Re ASIIMWE

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00004/2020/SC (Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye and Rukundakuvuga, J.) March 26, 2021]

Constitution – Jurisdiction of courts – Appeal – Second appeal – Due process of law – The inalienable right of appeal consists of the first appeal which may however have some limitations for legitimate reasons - The right to appeal may be limited on the second appeal but for legitimate reasons.

Constitution – Jurisdiction of courts – Unconstitutionality – Second appeal in criminal cases – Due process of law – The fact that the party pleading not guilty may be allowed a second appeal depending on the sentence imposed while the accused who pleaded guilty is barred from lodging a second appeal, amounts to unequal treatment of accused persons, which is inconsistent with the principle of equality before the law.

Facts: Asiimwe initiated a petition to request the Supreme Court to declare paragraph 2 of article 52 and paragraph 3 of article 46 of the Law n°30/2018 of 02/06/2018 determining the jurisdictions of courts inconsistent with article 29 of the Constitution of the Republic of Rwanda. He elucidates that the foregoing articles violate the due process of law provided under the Constitution on ground that in examining the second appeal, the Court limits itself to determine only whether the appellant lost the case for same reasons before both previous courts and/or whether he/she admitted charges brought against him/her.

The State Attorney contends bu submitting that the foregoing articles are in no way inconsistent with rticle 29 of the Constitution given that there are other remedies provided under the law to which a litigant can resort in the event she/he deems to have experienced injustice.

The court admitted and accorded the petition a docket number and on the hearing date, it was examined whether the inadmissibility of a second appeal on ground that the appellant lost the case for same reasons in both previous Courts, violates the right to due process of law and whether such inadmissibility with respect to those who pleaded guilty, violates the principle of equality before the law provided under article 15 of the Constitution, and thus inconsistent with due process of law provided under article 29 of the Constitution.

Regarding Article 52, paragraph 3 of the aforementioned Law n^{o} 30/2018 providing for the inadmissibility of the second appeal on ground that the appellant lost the case on same reasons in previous courts, the petitioner alleges that this provision creates a situation where, in the event the convict by the lower Courts resorts to the Court of Appeal for rectification of all irregularities by such courts, it declares itself incompetent on ground that he/she lost the case on same reasons, and refrains from hearing the merit of the case, which would have allowed to determine whether there has been violation of the law or disregard of evidence, and it contradicts the purpose of appeal remedy and thus, the appellant is deprived of the right to due process of law.

She additionally submits that had the law provided that the Court of Appeal does not admit the second appeal in case the appellant lost the case in previous courts for same reasons after prior examination whether there has been no violation of the law and blatant disregard of adduced evidence, the right of the litigant would have been respected. She rests her case by submitting that

the existence of the cases review due to injustice is a clear proof that the inferior courts to the High Court and Court of Appeal may err in the course adjudication. Accordingly, as long as paragraph 3 of article 52 of the aforementioned Law nº 30/2018 is applied in the same manner the Court of Appeal applies it, the litigant deprived of the right to be heard in merit while feeling aggrieved at first and second instances, would consider such a practice as condoning injustice and corruption.

The State attorney submits that the Rwandan law uphold the principle of one appeal but with exception to some cases that can be appealed at the first and the second level after examining whether the two previous courts came to the same conclusion based on similar reasons seeing that courts are expected to dispense fair justice.

She further states that concerning the ground relating to due process of law, the legislator accorded equal rights to parties where on one hand the right to appeal for the loser and on the other the right to justice for the winner, which is consistent with the provisions of article 15 of the Constitution providing that all persons are equal before the law and entitled to equal protection of the law. She concludes by submitting that paragraph 2 of article 46 and paragraph 3 of article 52 of the Law nº 30/2018 mentioned above are not inconsistent with article 29 of the Constitution.

He submits that regarding the inadmissibility of the second appeal with respect to cases wherein litigants admitted charges brought against them, the petitioner submits that the provisions of paragraph 2 of article 46 and paragraph 3 of article 52 of the Law nº 30/2018 mentioned above bars the appellant who pleaded guilty before previous courts whereas the appeal of the party who pleaded innocent is admitted based only on the fact that he/she was sentenced to a penalty of fifteen (15) years of imprisonment, he/she accordingly finds this article inconsistent with the principle of equality before the law provided under article 15 of the Constitution. He elucidates that regarding criminal cases, it should be clear that what must be considered, is that even if the accused admitted charges before lower courts, this act should not deprive him/her of the right to lodge an appeal to the Court of Appeal as long as he deems the sentence pronounced against him unfair.

He concludes by submitting that the existence of extraordinary remedies including case review due to injustice does not solve the problem because in the event the losing party exercises such remedy, he/she seizes the same court that rejected his/her appeal, which does not guarantee him/her fair trial.

The State Attorney states that paragraph 3 of article 52 and paragraph 2 of article 46 of the Law nº 30/2018 determining jurisdiction of courts are not inconsistent with article 29 of the Constitution since even though the second appeal is not admitted on ground that the appellant pleaded guilty before previous courts, the Law provides for another remedy in case he faces injustice.

Held: 1. For the purpose of dispensation of fair justice, the legislator provided that for the second appeal to be admitted, the appellant should not have lost the case for same reasons, and this does not deprive him/her of the right to due process of law, given that the right to first appeal, which is an inalienable right, is granted to him/her, even though some limitations may be set for legitimate reasons.

2. The inadmissibility of the appeal on ground that the appellant lost the case for same reasons does not imply the occurrence of injustice since the legislator determined the remedy of case review due to injustice, therefore paragraph 2 of article 46 and paragraph 3 of article 52 of the Law nº 30/2018 of 02/06/2018 determining jurisdiction of courts are not inconsistent with article 29 of the Constitution. Nonetheless, the formulation of article 52 of the said law would be rectified

whereby paragraph 3 should be dissociated from subparagraphs of paragraph 2 of the same article, with the exception of subparagraphs 8 and 9. In addition, paragraph 2 of article 46 should be linked to subpagraph 6 of paragraph 1 of the same article.

3. The fact that the party pleading not guilty may be allowed a second appeal depending on the sentence imposed while the accused who pleaded guilty is barred from lodging a second appeal despite that he/she facilitated the administration of justice, amounts to unequal treatment of accused persons, which is inconsistent with the principle of equality before the law provided under article 15 of the Constitution. Consequently, the parts of the text of paragraph 3 of article 52 and of paragraph 2 of article 46 of the Law no 30/2018 of 02/06/2018 determining jurisdiction of courts with respect to inadmissibility of the second appeal on ground that the appellant admitted charges brought against him/her, are inconsistent with articles 15 and 29 of the Constitution of the Republic of Rwanda.

The petition to repeal articles that are inconsistent with the Constitution has merit in part; Paragraph 2 of Article 46 and Paragraph 3 of Article 52 of Law n°30 / 2018 of 02/06/2018 determining the jurisdiction of Courts on matters relating to inadmissibility of second appeal "*for parties having admitted charges brought against them*" are inconsistent with Article 15 of the Constitution of the Republic of Rwanda.

Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 2003, revised in 2015, articles 15 and 29;

International Covenant on Civil and Political Rights, article 14, paragraphs 1 and 5;

Law n°30/2018 determining the jurisdictions of courts, article 46, paragraph 2 and article 52, paragraph 3.

Cases referred to:

RS/INCONST/SPEC 00003/2019/SC, Kabasinga Florida rendered by the Supreme Court on 4/12/2019,

RS/REV/INJUST/CIV 0023/16/CS, Rutabayiro n'abandi v Mukakabano rendered by the Supreme Court on 27/09/2019

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Kotak Mahindra Bank Pvt. Limited Vs Ambuj A. Kasliwal & Ors, Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No. 538 of 2021

Judgment

I. BACKGROUND OF THE CASE

[1] Asiimwe Frank petitioned the Supreme Court praying it to declare paragraph 3 of Article 52, and paragraph 2 of Article 46 of Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts inconsistent with Article 29 of the Constitution of the Republic of Rwanda. His petition was given the docket N° RS/INCONST/SPEC 00004/2020/SC.

[2] He argues that the fact that, in examining the admissibility of the second appeal, the Court considers only that the fact that a party lost his/her case in the two previous courts for the same reasons without examining the merit of reasons are legally valid, and this violates the right to fair justice. He also points out that the fact that a party who pleaded guilty in the previous courts does not have the right to a second appeal also violates the right to fair justice, whereby he explains that pleading guilty is different from acquiescing in the decision of the Court.

[3] The State Attorney states that Article 52, paragraph 3 and Article 46, paragraph 2 of Law n°30/2018 of 02/06/2018 determining the jurisdiction of the courts are not in contradiction with Article 29 of the Constitution of the Republic of Rwanda reading that: "*Everyone has the right to due process of law*", because, the law provides for other remedies that a party can exercise when he/she feels he/she aggrieved.

[4] The hearing was scheduled on 11/01/2021, but was not held on this date and postponed to 04/03/2021. On this day, it was held in public whereby, all parties appeared, Asiimwe Frank being assisted by Counsel Rwigema Vincent, Counsel Kabasinga Florida, Counsel Gakunzi Musore Valéry and Counsel Munyentwali Charles, while the Government of Rwanda was represented by Counsel Gahongayire Myriam.

[5] Based on the submissions of the petitioner and his legal counsel, the Court finds that the legal issues to be analyzed are as follows:

> Whether the inadmissibility of the second appeal due to the fact that the appellant lost his/her case in the previous courts for the same reasons violates the right to due process of law provided under article 29 of the Constitution;
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> Whether the inadmissibility of the second appeal for cases in which the parties have admitted the charges brought against them violates the principle of equality before the law provided under article 15 of the Constitution, as well as the right to due process of law provided under article 29 of the Constitution.

II. LEGAL ISSUES AND THEIR ANALYSIS

A. Whether the inadmissibility of the second appeal due to the fact that the appellant lost his/her case in the previous courts for the same reasons violates the right to due process of law provided under article 29 of the Constitution

[6] In the submissions and pleadings that Asiimwe Frank and his counsels presented to the Court they argue that Article 52, paragraph 3 of the Law nº 30/2018 creates a situation where, in the event the convict by the lower Courts resorts to the Court of Appeal for rectification of all irregularities by such courts, it declares itself incompetent on ground that he/she lost the case on same reasons, and refrains from hearing the merit of the case, which would have allowed to determine whether there has been violation of the law or disregard of evidence, and it contradicts the purpose of appeal remedy provided under Articles 150 and 157 of Law nº. 22/2018 of 29/04/2018 relating to Civil, Commercial, Social and Administrative Procedure.

[7] They support this argument by stating that the inadmissibility of the appeal on ground that a party lost the case on same grounds, deprives the appellant of the right to due process of law. They explain the principle of due process of law in two ways by referring to the judgment nº RS/INCONST/SPEC00003/2019/SC rendered by the Supreme Court whereby the procedural due process of law, meaning a set of rights to be respected in the course of trial; and substantive due process of law. This situation prohibits the adoption of irrational laws and other measures that infringe upon the rights of the people.

[8] To explain the principle of the right to fair justice, they referred to the case of East African Law Society vs. Attorney General of the Republic of Burundi & The Secretary General of the East African Community,[1] and argued that the Court relied on the fact that the plaintiff was deprived of his right to due process of law, which is therefore contrary to the principle of the rule of law provided for in Articles 6 (d) and 7 (2) of the Treaty Establishing the East African Community.

[9] They also claim that such right is reiterated by Article 14 of the International Covenant on Civil and Political Rights, which provides for the principle of fair trial. They motivate that the provisions of Article 46, paragraph 2 and Article 52, paragraph 3 of the aforementioned Law nº 30/2018 violate this principle, as they establish barriers for a party who was aggrieved by two courts from lodging an appeal to another court for redress.

[10] They also motivate that the same reasons should not be confused with certain appropriate, well-founded and lawful grounds, which cannot be proved unless the Court examines the merits of the case, especially that in the lower courts the party is often not assisted, and it is clear that at the level of the Court of Appeal, he/she would have the opportunity to produce additional evidence. They argue that had the law provided that the Court of Appeal should reject the second appeal by the appellant who lost the case in the previous courts for same reasons after examining whether there has not been violation of law or disregard of evidence, the right of a party to due process of law would have been respected.

[11] They point out that as long as the Court of Appeal rejected the appeal on ground that the appellant lost the case for the same reasons, even if he/she were to apply for review of the case due to injustice before the Court of Appeal or the Supreme Court for judgments rendered by the High Court, he/she would not be successful because such courts, in examining whether there has been injustice, take into account only the judgment rendered at last instance by analyzing whether the previous courts based on the same reasons to reach the final decision as decided in the case RS/INJUST/RP 00002/2019/SC between the Prosecution and Habimana Innocent.

[1] EACJ, Reference No. 1 of 2014, delivered on 15 May 2015.

[12] To conclude on this ground, they argue that the fact that there are judgments subject to review due injustice implies that the lower courts to the High Court and Court of Appeal can err in in adjudication. They explain that as long as this article 52, paragraph 3 of Law n° 30/2018 mentioned above continues to be applied in the same manner as the Court of Appeal does, the party deprived of his/her rights to be heard in merit of the case while being aware of his/her injustice at first and second instances, he/she would consider such resort as condoning injustice and corruption in the judicial system.

[13] Counsel Gahongayire Myriam, the State Attorney, specifies that the law in force in Rwanda recognizes the principle of a basic appeal, but the law provides for exceptions for some cases susceptible to second level of appeal (articles 46 and 52 of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts) after determination whether the two previous courts reached the same decision based on the same reasons, especially that courts are expected to dispense fair justice.

[14] She also indicated that Article 55 of the aforementioned Law n° 30/2018 provides the causes for lodging the appeal for review against a final judgment tainted with injustice, that the aggrieved party who is bared by Articles 46 and 52, can resort to this remedy. She added that, although it was found that among all judgments subjected to application for review, only 3% of them were vitiated by injustice. Accordingly, this article was laid down with the purpose to assist the citizen and protecting him from possible deprivation of his/her rights.

[15] She further states that concerning the ground relating to due process of law, the legislator accorded equal rights to parties where on one hand the right to appeal for the loser and on the other the right to justice for the winner, which is consistent with the provisions of article 15 of the Constitution providing that all persons are equal before the law and entitled to equal protection of the law. She concludes by submitting that paragraph 2 of article 46 and paragraph 3 of article 52 of the Law n° 30/2018 mentioned above are not inconsistent with article 29 of the Constitution.

DETERMINATION OF THE COURT

[16] Before examining whether paragraph 2 of Article 46 and paragraph 3 of Article 52 of the aforementioned Law n° 30/2018 are contrary to Article 29 of the Constitution, the court finds it necessary to explain for the onset the principle of the right to due process of law and the right to appeal.

[17] Article 29 of the Constitution provides that "Everyone has the right to due process of law". This article lays down some of the components of the due process of law. In judgment n° RS/INCONST/SPEC 00003/2019/SC[2], the Supreme Court gave two explanations of the due process of law, as mentioned in paragraph 7 of the instant judgment.

[18] The Court notes that article 14, paragraphs 1 and 5, of the International Covenant on Civil and Political Rights provides for the right to a trial by a competent court and the right to appeal as part of the right to a due process of law. Legal scholars specify that the due process of law is a

[2] RS/INCONST/SPEC 00003/2019/SC about KABASINGA Florida rendered by the Supreme Court on 4/12/2019, page 4 and 5.

right to a remedy available to each party to the case who is not satisfied with the decision of the court. He/she also has the right to have the court's decision reviewed, annulled or reversed by a higher court, in accordance with the law.[3]

[19] Another legal scholar, Vilard BYTYQI, explains that the notion of appeal refers to the right of the accused and the prosecutor (the prosecuting authority) to have the chance to appeal the judgement of the court of first instance, under the pretense of any eventual error undertaken by this level of trial. The right to submit the appeal guarantees the procedural parties that the principal of two instances will be respected·.[4]

[20] In addition, article 14, paragraph 5, of the International Covenant on Civil and Political Rights provides that everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law, that is, the manner in which the review by a higher tribunal is to be carried out, and the determination of the tribunal entrusted with the task of carrying out the review in accordance with the Covenant. Article 14(5) does not require member states to establish more than one appellate body. However, if domestic law provides for other instances of appeal, the sentenced person must be able to make effective use of all of them. [5]

[21] Legal scholars such as Nuala Mole and Catharina Harby argue that the right to appeal to a court or to be heard by a judge is not definitive. They pointed out that the European Union Court in Golder v. United Kingdom case, explains that the usual method applied, which is considered as a legitimate reduction of this right is to the effect that a given form of appeal is only allowed after examining the ground of its admissibility in accordance with in the laws established by the States.[6]

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[3] Serge Guinchard, Droit processual: Droit commun et droit compare du procès equitable, 4ème Ed. Dalloz 2007, Page 420, Le droit d'accès à un tribunal est l'une des deux expressions du droit à un recours. Le droit au recours est le droit de toute personne de pouvoir contester une mesure prise à son encontre, devant une instance investie d'un pouvoir de réformation de cette mesure et/ ou de réparation de ses conséquences dommageables.

[4] **The Right to Appeal as a Fundamental Right under International Acts and Jurisprudence, with Special Emphasis on Criminal Procedure. Acta Universitatis Danubius. Juridica, Vol 13, No 1 (2017), http://journals.univ-danubius.ro/index.php/juridica/article/view/3868/4027 -** The notion of appeal refers to the right of the accused and the prosecutor (the prosecuting authority) to have the chance to appeal the judgement of the court of first instance, under the pretense of any eventual error undertaken by this level of trial. Therefore, the appeal plays the role of the instrument that fixes the eventual errors, which could have been done by the court of first instance. The right to submit the appeal guarantees the procedural parties that the principal of two instances will be respected.

[5] Le paragraphe 5 de l'article 14 dispose que toute personne déclarée coupable d'une infraction a le droit de faire examiner par une juridiction supérieure la déclaration de culpabilité et la condamnation conformément à la loi, c'est à dire les modalités selon lesquelles le réexamen par une juridiction supérieure doit être effectué, ainsi que la détermination de la juridiction chargée de procéder au réexamen conformément au Pacte. Le Paragraphe 5 de l'article 14 n'exige pas aux Etats parties qu'ils mettent en place plusieurs instances d'appel. Toutefois si le droit interne prévoit d'autres instances d'appel, le condamné doit pouvoir utiliser effectivement chacune d'entre elles. (Nations Unies, Pacte international relatif aux droits civils et politiques, Remarques générales No. 32, 23 aout 2007, http://hrlibrary.umn.edu/gencomm/french/f-gencom32.pdf)

[6]Nuala Mole et Catharina Harby, Le droit à un procès equitable, Un guide sur la mise en oeuvre de l'article 6 de la Convention européenne des Droits de l'Homme, Conseil de l'Europe 2007, p. 43. Toutefois, le droit d'accès à un tribunal n'est pas absolu. La Cour a ajouté dans l'arrêt Golder c. Royaume-Uni que ce droit appelle, de par sa nature même, une réglementation émanant de l'Etat (qui peut varier dans le temps et dans l'espace en fonction des besoins

[22] The same Court further upheld that such right can be limited in accordance with article 6 of the European Convention on Human Rights on the following two conditions:

a. Pursue a legitimate purpose;

b. a reasonable relationship of proportionality between the means employed and the end sought.[7]

[23] Other legal scholars added that the right to a first-level appeal is treated as a fundamental right, the law established by the states determines how it is exercised. The second appeal and other appeal remedies provided under national law are exercised in accordance with the needs of the community, and the legislator may also determine the requirements for the admissibility of the appeal.[8]

[24] The provision of the requirements for the admissibility of the appeal is also evident in the judgment of the Supreme Court of India between Kotak A. Mahindra Bank Pvt. Limited and Ambuj A. Kasliwal & Ors[9], where the Court held that it is trite law that in the event where the right of appeal is provided under the law, and while granting such right, the legislature may lay down the conditions for the exercise of such right thereof, and such exercise must be done without obstructing the rights of the beneficiary.

[25] The Court notes that the Rwandan Legislator, as it is in other countries, provided for the possibility for a party to the case to appeal to a higher court than the trial court, in articles 46 and 52 of the aforementioned law n˚ 30/2018, he/she has also provided for the modalities of lodging a second appeal. He/she has provided in paragraph 2 of Article 46, and paragraph 3 of Article 52 of the aforementioned law, that the second appeal is not admissible for a losing party for the same reasons.

[26] For a fair administration of justice, it is in the finding of the Court that the fact that the legislator provided that in order for the second appeal to be admissible, the appellant must not have lost for the same reasons, does not deprive him/her of the right to the due process of law since he/she is guaranteed the possibility of appealing for the first instance, and this is an inalienable

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et des ressources de la collectivité et des particuliers), laquelle ne doit en aucun cas porter atteinte à la substance dudit droit ni se heurter à d'autres droits consacrés par la Convention.
Les juges de Strasbourg ont en outre précisé dans leur jurisprudence qu'une limitation du droit d'accès ne serait compatible avec l'article 6 qu'à la double condition de :

a. poursuivre un but légitime ;
b. présenter un rapport raisonnable de proportionnalité entre les moyens employés et le but visé.

[7] Ibidem.

[8] Tarun Jain, Limitations on Second Appeal: The Law Revisited, 18 November 2010, http://legalperspectives.blogspot.com/2010/11/limitations-on-second-appeal-law.html ; Sabodt Asthana, Second Appeal under Civil Procedure Code: Nature, Scope, Forum and Procedure, 4 January 2020, https://blog.ipleaders.in/second-appeal /

[9] Kotak Mahindra Bank Pvt. Limited Vs Ambuj A. Kasliwal & Ors, Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No. 538 of 2021, https://indiankanoon.org/doc/56200562 /: "It is well settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory."

right that he/she cannot be deprived of, although there may be certain limitations for legitimate reasons.

[27] With regard to the issue of whether there is no other remedy for the party to obtain justice in case he/she lost the case for the same reasons and both courts prejudiced him/her, the Court notes that the fact that the Court of Appeal rejects his appeal does not prevent him/her from applying for a review of the judgment against him/her on grounds of injustice, provided that he/she does not exceed a period of thirty days effective from the date he/she was notified of the decision of the Court of Appeal in accordance with the legal position set by such Court in various cases.[10]

[28] Based on motivations provided, the Court finds that paragraph 2 of Article 46, and paragraph 3 of Article 52, of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts are not contrary to Article 29 of the Constitution.

[29] Nonetheless, the Court notes the formulation of article 52 of the said law would be rectified whereby paragraph 3 should be dissociated from subparagraphs of paragraph 2 of the same article, with the exception of subpagraphs 8 and 9. In addition, paragraph 2 of article 46 should be linked to subpagraph 6 of paragraph 1 of the same article. Indeed, the judge should not ignore the defects referred to in subparagraphs 2 to 7 of article 52, and subparagraphs 1 to 5 of article 46, even if the party has lost in both courts for the same reasons.

B. Whether the inadmissibility of the second appeal for cases in which the parties have admitted the charges against them violates the principle of equality before the law provided under article 15 of the Constitution, thus violating the right to due process of law provided under article 29 of the Constitution

[30] As for criminal cases, Asiimwe Frank and his counsels argue that the right to appeal for a convicted person is reiterated by article 14 of the International Covenant on Civil and Political Rights ratified by Rwanda. They motivate that normally pleading guilty is beneficial to the defendant in different ways, such as minimizing impact of an offence on the victim, reducing the time and money spent on investigative activities and prosecution, especially for the offender, resulting in a reduction of the sentence in his/her favor as decided by the Supreme Court in judgment RPAA 0014/10 / CS rendered on October 25, 2013, involving the Public Prosecutor's Office vs. Dusabeyezu Damascene.

[31] They further argue that regarding criminal cases, it should be clear that what must be considered, is that even if the accused admitted charges before lower courts, this act should not deprive him/her of the right to lodge an appeal to the Court of Appeal as long as he/she deems the sentence pronounced against him/her unfair. Nevertheless, the provisions of paragraph 2 of Article 46 and paragraph 3 of Article 52 of the aforementioned Law n°30 / 2018 prevent the appellant who pleaded guilty before previous courts whereas the appeal of the party who pleaded innocent is admitted based only on the fact that he/she was sentenced to a penalty of fifteen (15) years of imprisonment, he/she accordingly finds this article inconsistent with the principle of equality before the law provided under article 15 of the Constitution

[10] Example of Case No. RS/REV/INJUST/CIV 0023/16/CS, rendered on 27/09/2019, paragraph 28.

[32] They go on to explain that law scholars stress that the primary purpose of appeals in criminal cases is to secure justice. Evidently, any obstacle that deprives the aggrieved party of the right to appeal is contrary to the principles of administration of justice.

[33] They refer to judgments rendered by the Court of Appeal in which it dismissed the appeal on ground the appellant pleaded guilty at all previous instances. They inter alia include case n˚ RPAA 00147/2018/CA, the Prosecution v. Munyurangabo Jean Paul who pleaded guilty to defilement at all instances and the Court sentenced him to life imprisonment. He appealed to the High Court which decided that his appeal was without merit. He appealed to the Court of Appeal, which ruled that the appeal was not within its jurisdiction on ground that he had lost the case at two previous instances for the same reasons. They also cite the authority nº. RPAA 00166/2018/CA against Habimana Cedrick, authority nº. RPAA 00168/2018/CA against Bizumuremyi Thadée, authority nº. RPAA 00069/2018/CA against Ngezahoguhora Olivier and authority nº. RPAA 00167/2018/CA the Public Prosecutor's Office against Museruka Fabrice.

[34] They motivate that Article 107, paragraph 1 of Law n˚ 027/2019 on Criminal Procedure states that the burden of proof of an offence lies with the prosecution and the civil party. They point out that relying solely on the defendant's admission of charges for the Court to declare his/her appeal inadmissible violates the principle of not self-incrimination.

[35] They conclude by by submitting that the existence of extraordinary remedies including case review due to injustice does not solve the problem because in the event the losing party exercises such remedy, he/she seizes the same court that rejected his/her appeal, which does not guarantee him/her fair trial. They also point out that the purpose of the legislator in enacting paragraph 3 of Article 52, and paragraph 2 of 46, of Law n˚ 30/2018 was to determine jurisdiction on the basis of the value of the subject matter or the sentence imposed, and such should be maintained.

[36] State Attorney Gahongayire Myriam argues that Article 52, paragraph 3 and Article 46, paragraph 2 of Law nº. 30/2018 determining the jurisdiction of the courts are not contrary to the provisions of Article 29 of the Constitution, because although the second appeal is not admissible on ground the appellant pleaded guilty in the previous courts, the law nevertheless provides for other avenues of redress if he/she considers him/herself wronged.

DETERMINATION OF THE COURT

[37] Article 52, paragraph 3 of the aforementioned law provides that "*the appeal at second instance cannot be admissible for cases in which parties have admitted charges brought against them* […]", the same is true for paragraph 2 of article 46, of the aforementioned law concerning the admissibility of the appeal at the level of the High Court.

[38] With regard to the right of appeal in criminal matters, the Court considers that, as stated above, the inalienable right of appeal consists of the first level of appeal, although it may also be subject to limitations for a legitimate purpose. This right may be limited for the second level of appeal, but for a legitimate purpose and in a reasonable relationship of proportionality between the

means employed and the aim pursued, as decided by the judges of the Court of Justice of the European Union.[11]

[39] It is in the finding of the Court that in criminal matters, Article 52, paragraph 2, subparagraph 9 of the aforementioned Law n˚30 / 2018 allows the person sentenced by the High Court or the High Military Court to at least 15 years of imprisonment to appeal to the Court of Appeal.

[40] The Court notes, however, that paragraph 3 of Article 52 of the aforementioned Law n˚30/2018[12] provides that the second level of appeal by parties who pleaded guilty is inadmissible, which means that persons convicted of the same offense and sentence have the right to appeal to the Court of Appeal, such a person who has pleaded not guilty has the right to appeal based only on the sentence imposed on him or her, for such a person who has pleaded guilty, the appeal is inadmissible even though he or she has facilitated the court in the administration of justice. This amounts to inequality of the parties and their unequal protection, which is contrary to the principle of equality before the law provided under Article 15 of the Constitution.

[41] Based on the foregoing, the Court finds that paragraph 3 of article 52 and part of paragraph 2 of article 46 of Law n˚30 / 2018 determining the jurisdiction of courts regarding the inadmissibility of the second level of appeal on ground that the appellant has admitted the charges against him/her are contrary to article 15 of the Constitution of the Republic of Rwanda and thus contrary to article 29 of the Constitution.

III. DECISION OF THE COURT

[42] Holds that the petition initiated by Asiimwe Frank is partially founded;

[43] Holds that part of paragraph 2 of Article 46 and part of paragraph 3 of Article 52 of Law n˚30/2018 of 02/06/2018 determining the jurisdiction of the courts regarding the admissibility of the appeal in second instance for " *a party who has lost his/her case in both courts for the same reasons*", are not contrary to Article 29 of the Constitution of the Republic of Rwanda; the Court recommends, however, that article 52 of this Law be reformulated so that the provisions of paragraph 3 apply only to subparagraphs 8 and 9 of paragraph 2, and that paragraph 2 of article 46 applies only to subparagraph 6 of paragraph 1 of this article;

[44] Holds that part of paragraph 2 of Article 46 and part of paragraph 3 of Article of Law n˚30/2018 of 02/06/2018 determining the competence of the courts regarding the admissibility of the appeal to the second degree for "*the appeal at second instance cannot be admissible for cases in which parties have admitted charges brought against them*" are contrary to the provisions of Article 15 of the Constitution of the Republic of Rwanda, and thus devoid of effect in accordance with the provisions of Article 3 of the Constitution;

[45] Orders that this judgment be published in the Official Gazette of the Republic of Rwanda.

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[11] Cfr paragraph 21 and 22 of the present case

[12] This also concerns paragraph2 of article 46 of the aforementioned Law about the second appeal in the High Court.