

RWANDA / JUDGMENT

GARAGE FMA v. ORINFOR LTD

RADA 0014/12/CS

COURT

Supreme Court

DECIDED

10 October 2014

CASE / FILE NUMBER

RADA 0014/12/CS

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Text

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GARAGE FMA v. ORINFOR LTD [Rwanda SUPREME COURT – RADA 0014/12/CS (Mugenzi, P.J., Kayitesi and Munangeri R., J.) 10 October 2014] Contract law – Verbal contract – Debt – Evidence of the debt – He can neither claim the payment of the debt based on verbal contract which is not supported by evidence nor can claim it based on the purchase order not accompanied by the invoice – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9. Damages – Damages and interest for non-payment – It cannot be awarded because it is it which triggered the non-payment by demanding the payment of the debt which is not supported by evidence. Facts: After the failure to pay the debt of 8,504,779Frw based on the verbal contract, Garage FMA sued ORINFOR Ltd, now changed to RBA before the High Court seeking the payment of that debt and its interests equivalent to 2% within 36 months and other various damages. The Court found that the claim has merit and it ordered ORINFOR to pay 1.494.674 and 18% for VAT. The Court relied on the fact that the demanded payment was not supported by evidence. It has so decided because it is this debt that the ORINFOR acknowledged. Garage FMA appealed to the Supreme Court stating that the High Court has so decided reasoning that there was no evidence it had submitted no evidence in support

while showed 7 purchase order and also kept silence in regard to all damages that he had requested. ORINFOR Ltd responded that this debt is not proved by evidence. She added that ORINFOR Ltd does not deny to pay the debt confirmed by the Court. Held: 1. The fact Garage FMA demands ORINFOR Ltd to pay 8,504,779Frw based on verbal contract, on good relationships that parties showed to each other but without the purchase order and even the one submitted is agreed by parties to be illegible though if it would be saying the truth it would not be relied on, as long as it is not accompanied by the invoice indicate that this debt is not supported by evidence. Hence, it is the debt confirmed by the High Court which must be paid. 2. It cannot be awarded any damage or interest in case it was found that it is Garage FMA which caused the non-payment because it was seeking the payment of the debt not supported by evidence. Appeal has no merit; Appealed judgment upheld; Appellant ordered to pay the court fees. Statutes and statutory instruments referred to: Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9.

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No case was referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Garage FMA states that states that it had concluded verbal contract of repairing vehicles of (ORINFOR Ltd) Office Rwandais des Informations. It added that from 2005 till 2007, the relationships between parties were perfect. It explained that it used to fix vehicles sent by ORINFOR Ltd and the payment used to be done on due time. However, things escalated from 2008 till 2009 when ORINFOR could hardly pay as the debt stood at 8.504.779Frw and it led to stopping its obligations as ORINFOR could pretend financial difficulties. [2] After misunderstanding on the stand of the debt as ORINFOR only accepted 1,494,764Frw, Grage FMA filed a claim before the Commercial High Court requesting for the payment of the whole debt of 8,504,779Frw as well as damages of different kind as highlighted in the object of litigation. The Court held that the claim has merit in part and it condemned ORINFOR to pay Garage FMA the 1,494,674 Frw and 18% for TVA because it recognises that. [3] In taking the decision, the Court relied on its ascertainment that Garage FMA does not submit evidence to prove the debt amounting to 8,504,779Frw which it demands the payment because there was neither written contract nor any other evidence that it presented. Instead, it ordered that the money that Garage FMA must be paid is 1,494,764Frw and 18% for TVA since it is evidenced by ORINFOR Ltd recognition. [4] Garage FMA appealed to the Supreme Court stating that the previous Court did not confirm the debt in his claim for, according to the Court, lack of evidence and it kept silence on all damages that it requested and, instead, it ordered the payment of little money compared to 7 purchase orders he showed. [5] The case was heard in an open court on July 8, 2014 Mucyesha David pleading on behalf of Garage FMA while RBA which replaced ORINFOR Ltd represented by State Attorney Umwali Munyentwali Claire. II. ANALYSIS OF LEGAL ISSUES Determination of the debt that RBA owes to Garage FMA [6] Counsel Mukesha David on behalf of Garage FMA states that the judge disregarded explanation that he had given

about the debt of 8,504,779Frw that ORINFOR owes it since their relation is not proved by the written contract. He added that initially ORINFOR used to pay conveniently. He explained that in 2008 and 2009 Ltd started difficultly paying for the works of fixing its vehicles as well as paying for the used spare parts. He insisted that things went on worsening till it stopped paying while the debt was standing at 8.504.779 Frw.

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[7] He argues further that the Court the debt that ORINFOR Ltd must pay to Garage FMA is 1,494,764Frw and 18% for TVA instead of at least taking as the benchmark 7 purchase orders that have been enclosed in the submissions as having the value of 1,699,660Frw and 18% for TVA. He added that it kept silence on those purchase orders. He asserts that the seventh purchase order that he submitted to the previous Court and hence submit again the copy for it to be considered. [8] With regard to the debt which stands at 8,504,779Frw that ORINFOR is demanded to pay, Umwali Munyentwali Claire, State Attorney for RBA replied that Garage FMA has either provided pieces of evidence of the debt to the Court and the latter might have omitted them nor he does not right now in the proceeding. To her, the High Court has been right. However, she reiterated, she does not challenge the amount of money that ORINFOR Ltd was ordered to pay since it accepts that. [9] With regard to the debt that stands at 1.699.660Frw and 18% for TVA which is connected to 7 purchase orders, State Attorney Umwali Munyentwali Claire argues that explanation given by Counsel for Garage FMA are not truthful because both parties, Garage FMA itself and ORINFOR Ltd recognise the debt standing at 1,494,764Frw and 18% for TVA and that the disagreement comes on purchase orders because ORINFOR Ltd concedes to have issued 6 only and that it does not recognise the seventh numbered n° 205/08 of 204,895Frw, since it did not issue it by detailing the service it needs. He asserts that she encounters it before this Court and it is illegible. She concluded that RBA accepts the debt standing at 1,494,764Frw and 18% for TVA in connection to 6 purchase orders which detail the service that he requests Garage FMA to provide. Hence, she agrees with the Court which confirmed this debt since it is the one supported by evidence THE VIEW OF THE COURT [10] Article 9 of Law relating to civil, commercial, labour and administrative procedure provides that every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case. [11] The Court notes that as highlighted by Counsel for Garage FMA, there is neither written contract nor any other evidence demonstrating the provided service, the spare parts used and their cost of 8,504,779Frw that ORINFOR Ltd is demanded to pay. What is clear is that Grage FMA demands the payment based on good relationships only without purchasing orders. TO this the previous Court held that there is no evidence in support. This is the same view as to this Court since there is no evidence was submitted before it to justify that debt. [12] With regard to 1,699,660Frw in regard to 7 purchase orders and 18% for VAT, parties only agree on 6 purchase orders while on the seventh, RBA replies it does not recognizes it and it encounters before this Court though parties agree that it is illegible. [13] Though the sevenths purchase order would be true, the Court notes that it is not accompanied by the invoice detailing the

provided service by Garage FMA for the payment. Therefore, the Court cannot rely on it and confirm that the payment on it must be done whole all others are accompanied by the related invoice details about the services provided by FMA.

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Hence, the money that RBA must pay is the one confirmed by the High Court since it is the one supported by evidence. Whether Garage FMA can be awarded damages it requests [14] Counsel for Garage FMA states that the Court kept silence in regard to all damages he requested while they are all supported by evidence. He explains that those damages the following:

- a. moratory damages which are the equivalence of the fact that if that money was paid, it would continue generating interest;
- b. Anti-values damages of 500,000 Frw due to the fact that the State failed to pay on due time and it is unusual;
- c. Procedural fees and being dragged in procrastinating proceedings, all equivalent to 500,000 Frw;
- d. Advocate fees, 1,000,000Frw to this instance
- e. court fees that Garage FMA must be refunded to this instance. [15] Counsel for RBA states that in regard to the damages and interests, Garage FMA must be awarded none of them in general because it cannot allege its fault and then requests damages. She added further that moratory damages must also not be awarded because was not reluctant to pay the money it accepts as ordered. She asserted rather that the delay in payment was caused by Garage FMA itself which has always submitted the invoice of 8.504.779 Frw which was not supported by evidence. THE VIEW OF THE COURT [16] With regard to the interests and damages, the Court finds that GARAGE FMA must not get them. The fact of RBA to delay to pay was caused by Garage FMA itself because it demands the payment of the debt not supported by evidence and it is these misunderstandings which led RBA to delay to pay. It cannot held responsible therefore because it was noted that it has the truth. [17] The Court finds further that Garage FMA must not even be awarded other damages because it loses the case. Thus, its appeal has no merit and the appealed judgment is upheld. III. THE DECISION OF THE COURT [18] Decides that appeal filed by Garage FMA has no merit; [19] Upholds the ruling of the judgment N° RAD 0056/11/HC/KGL rendered by t Kigali High Court on MARCH 22, 2012; [20] Orders Garage FMA to pay one hundred thousand (100,000Frw) for the court fees starting the payment from that he deposited for initiation of appeal.

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