he/she has to forcibly pay it, therefore this cannot be considered as a violation of the right to exploit the land in accordance with the law. Article 1 of Protocol No. 1 to the European Convention on Human Rights clearly illustrates that paying tax should not be confused with violation of the right to property. It states that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

[104] As motivated above, imposing the additional tax of 100% on the undeveloped plot of land emanates from the failure of the landowner to fulfill the obligation of exploiting it for the intended purpose. Those unable to pay such tax to apply for tax waiver in case they fulfill the requirements stated under article 31 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities. The fact that such a tax rate is excessive is not a ground to justify that the law determining such tax is inconsistent with the Constitution. Basing on these grounds, the Court finds article 20 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities does not contravene articles 34 and 35 of the Constitution.

[105] Even if article 20 of the Law N° 75/2018 is not inconsistent with the Constitution as motivated above, the Court

finds that its drafting should be completed to include the time limit during which the land can spend without being exploited, to be charged the additional tax and also that the additional tax is waived in case there is reasonable ground for its un exploitation as provided by article 58 of the Law N^{o} 43/2013 of 16/06/2013 governing land in Rwanda relating to the land subject to confiscation.

DECISION OF THE COURT

[106] Decides that the petition filed by Murangwa Edward has merits in part.

[107] Decides that article 16 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is not contrary to article 15 of the Constitution of the Republic of Rwanda.

[108] Decides that article 16 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is not contrary to article 16 of the Constitution of the Republic of Rwanda.

[109] Decides that article 17 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is not contrary to articles 15 and 16 of the Constitution of the Republic of Rwanda.

[110] Decides that article 19 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is inconsistent with article 15 of the Constitution of the Republic of Rwanda, therefore, article 19 is

without effect as provided for by article 3 of the Constitution of the Republic of Rwanda.

[111] Decides that article 20 of the Law N° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities is not contrary to articles 34 and 35 of the Constitution.

[112] Orders that this judgment is published in the Official Gazette.