

RWANDA / JUDGMENT

GOVERNMENT OF RWANDA v KARANGWA ET AL

RADA 0001/09/CS

COURT

Supreme Court

DECIDED

17 September 2010

CASE / FILE NUMBER

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Text

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GOVERNMENT OF RWANDA v. KARANGWA ET.AL [Rwanda SUPREME COURT – RADA 0001/09/CS (Mukanyundo, P.J., Kanyange and Munyangeri N., J.) September 17, 2010] Administrative procedure – Opposition of third party – The procedure for applying the third party opposition against the judgement rendered by the Supreme Court is prohibited. Fact: After that the Supreme Court ordered ELECTROGAZ to give 207,976,000Frw of the damages under the judgment RADA 0005/08/CS to Karangwa, the Government of Rwanda made third part opposition against that judgment stating that ELECTROGAZ is its own institution which it finds for budget, therefore it was charged the damages mentioned above without being demonstrated that there is a loss which it caused to the company of Karangwa. Karagwa raised an objection for not admitting the claim for opposition by third party against the judgment RADA 0005/08/CS; because the law which determines the jurisdiction of the Supreme Court does not allow the procedure for applying third party opposition against the judgment rendered by that Court. The Government of Rwanda states also that the provision of that article is to prevent the persons who were the parties in judgment

to make third party opposition against it, however The Government of Rwanda did not be represented in the judgment to be applied for third part opposition. Held: The procedure for applying the third party opposition against the judgement rendered by the Supreme Court is prohibited. The claim of third party opposition against the judgment RADA 0005/08/CS rendered by the Supreme Court is inadmissible because it contrary to the provision of the law. With the Court fees to the public treasury. Statutes and statutory instruments referred to: Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court Case referred to: Khalid V Ahmed ABDULATIF, RC 0002/09/CS, rendered on 19/03/2010 by the supreme court. Uwigabire V. Rusekerampunzi et.al , RCOM 0010/09/CS rendered on 30/04/2010

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] This judgment originates from the Contract which ELECTROGAZ concluded with Karangwa Eugène for giving him transformer of 400KVA for using in his industry named FIDECAR [2] ELECTROGAZ took back the transformer of 400KVA and replaced it with 50 KVA, it wrote that it is urgent but it will give back to them the other one like that one, when they will begin the industry activities which are provided for.

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[3] ELECTROGAZ gave back to Karangwa the transformer; but he continues to claim the damages at the High Court of Republic. That Court held that Karangwa lose the case in the judgment RADA 0005/08/CS; he appealed at the Supreme Court and then it ordered ELECTROGAZ to give to him 207,976,000Frw of the damages [4] Government of Rwanda, represented by its State attorney made third party opposition against the judgment RADA 0005/08/CS; because ELECTROGAZ is its own institution which finds for it the budget, thus it was charged the damages of 207,976,000Frw, without being demonstrated the loss it caused to the FIDECAR Company of Karangwa Eugène. [5] The defence submission, Batware Jean Claude, the Counsel for Karangwa states that he finds that before the hearing the judgment in its merit, there were firstly analysed about the admission of the claim submitted by the Government of Rwanda. [6] The hearing of the judgment was conducted on 05 August 2010, for examining only the issue of admitting the claim. II. ANALYSIS OF THE LEGAL ISSUE The admission of claim of Rwandan Government for making third party opposition against the judgment RADA 0005/08/CS . [7] The Counsel for Karagwa argues that claim of government of Rwanda for opposing the judgment should not be admitted, because article 84 Organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court as it was amended and completed to date, prevent the procedure for third party opposition against the judgment rendered by the Supreme Court. [8] The vice general states attorney argues that the claim of the Government of Rwanda for third party opposition against the judgment RADA 0005/08/CS should be admitted because what the article 84 of the organic Law n° 01/2004 of 29/01/2004 determining the organization, functioning and jurisdiction of the Supreme Court prevents; these are the persons who were

the parties in the judgment which is subject for third party opposition, however the Government of Rwanda was not represented in the judgment for being applied third party opposition, the provided interpretation by Counsel Batware on this article they do not understand it in the same way. [9] The Counsel for ELECTROGAZ states that the statement that article 84 of the organic Law n° 01/2004 of 29/01/2004 mentioned, does not allow that this judgment be a subject for making a third party opposition at the Supreme Court as Counsel Batware explained, he cannot add anything about it , rather the Court should analyse it. [10] According to law, article 84 of organic Law n° 01/2004 of 29/01/2004 mentioned above stipulates that “without bothering the procedure provided by the law for reviewing the judgment rendered at the last instance, the judgment rendered by the Supreme Court could not be heard again”. [11] The Court is finding the article of the organic law mentioned above explaining well that all other remedies which have the purpose to request that the judgment rendered by the Supreme Court could be again heard, are prohibited apart from applying case review of the judgment rendered by the Supreme Court at the last instance, it is the only one allowed, these are similar with the jurisprudence made by this Court in the previous judgments (RC 0002/09/CS rendered

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on 19 March 2010 and RCOM 0010/09/CS rendered on 30 April 2010) which held that the remedy of making third party opposition against the judgment in the Supreme Court is prohibited. [12] Basing on the motivation provided above, the Court finds that the claim of Government of Rwanda for the third party opposition should not be admitted because it was unlawfully submitted. III. DECISION OF THE COURT [13] Holds that the claim of the Government of Rwanda for the third party opposition of the judgment RADA 0005/08/CS does not admit because it is contrary to the provision of the law [14] Declares that the Court fees is on the side of public treasury.

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