

MPORANYI v. USENGIMANA

[Rwanda SUPREME COURT – RCOMAA 0014/15/CS
(Kayitesi, P.J., Karimunda and Ngagi, J.) June 23, 2017]

Commercial procedure – Business name – Standing to sue – A business name cannot be used to sue in the courts of law because it does not have a legal personality rather the claim is lodged by the owner of the business activities in his name since he is the one with the legal personality which entitles him to sue in the interest of the business activities he carries out under that name.

Facts: Entreprise Usengimana Richard brought shares in SORAS Group Ltd and later sued the latter's director Mporanyi Charles in the Commercial High Court of Nyarugenge arguing that he sold them at a higher price and requested the Court to compel him to reimburse the balance of the price at which he sold him the shares. The Court first examined the issue whether Entreprise Usengimana Richard has the standing to sue, and it found that it is not a company nor an entity with legal personality for it to sue or be sued, instead, the court found that it is a business name whereby the owner of the business activity is the one to sue, thus it found the claim inadmissible.

Entreprise Usengimana was not contented with the rulings of the judgment and appealed to the Commercial High Court claiming that the previous court disregarded the evidence and the provisions of laws he submitted to it proving that Entreprise is registered in Rwanda Development Board and thus rejected its claim. Mporanyi raised an objection of inadmissibility of the

appeal of Entreprise Usengimana on the ground that it does not have the standing to be a party in the case.

The Commercial High Court found that nothing is demonstrating that Entreprise Usengimana Richard is separate from its owner, The Court held that the claim should have been admitted because Usengimana is a name he uses in business activities and himself he has the legal capacity, thus he should not be refused to file a claim using the name of his business activities, therefore that the claim should be transferred back to the Commercial Court of Nyarugenge to be heard.

Mporanyi Charles appealed in the Supreme Court arguing that the Commercial High Court erred in holding that Entreprise Usengimana cannot be separated from its owner, because the business name does not have the standing to sue because it has no legal personality instead the owner is the one with the capacity to sue because he has legal personality. In its defense, Entreprise Usengimana Richard argues that as an institution nothing bars it from having a legal personality because it's a business name issued by a competent state organ.

Mporanyi Charles claims for damages for being dragged into unnecessary lawsuits, while Entreprise Usengimana rebuts that those damages are groundless because that is the work of the counsel to follow up on the case.

Held: 1. A business name cannot be used to sue in the courts of law because it does not have a legal personality rather the claim is lodged by the owner of the business activities in his name since he is the one with the legal personality which entitles him to sue in the interest of the business activities he carries out under that name.

The appeal has merit;

**The claim filed by Entreprise Usengimana Richard should
not have been admitted;
The appealed judgment is quashed;
Court fees on Entreprise Usengimana.**

Statutes or statutory instruments referred to:

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial,
labour and administrative procedure, article 2

Law N° 07/2009 of 27/04/2009 relating to companies, article
375

Cases referred to:

Julia Shop v Ecobank Rwanda Ltd, RCOMAA 0042/14/CS,
rendered by the Supreme Court on 18/03/2016

Association Momentanée SOBETRA SARL & SOBTRA (U)
Ltd v Office Rwandais des Recettes (RRA), RCOMA
0064/11/CS rendered by the Supreme Court on
28/11/2012

Free Zone, Co, Ltd v Association Momentanée (Joint Venture)
“H3E” RCOMA 0064/12/CS rendered by the Supreme
Court on 03/06/2016

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started in Commercial Court of Nyarugenge, whereby Entreprise Usengimana Richard requested the court to compel Mporanyi Charles to pay back 318,433,000Frw which is exceeded the price of its shares it bought in SORAS Group Ltd because the Entreprise Usengimana Richard states that it was overcharged when it bought 4,260 shares.

[2] That Court first examined whether the Entreprise Usengimana Richard had the legal standing to sue, and found that it is not a commercial company or an institute with legal personality for it to be allowed to sue or to be sued, rather it is a commercial name that gives its owner the right to sue in his own name. It dismissed the claim filed by Entreprise Usengimana Richard.

[3] Entreprise Usengimana Richard appealed to the Commercial High Court, stating that the previous court dismissed its claim, disregarding the law and the elements of evidence it produced before it, because even if that entreprise is owned by Usengimana Richard, but it is registered in Rwanda Development Board and it has legal personality.

[4] Mporanyi Charles raised an objection of inadmissibility of the appeal lodged by Entreprise Usengimana Richard arguing that it does not fullfil all requirements to be a part in a lawsuit, he based his argument on the provisions of article 18 of the Law N° 07/2009 of 27/04/2009 relating to companies and article 2,142 and that of 355, *litera* 10 of the law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

[5] The Commercial High Court held that nothing distinguishes Entreprise Usengimana Richard from its owner

because it is not an association, organization or an institution which have interest, capacity and legal standing to sue as provided by article 2 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, thus, it should not be requested what are provided in article 18 of the law N° 07/2009 of 27/04/2009 relating to companies so that it can have legal standing, capacity and interest for filing a claim. It concludes that nothing is preventing Entreprise Usengimana Richard or Usengimana Richard himself to have the capacity to sue or to be sued because it is a personal commercial name, therefore, his appeal should be admitted and heard on merit.

[6] The Commercial High Court continued the hearing on the issue of legal standing in the court decision RCOMA 500/15/HCC rendered on 31/10/214 and found that Entreprise Usengimana Richard is the name which Usengimana Richard uses in his commercial activities, thus if Usengimana Richard himself has legal personality, he should not be prevented to fill a claim by using his Commercial name. The court held that the claim should have been admitted and ordered the transfer of the case to the commercial court so that it should be heard¹

[7] Mporanyi Charles was not satisfied with that decision and appealed to the supreme court stating that:

a) the commercial High Court erred in declaring that Entreprise Usengimana Richard is a commercial name that can be used as a proper name while Entreprise Usengimana Richard stated that it has a legal personality

¹, the Court based on article 171 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

which is different from its own because it is registered in *Rwanda Development Board*.

b) the commercial high court declared that Usengimana Richard should not be separated from the commercial activities that he carried under the name of Entreprise Usengimana Richard while that « *entreprise* » is not a commercial name with a legal personality as it was declared by that Court so that it can have the standing to file a claim on behalf of its owner because the plaintiff must have a full identification (*personne morale ou physique dotée de personnalité juridique*), which is not possessed by Entreprise Usengimana Richard.

[8] The hearing was conducted in public on 04/10/2016, Mporanyi Charles was represented by Counsel Ruzindana Ignace whereas Entreprise Usengimana Richard represented by Counsel Idahemuka Tharcisse.

[9] The Court first examined the objection of lack of jurisdiction that was raised by Counsel Idahemuka Tharcisse arguing that the value of the subject matter of at least 50,000,000Frw was not determined by the previous Court or debated upon, but even if the appeal falls into the jurisdiction of this Court, again it cannot be admitted because he appealed against the interlocutory judgment the appeal against an interlocutory judgment is made only jointly with the final judgment.

[10] In interlocutory judgment rendered on 11/11/2016, the Court overruled the raised objections and held that the hearing on merit resume on 21/01/2017. On that day, Counsel Mugabonabandi Jean Maurice informed the court that he

replaced Counsel Idahemuka Tharcisse who withdrew himself in all cases of Entreprise Usengimana Richard and also that besides having accessed the case file for the first time but also the Rwanda bar association has not yet authorised him to plead this case, he requested that the hearing be postponed in order for him to prepare and get the permission to plead.

[11] The hearing was postponed to 21/03/2017. On that day the bench was not complete and postponed to 23/05/2017. On that day, the hearing was conducted in public, Mporanyi Charles was represented by Counsel Ruzindana Ignace whereas Entreprise Usengimana Richard represented by Counsel Mugabonabandi Jean Maurice who informed the Court that he has withdrawn his letter he submitted to the Court on 17/03/2017 whereby he stated that he withdrew from the case because he was unable to fulfill what he was requested by Rwanda bar association so that he can plead this case.

II. ANALYSIS OF THE LEGAL ISSUE

II.1. Whether the Entreprise Usengimana Richard has the standing to sue.

[12] Ruzindana Ignace, the counsel for Mporanyi Charles states that the Commercial High Court erred in declaring that Entreprise Usengimana Richard should not be separated from its owner instead of accepting or rejecting the statement of Usengimana Richard that Entreprise Usengimana Richard is a company or an institution. He explains that a commercial name does not have the standing to file a claim because it does not have legal personality rather the owner is the one who files the claim, and this is the position of this Court which was held in

the judgment of *Rwanda Free Zone, Co, Ltd v. Association momentanée (joint-venture)*, thus, he requests the Court to rely on that caselaw and article 2 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure and hold that Entrepise Usengimana Richard does not have the standing to sue and reverse the appealed judgment and sustain the rulings of the judgment rendered by the Commercial Court of Nyarugenge.

[13] Mugabonabandi Jean Maurice, the counsel for Entrepise Usengimana Richard states that the Commercial High Court did not err because it ruled on the issue of standing to sue which was filed before it, it was not obliged to rely on the statement of parties only. He further states that he, sought for guidance from the *Rwanda Development Board* and it informed him that the enterprises are only issued with certificates, that even if it confused him because they told him that it is given to the small traders, he finds that nothing stops Entrepise Usengimana Richard as an institution to have legal personality because it is a commercial name that was issued by a competent public organ, but if this court finds it contrary, it should hold that the certificate issued to Entrepise Usengimana Richard, as the commercial name, which grants it the status of performing the contract, to buy and sale shares, therefore it also grants it the standing to sue as it was held in paragraph 5 of the appealed judgment.

DETERMINATION OF THE COURT

[14] Article 2 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure

provides that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit.

[15] Article 375 of the Law N° 07/2009 of 27/04/2009 relating to companies which was in place at the time of filing the claim provides that registration, nature and organization of those who can not score a daily income of at least ten thousand Rwandan francs (10.000 Rwf) shall be determined by an Order of the Minister in charge of commerce.

[16] Article 2 of the Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income, provides that, a business activity shall mean any business activity carried out by any individual regardless of sex and registered as provided for by this Order. It shall include purchase and sale, service delivery or any other professional activity done regularly to gain profit.

[17] The documents contained in the case file demonstrate that on 17/03/2014, in the name of its director, Entreprise Usengimana Richard registered on « *Entreprise code* » 100058249, sued Mporanyi Charles at the Commercial High Court of Nyarugenge requesting that he be compelled to pay 318,433,000Frw originating from the balance of 276,900,000Frw for the 4260 shares he brought from him and he paid 595.335.000Frw and various damages (cote 6).

[18] Again the documents in the case file indicate that on 10/07/2011, Rwanda Development Board (RDB), in accordance to article 10 of the Ministerial Order N°02/09/MINICOM of

08/05/2009 relating to business of low income,² issued to Entreprise Usengimana Richard a Certificate of Entreprise Registration, in the names of (Entreprise Name) Usengimana Richard, which had to operate under the business name of Usengimana Richard (cote 62).

[19] The Court finds that the Ministerial Order N° 02/09/MINICOM of 08/05/2009 mentioned which was based on to issue to Entreprise Usengimana Richard a Certificate of Entreprise Registration, states clearly that it determines modalities of registration, the nature and organization of business whose income is less than ten thousand Rwandan francs (10,000 Rwf) per day, while article 10 provides that in registering such traders it mentions the following names of the registered person, registration number of the business activity and the activity, this implies that a trader registered in that way is not considered as someone who has registered a company but does it to formalize the commercial activities he has.

[20] Therefore, the Court finds that since Entreprise Usengimana Richard is a business name implies that it has no legal personality, thus it cannot file a claim in the court, that is the reason the claim has to be lodged by the owner of that name or «*entreprise* » who is Usengimana Richard because he is the one with legal personality, with the legal standing to sue for the

² That article provides registration certificate shall mention the following: Registration number of the business activity; b) - Names of the registered person; c) - Business name, name of the business d) activity and name of the trader; e) - Brief and precise description of the registered business activity; f) - The company head office and the place of business; g) - The date on which the registration certificate was issued; h) - Signature and stamp of the Registrar General or his/her representatives; - Category of the commercial activity.

interests of the business activities he carries out in that name. This is the legal position that the court has emphasized in various judgments such as in the case of Julia Shop and Ecobank Rwanda Ltd³, the case of Association Momentanée SOBETRA SARL & SOBTRA (U) Ltd versus Office Rwandais des Recettes (RRA)⁴ and that of Rwanda Free Zone, Co, Ltd versus Association Momentanée (Joint Venture) «H3E»⁵, whereby it held that a business name or a temporary cooperative which have no legal personality do not have obligations or rights before the law, implying that they cannot sue in courts rather the owners of the business activity is the one who has the standing to sue and if it is done otherwise the Court should rule that it was moved by a person with no capacity to sue and thus dismiss the case.

[21] The Court finds that this legal position is also emphasized by the legal scholars in commercial matters, whereby they argue that a sole proprietorship does not have a legal personality distinct from that of the natural person who operates it and that a personal «*entreprise*» registered as a business name do not have the standing to sue rather legal actions are brought by the owner in his own name, these also emphasize that *Entreprise Usengimana Richard* did not have the standing to sue,⁶ therefore its claim should have been admitted.

³ See Judgment RCOMAA 0042/14/CS between Julia Shop and Ecobank Rwanda Ltd rendered by the Supreme Court on 18/03/2016 par 19 and 22.

⁴ Judgment RCOMA 0064/11/CS rendered by the Supreme Court on 28/11/2012, par 16.

⁵ Judgment RCOMA 0064/12/CS rendered by the Supreme Court on 03/06/2016, par 39.

⁶ « L'entreprise individuelle est donc celle exploitée par un commerçant physique seul, c'est-à-dire sans associé. [...] une telle entreprise individuelle n'a pas de personnalité juridique distincte de celle de la personne physique

[22] The Court finds that, in paragraph five of the appealed judgment, the Commercial High Court erred in holding that Usengimana Richard “should not be barred from filing a claim in the name of [*Entreprise Usengimana Richard*], which he is allowed to be known as it his business activity [...] because its a name for a person with a legal personality [...],” because as motivated above and held by the Commercial Court of Nyarugenge, the name itself has no legal personality to the extent that it can file a claim to the court, instead Usengimana Richard, the owner of the business activities is the one who has the standing to sue, therefore as provided by 2, par 1of the Law N^O 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, the plaintiff has no standing, thus the claim is inadmissible.

[23] Pursuant to the provisions of laws and motivations given above, the Court holds that the judgment RCOMA 500/14/HCC rendered by the Commercial High Court on 31/10/2014 is overturned, if Usengimana Richard wishes to sue he must do it in his name instead of suing in the name of the director of Entreprise Usengimana Richard.

II.2. Whether Mporanyi Charles should be awarded damages.

qui l’exploite. L’entreprise individuelle, à la différence de la société n’a donc pas la personnalité morale. » Jean-Pierre BERTREL et Marina BERTREL, Droit des sociétés, in Droit de l’Entreprise, Paris, Wolters Kluwer France SAS, 2010, p.382. « [...] l’entreprise individuelle ne possède pas de la personnalité juridique et n’est pas sujet de droit. En conséquence, elle ne peut pas être titulaire de droits réels et fait partie du patrimoine personnel de l’entrepreneur. Elle ne peut également pas ester en justice. Les actions en justice sont intentées par l’entrepreneur. » See Le commerçant, entrepreneur individuel « traditionnel » available on <http://www.distripedie.com/distripedie/spip.php> [accessed on 20/06/2017].

[24] Counsel Ruzindana Ignace argues that Mporanyi Charles was dragged into unnecessary lawsuits, thus he should be awarded 1,000,000Frw for procedural fees and counsel fees of 2,000,000Frw on both Commercial High Court and at the Supreme Court.

[25] Counsel Mugabonabandi Jean Maurice argues that the procedural fees requested by Mporanyi Charles is groundless because the counsel is paid to follow on the case, he rather states that the Court should declare that Entreprise Usengimana Richard had the standing to sue as held by the Commercial High Court and award Entreprise Usengimana Richard the counsel fees of 1.000.000Frw.

DETERMINATION OF THE COURT

[26] The Court finds that the procedural fees and the counsel fees requested by Mporanyi Charles, should be awarded to him because he had to follow up on the case and also hire the counsel, but since he cannot prove that the amount he requests for, in the court's discretion he should be 300,000Frw for procedural fees and 500,000Frw for the counsel fees, all amounting to 800,000Frw.

III. DECISION OF THE COURT

[27] Decides that the appeal lodged by Mporanyi Charles has merit;

[28] Decides that the claim filed by Entreprise Usengimana Richard should not have been admitted.

[29] Decides that Judgment RCOMA 500/14/HCC rendered by the Commercial High Court on 31/10/2014 is quashed;

[30] Orders Entreprise Usengimana Richard to pay Mporanyi Charles 300,000Frw for procedural fees and 500,000Frw for counsel fees, all amounting to 800,000Frw;

[31] Orders Entreprise Usengimana Richard to reimburse to Mporanyi Charles the court fees deposit of 100,000Frw.