

RWANDA / JUDGMENT

DEMIMPEX v. COGE BANQUE et al.

RCOMA 0066/11/CS

COURT

Supreme Court

DECIDED

16 January 2015

CASE / FILE NUMBER

RCOMA 0066/11/CS

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Text**Page 1**

DEMIMPEX v. COGE BANQUE et al. [Rwanda SUPREME COURT – RCOMA 0066/11/CS (Mutashya, P.J., Mukandamage and Munyangeri, J.) 16 January 2015] Commercial procedure – Striking off the case – Effects faced by the plaintiff if he/she fails to appear without any reason – Plaintiff who attended the preliminary hearing and sign the date for audience that there will not be given another summon and fails to appear before the court, his/her case is struck off in court registry because of lack of interest he/she is pursuing in that case – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 57. Civil or obligation law – Damages for procedural and advocate's fees – If the defendants reveal to the court that there is money relating to the procedural and advocate's fees spent when they requested that the case may be struck off from the court registers, they are granted for them and if they are too excessive, they are determined in the appreciation of the court. Fact: DEMIMPEX imported 20 cars in Rwanda of the category of Nissan and brought them in MAGERWA. Then after, they were seized due to the problem of taxes and the loan which was given by COGE BANQUE for them to be purchased. DEMIMPEX seized Nyarugenge Commercial Court claiming to be given back the seized cars, which court decided itself incompetent basing on the subject matter relating to those

cars which could have been seized before the Belgian Courts basing on the contracts that RWABUKAMBA made with DEMIMPEX. DEMIMPEX appealed to the Commercial High Court which decided to sell those cars in auction and the money got there from be deposited on the account of the court for fear of going on to be damaged. Then after, MAGERWA S.A lodged a claim before the Commercial High Court suing Rwanda Revenue Authority and COGEBANQUE, and DEMIMPEX intervened. MAGERWA S.A claimed to be paid the money for its services relating to parking and store. The Commercial High Court decided that the claim of MAGERWA S.A has basis and it held that it is given the money which was deposited on the account of the court in the way of paying its services. DEMIMPEX appealed before the Supreme Court arguing that the whole amount of money has not to be given to MAGERWA S.A and that the Commercial High Court has based its decision on the Ministerial Order while there was a law which would have been applied. During the hearing, DEMIMPEX defaulted, COGEBANQUE and MAGERWA requested that its case be struck off from the court registers and be provided with the procedural and lawyer's fees. Rwanda Revenue Authority also was appeared and requested also that the case of MAGERWA S.A be struck off. Held: 1. The plaintiff who attended the preliminary hearing and signed for that the case has to be heard, and that there is no any other summon that will be given and he defaulted without revealing any reason to the court, his/her case is striked off in registry of the court because of lack of interest he/she is pursuing in that case.

Page 2

2. If the defendants request for the procedural and lawyer's fees in the case which they have requested to be struck off, they are provided with it since the plaintiff makes them to make a follow up of their case and looking for the lawyer to assist them. Appeal is struck off from the court registers; Court fees to the appellant. Statutes or statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 57 No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] This case originates from 20 cars which are in the category of Nissan which DEMIMPEX claims to have imported in Rwanda and after getting in MAGERWA they were seized due to the problem of taxes for Rwanda Revenue Authority and the loan which was given by COGEBANQUE for being purchased. DEMIMPEX seized Nyarugenge Commercial Court claiming to be given back those seized cars, that court decided that it was not competent to hear that case. [2] The court in taking the decision of that it is incompetent based on the grounds that the issue relating to those cars could have been seized to Belgian Court referring to the contract that RWABUKAMBA who ordered them has made with DEMIMPEX. [3] DEMIMPEX appealed to the Commercial High Court which took the decision of selling those cars in the auction and the money be deposited on the account of the court for fear of being damaged, but DEMIMPEX has deprived itself from the right on its appeal. [4] After selling the cars and the money being deposited on the account of the court, MAGERWA S.A lodged a claim before the Commercial High Court suing RRA and COGEBANQUE and DEMIMPEX intervened in that case,

in its claim MAGERWA S.A claimed to be paid 84,856,736 Frw for its services which are include parking fees, stocking fees, storing fees and that of holding. [5] The Commercial High Court decided that the claim of MAGERWA has basis, and it held that the money for 20 cars sold in auction and deposited on the account of the court be paid to MAGERWA S.A in the way of paying its services. [6] The court in proving the decision has stated that MAGERWA S.A has right of seizing the cars in case it is not paid for different services basing on the article 4 of the Ministerial Order N°2/Fin.08.05 of 02/01/1970, which means that the cost of the seized cars may not be given to DEMIMPEX that instead it has to be given to MAGERWA S.A due to “the privilege” that the law provides for it, that’s why MAGERWA has to be given 84,856,736 Frw for the cost of its services from the account N°120.15.42 which is in BNR.

Page 3

[7] The court found that the fact that the seizure was made by RRA together with COGEBANQUE even if it might have been illegally performed and caused the loss to DEMIMPEX as it claims it; it may have been sued in another case. [8] DEMIMPEX appealed against the decision of the Commercial High Court before the Supreme Court arguing that the court has committed the faults of providing with MAGERWA the whole amount which came from the auction of the cars and the fact of having based on the Ministerial Order while there was a law which had to be applied. [9] The hearing of the case was publically held on 02/12/2014, DEMIMPEX defaulted and it has revealed no reason, Me MUGIRE Joseph pleading on behalf of RRA, Me KAYITARE Serge pleading on behalf of MAGERWA while Me BATWARE Jean Claude pleaded on behalf of COGEBANQUE. II. THE ISSUES IN THIS CASE AND THEIR ANALYSIS Whether the appeal of DEMIMPEX deserves to be struck off from the court registers, and the defendants be provided with the procedural and advocate’s fees. [10] BATWARE Jean Claude, the counsel for MAGERWA says that the fact that DEMIMPEX defaulted while it is the one which made an appeal without revealing any reason, the case may be heard, that it always behaves like that since even in the preliminary hearing it was summoned several times and it did not appear, that however, the court may base on the article 57 of the Civil Procedure and decides that the case is struck off from the registry of claims, that however, since MAGERWA has been involved in court proceeding for no ground it has to be provided 1,000,000 Frw for the procedural and lawyer’s fees. [11] KAYITARE Serge, the counsel for COGEBANQUE says that the fact that DEMIMPEX defaulted while it knew this date, it proves that it no longer has interests in this case, that one of the procedures to be used by applying the law, it includes to hear it or strike it off from the court registers, that therefore the case may be heard due to the fact that there is the money which COGEBANQUE claimed relating to it, that however, if the court finds it necessary the case may be struck off, COGEBANQUE be provide with 2,000,000 Frw for the procedural and lawyer’s fees as it claimed it in the court submissions. [12] MUGIRE Joseph, the counsel for RRA also says that the case may be struck off due to the fact that even before they have raised the objection that the appeal of DEMIMPEX may not be admitted. THE VIEW OF THE COURT [13] The article 57 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative

procedure provides for that “If the plaintiff fails to appear before the court without a justified reason, the defendant may request a dismissal of the case or ask the court to hear the case on merits in his/her favor, and the judgment shall be considered as rendered after hearing both parties, unless for good administration of justice, the court is required to adjourn the case to another date in order to re-summon the plaintiff”. [14] This court realizes the fact that on 21/10/2014 NIZEYIMANA Boniface, the counsel for DEMIMPEX in the preliminary hearing has attended and signed for that the case would be heard on 02/12/2014 and that no other summon would be issued, and again on 10/11/2014

Page 4

in the preliminary hearing he signed again for the date of 02/12/2014 that the case should be heard, and he has agreed with the adverse parties on the hour of the hearing, but DEMIMPEX failed to appear without revealing any ground to the court, it is evident that it intends in this case, thus basing on the article 57 of 21/2012 of 16/07/2012 mentioned above, its appeal has to be struck off from the court registers of claims. [15] The court realises again with regard to the procedural and lawyer’s fees which was claimed by the one pleading on behalf of MAGERWA and COGEBANQUE deserves to be provided due to the fact that DEMIMPEX has appealed it made them to make a follow up on the case and look for the lawyers to assist them, thus it has to be held liable on it. It realises however the amount of 2,000,000 Frw that KAYITARE Serge, the counsel for MAGERWA is claiming is too excessive, it is provided with within the discretionary power of the court 1,000,000 Frw for the procedural and lawyer’s fees. III. THE DECISION OF THE COURT [16] Decides that the appeal of DEMIMPEX is struck off from the court registers. [17] Condemns DEMIMPEX to pay to COGEBANQUE 1,000,000 Frw for the procedural and lawyer’s fees, and pay to MAGERWA 1,000,000 Frw for the procedural and lawyer’s fees at both instances. [18] Condemns DEMIMPEX to pay the court fees.

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