

RWANDA / JUDGMENT

Caf Isonga v. Kabundi

RCOM 0006/13/CS

COURT

Supreme Court

DECIDED

1 October 2013

CASE / FILE NUMBER

RCOM 0006/13/CS

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Text

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Caf Isonga v. Kabundi [Rwanda SUPREME COURT –2013SC – RCOM 0006/13/CS (Kayitesi R., P.J., Mukandamage and Kanyange, J.) October,01 2013] Procedural laws –Admissibility of a Summary procedure – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure 316 Facts: The applicant had sued in Commercial High court requesting the defendant to pay him his debt of 26.301.221 Rwf with interests. The Court Held that he should pay 7.549.449Rwf He was not satisfied by the ruling and lodged appeal in the Supreme Court, The case was numbered n° RCOMA 0127/12/CS Before hearing of the case, the Appellant lodged for a Summary procedure requesting the court order for provisional seizure of 2.900.000 Rwf won by the defendant in case RSOCA 0007/11/HC/NYA decided by The High Court of Nyanza, because once he wins the case, he will not be able to pay him. Held: Aclaim for summary procedure to be admitted, it has to be related to the principal suits as provided in article 316 of Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure 316.when they are not related the claim cannot be received. Appeal not allowed Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure 316. No Cases referred:

Judgement

I. BRIEF BACKGROUND OF THE CASE [1] CAF ISONGA had a case with KABUNDI Joseph who was their former employer and it lost the case with the order to pay 2.900.000 Rwf in the case RSOCA 0007/11/HC/NYA rendered by the High court, Chamber of NYANZA [2] On the other side, CAF ISONGA has also introduced a claim against KABUNDI Joseph in the Commercial High Court requesting that he pay its debt equal to 26.301.221 Rwf together with its benefits he owes it emanating from the vehicle loan given to him, the court ruled that he must pay 7.549.499 Frw, he appealed in the Supreme Court and the case was given no RCOMA 0127/12/CS.

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[3] While that case was not yet heard, CAF ISONGA introduced a summary procedure requesting the court to seize 2.900.000 Frw that KABUNDI Joseph is claiming against them as explained above, arguing that if CAF ISONGA wins the case, he will be unable to pay them. [4] This case was publicly heard on the 24th 09/2013; CAF ISONGA represented by Me NGENDAHIMANA Alphonse, KABUNDI Joseph assisted by Me MINYATI RUGAMBA Jacob. II. THE LEGAL ISSUE TO BE EXAMINED IN THE CASE AND ITS ANALYSIS To know whether the summary procedure lodged by CAF ISONGA can be admissible; [5] At the beginning of the hearing, KABUNDI and his counsel raised an objection of inadmissibility of this claim of summary procedure lodged by CAF ISONGA intending to seize the amount of 2.900.000 Frw they lost to him in the case RSOCA 0007/11/HC/NYA rendered by the High court, Chamber of NYANZA, that this claim should be declared inadmissible due to incompetence of the court. They explained that article 317 of the Law relating to the civil, commercial, labour and administrative procedure provides for Summary procedure judges and that the judge of the supreme court is not included, according to them this claim should have been introduced in the hearings before the Commercial High Court, that the case No RSOC 0007/11/HC/NYA acquired authority of res judicata because of exceeding the period of a month at that time. [6] They further said that article 309 of the Law relating to the civil, commercial, labour and administrative procedure provides for the competent court to resolve procedural difficulties occurred in the course of seizure and that the Supreme Court is not included. [7] KABUNDI and his counsel further argues that as it is provided in the article 316 of the Law relating to the civil, commercial, labour and administrative procedure, a summary procedure must have a principal suit that a party to the case must have lodged before, it is not understood how CAF ISONGA introduces a summary procedure without any principal suit/claim they have made because it is KABUNDI who appealed, in addition to that the money that they want to be seized is not among the subject matters of this case rather he won it in a different case. They concludes by saying that CAF ISONGA does not even have interest to ask the seizure of that money because KABUNDI doesn't have any debt against them and they don't know who will win the case. [8] Me NGENDAHIMANA who represents CAF ISONGA says that he introduced this summary procedure because KABUNDI Joseph started the recovery through the procedure of forced enforcement, the bailiff has delivered to CAF ISONGA the order to pay 2.900.000 RWF won in the case No RSOC 0007/11/HC/NYA while there is another

case RCOMA 0127/12/CS against KABUNDI where he was ordered to pay 7.549.499 Frw and its benefits, CAF ISONGA is therefore requesting that, that money be seized and kept by CAF ISONGA while waiting for

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the final judgement for this case so that it will start its recovery from that amount at the time they will have won, because if he took that money he will not find the payment as he is unable to pay since he was given a loan. [9] Concerning the competence of this court in terms of summary procedure, Me NGENDAHI MANA finds the supreme court competent because the law provides that there must be a principal suit in the court, that the law doesn't provide that a party to the case needs to base on the suit he/she introduced him/herself to lodge a summary procedure, and that there are more other similar actions admitted and examined by this court, he finds that article 310 of the Law relating to the civil, commercial, labour and administrative procedure is common to all courts. Indeed, he says that CAF ISONGA has interest to lodge the claim because KABUNDI owes it a debt of much money. THE VIEW OF THE COURT [10] Concerning the competence of the court in terms of the summary procedure, article 316 of the Law relating to the civil, commercial, labour and administrative procedure provides that « When there is need to have a interim ruling on a matter which requires urgent resolution, an action shall be filed in accordance with the ordinary procedure regarding principal suits, before an urgent applications judge in the jurisdiction where the urgent measure is required in accordance with ordinary summons procedure. » [11] The court declares that, basing on what are provided in that provision, when there is a principal suit introduced in the Supreme Court and there is a need to have a interim ruling on a matter which requires urgent resolution before the principal suit is heard, the supreme court is competent to hear that summary procedure submitted before it, it is neither not necessary that it must have been lodged by the appellant only. [12] Concerning the summary procedure submitted by CAF ISONGA in this court, the court finds that even if there is a case which is not yet heard numbered RCOMA 0127/12/CS, between KABUNDI Joseph and CAF ISONGA with the subject matter of a debt of 26.301.221 Frw together with its benefits, what is being requested in the summary procedure that 2.900.000 Frw it must pay KABUNDI in the execution of the case No RSOCA 0007/11/HC/NYA rendered by the High court, Chamber of Nyanza be provisionally seized and kept by CAF ISONGA has no link with that case, for that this summary procedure is declared inadmissible since it is in contradiction of the provision of the law stipulate above. III.DECISION OF THE COURT [13] Holds that the summary procedure submitted by CAF ISONGA is declared inadmissible because it is in contradiction with the law.

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