

RWANDA / JUDGMENT

ABDUL KALIM v. RWANDAMOTOR

RCOMA 0036/12/CS – RCOMA 0041/12/CS

COURT

Supreme Court

DECIDED

17 October 2014

CASE / FILE NUMBER

RCOMA 0036/12/CS – RCOMA 0041/12/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

ABDUL KALIM v. RWANDAMOTOR

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-10-17
- Case/document no.: RCOMA 0036/12/CS – RCOMA 0041/12/CS
- Collection: Supreme Court

Text

Page 1

ABDUL KALIM v. RWANDAMOTOR [Rwanda SUPREME COURT – RCOMA 0036/12/CS – RCOMA 0041/12/CS (Mukamulisa, P.J., Mukandamage and Gatete, J.) October 17, 2014] Commercial procedure – The capacity of seizing the Court – The claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit – The fact that the lessee of the car has to give it back to the owner in the same status as it was given to him, it does not mean that the lease contract made him to be its owner – He cannot claim the damages in case he has no capacity and interest to bring a suit. Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 2 in its paragraph 1. Law regulating the contractual obligations – The damages – Any act of the person which causes damage to the other person, it obliges the one who caused damage to repair that damage – The fact that the car was delayed in the garage it made the owner to be deprived of the money from its lease, and she deserves to be provided with the damages in case the one who repaired it itself admits that there has been the faults and delay in repairing the car – Law of 30/07/1888 relating to contracts or obligations, article 258. Facts: Safari Jeanne and Abdul Kalim made a contract of lease of a car, which was broken down and he took it to the garage of Rwandamotor which delayed to finish its

reparation and return it, it lead Abdul to sue Rwandamotor before the Commercial High Court requesting to be paid the air plane ticket from Kigali to London, accommodation fees, since he lived in England and came for the follow up of its reparation in Rwanda. Safari, the owner of the car, she too seized that court requesting that Rwandamotor pays the interests deprived her car ceased to work. The court decided not to admit Abdul's claim it decided that he had no interests and capacity to lodge that claim because he is not the owner of that car, and SAFARI behaved as the owner of the car, and now claiming the damages. The court realized that the airplane ticket has not to be paid back to him, and provided Safari with 5,000,000 Rwf for the damages. Since it made her to spend her time, which made the contract she has signed with the lessee of her car not be performed. Abdul and Safari appealed before the Supreme Court saying that the court ignored the lease contract they made and that made between Abdul and Rwandamotor. The latter also has lodged an appeal arguing that the court considered the facts contrary to the reality, and condemned it to pay damages while it was not at fault. The one pleading on behalf of Abdul argues that the court ignored the contract he made with Safari and refused to admit his claim, He says again that the contract of repairing was signed between Abdul and it, it was not signed between the latter and Safari. And that the violence or deception committed against Abdul who made the contract with Rwandamotor, that his claim could have been admitted, and be paid back the travelling expenses from London to Kigali. The Counsel on behalf of Rwandamotor realized that Abdul Kalim was not infringed since Rwandamotor had no property for him since he did not prove that he had the obligation of making the reparation of the car and give it back to the owner as she gave it to him. The counsel on behalf of Safari says that the judge provided Safari with the damages in its discretion basing of the fact that did not reveal evidences she was required. He says that the

Page 2

delay of her car in the garage deprived safari the money for the payment from the lease per day, that she deserves the moral damages amounting to 5,000,0000 Rwf. The counsel on behalf of Rwandamotor appealed against the damages the court has provided with safari he said that it provided with them ignoring the arguments of Rwandamotor which lead it to consider the facts in a contrary sense. He realizes Rwandamotor could not be condemned to pay the damages without the court having proven the fault it committed. Held: 1. The lessee of the car has no interest and capacity of claiming the damages resulting from the car which is not his in case what he did by making the repair of the car, he did it to the owner, which is the ground that he has not to be provided with diverse damages she claims.

2. The doubt that the car delayed to be repaired due to the faults of the ones who repaired it, who do not contradict it, and this has affected its owner since had it been repaired earlier and get completed she would have used it in the work he has deserved for it, thus 5,000,000 Rwf for damages that the first instance court has provided with its owner has to remain since there are in good average. Appeal of Abdul has no merit. Appeal of Rwandamotor has no merit. Appeal of Safari Jeanine has merit on some grounds. Court fees to the defendant. Statutes and Statutory referred to: Law n° 21/2012 of 14/06/2012 relating to the civil,

commercial, labour and administrative procedure, Law of 30/07/1888 relating to contracts or obligations, article 258. No cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] SAFARI Jeanne and ABDUL Kalim made a contract of lease of a car, which was broken down and ABDUL took it to the garage of RWANDAMOTOR which delayed to finish its reparation and return it. ABDUL sued RWANDAMOTOR before the Commercial High Court requesting to be paid the air plane ticket from Kigali to London, accommodation fees, the moral damages and the lawyer's fees, for the delayed reparation and that he was ordered to buy the spare parts which had no relation with those which were broken down and it has been necessary that he left England for the follow up of its reparation in Rwanda. [2] SAFARI, she too seized that court requesting that RWANDAMOTOR pays the interests deprived due to the termination of the lease contract of lease of her car, and to pay to her the moral damages and the advocate's fees.

Page 3

[3] The Court decided not to admit ABDUL's claim since he had no interests and capacity to lodge that claim because he is not the owner of that car that RWANDAMOTOR was given for repairing; and that he failed to prove that its breaking down resulted from him so that it may be considered that he had the obligation of repairing it and give it back to its owner as she gave it to him. It realized that what he did, he did it for its owner (management of another person's property), thus he has to claim the reimbursement from her, the fact of what RWANDAMOTOR has promised him, it was because he behaved as the owner of the car, and now SAFARI came in as its owner claiming the compensations. [4] The court realized that the airplane ticket has not to be paid back to ABDUL since his lawyer, himself said that he used it when he came for his personal work, and SAFARI said that he leased another car for him. [5] The court, in its discretionary power, provided SAFARI Jeanne with 5,000,000 Rwf for the compensations and 1,000,000 Rwf for the lawyer's fees for RWANDAMOTOR having spent her time, which made the contract she has signed with the lessee of her car not be performed, it has admitted these faults in the letter it wrote to ABDUL on 16/08/2010. [6] ABDUL and SAFARI appealed before the Supreme Court saying that the court ignored the lease contract they made and that made between ABDUL and RWANDAMOTOR, and it determined the economic damages in its discretions while there were substantial calculations on which SAFARI basing in claiming them. [7] RWANDAMOTOR too has lodged an appeal arguing that the court considered the facts contrary to the reality, and condemned it to pay damages while it was not at fault. [8] The case was heard in public on 16/09/2014, ABDUL Kalim and SAFARI Jeanne were represented by Me Protais MUTEMBE, and RWANDAMOTOR was represented by Me MBARUSHIMANA Aimé II. ANALYSIS OF THE LEGAL ISSUES.

- a. Knowing whether ABDUL Kalim had the interests and capacity of lodging a claim. [9] Me MUTEEMBE who pleads for ABDUL argues that the court refused to admit his claim ignoring the article four of the contract signed between him and SAFARI which provided for that he would give her the car in the same state as it was given to him. [10] He says again that the repair contract was signed between ABDUL and RWANDAMOTOR, it was not signed between the latter and SAFARI, this contract has no relation with the 251 of CC BII on which it based, it was instead the contractual obligation that ABDUL had provided for by the article 4 of the lease contract he had made with SAFARI, and on the article 64 of the Law regulating the contract. [11] Me MUTEEMBE says again that the violence or deception committed against ABDUL, were not committed against the owner of the car who played no role in the contract made between him and RWANDAMOTOR, that his claim could have been admitted, and be paid back the travelling expenses from London to Kigali and the living expenses as RWANDAMOTOR

Page 4

has committed itself in its letter of 16/08/2010, and be given the damages amounting to 150 USD ×342 days (from the date on which the car entered its garage until 16/08/2010)= 51,300 USD, which has to be exchanged in Rwandan Francs according to the percentage of the day of payment, and be given also the moral damages of 5,000,000 Rwf. [12] Me MBARUSHIMANA who pleads for RWANDAMOTOR says that the court has well explained that ABDUL is not the owner of the car that RWANDAMOTOR was given to repair, and he failed to prove that its breaking down resulted from him to be considered that he has the obligation of making repairs and give it back to the owner as she gave it to him, it proved that what he did, he did it to SAFARI who has leased it to him. He realized that he was not infringed since RWANDAMOTOR had no property for him. The view of the Court [13] The article 2 paragraph one of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit. [14] In the lease contract made between SAFARI and ABDUL of 02/09/2009, it reveals that the leased contract is for SAFARI Jeanine. [15] The fact that ABDUL says that he had to give back the car to the owner in the proper state as it was given to him, this does not mean that this lease contract made him to be its owner at the extent that he claims the damages resulting from the ground that RWANDAMOTOR delayed to repair it, more importantly he does not prove that its breaking down resulted from his fault. And again when the car was given to the garage, ABDUL had to inform its owner so that she may do the follow up [16] The court realizes that as the Commercial High Court has explained, what ABDUL has done of making the repairs of SAFARI's car, he did it for her, thus he has no interests and capacity to claim the damages resulting from the car which is not his, that is why even the diverse damages he claims may not be awarded to him.

- b. With regard to the damages that SAFARI was provided with the Commercial High Court. [17] Me MUTEEMBE who pleads for SAFARI says that the judge provided SAFARI with the damages in its discretion basing of the fact that her lawyer did not provide substantial evidences proving the damages she claimed, ignoring the substantial evidence it was provided with.

[18] He says that the delay of her car in the garage deprived SAFARI the money for the payment from the lease calculated on 150 USD per day as agreed up on in the article 3 of the contract she made with MABANO David: -The first lease of 04/03/2009: its duration: 05/03/2009 -30/08/2009 =86 days -Another lease: 01/10/2009 -30/08/2010 = 303 days

Page 5

-Total dollars: 150 USD ×386 days = 58,350 USD, which have to be exchanged in Rwandan Francs on the rate they will be paid, together with their interests calculated on 18%. [19] Me MUTEMBE says again that SAFARI deserves the moral damages amounting to 5,000,0000 Rwf and the lawyer's fees equal to 10%. [20] Me MBARUSHIMANA who pleads for RWANDAMOTOR says that it also appealed against the damages the court has provided with SAFARI equal to 6,000,000 Rwf encompassing 5,000,000 Rwf for the moral damages and 1,000,000 Rwf for the lawyer's fees, since it provided them ignoring its arguments which lead it to consider the facts in a contrary sense. [21] He explains that what the court has said that RWANDAMOTOR has wasted SAFARI's time and failed to repair her car and caused the contract she has made with its lessee not to be performed and even it is as RWANDAMOTOR has admitted it in the letter of 16/08/2010, it has no basis since the car had the problems of its parts which needed to be replaced (compresseur, suspension, driver box, four air brakes, module d'airbag), its owner opted to buy them herself, but it was realized that KAYITABA Charles, the brother of SAFARI Jeanine who was in charge of the follow up of its reparation , once he brought old spare parts, this became a hindrance and caused the a late reparation of the car, but RWANDAMOTOR committed to order them and performs its obligations, and gave back the car to its owner. [22] He realizes RWANDAMOTOR could not be condemned to pay the damages without the court having proven the fault it committed, the fact that it admitted that there were some it had to pay which include exemption from paying the spare parts it used to repair the car and the money for reparation, etc and it did it, the court could not have ignored them and provided with her other damages without any basis, in case even it has itself decided that there was no substantial evidence she has revealed, since it could be in contradiction with the article 9 of the law relating to the civil, commercial, labour and administrative procedure. The View of the Court [23] The article 258 of CCB III provides for that "any act of the person which causes damage to the other person, it obliges the one who caused damage to repair that damage". [24] The documents which are in the file prove that the SAFARI's car was brought in the garage of RWANDAMOTOR on 17/09/2009, and it was given back to her on 16/08/2010, on 03/08/2010, ABDUL who has brought it there wrote the letter to the Executive Manager of that garage explaining to him the faults that the Technical Director has committed against him by ordering him to bring the spare parts but he did not repair the car while he has promised to him that it would not spent a long time and he did ask him money while it was not necessary. [25] RWANDAMOTOR responded to that letter on 16/08/2010 admitting that there have been faults and delay in the repair of the car, and required the amicable settlement of the issue. [26] The court uncertainly realizes that SAFARI's car delayed to be repaired due to the faults of the workers of RWANDAMOTOR, and itself does not contradict it, and this has affected its owner since had it been repaired earlier and get completed he would have used it in the jobs he

Page 6

has deserved for it, thus 5,000,000 Rwf for damages that the first instance court has provided with SAFARI has to remain since there are in good average. [27] With regard to 58,350 USD for the lease of the car and its interests that SAFARI claims to have been deprived, the court realizes that she may not be provided with them since the contract she claims to have made with MABANO, it is clear that it was made on 04/03/2009 when the car has not been brought to the garage, and he made another contract when it was in the garage, thus she could not give her car for leasing knowing that it does not work since it was in the garage of RWANDAMOTOR. In addition she reveals no evidence proving that her car was deserved for the job of being leased as commerce. [28] With regard to the lawyer's fees, the court realizes that SAFARI deserves them but that she claims is too excessive, the court within its discretion, provides with her 500,000 Rwf to be added to 1,000,000 Rwf that was provided with the Commercial High Court which make in total 1,500,000 Rwf. [29] Basing on what has been said, the money that RWANDAMOTOR has to pay to SAFARI Jeanine equals to 5,000,000 Rwf + 1,500,000 Rwf = 6,500,000 Rwf. III.THE DECISION OF THE COURT [30] Decides that ABDUL Kalim's appeal has no merit; [31] Decides that SAFARI Jeanine's appeal has merit on some grounds; [32] Decides that the appeal of RWANDAMOTOR has no merit; [33] Orders RWANDAMOTOR to pay to SAFARI Jeanine 6,500,000Rwf for damages as explained above; [34] Orders RWANDAMOTOR to pay 100,000 Rwf for the court fees starting.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7431/7708>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/abdul-kalim-v-rwandamotor-capacitytosue-supreme-court-2014>

Prepared on 11 October 2026 · Esheria