

Federal Court



Cour fédérale

**Date: 20161109**

**Docket: T-1967-10**

**Citation: 2016 FC 1249**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, November 9, 2016**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**DÉOGRATIAS NKUNZIMANA,  
IRIKUJIJE BELLANCILLE,  
EVELINE IRADUKUNDA,  
MÉDIATRICE IRAKOZE,  
ALYVERA IRAMBONA,  
ERIC MUHIZI-IRAKOZE**

**Applicants**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER AND REASONS**

[1] This is a motion from the defendant, which I would describe as *sui generis*, dealing with a final decision that I rendered on July 23, 2014. At the time, I allowed the applicants' action, in part, and made the following orders against Her Majesty the Queen:

**THE COURT'S JUDGMENT is that:**

1. The applicants' action is allowed in part;
2. The defendant is ordered to pay applicant Déogratias Nkunzimana the sum of \$10,000 with interest at the legal rate and the additional indemnity set out in Section 1619 of the Civil Code of Québec (C.C.Q.) starting on November 22, 2010;
3. The defendant is ordered to pay applicant Irikujije Bellancille the sum of \$27,500 with interest at the legal rate and the additional indemnity set out in Section 1619 of the C.C.Q. starting on November 22, 2010;
4. The defendant is ordered to pay applicant Eveline Iradukunda the sum of \$27,500 with interest at the legal rate and the additional indemnity set out in Section 1619 of the C.C.Q. starting on November 22, 2010;
5. The defendant is ordered to pay applicant Médiatrice Irakoze the sum of \$27,500 with interest at the legal rate and the additional indemnity set out in Section 1619 of the C.C.Q. starting on November 22, 2010;
6. The defendant is ordered to pay applicant Alyvera Irambona the sum of \$27,500 with interest at the legal rate and the additional indemnity set out in Section 1619 of the C.C.Q. starting on November 22, 2010;
7. The defendant is ordered to pay applicant Eric Muhizi-Irakoze the sum of \$27,500 with interest at the legal rate and the additional indemnity set out in Section 1619 of the C.C.Q. starting on November 22, 2010;
8. Costs are awarded to the applicants.

[2] On January 14, 2015, counsel for the defendant, informed by applicant Nkunzimana that the applicants were no longer represented by counsel, sent him a cheque for \$187,890.20 payable to him, covering all sums owed to all applicants for principal, interest and costs. Without ensuring that this sum would be shared in accordance with the judgment rendered, counsel for the defendant obtained a final release only from applicant Nkunzimana.

[3] In May 2016, counsel hired by applicants Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze informed counsel for the defendant that they had never received the sums owed to them under the terms of the judgment.

[4] Initially based on paragraph 399(2)(a) of the *Federal Courts Rules*, SOR/98-106, the defendant filed a motion with the Court to amend the findings of the judgment and to order applicant Nkunzimana to pay the sums owed to the other applicants. The defendant maintained that the fact that Mr. Nkunzimana refused to comply with the judgment constituted a new fact.

[5] During a conference call held on August 10, 2016, I was sceptical that paragraph 399(2)(a) could apply to this situation, since no new fact, subsequent to the delivery of the judgment, would have been likely to induce me to make an order other than those made; quite the contrary. I therefore asked the defendant to amend her motion and instead request the Court's assistance in executing the judgment in accordance with *Federal Courts Rules* applicable to the execution of judgments and C.C.Q. provisions that allow a debtor to recover money paid in error. I also said it would be desirable for the defendant to pay the amount owing to the applicants, who should not be involved in this new litigation, in order to avoid incurring unnecessary costs.

[6] The defendant's amended motion, based on Sections 3, 4, 359, 399(2)(a) and 423 of the *Federal Courts Rules*, Sections 1491 and 1554 of the *Civil Code of Québec* and Section 657 of the *Code of Civil Procedure*, CQLR c C-25.01, requests that the Court:

Declare that the Receiver General for Canada has paid Déogratias Nkunzimana an amount of \$187,890.20 on January 14, 2015, which represents the total amount of damages awarded by the Court to all applicants;

Declare that on January 14, 2015, Irikujje Bellancille, Eveline Iradukunda, Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze were each entitled to a \$34,339.59 payment, which included the \$27,500 amount awarded by the Court, plus interest and the additional indemnity payable from November 22, 2010 to the date of payment, January 14, 2015 (\$34,339.59);

Declare that on January 14, 2015, Déogratias Nkunuzimana was entitled to a \$10,000 payment for damages plus interest and the additional indemnity (\$12,487.12);

Order Déogratias Nkunuzimana to pay the sum of \$171,697.95 , which represents the portion of the damages awarded by the Court to the children (\$34,339.59 x 5), to the Attorney General of Canada's representative, within five (5) days following the order of this Court.

[7] By a directive issued on September 27, 2016, I scheduled this motion to be heard on October 27, 2016, reminding the defendant that it would be desirable for applicants Irikujje Bellancille, Eveline Iradukunda, Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze to have received the sums due to them, by the hearing date, in order to avoid incurring additional costs.

[8] The applicant attended the hearing of the motion and was represented by his counsel, while applicants Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze attended via video conference from Québec and were represented by their counsel.

[9] The day before the hearing, I received release letters from Irikujje Bellancille and Eveline Iradukunda, ratifying the \$34,339.59 payment made by the defendant to Déogratias Nkunuzimana in accordance with Section 1557 of the *Civil Code of Québec*, which stipulates that:

1557. Payment shall be made to the creditor or to a person authorized to receive it for him.

Payment made to a third person is valid if the creditor ratifies it; if it is not ratified, the payment is valid only to the extent of the benefit that the creditor derives from it.

[10] I therefore take note that Irikujije Bellancille and Eveline Iradukunda ratified the sum paid to Déogratias Nkunzimana, which was granted to them by the July 23, 2014 judgment, which included a release in favour of the defendant.

[11] That said, having heard the submissions of all parties, I am still of the opinion that paragraph 399(2)(a) of the *Federal Courts Rules* does not apply in this case and that my jurisdiction to act and assist the defendant in executing the Court's judgment is based rather on Section 423 of the *Federal Courts Rules*, which stipulates that:

423. All matters relating to the enforcement of orders shall be brought before the Federal Court.

[12] Sections 3 and 4 of the *Federal Courts Rules* invite me to seek a fair solution to the dispute that is as expeditious and economical as possible and which, if the Rules are silent, refers the Court to the practice of the most relevant Superior Court, in this case, the Superior Court of Québec.

[13] If Section 423 of the Rules were not sufficiently specific to allow me to make this order, which I doubt, then I could also draw inspiration from the new *Code of Civil Procedure*, which stipulates that:

657. After the judgment, the court may issue any order to facilitate execution, whether forced or voluntary, in the manner that is most advantageous for the parties and most consistent with their interests.

[14] Given the wording of the findings of the July 23, 2014 judgment, it is clear that part of the payment made to applicant Nkunzimana by the applicant was made in error and was not a final payment for the defendant. He never released the defendant from the obligation to pay the sum due to applicants Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze for principal, interest and additional indemnity. This portion of the payment was made in error and the defendant has valid grounds to seek reimbursement from applicant Nkunzimana.

[15] Applicant Nkunzimana filed an affidavit in which he argued that he was entitled to this money, that at the beginning of the case, he was the only applicant and that his counsel at the time recommended that he add his nieces and nephews. He added that he was suing this counsel for professional liability before the Superior Court, in connection with this case.

[16] Now, if applicant Nkunzimana was dissatisfied with my judgment, he was free to appeal to the Federal Court of Appeal. He did not. The indemnification paid to his nieces and nephews was intended to offset the harm suffered by them. At any rate, if they had not been applicants in this case, applicant Nkunzimana would not have been entitled to those amounts. In the best case scenario for the applicant, he would have been entitled to the damages awarded him by the judgment, and in the worst case scenario his action would have been dismissed with costs.

[17] I will therefore allow the defendant's motion, in part, to recover the money paid in error and order applicant Déogratias Nkunzimana to reimburse her the sum of \$103,018.77, i.e. the amount of damages awarded to applicants Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze by the July 23, 2014 judgment, with interest and the additional indemnity, starting on January 14, 2015.

[18] On October 31, 2016, I was informed that, the day after the motion was heard, the Assistant Deputy Minister had finally approved payment of the sums due to Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze. Unfortunately, they were not exempted from attending and being represented at the hearing of the motion, despite the Court's warnings. They will therefore be entitled to their costs against the defendant.

**ORDER**

**FOR THESE REASONS, the Court:**

1. Orders Déogratias Nkunzimana to pay the Attorney General of Canada the sum of \$103,018.77, within five (5) days of this order, with interest and the additional indemnity set out in the Act, starting on January 14, 2015;
2. Orders Déogratias Nkunzimana to pay the defendant a \$2,500 lump sum for costs, including all taxes and disbursements;
3. Orders the defendant to make a single \$5000 payment to Médiatrice Irakoze, Alyvera Irambona and Eric Muhizi-Irakoze for costs, including all taxes and disbursements.

“Jocelyne Gagné”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1967-10

**STYLE OF CAUSE:** DÉOGRATIAS NKUNZIMANA, IRIKUJIJE  
BELLANCILLE, EVELINE IRADUKUNDA,  
MÉDIATRICE IRAKOZE, ALYVERA IRAMBONA, ERIC  
MUHIZI-IRAKOZE v HER MAJESTY THE QUEEN

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 27, 2016

**ORDER AND REASONS:** GAGNÉ J.

**DATED:** NOVEMBER 8, 2016

**APPEARANCES:**

Mélanie Asselin

FOR THE APPLICANT  
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Valérie Gagné-Dorval

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