

NGIZWENINSHUTI v MUHIMA

[Rwanda SUPREME COURT – RS/INJUST/RC 00024/2018/SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga and Hitiyaremye, J.) 21 February 2020]

Procedure for review of a judgment due to injustice – Objections – The objection which was overlured at the first instance and not raised as a ground of appeal on the appellante level cannot be raised during the review of the judgment due to injustice

Laws relating to evidence - Probative value of deeds - Authentic deeds - A deed does not become an authentic deed because it has been drawn by a public officer, but it must contain the authentic information witnessed by a civil servant in the capacity of a witness; otherwise, the deed shall be considered as any other evidence which may be challenged by other adversial evidence.

Facts: The case started at Intermediate Court of Nyarugenge where Muhima filed a claim against Ngizweninshuti seeking the rectification of the statement made by the judicial police officer that attributed to him the fault that caused the accident on the road and accordingly order Ngizweninshuti Albert who knocked him to pay him all the costs he incurred in repairing the car. The court ruled the case of the judicial police officer which confirmed that the accident was caused by Muhima. The court declared that his claim has no merits because he he is the cause of the road accident.

Muhima was not satisfied with the ruling and lodged an appeal to the High Court stating that the content of the sketch of the accident “*croquis d'accident*” is not true, because it omitted some useful and relevant information, that the trial Court disregarded important grounds and that the judicial police officer’s statement that Muhima was the one who hit Ngizweninshuti's car is not true because its Ngizweninshuti's car that hit his. In pronouncing itself on this matter, the court declared that Ngizweninshuti was responsible for the accident because he did not follow traffic rules; that the statement of the traffic police staff on the scene does not corroborate with the sketch of the accident, thus Muhima's appeal has merits. Therefore, Ngizweninshuti must pay him damages.

Ngizweninshuti was not satisfied with the rulings and filed an application for review due to injustice to the Office of the Ombudsman which was referred to the Supreme Court which admitted the application for review due to injustice.

Ngizweninshuti’s grounds for application for review due to injustice are to the effect that the claim for rectification of the accident statement cannot be lodged against him because he was not the one who drew up the statement. The other reason is that the accident statement drawn up cannot not be challenged except in the manner prescribed by law thus the judge should not criticize and challenge it. The last reason for his review of judgment is that the Court overlooked the person responsible for the accident, who is Muhima because it diregarded the laws especially the traffic rules which determines enforcement officers and by doing so declared OPJ's statement invalid without first hearing his defense.

Muhima submitted that Ngizweninshuti cannot be sued in the case of rectification of the accident statement because in cases relating to accident the concerned parties are the only ones brought before the court to determine the liable party. But, given the fact that the accident statement is

tainted with errors premised on the judicial police officer's erroneous conclusion that Muhima was responsible for the accident rather than Ngizweninshuti such errors must be corrected and the decision thereof declared invalid because it's not in the Judicial police officer's competence to determine the party responsible for the accident. He concludes by stating that they have nothing to hold against the Judicial Police officer personally. With regard to the fact that the accident statement cannot be declared nul because it is an authentic deed, Muhima argues that it is not true because the Judge is competent verify whether the content of the statement made by the judicial police officer is consistent with the truth of the matter and may even declare it invalid if he finds it illegal or inaccurate because the statement made by the judicial police officer is not an authentic deed but an ordinary statement to the extent that its content cannot be challenged. He is accordingly of the stance that such statement is not immune from rebuttal. Regarding the party responsible for the accident, he concluded by submitting that the responsible party is is Ngizweninshuti on the ground that Muhima's car, traveling from Kimihurura to town, collided with Ngizweninshuti's car at the road junction as he suddenly entered the road and damaged the right side of the car that was being driven by Muhima Giovanni.

Held: 1. The objection which was overlured at the first instance and not raised as a ground of appeal on the appellante level cannot be raised during the review of the judgment due to injustice, therefore, the issue raised by Ngizweninshuti that he shouldnot have been sued for failure to rectify the accident report which was submitted to the Intermediate Court as an objection but was not raised again at the appellate level, so it can not be examined at the level of review of the judgment due to injustice.

2. A document is not considered an authentic deed just because it was made by a public employee, but rather to be considered authentic it has to contain authentic information witnessed by a competent authority, if not so that document will be considered as any other evidence which may be challenged by any counter evidence. Therefore, the accident report must be considered as any other document containing the information that may be contradicted.

Review of the judgement due to injustice has merits;

Statutes and statutory instruments referred to:

Law N° 21/2012 of 14/06/2012 relating to the Civil, Commercial, Labour and Administrative Procedure, point 6, Article 150.

Law N° 30/2018 of 02/06/2018 determining the Jurisdiction of the Courts, article 55

Organic Law No 01/2012/OL of 02/05/2012 instituting the Penal Code, paragraph 2 of article 24

Law N° 15/2004 of 12/06/2004 relating to Evidence and its Production, article 119

Presidential Decrée No85/01 of 02/09/2002 regulating general traffic police and road traffic, Articles 11, 13. 15 and 104

Decree Law N° 21/77 instituting the Penal Code, article 18

No cases referred to.

Legal scholars:

Thierry Debard et al, Lexique des termes juridiques, 23ème éd., Dalloz, 2015-2016, p.18

Rapport Annuel 2012, La preuve dans la jurisprudence de la Cour de cassation, p.27

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 06/01/2012, an accident occurred at Kabindi Traffic lights, where a M. Benz plate N° RAB 638 W, which was being driven by Muhima Giovanni travelling from MINADEF, collided with Toyota Corolla plate N° RAB 464 R coming from Remera driven by Ngizweninshuti Albert, and the accident report made by Traffic Police Officer, Muhire Emmanuel stated that the vehicle that caused the accident belonged to Muhima Giovanni, this prompted Muhima Giovanni to file a claim against Ngizweninshuti Albert before the Intermediate Court of Nyarugenge seeking the rectification of that accident report made by that judicial police officer which faulted him for the causing the accident, so that Ngizweninshuti Albert, compensates him the expenses he incurred on repairing his car.

[2] Nyarugenge Intermediate Court adjudicated case RC 0701/13/TGI/NYGE on 25/04/2014, examined the objection for inadmissibility of the claim filed by Ngizweninshuti Albert before it examined the merits of the case.

[3] With regard to the objection, Ngizweninshuti Albert contends that he is not the right person to be sued for rectifying the accident report made by the Judicial Police Officer Muhire Emmanuel, whereas Counsel Kazenzeza Théophile representing Muhima Giovanni states that their claim seeks the invalidation of the accident report, and accordingly Ngizweninshuti Albert be compelled to pay all car repair expenses. In respect of this issue, the court ruled that there is no reason for not suing Ngizweninshuti Albert because the case is based on liability originating from the accident but not on the accident report because he is not the one who made it.

[4] With regard to the case in merits, basing on the fact that the accident report made by the judicial police officer at the scene confirmed that Muhima Giovanni violated the traffic lights (green light) which resulted in an accident and the fact that there was no way it can change the report made by the Judicial Police officer which confirmed that the accident was caused by Giovanni's faults, the Court declared that his claim has no merits because he was responsible for the accident.

[5] Muhima Giovanni lodged an appeal to the High Court on grounds that the Judge of the Intermediate Court of Nyarugenge erred in fact by disregarding the crucial information and moreover they raised them, which includes the following ;

- a. One of the police officers at the scene who stated that Muhima Giovanni's car started moving when traffic lights were indicating green light, was not interviewed
- b. The judicial police officer stated that Muhima Giovanni's car was the one that hit Ngizweninshuti Albert's car whereas it was his car that hit the side of Muhima Giovanni's car ;
- c. Another vehicle (vehicle C) was parked alongside that of Ngizweninshuti Albert, did not move while Ngizweninshuti Albert kept driving, was not mentioned in the report ;

d. In general, the content of the sketch of the accident is false and it left out some crucial information, (*position des véhicules après l'accident ; la distance déjà effectuée par les deux véhicules ...*)

[6] In the judgment RCA 0249/14/HC/KIG rendered on 23/10/2015, the High Court challenged the decision of the Intermediate Court for premising its decision on the Judicial Police Officer testimony who declared that Muhima Giovanni was responsible for the accident basing only on what he was told by the traffic police officers who were on duty at the time who alleged that he had passed when the traffic lights were green However, it is contrary to what the sketch of the accident indicates. The High Court, based on the fact that :

a. Compared to where Muhima Giovanni's car pulled away and the scene of accident, it is a long distance ; and close to where Ngizweninshuti Albert's car started moving ;

b. Muhima Giovanni's car was about to end the junction zone the whereas Ngizweninshuti Albert's car was entering the junction. The Court found that Ngizweninshuti Albert is responsible for the accident because he was not careful to comply with the provisions of Article 15 of the Presidential Decree n° 85/01 of 02/09/2002 regulating general Traffic Police and Road Traffic¹ . Thus it accordingly declared that :

a. The appeal filed by Muhima Giovanni has merits ;

b. The appealed judgment is reversed in whole ;

c. Ordered Ngizweninshuti Albert to pay Muhima Giovanni 3,262,603 Frw for damages and to pay him back 75,000 Frw as court deposit.

[7] Ngizweninshuti Albert was not satisfied with the ruling of the case and addressed a written request to the Ombudsman applying for review due to injustice.

[8] Following the examination of the matter, the Office of the Ombudsman addressed a written request to the President of the Supreme Court requesting that the judgment RCA 0249/14/HC/KIG rendered on 23/10/2015 by the High Court to be reviewed due to injustice. Based on the report of the Inspectorate-General of Courts, the President of the The Supreme Court confirmed the review of the judgement and was registered under RS/INJUST/RC 00024/2018/SC.

[9] On 04/02/2020, parties were called to appear before the court. Ngizweninshuti Albert was represented by learned Counsel Bizumuremyi Isaac together with learned Counsel Ndobu Augustin, whereas Muhima Giovanni was represented by Counsel Kazenzeza Théophile ; and the case was heard.

[10] At the beggining of the hearing, Counsel Kazenzeza Théophile, representing Muhima Giovanni raised an objection for inadmissibility of the claim before responding to the grounds of injustice filed by Ngizweninshuti Albert where he contended that the case subjected to application for review due to injustice was executed. Thus, he moved the Court to declare that Ngizweninshuti Albert no longer have interest in it because he lost the case.

¹The Article stipulates that the car driver must, particularly, come close to a cross-road at such a speed that he has the possibility to stop and let pass vehicles having priority ; he cannot move in the cross-roads where his car risks to be immobilised and block the passage to vehicles moving on the transversal way

[11] In his defence, Counsel Bizumuremyi Isaac, representing Ngizweninshuti Albert argued that the case was executed because it's not prohibited by law as it equally provides that such execution shall not be an impediment to the application for review of the case on grounds of injustice neither does it extinguish Ngizweninshuti Albert's interest to pursue their case

[12] The court immediately solved the disagreement and declared that the objection lacks merits on grounds that judgement execution does not prevent the agrieved party from filing a an application for review of the judgement on grounds of injustice as provided for in Article 64 of Law N°30/2018 of 02/06/2018 determining the Jurisdiction of the Courts² . The hearing proceeded to the merits of the caset.

[13] Counsel Bizumuremyi Isaac and Learned Counsel Ndoba Augustin representing Ngizweninshuti Albert explained that the grounds of injustice they seek the Supreme Court to correct is based on the following reasons :

- a. The fact that he was charged with correcting the accident statement drawn up by a police officer a one Muhire Emmanuel, , he is accordingly of the stance that his clent should not be held accountable for the matters concerning the foregoing statement;
- b. The fact that the High Court disregarded the fact that the statement drawn up by a judicial police officer is a statement provided for by the Article 13 of the Law relating to Evidence and its Production which cannot be challenged by the testimony of witnesses only.
- c. The fact that the High Court disregarded the law and evidence by declaring that he was the party responsible for the accident whereas there are witnesses who deponed that the accident was caused by Muhima Giovanni. Therefore, he seeks to be repaid the money he paid to him with interests thereof.

[14] With regard to the first reason, learned Counsel Kazeneza Théophile states that his client, Muhima Giovanni, prayed for the rectification of the accident statment so as determine the party that caused the accident given that the rationale behind this is to prove that Ngizweninshuti Albert is responsible for accident and and hold him accountable for it. He also does not admit that a a judicial police officer statement is an authentic deed as he consideres it to be a legal act that can be challenged in any way according to the veracity of the evidence adduced. He is also of the stance that no evidence was ignored by the Court because it based it ruling on the description of the accidentin accordance to the accident sketch.

[15] The Court finds that the issues to be examined in the instant case are as follows :

- Matters concerning dispute related to the claim seekingfor the correction of a statement drawn up by Judicial Police Police Officer a one Muhire Emmanuel ;
- whether an accident statement
- drawn up by a Judicial police officer is an act that may be challenged only in accordance to the provisions of the Article 13 of the Law relating to Evidence and its Production ;

² The Article stipulates that: “an application for review of a final judgement on grounds of being vitiated by injustice does not entail the stay of the execution of the judgement.

- Determine who should be held accountable for the accident of 06/01/2012 ;
- Matters concerning the money paid by Ngizweninshuti Albert to Muhima Giovanni;
- Matters concerning damages claimed by both parties.

II. ANALYSIS OF THE LEGAL ISSUES IN THE CASE

Matters concerning dispute related to the claim seeking for the correction of a statement drawn up by a Judicial Police Officer a one Muhire Emmanuel;

[16] Learned Counsel Bizumuremyi Isaac, Ngizweninshuti Albert's representative contends that the claim requesting the correction of the accident statement made by the judicial Police Officer a one Muhire Emmanuel should not be filed against him because he was not the one who drew such a statement ;

[17] Learned Counsel Kazenzeza Théophile, Muhima Giovanni's representative submitted that in matters related to accidents, parties to the dispute are the same time parties to the case so as to determine the party responsible for the accident and the same should pay.. However, the fact that the report of the accident is tainted with errors where the judicial police officer who drew it up erroneously declared that Muhima Giovanni was responsible for the accident rather than being Ngizweninshuti Albert such errors should be corrected and as well as decision that resulted thereon must be declared invalid as it's not vested in Judicial police officer's competence to determine the responsible for accident. Counsel Kazenzeza rests his case by stating that they have nothing to hold against the judicial police officer personally.

DETERMINATION OF THE COURT

[18] With respect to whether the claim requesting for the correction of an accident statement drawn up by the Judicial Police Officer a one Muhire Emmanuel may be lodged against Ngizweninshuti Albert, the Court found that it was raised as an objection and accordingly decided on by the Intermediate Court where it declared that the charge against Ngizweninshuti Albert is a claim based on the accident liability not on the correction of accident statement because he is not the one who drew it. It also finds that the foregoing claim was not been appealed to the High Court as it is clear that the dispute was based solely on determination of the party responsible for the accident and the liability thereof. The current problem is to determine whether the objection that was raised and decided on at the first instance, and was not appealed against that it may be heard as a ground of appeal in the judgement rendered at the last instance could be reexamined through application for review on grounds of injustice.

[19] Regarding the foregoing matter, the Court finds that the last paragraph of Article 55 of Law N°30/2018 of 02/06/2018 determining the the Jurisdiction of Courts has something to enligh thereon. The paragraph stipulates that : «...any party entitled to ordinary and extraordinary remedies but that fails to assert his/her right within the time limit provided by law, is not allowed to apply for review of a case he/she lost because of injustice... ». This means that in the event where Ngizweninshuti Albert felt dissatisfied with the decision, he would have challenged it by

filing a cross appeal to the High Court that it may correct the errors that may have been made by the intermediate court judge³. The fact that he failed to do so when he was entitled to it, means that he deprived himself of the appeal procedures. Thus, he cannot apply for review on grounds of injustice for such issue to be re-examined as it would be inconsistent with the provisions of Article 55 of the above Law.

[20] However, the Court also wonders whether the appeal referred to in the preceding paragraph does not concern the whole case so much so that Article 55 may not be based on in the event where some grounds deliberated by the trial court were not appealed against. One may also wonder why such grounds cannot be reviewed on grounds of injustice yet Article 63 of the aforementioned law provides that « when the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgement on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties ». The question before the court is to clearly determine limitations of the review provided for under the new Article.

[21] Regarding this matter, the Supreme Court finds that examining the merits of the case anew should not be construed as a disregard for the existence of other cases before being seized due to injustice. If this were the case, it would not have been necessary for the parties to submit submissions on the alleged injustice as a result of an unfair judgement as provided for in Article 150.60 of Law No. 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. This Article requires a party who is not satisfied with the ruling of the case to demonstrate the errors contained in the impugned case. To wit: errors of act or omission (including fixing the errors of the case at the previous instance) in accordance with the provisions of the law⁴. This means that the objection not raised by the party before the last appellate court, he/she is satisfied with the decision taken thereon he would not accordingly raise it again at the level of review of the case due to injustice because he deprived himself of the right to getting a fair trial when he could appeal and request for modification according to legal provisions, but failed to do so.

[22] It is therefore, in the finding of the Supreme Court that, based on preceding paragraphs, Article 55, last paragraph when aligned with the first paragraph of Article 63 of Law No. 30/2018 of 02 / 06/2018 determining the Jurisdiction of Courts, an unadmitted objection before the trial court and if it is not raised at the appellate level, cannot be subjected to application for review due to injustice. Thus, the fact that the matters related to the claim seeking the correction of the accident statement drawn up by the Police staff a one Muhire Emmanuel was not heard in the case prayed to be reviewed due to injustice, it neither be reviewed at this instance.

³ Article 170 Law No. 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “The subject matter to be decided by the appeal court shall be limited to what is in the appeal. The court may only decide on the issues brought forth by the appellant and respondent at the appeal level.”

⁴ The article stipulates that: The application for appeal is done by means of submissions filing the claim and containing: « ... The motivation for each grievance or problem indicating the errors committed and the way in which they must be modified on the basis of the law and the means of proof and the claim

Whether a statement of accident drawn by the Judicial police officer is an authentic deed that may be challenged only in accordance to the provisions of the Article 13 of the Law relating to Evidence and its Production;

[23] Counsel Ndoba Augustin, representing Ngizweninshuti Albert, contends that the appellate judge examined the accident sketch and faulted it by interpreting it in his own understanding regardless of whether the accident statement was an authentic deed seeing that it was drawn by a competent staff and accordingly cannot be challenged except in the manner provided for under Article 13 of the Law N°15/2004 of 12/06/2004 relating to Evidence and its Production⁵.

[24] Counsel Kazenzeza Théophile, representative of Muhima Giovannis submits that the Judge has competence to verify whether the content of statement made by the judicial police officer is consistent with the truth and he/she may even declare it invalid if it is found to be illegal or inaccurate because the statement drawn up by the judicial police officer is not an authentic deed but an ordinary legal act to the extent that such content is deemed immutable or infallible its contents cannot be as provided under Article 119 of the Law N° 15/2004 relating to Evidence and its Production⁶.

THE ANALYSIS OF THE COURT

[25] The Court finds that the dispute based on probative value (Probative value) as evidence of the accident statement made by the judicial police officer must be interpreted according to an analysis of the following Articles of the Law N°15/2004 of 12/06/2004 relating to Evidence and its Production : Articles 11, 13 and 119 defining matters of the deeds made by a competent civil servant, their value and their use as evidence in the legal framework. Article 11 stipulates that an authentic deed is “one, which has been drawn or received in accordance with all the required formalities, by a public officer authorised to officiate in the place where the deed was drawn up”; Article 13 of that Law provides that the “content of authentic deed witnessed by a civil servant in the capacity of a witness or agent within the limit of his or her mission is reliable and binding towards all... », whereas Article 119 stipulates that “in criminal cases, evidence can be established by all means of fact or law provided they are subject to adversarial proceedings. The court rules sovereignly on the validity and relevance of the prosecution or defence evidence”.

[26] If you read the definition of an authentic deed in a Glossary of Legal Terms (Lexique des termes juridiques) an authentic deed is defined as “a document drawn up by an authorized public officer, on paper or by other means of technology, which contains credible information that shall not be challenged, except through prosecution for falsification or forgery... ”⁷. Apparently, this definition is consistent with the provisions of Article 11 and 13. upon the foregoing elucidations, the courts added that documents personally drawn by a competent staff attesting to what happened

⁵ The Article states that “the content of authentic deed witnessed by a civil servant in the capacity of a witness or agent within the limit of his or her mission is reliable and binding towards all. The contents of such a deed shall not be challenged except through prosecution for falsification or forgery.”

⁶ The Article stipulates that “in criminal cases, evidence can be established by all means of fact or law provided they are subject to adversarial proceedings. The court rules sovereignly on the validity and relevance of the prosecution or defence evidence”.

⁷ Ecrit établi par un officier public, sur support papier ou électronique dont les affirmations font foi jusqu’à inscription de faux... ». cfr Thierry Debard et al, Lexique des termes juridiques, 23ème éd., Dalloz, 2015-2016, p.18

while he/she was fulfilling his/her duties, or if he/she was an eye witness, such document have a value of unquestionable evidence which can only be revoked by the court⁸. Succinctly, the Court finds that the authentic deed is a document that meets the following criteria :

- a. The fact that it's an authentic deed which has been drawn or received in accordance with all the required formalities, by a public officer authorised by a written document or by other means of technology ;
- b. The fact that it is a deed that was drawn up in the course of fulfilling his/her duties in his/her Work jurisdiction ;
- c. Being a document containing information personally drawn by him/her or first hand information.

Therefore, based on the foregoing elucidations, it is clear that it is not enough for a document to be drawn up by a competent public servant to be called an authentic deed.

[27] With regard to the statement of the judicial police officer, the Rwandan legislator does not specifically define its value as evidence of litigation. In other countries, such as France, there are regulatory principles to that effect: in general, the statements by judicial police officer are considered as ordinary information under the law, which can be challenged in accordance with Article 119 of the Law relating to Evidence and its Production⁹, but some of them are given high probative value than others¹⁰. Some of them given probative value as authentic deeds and these inter alia include statements made by the customs officer¹¹; others are given the value beyond normal information, which can only be impugned when an adversarial evidence is found¹². This means that it is impossible to rebut them when one is using his own words. words.¹³. However, in

⁸ Selon la jurisprudence, seuls les faits que l'officier public a énoncés dans l'acte comme ayant été accomplis par lui ou comme s'étant passés en sa présence dans l'exercice de ses fonctions sont revêtus de cette force probante, qui ne peut être combattue que par la procédure d'inscription de faux ». Voir Cour de Cassation Française, Rapport Annuel 2012, La preuve dans la jurisprudence de la Cour de cassation, p.27, accessible sur <https://www.courdecassation.fr/publicationss26/rapport-annuel-36/rapport2012-4571/>

⁹ En principe, un procès-verbal rédigé par un membre de la police judiciaire ou par un fonctionnaire chargé de constater une infraction ne vaut qu'à titre de simple renseignement ». Ibid., p.229

¹⁰ « En premier lieu, la loi peut prévoir que le procès-verbal vaudra jusqu'à preuve contraire et la loi régleme alors les conditions dans lesquelles cette preuve contraire pourra être rapportée, soit, le plus souvent, par l'écrit et le témoignage. En second lieu, la loi peut préciser que le procès-verbal vaudra jusqu'à inscription de faux. Le contenu du procès-verbal ne pourra être contesté que par la mise en œuvre de la procédure d'inscription de faux ». Ibid., p.230

¹¹ Selon l'article 336, 1°, du code des douanes, lorsqu'ils sont rédigés par deux agents des douanes ou de toute autre administration, les procès-verbaux de douane font foi, jusqu'à inscription de faux, des constatations matérielles qu'ils relatent. Les constatations matérielles sont celles qui sont faites directement par les rédacteurs du procès-verbal ». Ibid., p 231

¹² Le fait d'attribuer une force probante renforcée à certains procès-verbaux induit nécessairement une limitation du contradictoire, la discussion des éléments de preuve étant encadrée par la loi. Le prévenu a le droit de combattre ces procès-verbaux par tous les moyens légaux de preuve, mais leur force probante ne peut être infirmée sur ses seules dénégations ou allégations ». Ibid., p. 230

¹³ En premier lieu, cette force probante renforcée ne s'attache qu'aux constatations effectuées par les agents et non aux appréciations personnelles, reconstitutions et déductions auxquelles elles donnent lieu, qui ne valent qu'à titre de renseignements laissés à l'appréciation des juges du fond. En deuxième lieu, seuls les constats effectués personnellement par l'auteur du procès-verbal bénéficient de la valeur probatoire renforcée.

order for a statement in this category to have such specific value, there are certain requirements that must be met¹⁴:

- a. it must contain the firsthand information witnessed by a judicial police officer, to wit: it is not a decision based on its own analysis as it gives the statement the value of ordinary information;
- b. The fact that it is not based on hearsay even if it was told to him/her fellow judicial police officer ;
- c. The fact that it was drawn by a competent judicial police officer in his territorial jurisdiction where the crime was committed. It is in that light that Petty offences statements are the statements that have special force ¹⁵, while those made on misdemeanours are considered as ordinary information, unless otherwise provided by law¹⁶. This, of course is calculated at both reducing and ending disputes on Petty offences and avoid giving blanket justice (giving him/her enough time for defense) misdemeanours' defendant.

[28] The Supreme Court finds that, while there is no law that defines the value of a judicial police officer's statement as a piece of evidence, this example from France would be a good precedent in resolving continuing disputes over the value of a judicial police officer's statement. The only remaining question is to determine at which level the statement made by a judicial police officer on crimes committed in violation of the Presidential Decree regulating general traffic police and road traffic ¹⁷would be classified..

[29] The Supreme Court finds that the answer to this question is provided under Article 18 of Decree -Law N° 21/77 Instituting the Penal Code ¹⁸ that was in force at the time the accident happened and in paragraph 2 of Article 24 of the Organic Law n° 01/2012/OL of 02/05/2012 Instituting the Penal Code that was in force at the time the road accident statement between Muhima Giovanni and Ngizweninshuti Albert was adduced as evidence in cases that preceded this one. The Article stipulates that the offense of non-compliance with road traffic rules is classified as a petty offence except they are punishable under specific law¹⁹..

[30] Based on the contents of the preceding paragraphs, the Supreme Court finds the statement of the car accident to be an irrefutable piece of evidence unless evidence rebuttal to that effect is adduced given that it is a statement on a petty offence drawn by a Judicial police officer as long as it fulfills the requirements set out in paragraph 27.

¹⁴ Enfin, la force probante renforcée ne vaut que pour les constatations se rapportant aux infractions que l'auteur du procès-verbal est spécialement habilité à constater, sur l'étendue de la circonscription à laquelle il est affecté ». Ibid., p. 231

¹⁵ Les procès-verbaux de constat établis en matière contraventionnelle valent jusqu'à preuve contraire». Ibid., p.230

¹⁶ Les procès-verbaux ne bénéficient de cette force probante renforcée que dans les cas où leurs auteurs «ont reçu d'une disposition spéciale de la loi le pouvoir de constater des délits par des procès-verbaux ou des rapports». Ibid.

¹⁷ Presidential Decree n° 85/01 of 02/09/2002 regulating general traffic police and road traffic, Articles.

¹⁸ The Article stated that « ...Offences against laws, orders, public service and security regulations in respect of which the law does not provide for specific sentences are also petty offences».

¹⁹ Iyo ngingo yagiraga iti "Offences against laws, orders, public service and security regulations in respect of which the law does not provide for specific sentences are also petty offences».

[31] With respect to the instant case, the statement drawn up by the judicial police officer on the accident occurred between Muhima Giovanni and Ngizweninshuti Albert's car is not an authentic deed but a statement that cannot be subjected to challenge unless the rebuttal evidence is adduced as it is a statement on petty offense, however the Court finds it to have some inadequacies that prevents it qualify for that level mainly based on the fact that the content thereof was not a firsthand information but a hearsay the judicial police officer heard from people present at the scene of the accident²⁰. In addition, the conclusion of the statement seems to give a conclusion based on personal-analysis of the events that occurred²¹. accordingly, it is in the finding of the Supreme Court such statement should be considered as any document that providing information that can be challenged in any way as provided for under Article 119 of Law No. 15/2004 of 12/06/2004 relating to Evidence and its Production.

Determination of who should be held liable for the accident of 06/01/2012

[32] Learned Counsel Ndoba Augustin and learned Counsel Bizumuremyi Isaac, representative of Ngizweninshuti Albert submit that Muhima Giovanni is the party responsible for the accident because :

- a. The Road traffic staff saw him ;
- b. There are also witnesses who deponed that Muhima Giovanni violated traffic rules where he started moving when the traffic lights shone red whci prohibited him from moving moving, and and in acting contrary to that they collided.

[33] They submit that the High Court also errorrd in law by disregarding the law, in particular the Presidential Decree N° 85/01 of 02/09/2002 regulating General Traffic Police and Road Traffic in the Article one, paragraph 2, which defines the qualified agent for enforcement of this Order and and nullified the statement made by OPJ Muhire Emmanuel without hearing his elucidations on the matter.

[34] Counsel Kazenzeza Théophile, representative of Muhima Giovanni contends that the party responsible for the accident is Ngizweninshuti Albert on ground that Muhima Giovanni's car, traveling from Kimihurura to the town (one heading to the town and the other to Kimihurura), was knocked by Ngizweninshuti Albert's car in the road junction as he suddenly entered the road and as a result damaged the right side of Muhima Giovanni's car

[35] Learned Counsel Kazenzeza Théophile also states that the Presidential Decree that was based on stipulates that in road junctions the driver must be cautious. He rests hua case by praying the Court to examine the statement of the accident and the declarations of both parties as it appears to be inconsistent with what happened.

DETERMINATION OF THE COURT

²⁰See the text on page 4 where it states that: "Traffic police staff who were standing at the Traffic lights in the junction also confirmed that Muhima Giovanni had crossed when the red lights were being emitted."

²¹ See the statement on page 4 where it states that "... the accident caused by Muhima Giovanni who crossed when the red lights were being emitted"

[36] The Court finds that Article 104 of Presidential Decree N° 85/01 of 02/09/2002 regulating General Traffic Police and Road Traffic, defines a vehicle that has priority to pass based on the traffic lights that shne in colours following three colours :

a. the red light means : prohibition to move beyond the signal ;

b. the yellow light means : prohibition to move beyond the stop line or, in default of any stop line, the signal itself, unless its turns on when the driver is so close to the degree that he is not able to stop without causing more problems ; however in the event where where the signal is located at cross-roads, the driver who has moved passed the stop line or the signal in such circumstances can only cross the cross-roads if he cannot cause danger to other road users;

c. the green light means : authorisation to pass the signal.

[37] When vehicles collide in a junction that has a traffic lights and each of the drivers does not accept its responsibility therein, the party thatviolated the general rules of the road must shall be held liable, especially Article 15 of the Presidential Decree n° 85/01 of 02/09/2002 regulating general traffic police and road traffic, stipulating that the car driver must come close to a cross-road at such a speed that he has the possibility to stop and let pass vehicles having priority to avoid any cause of an accident.

[38] In the event where an accident happened due to the fact that one of the vehicles moved into the junction without the priority to pass given that the red light signal was on ans as a result slumed into the one complying with the green light signal, which has priority to pass, he is undoubtly responsible for the accident. On the other hand, if someone with priority to pass as per the green light signal is passes and happens to slam into something, they are also equally responsible for theaccident based on the fact that he was negligent to enter the junction without being careful of any risk that might cause the accident as provided under Article 15 of the Decree mentioned above. However, if it's clear that he is the victim, the accident is the sole responsibility of the offender. In the event where it was a head to head collission or when it is difficult to determine who the responsible party is, the one who violated the red traffick light signal shall be held liable as he/she is the one who blatantly ignored the principle of foresight.

[39] In the instant case, the accident sketch shows that Muhima Giovanni, who was driving from RRA's directionwas and as he crossed the road junctionhe collided with Ngizweninshuti Albert's car who was emerging from KBC road heading to Kimihurura. The report also demonstrates that the car was damaged at the front side. A police officer present at the scene of accident stated that the accident was caused by Muhima Giovanni who crossed the road junction while the red light was still on. Although Muhima Giovanni denies to that effect, it is not clear how Ngizweninshuti Albert's car would have hit him in the junction if he had complied with the traffick lights which shone red because the traffic lights cannot indicate signs that would lead vehicles to reach the junction at the same time and collide as a result. On the other hand, none of the witnesses challenged the fact that Ngizweninshuti Albert crossed the junction when traffic lights indicated green light. This indicates that Muhima Giovanni was the one who crossed the road junction when the red light was still in action. Therefore, the fact that both vehicles collided and got damaged at the front side, and Muhima Giovanni was the one who was in violation of the traffick lights that ordered him to stop, the Court finds him liable for the accident on grounds that because he is the one who blatantly lacked foresight as explained in the preceding paragraph.

[40] However, regarding the fact that the previous courts did not summon the person who drew the statement for elucidations, the Supreme Court finds it unnecessary because, as explained, such accident statement is more or less than the ordinary information that may be examined and considered by the court in its discretion.

Regarding the amount of money and the interest thereof that Ngizweninshuti Albert seeks to be refunded,

Whether Ngizweninshuti Albert can be refunded the amount of 3,837,603 Frw paid to Muhima Giovanni

[41] Learned Counsel Bizumuremyi Isaac, representing Ngizweninshuti Albert, submitted that the High Court ordered Ngizweninshuti Albert to pay Muhima Giovanni three million, three hundred and thirty-seven thousand, six hundred and three rwandan francs (3,337,603 Frw) for damaged car in addition to of the cout fees of seventy-five thousands rwandan francs (75,000 Frw) and five hundred thousand rwandan francs (500,000 Frw) paid to the professional bailiff who executed the judgement. Making a total sum of three million, eight hundred and thirty-seven thousand, six hundred and three rwandan francs (3,837,603 Frw); so he has to be refunded taht money because he is not the party responsiblefor the accident.

[42] Learned Counsel Kazeneza Théophile, representing Muhima Giovanni, contends that the Court order is a result of the judgment execution in order to repair the car damaged by the accident, accordingly such money shall not be refunded to Ngizweninshuti because he is not the one who paid it but the insurance company though he denies it. Thus, he is not eligible to be refunded.

DETERMINATION OF THE COURT

[43] The Court finds that three million eight hundred thirty-seven thousand six hundred three rwandan francs (Frw 3,837,603) claimed by Ngizweninshuti Albert from Muhima Giovanni based on the judgement execution and the liability of the accident, as well as the court fees paid at the High Court must be refunded to him because he is not the party responsible for the accident as stated above. But the total amount includes the amount paid by the Insurance Company (SAHAM RWANDA ex CORAR AG Ltd) amounting to two million two hundred seven thousand six hundred three rwandan francs (2.207.603 Frw). This last sum must be deducted from the total amount to be reimbursed to him because he is not the one who paid it. Therefore, the Court finds that the amount to be refunded is one million six hundred thirty thousand Rwandan francs (1,630,000 Frw).

Regarding the interests related to amount Ngizweninshuti Albert seeks to be refunded

[44] Learned Counsel Ndobu Augustin representing Ngizweninshuti Albert claims annual interest of 18% over the last 4 years after paying 3.837.603 Frw. Interests are equal to 2,763,074 Frw, based on the loss he incurred andon the fact that he was unfairly deprived such amount.

[45] Learned Counsel Kazenzeza Théophile representing Muhima Giovanni contends that the interests claimed are unreasonable and groundless on grounds that it would be penalizing the party that won the case yet they are innocent. What he did was to execute the decision of the Court.

DETERMINATION OF THE COURT

[46] According to the statement of execution of judgement 0249/14/HC/KIG tried on 23/10/2015 by the High Court between Muhima Giovanni and Ngizweninshuti Albert, the Court finds that Muhima Giovanni was paid three million eight hundred thirty-seven thousand six hundred three rwandan francs (3,837,603 Frw) of which Ngizweninshuti Albert paid one million six hundred and thirty thousand rwandan francs (1,630,000 Frw) whereas his insurer SAHAM (ex CORAR) paid two million two hundred and seven thousand six hundred and three rwandan francs (2,207,603 Frw). It is ostensibly clear that he was not deprived of the amount paid by SAHAM. So, and accordingly shall not be awarded the interests thereof.

[47] On the contrary the Court finds that the interests he is eligible for are those based on the amount he personally paid to with : one million six hundred and thirty thousand rwandan francs (1,630,000 Frw). With regard to the rate of 18% that Ngizweninshuti Albert bases his interests, the Court finds that Muhima Giovanni did not rebut to that effect and the Court also finds the to be reasonable, on grounds that if he had borrowed the money to be repaid or had borrowed it to fill the gap left, he would have borrowed it at the rate similar to the one of the bank to the borrowers ; and currently there are banks that grant loans at an annual rate of 18%. based on such grounds Muhima Giovanni must pay Ngizweninshuti Albert the interests emanating from one million six hundred and thirty thousand Rwandan francs (1,630,000 Frw) calculated over a period of three years and twenty-five days to wit: one thousand one hundred and twenty days since the judgement was executed as its indicated by the statement of the execution of the judgement of 27/01/2017 until today, instead of four years as Ngizweninshuti Albert claims; thus, the total is (1,630,000 Frw x 18% x 1120 J): 350 J= nine hundred thousand two hundred ninety-five rwandan francs (900.295 Frw)

Regarding Damages claimed in the instant case

[48] Counsel Ndoba Augustin representing Ngizweninshuti Albert requests seeks to be refunded one million (1,000,000 Frw) paid to his Counsel at both Intermediate and High Court level as well as another one million (1,000,000 Frw) he paid to this Court amounting to a total amount of 2,000,000 Frw in addition to the one million (1,000,000 Frw) for procedural fees right from the Police level, throughout investigation until the current level.

[49] Counsel Kazenzeza Théophle, representing Muhima Giovanni, contend that court deposit fees and lawyer's fees should not be paid by Muhima on ground that he was he is not the judge that tried the case not mentioning that they are unfounded. He on the contrary moved the Court to order the plaintiff to pay the damages for procedural fees equivalent to five hundred thousand rwandan francs (500,000 Frw) and a lawyer's fees equivalent to one million rwandan francs (1,000,000 Frw).

DETERMINATION OF THE COURT

[50] The court finds that Muhima Giovanni does not deserve damages he claimed because he is responsible for the accident which occurred on 06/01/2012 between his car and that of Ngizweninshuti Albert. The Court finds that Ngizweninshuti Albert must receive the claimed damages, but because he does not justify the basis of the calculation thereof, the Court, in its discretion, awards him three hundred thousand rwandan francs (300,000 Frw) of procedural fees for each case level which is equivalent to nine hundred thousand rwandan francs (900,000 Frw) and five hundred thousand francs (500,000 Frw) for lawyer's fees at each level which is equivalent to one million five hundred thousand rwandan francs (1,500,000 Frw). The total is two million and four hundred thousand Rwandan francs (2,400,000 Frw).

III. DECISION OF THE COURT

[51] Hereby declares that Ngizweninshuti Albert's application for review for injustice against judgement n° RCA 0249/14/HC/KIG tried by the High Court on 23/10/2015, is founded ;

[52] Declares that the ruling of case n° RCA 0249/14/HC/KIG rendered by High Court on 23/10/2015 is reversed in whole ;

[53] Orders Muhima Giovanni to pay Ngizweninshuti Albert :

- One million six hundred and thirty thousand Rwandan francs (1,630,000 Frw) paid in execution of case n° RCA 0249/14/HC/KIG tried by the High Court ;
- The interests thereof equivalent to nine hundred thousand two hundred ninety-five rwandan francs (900.295 Frw)
- Two million four hundred thousand rwandan francs (2,400,000 Frw) for procedural fees and lawyer's fees paid at the Intermediate Court, High Court and the Supreme Court level ;
- The total amounts to four million nine hundred thirty thousand two hundred ninety-five Rwandan francs (4,930,295 Frw).