

Re MHAYIMANA

[Rwanda SUPREME COURT-RS/RECUS/RDA 00001/2022/SC-(Mukamulisa, P.J,
Nyirinkwaya and Hitiyaremye, J.) 30 November 2022]

Administrative procedure -Disqualification of a judge – The admissibility of judge’s disqualification- Merely quoting a legal provision in the application for judge’s disqualification is not enough, the applicant must produce the underpinning elements of evidence on which the Court shall rely to determine the merits of the claim.

Facts: Mhayimana applied for disqualification of a judge in the case RS/INJUST/RAD/00002/2022/SC that opposed him to Rwanda Bar Association; he argues that he notes that the Judge for whom he seeks disqualification who is member of the bench has deep hatred against him resulting from the enmity he manifested following his petition to His Excellency the President of the Republic of Rwanda entitled: Submission of the case of injustice suffered in the judgment RS/INJUST/RCOM 00002/2020/CA rendered by the Court of Appeal in which I was opposed to KHASS Ltd, Company of a Pakistani and request for pointing out the hidden cause of such injustice deliberately inflicted by disregarding the truth and laws.

He further states that in the letter he addressed to His Excellency the President of the Republic, he indicated that the very Judge conspired with the Pakistani, and held that the ruling of the judgment RCOMA 00503/2019/HCC that he had already won before the Commercial High Court, was vitiated by injustice, while such claim would not be admitted. He concludes by stating that if the Judge remains member of the bench, he might not expect justice, since the Judge might get an opportunity to revenge on him.

Held: Merely quoting a legal provision in the application for judge’s disqualification is not enough, the applicant must produce the underpinning elements of evidence on which the Court shall rely to determine the merits of the claim. Therefore, since Mhayimana Isaïe does not produce any element of evidence that proves the enmity the concerned Judge has against him, his claim for judge’s disqualification is not admitted.

The claim for judge’s disqualification is not admitted.

Statutes referred to:

Law N^o 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, articles 103,106, and 107.

Cases referred to:

Case of Uwera Sharon RS/RECUS/COM 0001/17/CS rendered by the Supreme Court on 14/06/2019.

Judgment

Background of the case

[1] In the judgment RS/INJUST/RAD 00002/2022/SC opposing him against Rwanda Bar Association, Mhayimana Isaïe applied for the disqualification of the Judge Karimunda Muyoboke Aimé, the disqualification was publicly made in the hearing of 21/11/2022. To that effect, the hearing was suspended, the applicant for disqualification was reminded to materialize his claim in a letter explaining it with supporting legal provisions.

[2] On 22/11/2022, through IECMS used for lodging the claims in the courts, Mhayimana Isaïe explained in writing that the reason for the judge's disqualification is the enmity of Judge Karimunda Muyoboke Aimé against him.

[3] The issue was examined in the judges's meeting of 28/11/2022 on basis of the applicant's submissions for the disqualification of the judge as per the provisions of article 107, paragraph 5 of the Law N0 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which stipulates that "The examination of and decision on the admissibility of the application for disqualification is done based on documents submitted to the court without summoning parties".

[4] In the course of this case, the Court had to firstly examine whether the claim filed by Mhayimana Isaïe for judge's disqualification can be admitted under the provisions of the article 103, sub-paragraph 3 of the above mentioned Law as it provides for the reasons on which he relied his claim.

II. ANALYSIS OF LEGAL ISSUE

- **Whether the claim filed by Mhayimana Isaïe for the disqualification of a judge should be admitted**

[5] In the document loaded in the IECMS, Mhayimana Isaïe states that the reason for which he applied for the disqualification of the Judge Karimunda Muyoboke Aimé who is the member of the bench hearing the judgment RS/INJUST/RAD 00002/2022/SC, is that he notes that the Judge has deep hatred against him resulting from the enmity he got following his petition to His Excellency the President of the Republic of Rwanda entitled: Submission of the case of injustice suffered in the judgment RS/INJUST/RCOM 00002/2020/CA rendered by the Court of Appeal on 25/06/2021 in which I was opposed to KHASS Ltd, Company of a Pakistani named Amjat Ali Merchant and request for pointing out the hidden cause of such injustice deliberately inflicted by disregarding the truth and laws

[6] He submits that the above letter came following another one of 15/07/2020 that he had addressed to the President of the Court of Appeal who was then Karimunda Muyoboke Aimé, he requested for urgent examination of the second appeal filed by KHAAS Ltd which rented his buildings as he remarked that it should not be admitted, rather it was only meant for delaying the case; many letters were addressed to him and sent through IECMS, but the Judge did not act upon it, rather he decided that the judgment RCOMA 00503/2019/HCC should be reviewed on grounds of injustice.

[7] Mhayimana Isaïe further states that in the letter he addressed to His Excellency the President of the Republic, he indicated that the Judge Karimunda Muyoboke Aimé who was the President of the Court of Appeal blatantly plotted with the Pakistani Amjat Ali Merchant, the Managing Director and shareholder of KHAAS Ltd, and held that the judgment RCOMA 00503/2019/HCC won by Mhayimana Isaïe was vitiated by injustice; while such claim would not be admitted. To prejudice Mhayimana Isaïe from proceeding with the judgment execution, the Judge Karimunda Muyoboke Aimé dissented to the decision about the appeal of KHAAS Ltd as regards its registration and adjudication or declaring it inadmissible, rather he instantly proceeded with the examination of the application of KHAAS Ltd on grounds of injustice and other proceedings aiming at allowing KHAAS Ltd to win the case on basis of injustice indicated in the letter of Mhayimana Isaïe.

[8] He also submits that due to the fact that he addressed a letter to his Excellency the President of the Republic, with copy to the President of the Supreme Court and to the Minister of Justice, indicating the defects within that judgment, Kalimunda Muyoboke Aimé manifested enmity against him.

[9] He concludes by submitting that considering all the explanations he has provided, he notes that if the Judge Karimunda Muyoboke Aimé remains member of the bench, he might not expect justice, since the Judge might get an opportunity to revenge on him.

DETERMINATION OF THE COURT

[10] With regard to the disqualification of a judge, the article 103, sub-paragraph 3 of the Law N^o N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides that “Any judge may be disqualified if one of the parties demonstrates the existence of enmity between him/her and the judge”.

[11] The article 106 of the above mentioned Law provides that “A party applying for the disqualification of a judge during the hearing must address a letter to the president of the court explaining the reasons for such a disqualification” The paragraph one of the article 107 of the same Law stipulates that “The court to which the disqualified judge belongs immediately examines the admissibility of the application for such a disqualification”.

[12] Articles 106 and 107 above mentioned denote that the claimant would not merely quote the legal provision, he would produce elements of evidence underpinning his allegations, for providing to the Court the basis for determination of the merits of the claim.

[13] The Court finds that, in consideration of the explanations provided by Mhayimana Isaïe to the Court through IECMS requesting for the disqualification of the Judge Karimunda Muyoboke Aimé, he does not produce any evidence proving that the concerned Judge has really the enmity against him, for examining the merits of the applicant’s allegations in accordance with the article 103, sub-paragraph 3 of the above mentioned Law N^o 22/2018; apart from stating only that the enmity emanates from a letter that he once addressed to His Excellency the President of the Republic.

[14] With regard to the fact that an applicant for the judge's disqualification must provide proof for his/her allegations, this Court has thereof set the position in the judgment rendered on 14/06/2019, whereby this Court declined to admit the application for disqualification filed by the legal counsel to Uwera Sharon, who as well claimed that the judge manifested enmity against her client, but he failed to provide supporting elements of evidence¹.

[15] Therefore, basing on the article 106, sub-paragraph 3 and the article 107, paragraph one of the above mentioned Law N^o 22/2018 of 29/04/2018, the Court finds that the application by Mhayimana Isaïe for the disqualification of the Judge Karimunda Muyoboke Aimé cannot be admitted and examined because he did not produce elements of evidence supporting his application for the judge's disqualification on grounds of alleged enmity against him.

III. DECISION OF THE COURT

[16] Holds that the application filed by Mhayimana Isaïe for the disqualification of a judge is not admitted.

¹ Judgment RS/RECUS/COM 0001/17/CS, paragraph 12.