

## **BIZIMANA v UWASE**

[Rwanda, SUPREME COURT- RS/INJUST/RC 00015/2017/SC – ((Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and Rukundakuvuga, J.) 23 June 2020]

*Civil procedure – Application for review due to injustice – Absentia parties – When a claim in respect for an Application for Review of a judgment on grounds of being vitiated by Injustice, none of legally summoned parties appears, similar to the case of other proceedings, the Court may adjourn the case, or remove the case from the list of cases when it appears to the court that the parties have no interest in pursuing their case.*

**Facts:** When a claim is relating to application for Review due to Injustice, none of the parties appear to court for the entire procedure of summons as provided for the law, as in the case of other proceedings, the Court may adjourn the case to another day, or removal the case from the list of cases when it is clear to the court that parties have no interest in pursuing their case.

Bizimana was not satisfied with the court decision and appealed to the Intermediate Court of Rubavu. The court ruled that Bizimana's appeal was founded in some arguments; orders that the property consist of 2 houses, must be registered with their children represented by Bizimana and Uwase, and that Bizimana and Uwase are not allowed to sell it; confirms that the judgment of the appealed case has changed only with respect to the property consisting of the houses.

Bizimana was not satisfied with the decision of the case and wrote to the Office of the Ombudsman requesting that the case decided by the Intermediate Court of Rubavu be reviewed due to injustice, as the Court ordered that the property he owed with Uwase be given to their children, and registered to their children which the law did not provide for whereas the law provides that in the event of a permanent divorce spouses share their property equally.

The Office of the Ombudsman wrote to the President of the Supreme Court requesting that the case be reviewed to injustice, and the President of the Supreme Court also confirmed that the case would be heard by the Supreme Court.

The date of the hearing was reached, with no party personally present whereas they were all summoned in the means and procedure prescribed by law. And the court examined the question to know how it goes in case the parties are not personally present in the Court while there were summoned in means and procedure prescribed by the law in the case of application for review due to injustice.

**Held:** 1. When a claim is relating to Application for Review due to Injustice, none of the parties appears to court after the entire procedure of summons as provided for the law, as in the case of other proceedings, the Court may adjourn the case to another day, or removal the case from the list of cases when it is clear to the court that parties have no interest in pursuing their case, thus it is clear that Bizimana has no interest in this case he applied for review due to injustice because, he were summoned and did not personally appear to Court. The Court must remove this case on the list of the cases.

**Claim of application for review due to injustice removed**

**Statutes and statutory instruments referred to:**

Law N°. 22/2018 of 29/04/2018, on Civil, Commercial, Labor and Administrative Procedures, article 59, Paragraph 1

**No cases referred to.**

## **JUDGMENT**

### **I. BACKGROUND OF THE CASE**

[1] Bizimana Twizerimana Théoneste was married to Uwase Furaha Marie Louise on 15/07/2005, in Nyamyumba Sector, they begot two children namely Uwiduhaye Nadine born in September / 2004 and Irabizi Didier born on 15/05/2008 and they have property consisting of two houses and a motorcycle. Later they had misunderstanding until Uwase Furaha Marie Louise filed a lawsuit in Primary Court of Gisenyi seeking for a divorce.

[2] On 31/10/2013, Primary Court of Gisenyi ruled as follows:

- Declares that Uwase Furaha Louise is completely divorced from Bizimana known as Twizerimana Théoneste;
- Ordered that the property they owned together consist of two houses in Plot No. 511 located Rushubi-Rugerero remain with Twizerimana Bizimana Théoneste because it is his usual residence, while Uwase Furaha Marie Louise wins the house in Plot No. 763 located in Rurembo-Rubona;
- Orders that TVS motorcycle with the Chassis number MD625DF44C1A71630 be sold from the proceeds and distributed equally;
- Orders that the debts owed to Vision Bank amount to 622,500 Frw to be paid equally: each of them must pay 311,200 Frw and then the Bank will calculate the interest on late payment, and the divorced will jointly repay them equally;
- Ordered that their two children, Nadine Uwiduhaye, born on 09/2004 and Irabizi Didier, born on 15/05/2008, have to live with her mother and take care of them, then her father Bizimana Twizerimana Théoneste pay harmony of 10,000Frws per month to help Uwase Furaha Marie Louise to raise them.

[3] Bizimana Twizerimana Théoneste appealed the case to the Intermediate Court of Rubavu and a claim was given number RCA 0043/14 / TGI / RBV. In this case, the court heard only the consequences of the divorce and the division of property and who will be given children because both wanted to keep them.

[4] On 04/06/2014, High Court of Rubavu ruled in RCA 0043/14 / TGI / RBV as follows:

- a. It held that Bizimana Twizerimana Théoneste's appeal was well-founded;
- b. Ordered that the property consists of a house in plot no 763 located at Rurembo-Rubona-Nyamyumba and a house in plot number 511 located at Rushubi-Rugerero, should be registered to their children namely Uwiduhaye Nadine and Irabizi Didier

and represented by Bizimana Twizerimana Théoneste and Uwase Furaha Marie Louise, then Bizimana and Uwase are not allowed to sell it;

- c. It affirms that the judgment in Case RC 0174/13 / TB / GIS on appeal has only changed with respect to property consisting of houses.

[5] Bizimana Twizerimana Théoneste wrote to the Office of the Ombudsman requesting that case RCA 0043/14 / TGI / RBV decided by the Intermediate Court of Rubavu on 04/06/2014 be reviewed due to injustice as the Intermediate Court of Rubavu ordered that the property the gained while living together be given to their children and registered to them hence there is no statutory provision provides so, rather it provides that in case permanent divorce is given, the spouses share their property equally.

[6] After examining the matter, the Office of Ombudsman found that case RCA 0043/14 / TGI / RBV decided by the Intermediate Court of Rubavu on 04/06/2014, should be reconsidered on grounds of injustice, and requested the President of the Supreme Court, after considering the report of the Inspectorate General, of Courts, confirmed that the case is being reheard and registered to RS / INJUST / RC 00015/2017 / SC.

[7] On 23/06/2020, the case was called without any of the parties personally present and they were summoned in accordance with the law;

[8] The issue to be considered is to know how the case of application for review due to injustice is treated when no one of the parties to the case personally appeared before Court after all procedures of summoning parties as determined by the law.

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

[9] After the President of the Supreme Court ruled<sup>1</sup> that the case No. RCA 0043/14 / TGI / RBV decided by the Intermediate Court of Rubavu on 04/06/2014 was remanded on grounds of injustice at Bizimana 's request, his complaint was registered in the list of cases of Supreme Court as provided for in article 80 of Organic Law No. 03/12 / OL of 13/06/2012 determining the structure, functioning and jurisdiction of the Supreme Court. Bizimana Théoneste was repeatedly summoned on the basis of his identifications given<sup>2</sup> but could not appeared to court so as to provide his court submission in accordance with article 20 of Law No. 22/2018 of 29/04/2018, on civil, commercial, labor and administrative procedure. He was required to be summoned as a party with unknown address<sup>3</sup> in accordance with the provisions of articles 45, 46 and 49 al.2 of the above law; unfortunately, he did not personally appear to Court.

[10] Uwase Furaha Marie Louise was also summoned but according to the summons, she refused to sign stating that the case against her husband she won the case, and they had even begun to execute so that they had no other case, that she said that they are duping her<sup>4</sup>.

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<sup>1</sup> See the decision of the President of The Supreme Court N<sup>o</sup>021/2017 of application for review due to injustice found in final court decisions

<sup>2</sup> See summon of 27/07/2017, that of 23/11/2017 and that of 07/02/2019

<sup>3</sup> See summon of 5/12/2019

<sup>4</sup> See summon of 27/07/2017 and the statement of a Court Bailiff of 02/08/2017 appearing to that summon

## **DETERMINATION OF THE COURT**

[11] Article 59 (first paragraph) of Law N°. 22/2018 of 29/04/2018, on civil, commercial, labor and administrative procedure provides that “If no party appears in court on the day of the hearing and the parties are duly notified of the date of the hearing, the Court may adjourn the case to another day, or removal the case from list of cases when it is clear to court that parties have no interest in pursuing their case.

[12] The Supreme Court finds that this provision gives the court a choice between adjourning the case to another day, or remove from the list of cases. The court is allowed to remove the case from list of cases when it is clear to court that parties have no interest in pursuing their case.

[13] In the present case, the court finds that the first party to have interest was Bizimana Twizerimana Théoneste because he was the one who requested that this case to be reviewed due to injustice and accepted. But the fact that he was allowed to do so in order to do what the law requires for his trial or for him to proceed with his case shows that he has no longer interest in it. As for the defendant, Uwase Furaha Marie Louise, who testified to the bailiff who went to summon her, told him that she had no direct interest in the case as described above.

## **DECISION OF THE COURT**

[14] Held that Bizimana Twizerimana Théoneste's application for review due to injustice of the case RCA0043 / 14 / TGI / RBV ruled by Intermediate Court of Rubavu on 04/06/2014 is removed from the list of cases.