

RWANDA / JUDGMENT

ANGELIQUE INTERNATIONAL LTD v. RYAMUGEMA ET AL

RSOCA 0015/13/HC/NYA

COURT

High Court

DECIDED

13 March 2013

CASE / FILE NUMBER

RSOCA 0015/13/HC/NYA

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Text**Page 1**

ANGELIQUE INTERNATIONAL LTD v. RYAMUGEMA ET AL [Rwanda HIGH COURT CHAMBER OF NYANZA – RSOCA 0015/13/HC/NYA (Kamanzi, J.) 13 March 2013] Administrative law – Determining the subject matter and immutability of the claim – The subject matter of the claim shall be determined by the claims made by the respective parties. These claims shall be indicated in the plaintiff's and defendant's submissions. , in the course of trial, no party is allowed to change the subject matter of the claim, without agreement of all the parties to the case. The judge shall rule only and on all that which is referred to the court. – Law no.21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure article 4, 7. Facts: After failing to reach a common understanding on some of the issues before the Labour Inspectorate, Rwamugema and Nkongoli, they sued Angelique International Ltd in the Intermediate Court of Muhanga requesting for the damages for unlawful dismissal, employment certificate, dismissal compensation, notice, overtime, Social Security contribution, procedural and counsel fees. . That Court ruled that their claim has merit and ordered Angelique International Ltd to give them

damages for notice. Employment certificate , procedural and counsel. Angelique International Ltd appealed in the High Court Chamber of Nyanza stating that the Judge awarded Rwamugema damages for notice when he did not sue for them and it was not satisfied with the motive of the judge on awarding them' Ryamugema for him, he states that the Judge erred when he awarded the last month of the salary and called it payment for dismissal notice and the employment certificate was given to him late with a lot of errors. For Nkongoli he requested the Court to order Angeliue International Ltd to givethem other dameges in addition to those which were awarded by the Intermediate Court. Held: Ryamugema consent that he received the payment for dismissal notice in the document submitting the claim in the Intermediate Court of Huye (Cote 20) Ryamugema did not sue for the payment of the dismissal notice , this Court finds that the previous court ruled on the matter which was not referred to it contrary to the Law. The payment for the dismissal notice is herein revoked, the compensation for the employment certificate , the salary for September which was not paid and procedural and counsel fees are to be paid. , The appeal of Angelique against Nkongoli has no merit because the compensation was given to him unlawfull, as decided by the judge who heard this case on the instance level . The appealed judgment must be executed in all its aspects because the payment o dismissal notice has been replaced by the salary of September which still makes it amount which Angelique Ltd had to give him remains the same As the one ordered by the previous court . that is why the judgement has not overruled because what has been altered does not change reduce the amount .

Page 2

The appeal has merit.. h Though te judgment has been altered in some parts , but it has to be executed entirely; Court fees on the appellant.. Statutes and statutory instruments referred to: : Law no.21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure article 4, 7. No cases referred to .

Judgment

Brief Background of the case [1] RYAMUGEMA Michel and NKONGOLI Kenny Emmanuel assert that they were employees of ANGELIQUE INTERNATIONAL LTD and were unlawfully dismissed. . and they tried to mediate with their employer but in vain, and they brought the matter before the labour inspection where they agreed on some issues and failed to agree on others which led them to resorting to courts where they seized the Intermediate Court of Muhanga;The Intermediate Court of Muhanga brought together cases RSOC 0001-0002/12/TGI/MHG where Rwamugema Michel and Nkongoli Kenny Emmanuel brought claims against Angelique International Ltd, requesting damages due to unfair dismissal, the work certificate, accompanying allowance, notice compensation, the payment of extra hours, proceedings' fees, they payment of social security contribution and the counsel's honorary. That court held that their claim was founded on some issues and ordered Angelique International Ltd to award Rwamugema Michel Damages worth 140, 000 Rwf, the dismissal notice compensation worth 140,000 Rwf, 140,000 Rwf of work certificate and 200,000 Rwf of proceedings fees and the counsel's honorary, when computed was 480,000 Rwf. It also ordered Angelique International Ltd to award Nkongoli Kenny Emmanuel

damages worth 150,000 Rwf of dismissal notice compensation, 150, 000 Rwf of the work certificate that he was not given and 200,000 Rwf of proceedings fee and the counsel's honorary, all computed was 500,000 Rwf. [2] Angelique International Ltd was not satisfied with the ruling and appealed before the high Court, the Chamber of Nyanza, represented by Counsel BIZUMUREMYI Isaac explained that he was not satisfied with grounds on which the judge based the awarding of damages Nkongoli Kenny Emmanuel asserts that he was paid the last salary of September which was considered as the notice compensation yet he worked during that month, therefore he finds that it should not be qualified as notice compensation and he asserts that he was not given the work certificate. his counsel Habimana, argues that Angelique International Ltd did not comply with article 38 of the labour code as it did not give Nkongoli the work certificate immediately after dismissing him and he was not given the dismissal notice compensation because it paid him the salary of the last month only. Habimana, the counsel for Rwamugema in this case argues that the judge erred and awarded the last month as the salary and qualified at as the notice compensation, he further asserts that the work certificate was given to him, with many errors. Nkongoli Emmanuel and his counsel

Page 3

- [3] Counsel Habimana, who is also the counsel of Rwamugema prayed to the court to order Angelique International Ltd to award other damages than those ordered by the Intermediate Court. [4] In this case the court examines whether damages the court ordered Angelique International Ltd to pay Nkongoli Kenny Emmanuel and Rwamugema due to unfair dismissal were not justified, and whether damages claimed by Nkongoli Emmanuel and Rwamugema at the appellate level can be awarded. II. LEGAL ISSUES AND THEIR ANALYSIS
- a. To know whether damages the court ordered Angelique International Ltd to pay to Nkongoli Kenny Emmanuel and Rwamugema due to unfair dismissal was not justified; [5] Counsel BIZUMUREMYI, the counsel of Angelique International Ltd in explaining the grounds of appeal he argues that the judge awarded to Rwamugema Michel the notice compensation yet this was not among his claims, the court finds that this ground of appeal is founded because before the Labour Inspector in the affidavit of conciliation (paragraph 27-29), Rwamugema admitted that he received the notice, in the court submissions filed before the Intermediate Court of Huye (paragraph 20) he did not include, considering the provisions of article 4 paragraph of the law no 21/2012 of 14/06/2012 relating to civil, commercial and administrative procedure which provides that the subject matter of the case is determined by the claims of each party. The claims are included in the plaintiff and defendant court submissions. [6] This is basis on which the court agrees with Counsel BIZUMUREMYI Isaac that the court ruled ultra petita which is contrary to article 7 of this law, this means that 140,000 Rwf awarded to Rwamugema Michel in the judgment appealed as the notice compensation is removed and only 140,000 Rwf of the work certificate that he was given timely, 140,000 Rwf of the salary of the Sepember2011 that he was not paid yet he was still an employee and 200,000 Rwf of counsel honorary, and all computed is 480,000 Rwf . This amount has to be awarded by Angelique International Ltd in the name of its director general

because it failed to comply with the provisions of labour law when Rwamugema Michel was dismissed. [7] With regard to the appeal relating to NKONGOLI Kenny Emmanuel, this court finds that the appeal of Angelique International Ltd has no merit because the notice was given to him in violation of the law as the judge at the first instance motivated this under paragraph 17 at the page 4; [8] The court finds that incidental appeal raised by Counsel Habimana Bonaventure is not founded because the claims of his clients are those he argued before the Intermediate Court at the first instance where the judge explained why different damages were not awarded, therefore they cannot re-examined in the incidental appeal; [9] After examining the appeals of both parties, this court before which the appeal was lodged finds that the judgment R.SOC 0001-0002/12/TGI/MHG rendered the Intermediate Court of Muhanga on 28/06/2013 has to be enforced in its entirety because the notice compensation changed on Rwamugema Michel is replaced by the salary of September,

Page 4

therefore the amount Angelique International Ltd has to pay him remains equal to the amount ordered by the court at the first instance, therefore the court ruling is not modified because what have been modified do not lower the amount Angelique International Ltd has to pay RYAMUGEMA Michel and NKONGOLI Kenny Emmanuel; II.DECISION OF THE COURT [10] It admitted the appeal of Angelique International Ltd as it was brought in accordance with the law and it examined it and found relevant on some points; [11] It holds that although the judgment RSOC 0001-0002/12/TGI/MHG rendered by the Intermediate Court of Muhanga on 28/06/2013 has been modified on some points will be executed in its entirety, [12] It orders Angelique International Ltd in the name of its director General to comply with the ruling in the judgment RSOC 0001-0002/12/TGI/MHG stated above; [13] It orders Angelique International Ltd in the name of its director general to pay the court fees equal to 47.950 Rwf starting on 6000 Rwf paid as the court fee security at the time it lodged an appeal, which has to be paid within 8 days from the day the judgment is pronounced, otherwise it will be taken from its property by the public force;

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