

RWANDA / JUDGMENT

CAPLAKI v. MUKANYIRINKWAYA_en

RLR V.2-2018

COURT

Supreme Court

DECIDED

27 May 2016

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RCOMAA0043/14/CS

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CAPLAKI v. MUKANYIRINKWAYA [Rwanda SUPREME COURT – RCOMAA0043/14/CS –(Kayitesi Z., P.J., Kayitesi R. and Nyirandabaruta, J.) May 27, 2016] Law relating to commercial procedure – Voluntary intervention – The admissibility of the claim for voluntary intervention – The claim for voluntary intervention is admissible on first instance or on the appellate level, unless the intervenor's claim at the appellate level was never examined by the previous courts – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 113. Law relating to commercial procedure – Changing the nature of the case – The voluntary intervention of Kigali City does not change the nature of the case which begun as a commercial one, since it does not extinguish the obligations resulting from the sale contract concluded by both parties – Organic Law No02/2013 of 16/06/2013 modifying and complementing organic law No58/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts, article 12. Fact: Kigali City leased plot No5810 to SOGECO and it also issued its construction permit, thereafter the lease was terminated by Kigali City due to the fact that Electrogaz notified it that a large water pipe traversed therein and it could be damaged in case heavy buildings are elected on that plot. Thereafter Kigali City lent that plot to CAPLAKI

cooperative for it to sell therein its handcrafts products on the condition that it is not allowed to construct on it, thereafter it was also dispossessed of it and given to Mrs. Mukanyirinkwaya Adele, who lent it to CAPLAKI, after they agreed on the sale of that plot whereby a sale contract was concluded between them, thereupon CAPLAKI as a buyer paid her the first instalment. After CAPLAKI learnt that Mukanyirinkwaya Adele had no right to sell that plot, unilaterally terminated the sale contract and sued her before Nyarugenge Commercial Court claiming for reimbursement of the money for rent and the first instalment it paid her, the court found the case with merit and ordered Mukanyirinkwaya Adele to reimburse CAPLAKI the money for the first instalment she received and also pay procedural and advocate fees. Both parties appealed before the Commercial High Court and the appeal of CAPLAKI was found with merit, while that of Mukanyirinkwaya Adele had merit on some grounds, and the Court decided that there should be compensation of debts and CAPLAKI was ordered to give her back the plot, pay procedural and advocate fees. Cooperative CAPLAKI appealed again before the Supreme Court arguing that the judge of the previous court based on repealed law, he was characterized by excessive contradiction and he ignored the evidences it submitted proving that the plot was a government property. Kigali City voluntarily intervened in the case at the Supreme Court arguing that it had interests in that case since the plot on which the sale contract was concluded was a government property. Mukanyirinkwaya Adéle raised an objection for inadmissibility of the voluntary intervention of Kigali City arguing that it was filed for the first time at the Supreme Court and if it happens to be admitted it will change the nature of the case to an administrative one instead of being a commercial one while the subject matter is reimbursement of the money.

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CAPLAKI argues that the voluntary intervention of Kigali City does not change the nature of the case to the extent that the claim becomes an administrative one when the subject matter originates from the property it argues that it belongs to the government. Held: 1. The claim for voluntary intervention is admissible on first instance or on the appellate level, unless the intervener's claim at the appellate level was never examined by the previous courts. Hence the voluntary intervention of Kigali City before the Supreme Court should be admitted since it was not a party before the previous courts and it has interest in this case.

2. The voluntary intervention of Kigali City does not change the nature of the case which begun as a commercial one, since it does not extinguish the obligations resulting from that sale contract concluded by both parties. Objection overruled. The hearing of the case on merit will continue. Court fees suspended. Statutes and statutory instruments referred to: Organic Law No02/2013 of 16/06/2013 modifying and complementing organic law No58/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts, article 12. Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 113. No case referred to. Author cited: Serge Guinchard "Droit et Pratique de la Procédure Civile", Edition Dalloz, Paris, 2006. Jean Rivero and Jean Waline, "Droit Administratif" Edition Dalloz, 20ème Edition, 2004.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 09/05/2000, a plot No5810 was leased to SOGECO cooperative by Kigali City, it also issued to them its construction permit, but on 18/09/2002 ELECTROGAZ wrote to Kigali City informing it that there is a large water pipe distributing water to many areas of Kigali, that in case the plot is constructed it would damage those infrastructure, and accordingly Kigali City terminated the lease contract for that plot on 31/12/2002. [2] On 02/12/2003, Kigali City rent plot No5810 to CAPLAKI so that it can use it to exhibit its products, then on 28/04/2009 Kigali City again gave the same plot to Mukanyirinkwaya Adèle and on 14/05/2009, the latter also rented it to CAPLAKI and on 09/06/2011, they entered into a sale contract, whereby CAPLAKI paid the first instalment of 37.500.000Frw to Mukanyirinkwaya Adèle.

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[3] On 27/03/2012, CAPLAKI unilaterally cancelled the contract after it had realized that Mukanyirinkwaya Adèle had no right to sell that plot, it also went ahead and filed a claim before Nyarugenge Commercial Court claiming for the reimbursement of the money it paid for rent, the first instalment and also requesting for various damages. In the judgment RCOM0279/14/TC/Nyge rendered on 30/05/2014, the court found CAPLAKI's claim with merit and ordered Mukanyirinkwaya Adèle to pay to CAPLAKI the money for the first instalment she received, moral damages, procedural fees and advocate fees all amounting to 38,300,000Frw. [4] Both CAPLAKI and Mukanyirinkwaya Adèle appealed before the Commercial High Court, Mukanyirinkwaya Adèle's appeal was recorded on RCOMA0353/14/HCC while that of CAPLAKI was given RCOMA0390/14/HCC, both appeals were combined, on 19/09/2014, the Court rendered the judgment, whereby it found Mukanyirinkwaya Adèle's appeal with merit while that of CAPLAKI had merit in parts and the appealed judgment was consequently overruled, ordered for compensation of the debts, ordered CAPLAKI to give back the plot to Mukanyirinkwaya Adèle immediately after the pronouncement of this judgment failure to do so it would pay to Mukanyirinkwaya Adèle 34,948,000Frw for the rent it owed to her, 1,000,000Frw for damages for dragging her in lawsuits, 1,500,000Frw for the advocate fees and 500,000Frw for procedural fees. [5] On 14/10/2014, CAPLAKI through his counsel Nsengiyumva Niyondora appealed the rulings in the Supreme Court, on the grounds that the Judge based on inexistence law, the judgment was characterized by excessive contradiction, and the judge also ignored evidences proving that the plot occupied by CAPLAKI was a government property. Kigali City voluntarily intervened in the case. [6] The case was heard in public on 26/04/2016, CAPLAKI appeared represented by counsel Nsengiyumva Niyondora, Mukanyirinkwaya Adèle was represented by Counsel Mwanayire Florentine and Counsel Semadwinga Claude while Kigali City was represented by Counsel Rubango Epimaque. [7] Counsel Mwanayire Florentine and Counsel Semadwinga Claude raised a preliminary objection for inadmissibility of the voluntary intervention of Kigali City. II. LEGAL ISSUES AND THEIR ANALYSIS Whether the voluntary intervention by Kigali City is admissible and whether it changes the nature of the case. [8] Counsel Rubango Epimaque

argues that Kigali City voluntarily intervened basing on article 112 and 113 of Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure because of interest it has in this case. [9] He explains that in 2000, Kigali City leased plot No5810 to SOGECO, and thereupon signed a lease contract on 31/10/2002 which was terminated because a large water pipe distributing water in many areas of Kigali traversed through that plot and since then no one owns it this is emphasized by the fact that Kigali City lent it to CAPLAKI to use it in exhibiting and selling its products but not allowed to construct on it permanent structures and other activities which may damage the infrastructures of ELECTROGAZ which are in that plot.

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[10] He furthermore argues that the fact that Mukanyirinkwaya entered a sale contract with CAPLAKI on the property she does not own, without even requesting Kigali City to intervene so that the owner of the property can be determined, reveals the intention of snatching the property which is not theirs, he requests the Court to admit the voluntary intervention of Kigali City. [11] Counsel Mwanayire Florentine argues that the voluntary intervention of Kigali City should not be admitted because it was lodged for the first time before the Supreme Court and moreover it knew already the issue and in case Kigali City claims that it's the owner of the contentious plot then the nature of the case should change to administrative one and hence be lodged in the administrative courts, he goes on to claim that Kigali City has no interests in this case since the subject matter of the case is reimbursement of the money. [12] Counsel Semadwinga Claude argues that the voluntary intervention of Kigali City should not be admitted because the claim of CAPLAKI against Mukanyirinkwaya originates from the lease and sale contract of plot N°5810 which makes it commercial in nature, basing on the principle of continuity of the authority, he states that the decision taken by a competent authority at that time, and later nullified by Kigali City, makes it an administrative one, therefore the claim of Kigali City cannot be joined with a commercial one. [13] Counsel Niyondora Nsengiyumva argues that nothing prohibits Kigali City to voluntarily intervene at any instance even on the appellate level as long as it proves that it has interest in the case as provided by article 113, 114 and 115 of the aforementioned Law N°21/2012 since it's the one which lent the plot N°5810 to CAPLAKI, and the voluntarily intervention of Kigali City does not change the nature of the case to the extent that the claim becomes administrative one when the subject matter originates from an asset it claims to own. VIEW OF THE COURT [14] Article 112 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that "any person has the right to intervene in a case at all stages and at any time, if it is likely to affect his/her interests". [15] While article 113 of the Law N°21/2012 mentioned above, provides that voluntary intervention is done when a person, on his or her own volition, intervenes in a case where he or she is neither a plaintiff nor a defendant in order to have it declared that the claim of the litigation belongs to him or her or to make sure that his or her interests are not compromised by the court's decision. And article 114 of the same law states that in order

for his/her claim to be admitted, the intervening party must prove legitimate interest, his/her direct personal material or moral interest". [16] The two provisions read together, elucidate that any person has a right to intervene in a case in which s/he is not a party on any instance when s/he deems that the case could compromise his/her interests, as long as s/he proves a legitimate direct personal interest based on material or moral interest. This is also emphasized by the statement of legal scholar Serge Guinchard in his book "Droit et Pratique de la Procédure Civile", where he stated that "The claim for voluntary intervention is admissible on first instance or on the appellate level,

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unless the intervenor's claim at the appellate level was never examined by the previous courts"¹. [17] With regard to the voluntary intervention of Kigali City for the first time on this instance, basing on the legal explanations mentioned above, the court finds that Kigali City should be allowed to voluntarily intervene before the Supreme Court since it was not a party in the case RCOM0279/14/TC/NYGE which was adjudicated by Nyarugenge Commercial Court or even in cases RCOMA0353/14/HCC - RCOMA0390/14/HCC which were appealed against and in addition to that Kigali City has interest in this case even though the subject matter of this case is reimbursing to COPLAKI 60,572,000Frw and other various damages, but that money originate from the lease and sale of the plot N°5810 which Kigali City claims to be the owner. [18] Regarding administrative cases, Organic Law No02/2013 of 16/06/2013 modifying and complementing Organic Law No58/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of courts in its article 12 bestows jurisdiction to specialized administrative chambers to hear at the first instance the petitions relating to administrative decisions taken by authorities at the last instances, and it outlines those petitions which are ten (10) in numbers, and article 15 endows the High Court with jurisdiction over the disputes relating to decisions taken at last instance by the President of the Republic and High ranking Officials, and outlines those petitions which are limited to three (3). [19] On the issue of "the voluntary intervention of Kigali City" changing the commercial claim to an administrative one, even though the legislator did not give a direct definition of "an administrative claim", the court finds that considering the provisions of the articles mentioned above, the administrative claims originate from the decisions taken at last instance by authorities in Government Institutions. These again goes corresponds with the statement of Law Scholars Jean Rivero and Jean Waline, in their book "Droit Administratif", where they state that "when there is violation of the law by the authority violates, the judge in the administrative matters is the one to rule over it, a person not satisfied by the decision of the authority is allowed to seize the court claiming for the nullification of the decision that was illegally taken or claim for damages resulting from that contested decision, those petitions are distinguished by the nature of the claim filed to the judge"². [20] As demonstrated in the court submissions, it is evident that the subject matter in this case is reimbursement of 60,572,000Frw and other damages, which originates from the sale contract of plot No5810 entered between CAPLAKI and Mukanyirinkwaya Adèle. [21] Basing on the legal provisions and the opinion of legal scholars aforementioned, the court finds that the purpose of voluntary intervention of

Kigali City in this case was to prove that the plot that Mukanyirinkwaya Adèle attempted to sell is a government asset, which does not change the nature of the case from being commercial one, since it does not extinguish the 1Droit et Pratique de la Procédure Civile

, Edition Dalloz, Paris, 2006 C'est que l'intervention volontaire est recevable tant en première instance qu'en appel, sauf dans ce dernier cas l'interdiction de soumettre à la Cour un litige nouveau en la saisissant de prétentions qui n'ont pas subi le premier degré de juridiction. A chacun de ces degrés, l'intervention volontaire est possible en tout état de cause, même après l'ordonnance de clôture dans les procédures écrites devant les Tribunaux de première Instance et devant la Cour d'Appel. 2 ``....Au fond, on considère que si l'administration manque au droit, c'est au Juge administrative qu'il revient de la sanctionner. Pour cela les administrés disposent d'un recours pour excès de pouvoir, le plein contentieux.....La classification moderne des recours repose sur la nature de la question posée au Juge par le requérant. Droit Administratif, Edition Dalloz, 20ème Edition, 2004, page 27, paragr.44.

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obligations resulting from that sale contract concluded by both parties, therefore, the voluntary intervention of Kigali City in this commercial case cannot change its nature to an administrative one. III. DECISION OF THE COURT [22] Overrules the preliminary objection raised by Mukanyirinkwaya Adèle; [23] It decides that Kigali City is allowed to voluntarily intervene in the appealed case RCOMAA0043/14/CS before this Court; [24] Orders that the hearing of the case RCOMAA0043/14/CS in merits will continue on 12/07/2016; [25] It orders the court fees to be suspended.

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