

NDAYISENGA v UMUHOZA

[Rwanda SUPREME COURT – RC 0008/2017/SC (Mugenzi, P.J, Kayitesi and Cyanzayire, J.)
September 28, 2018]

Law determining the jurisdiction of courts – Jurisdiction of the Court of Appeal – Contradictory court decisions – Issues related to contradictions that arise among final court decisions are resolved by the Court of Appeal.

Facts: The case started before the Mediation Committee where Umuhoza sued Mukandekazi for having registered the property left by Ndayambaje in her names while it does not belong to her. The mediators ruled that the forest belongs to Ndayambaje. Such decision became final since none of the parties lodged an appeal.

Umuhoza also sued her mother-in-law Mukandekazi before the Primary Court of Kacyiru for having registered herself to the property of late Ndayambaje, making it her family's property while she had inherited it from her husband. The Court heard the case and held that it lacks merit.

Umuhoza lodged an appeal to Intermediate Court of Gasabo but the case was later struck off the docket for default to appear. She later reintroduced the case, and the Court ruled in favor of Umuhoza.

Mukandekazi later applied for case review before Intermediate Court of Gasabo. While the application for review of the judgment was still pending trial, Ndayisenga Protais seized the Supreme Court, suing Umuhoza, praying the very Court to resolve the contradictions that arose between the decision of the Mediation Committee of Kimironko Sector and the ruling of the Primary Court of Kacyiru of 23/07/2007, a ruling that has been appealed to the Intermediate Court of Gasabo, stating that both cases were decided at last instance.

Umuhoza alleges that the application filed by Ndayisenga Protais requesting this Court to resolve the contradictions between the aforementioned decisions should not be admitted, because it was filed in the absence of an existing law which provides that the contradictions that arise among decisions are resolved by the Supreme Court. She further states that even in the current Law determining the jurisdiction of Courts, no court has been entrusted with the jurisdiction over contradictory decisions.

Ndayisenga states that the raised objection is unfounded, that the Supreme Court has jurisdiction over this claim, because even though these conflicting judgment decisions have become final, there are other cases originating from them, which were tried after the publication of the said Organic Law entrusting the Supreme Court with the jurisdiction over contradictory court decisions, and the current law of 2018 determining the jurisdiction of Courts, does not preclude the Supreme Court from trying claims arising from conflicting court decisions.

Held: 1. Issues related to contradictions that arise among final court decisions are resolved by the Court of Appeal, because contradictory court decisions are regarded as ordinary issues compared to the special jurisdiction entrusted to the Supreme Court, therefore the application filed by Ndayisenga is transferred to the Court of Appeal.

**Objection of lack of jurisdiction sustained;
The case is transferred to the Court of Appeal;
Court fees cover expenses incurred in this case.**

Statutes and statutory instruments referred to:

Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, article 52;
Organic Law N° 03/2012/OL of 13/06/2012 determining organization, functioning and jurisdiction of the Supreme Court, Subparagraph 12, article 29.

No cases were referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Umuhoza Annonciata sued to the Mediation Committee of Kimironko Sector her mother-in-law Mukandekezi Euphrasie, stating that when Goboka carried out an expropriation of the property she inherited from her husband late Ndayambaje Pierre, the defendant registered the said property in her own name while it is the claimant who has to manage it on behalf of the four (4) children she had with the deceased.

[2] The Mediation Committee of Kimironko Sector resolved the issue on 15/07/2005, where it held that the modern forest that was sold does not belong to Ndayambaje Pierre, and ordered that Gapfizi, Mukandekezi Euphrasie's husband, should be given another forest in exchange, because the forest that was sold belonged to him (Gapfizi). This decision became final since it was not subject to appeal.

[3] Umuhoza also sued her mother-in-law Mukandekezi before the Primary Court of Kacyiru for having registered herself to the property of late Ndayambaje Pierre, turning it her family's property while Umuhoza inherited the said property from her husband, and should be used to raise their children.

[4] The Court heard the case RC 0770/05/TD/KCY on 23/03/2007, and declared that Umuhoza Annonciata lost the case. It ordered that the proceeds of sale of the forest amounting to 423,570 Frw paid by Goboka and taken by Mukandekezi Euphrasie should be apportioned to the four (4) children of late Ndayambaje Pierre, but given that Umuhoza Annonciata was awarded excessive amount to what was supposed to be awarded to her children, they should not receive any amount of money. The Court also ordered that the money paid for the houses of the late Ndayambaje Pierre be distributed to his four children, meaning 893,810 Frw for each child; and children under the care of Umuhoza Annonciata be given 1,899,404 Frw. The very Court also ordered Umuhoza Annonciata to return 159,709 Frw to the children of Ndayambaje Pierre, who are under the care of Mukandekezi Euphrasie because she was unduly paid such amount, and ordered her to pay the judicial fees, deduction made of court fees deposit.

[5] Umuhoza Annonciata appealed such decision to the Intermediate Court of Gasabo and her appeal was registered under RCA 0064/07/TGI/GSBO. Goboka was forced to intervene, but the appeal was later struck off the docket on 21/11/2008, due to the fact that Umuhoza Annonciata who appealed, did not appear.

[6] Umuhoza Annonciata reintroduced the case on 16/06/2009, explaining the reasons for her failure to appear, and the Court admitted her reasons and proceeded with the hearing of the case on the merits.

[7] The Intermediate Court of Gasabo tried the case RCA 0138/09/TGI/GSBO on 25/02/2010 and held that the appeal of Umuhoza Annonciata has merit, and accordingly ordered Mukandekazi Euphrasie to take the property she was allocated on behalf of her children Uwambaje Liliane and Uwitonze Diane back to the property of late Ndayambaje Pierre for Umuhoza Annonciata to manage it on behalf of the children as ruled by the Court. The very Court also ordered to Mukandekazi Euphrasie to pay Umuhoza Annonciata 1,500,000 Frw as damages as well as 13,900 Frw for court fee. This case RCA 0138/09/TGI/GSBO was delivered on 25/02/2010 and was complemented by the interpretative judgment RCA 0499/10/TGI/GSBO rendered on 21/01/2011.

[8] Mukandekazi Euphrasie immediately filed another claim before the Intermediate Court of Gasabo requesting the review of the judgment RC 00249/2017/TGI/GSBO, and her claim was registered to RC 00249/2017/TGI/GSBO, and the pre-trial conference was scheduled on 02/03/2018, but the case is not yet tried.

[9] While the case RCA 0138/09/TGI/GSBO under review was still pending trial before the Intermediate Court of Gasabo, Ndayisenga Protais sued Umuhoza Annonciata before the Supreme Court, praying it to resolve the contradiction between the decision of the Mediation Committee of Kimironko Sector of 07/09/2005 and that of the case RC 0770/05/TD/KCY taken by the Primary Court of Kacyiru on 07/23/2007 that was appealed to the Intermediate Court of Gasabo and to adjudicate the case RCA 0138/09/TGI/GSBO. He states that both cases were rendered at the last instance, and the application was registered to RC 00008/2017/CS.

[10] Counsel Nsengimana Emmanuel assisting Umuhoza Annonciata states that, would the application filed by Ndayisenga Protais be dismissed, his client should be awarded consolidated damages amounting to 1,000,000 Frw.

[11] Counsel Twizeyimana Innocent representing Ndayisenga Protais sustains that the damages claimed from his client should not be awarded, since Umuhoza Annonciata is the person responsible to have dragged her family in all lawsuits, and in addition she should not be awarded counsel fee.

[12] The hearing of this case was conducted on 04/09/2018, Ndayisenga Protais being assisted by Counsel Twizeyimana Innocent while Umuhoza Annonciata was assisted by Counsel Nsengimana Emmanuel. At the beginning of the trial, Nsengimana Emmanuel raised an objection of inadmissibility of the application filed by Ndayisenga Protais due to lack of jurisdiction of the Supreme Court on matters relating to the application for resolving the conflicts that arose between the aforementioned decisions, the objection relating to the fact that one of such conflicting decisions of which application for case review was submitted to Intermediate Court of Gasabo is

still pending, and another objection related to lack of interest by the claimant, an objection that the later withdrew in the course of hearing. In examining the objections raised, the issue regarding the jurisdiction of the instant Court is to be analysed.

II. ANALYSIS OF LEGAL ISSUES

Whether the application for resolving the contradictions arising among court decisions falls within the jurisdiction of the Supreme Court

[13] Counsel Nsengimana Emmanuel, assisting Umuhoza Annonciata, states that the application filed by Ndayisenga Protais requesting this Court to resolve the contradictions arisen between the aforementioned judgment decisions, should not be admitted on ground that there is no existing law that stipulates that such contradictions are resolved by the Supreme Court. He motivates that the aforementioned contradictory court decisions were rendered before the adoption of Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, which came into force on 13/06/2012. He elucidates that the decision of the Mediation Committee was taken on 15/07/2005 and the judgment RC 0770/05/TD/KCY was rendered on 23/03/2007, and the judgment RCA 0138/09/TGI/GSBO that was rendered on 25 /02/2010, due to the fact that the above judgments had been rendered before the promulgation of the law on which the claimant bases the jurisdiction of the instant Court, such Court lacks jurisdiction to hear this claim based on the provisions of articles 87, 91 and 92 of the aforementioned Law n° 03/2012/OL. He further states that even in the current Law determining the jurisdiction of Courts, no court has been entrusted the jurisdiction over contradictory decisions.

[14] Counsel Twizeyimana Innocent assisting Ndayisenga Protais states that this objection is unfounded, and that the Supreme Court has jurisdiction over this claim, because even though these conflicting decisions became final, there are other cases originating from them, including the case of Mukandekazi Euphrasie about the rectification of the judgment and the interpretative judgment, all of which were tried after the adoption of the said Organic Law n° 03/2012/OL, and he therefore finds that such law continued to be applied on those contradictory cases until 2017, and that the current law n°30/2018 of 02/06/2018 determining the jurisdiction of Courts does not in any way preclude the Supreme Court from examining claims relating to conflicting court decisions.

DETERMINATION OF THE COURT

a. Regarding the jurisdiction of the Supreme Court on contradictory claims at the time of the application of the Organic Law n° 03/2012/OL of 13/06/2012 determining organization and functioning of the Supreme Court.

[15] The Court finds that the jurisdiction of the Court should not be considered on the basis of the time of the judgment trial, rather the time on which the Court was seized. Regarding the application of Ndayisenga Protais on the aforementioned contradicting judgments, it appears that it was submitted to this Court on 13/07/2017 while the Organic Law n° 03/2012/OL of 13/06/2012 determining organization, functioning and jurisdiction of the Supreme Court, which entrusted the Supreme Court jurisdiction over contradictory judgment decisions in its article 29, subparagraph

12, was still into force, because it was repealed on 02/06/2018. Accordingly, the Court finds that it had jurisdiction to admit and examine the application.

b. Whether the Supreme Court still has jurisdiction to hear cases relating to contradictions arisen from court decisions based on the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts

[16] The Court finds that the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts does not where entrust this Court with the jurisdiction to resolve contradictions arising among court decisions and no other court has been entrusted with such jurisdiction.

[17] The Court finds however that the fact that this jurisdiction was not provided, does not entail that the legislator intended that such claims should remain untried, rather it is evident that such provisions have been forgotten, therefore, a court to hear such claims should be determined.

[18] The instant Court finds that the direction taken by the legislator in the new Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts is that almost all cases that were tried by the Supreme Court were transferred to the jurisdiction of the Court of Appeal as of article 52 of this law.

[19] The Court finds therefore that since the contradictions arising among final decisions fell within the jurisdiction of the Supreme Court as provided in article 29, paragraph 12° of Law n° 03/2012/OL of 13/06/2012, such jurisdiction over contradictory court decisions should also be entrusted to the Court of Appeal, and accordingly, this case should be transferred to such Court, especially that it was not among the cases that were already under trial which shall be tried by this instant Court on basis of the provisions of Article 105 of Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts which reads that “From the day this Law comes into force, except cases already under trial, all cases that are no longer in the jurisdiction of the court seized are transferred to the court with jurisdiction in accordance with the provisions of this Law”. The proceedings and decisions taken in this case remain valid”.

[20] With regard to the issue of one of the contradictory judgments¹ which has not yet been decided as well as the damages claimed in this case, the Court finds that they should be considered by the Court of Appeal, since it is the one that has the jurisdiction over the case.

III. DECISION OF THE COURT

[21] Holds that the objection of lack of jurisdiction by the Supreme Court raised by Umuhoza Annonciata has merit;

[22] Holds that the Supreme Court lacks jurisdiction to hear the claim relating to contradictions of court decisions filed by Ndayisenga Protais;

¹ The decision of the Mediation Committee of Kimironko Sector of 09/07/2005.

-Judgment RCA 0138/09/TGI/GSBO (originating from the judgment RC 0770/05/TD/KCY) rendered on 25/02/2010 of which Mukandekazi Euphrasie applied for review that is still pending.

[23] Orders that the case is transferred to the Court of Appeal;

[24] Orders that deposited court fees cover expenses incurred in this case.