

RWANDA / JUDGMENT

HABUMUGISHA v. Rwanda Energy Group (REG LTD)

RADA 0050/13/CS

COURT

Supreme Court

DECIDED

7 October 2016

CASE / FILE NUMBER

RADA 0050/13/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

HABUMUGISHA v. Rwanda Energy Group (REG LTD)

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-10-07
- Case/document no.: RADA 0050/13/CS
- Collection: Supreme Court

Text

Page 1

HABUMUGISHA v. Rwanda Energy Group (REG LTD) [Rwanda SUPREME COURT – N° RADA 0050/13/CS (Mutashya, P.J., Gakwaya and Munyangeri, J.) 7 October] Administrative procedure – administrative appeal – the termination of the contract which the director of the Government or the public institution concluded with the individuals in term of providing to them the better service – in case director of the Government or the public institution terminated a contract, and then the other party did not satisfy with it he /she should file a claim before the competent Court but he/she could not request the Court to remove the decision that was taken by the administration of terminating the administrative contract they entered into – Law n° 18/2004 of 20/6/2004 relating to Civil, commercial, social and administrative Procedure, article 339 Administrative procedure – A party to the proceedings has the right to appeal against the judgment which he/she did not satisfy with its rulings therefore the damages for being dragged into vexatious ligation should not be awarded – Law n° 21/2012 of 14/6/2012 relating to Civil, commercial, social and administrative Procedure, article 162. Fact : after the meeting which

EWSA concluded with the concerned subscribers it was decided that they have to use the unities which are in their cash power, then after finishing them they will be disconnected, their cash power be removed till the time of the new decisions. Habumugisha one of the person who concluded with EWSA Subscription contract to the electricity together with Ayinkamiye wrote to the director of EWSA, branch of Rusizi, requesting to be connected again to the electricity and they produced the loss they suffered for. Again to the different dates, they applied an informal appeal to the general director of RECO RWASCO for requesting him to remove the decision of disconnecting the electricity to them. The general director of EWSA responds to him that the contract which they concluded must be terminated since it was unlawful and also he responded to informal appeal letter in stating that he explained to them the reason why EWSA terminated the contract he entered into with Habumugisha and he asked him in case the dialogue of agreeing about the way of distributing the electricity to them, is continuing between SNEL and EWSA, they would be patient. Habumusha filed a claim against EWSA to High Court; that Court held that the claim should not be admitted because it exceeded the period provided by the Law relating to Civil, commercial, social and administrative Procedure which was in force that time. Habumugisha appealed to the Supreme Court in stating that the High Court denied admitting his claim on the ground that he applied an informal appeal several times, while at his first response he would file a claim, but he finds that it is not what because he received the response of administrative appeal on 18 February 2011 that time he applied immediately administrative appeal and he was responded on 04 May 2011, and he files a claim to the Court on 09 October 2011, which means after five months. EWSA states that the decision taken by the High Court was lawful because if the application of administrative appeal may be done several time, article 339 of law n° 18/2004 of 20/6/2004 mentioned above would be provided that the period of six months for filing a case to Court, when the applicant of administrative appeal was not satisfied of the response he/she

Page 2

received, it must be computed after the last administrative appeal, however it is not provided by that article; especially that the high court based on what decided by the Supreme Court in the judgment it rendered. Concerning what is concluded in the letter of 18 November 2011, which the director of EWSA (REG Ltd) wrote for Habumugisha, it is not the letter which terminated that contract because minutes of meeting which took place on 20 October 2010 it was on that day they decided that the electricity will be disconnected. Held: 1. in case director of the Government or the public institution terminated a contract, and then the other party did not satisfy with it he / she should file a claim before the competent Court but he/she could not request the Court to remove the decision that was taken by the administration of terminating the administrative contract they entered into.

2. A party to the proceedings has the right to appeal against the judgment which he/she did not satisfy with its rulings therefore the damages for being dragged into vexatious litigation should not be awarded.

3. The fact that it was necessary for EWSA to search for the legal representative, it should be awarded the counsel fees in the Court discretion. Appeal has no merit; The claim of Habumugisha should not be admitted by the high Court; With the Court to Habumugisha. Statutes and statutory instruments referred to: Law n° 18/2004 of 20/6/2004 relating to Civil, commercial, social and administrative Procedure, article 339. Law n° 21/2012 of 14/6/2012 relating to Civil, commercial, social and administrative Procedure, article 162 No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 03 November 2009, HABUMUGISHA Jonas and EWSA which was called RECO RWASCO concluded subscription contract related to the distribution of electricity. On 20 October 2010, during the meeting which RECO RWASCO had with the concerned subscribers, it was decided that those subscribers must use all unities which are in their cash power, then after finishing them they will be disconnected, their cash power be removed till the time of the new decisions (...).

Page 3

- [2] On 29 November 2010, HABUMUGISHA Jonas and AYINKAMIYE Adidja whom they share the problem wrote to the director of EWSA (RECO RWASCO), branch of Rusizi requesting to be connected to the electricity and they produced the loss they suffered for. Again on the different dates, they applied for an administrative appeal to director general of RECO RWASCO requesting him to eradicate the decision of disconnecting their electricity. [3] On 18 February 2011, the general director of EWSA wrote to HABUMUGISHA Jonas for informing him that the contract which they concluded must be terminated since it was unlawful. On 04 May 2011, the general director of EWSA wrote again for responding to the administrative appeal letter of 11 April 2011 in stating that he explained to them the reason why EWSA terminated the contract he entered into with HABUMUGISHA Jonas and he asked him in case the dialogue of agreeing about the way of distributing the electricity to them, is continuing between SNEL and EWSA, they would be patient. On 10 October 2011, HABUMUGISHA Jonas filed a case against EWSA at High Court. [4] On 10 June 2013, that Court held that the claim of Habumugisha Jonas should not be admitted because it found that he exceeded the period provided by article 339 of the law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force that time. [5] HABUMUGISHA Jonas did not satisfy with the rulings of this judgment, and he appealed at the Supreme Court in stating that the High Court wrongly interpreted article 339 of the Law n° 18/2004 of 20/06/2004 mentioned above because it rejected the admission of his claim because he applied an administrative appeal many times, while at the first response he would file a claim to the Court. [6] The hearing was conducted in public on 19 July 2016, HABUMUGISHA Jonas represented by Counsel MBONYIMPAYE Elias whereas EWSA (REG Ltd) represented by counsel IYAMUREMYE Maurice. II. ANALYSIS OF THE LEGAL ISSUES Determining whether the High Court would admit the claim of HABUMUGISHA Jonas [7]

Counsel MBONYIMPAYE Elias states that the High Court rejected the claim of HABUMUGISHA Jonas because of he applied administrative appeal many times, while at his first response he would file a claim, but he finds that it is not what article 339 of the law

Page 4

n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure provides for. [8] Counsel MBONYIMPAYE Elias explains that the contract of distribution of the electricity which HABUMUGISHA Jonas and EWSA (REG Ltd) concluded on 3 November 2009 was cancelled after receiving the letter of 18 February 2011 of the general director of EWSA (REG Ltd), which means that it was on that day HABUMUGISHA Jonas received the response of administrative appeal because that contract was unlawfully terminated. He further explains that he applied administrative appeal that time, and he answered on 4 May 2011, then he filed a claim to the Court on 9 October 2011, it means that after five months. [9] Counsel IYAMUREMYE Maurice states that the ground has no merit because the decision of the High Court was lawful. He continues in arguing that if the application of administrative appeal may be done several times, article 339 of law n° 18/2004 of 20/6/2004 mentioned above would be provided that the period of six months for filing a case to Court, when the applicant of administrative appeal was not satisfied of the response he/she received, it must be computed after the last administrative appeal, however it is not provided by that article. He adds that the high court based on what decided by the Supreme Court in the judgment RADA 0001/11/CS between KIST and HASHAKIMANA Anastase rendered on 27 April 2012, therefore they must be respected by basing article 47 last paragraph of the organic law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court. [10] Concerning what is concluded in the letter of 18 November 2011, which the director of EWSA (REG Ltd) wrote for HABUMUGISHA Jonas, Counsel IYAMUREMYE Maurice states that it is not the letter which terminated that contract because minutes of meeting which took place on 20 October 2010 it was on that day they decided that the electricity will be disconnected. He continues in stating after that Counsel MBONYIMPAYE Elias wrote on 11 December 2010 for applying an administrative appeal against that decision, indeed on 11 April 2011 he wrote in stating that he applied an administrative appeal for the second time, therefore he realizes that HABUMUGISHA Jonas exceeded the period for lodging a claim. VIEW OF THE COURT [11] Article 339 paragraph one of the law n° 18/2004 of 20/6/2004 relating to Civil, commercial, social and administrative Procedure which was in force at the time HABUMUGISHA Jonas lodged the claim provides for that An action for annulment is admissible only against an explicit or implicit decision of an administrative authority. Its second paragraph provides for that Before bringing his action for annulment, the person who attacks the administrative decision must, beforehand, have made an ex gratia appeal to the

Page 5

authority which took the decision. Whereas its paragraph four provides for that The applicant who is not satisfied with the rejection decision has a six (6) month period in which he must bring an action for annulment, which then begins to run from service of the decision rejecting the appeal And in case of silence, from the expiration of the period of two (2) months provided for in the preceding paragraph. [12] The file of the case demonstrates that in the last paragraph of the letter of 10 December 2010, in the name of HABUMUGISHA Jonas and AYINKAMIYE Adidja, by basing on article 339 of the law n° 18/2004 of 20/6/2004 mentioned above, Counsel MBONYIMPAYE Elias to the general director of RECO/RWASCO for lodging administrative appeal, requesting him to regulate the issue of disconnecting the electricity from 25 October 2010 which is between them and RECO/RWASCO, also that he must respond to them within two months, before of seeking the justice before the competent courts. [13] As it is indicated in file of the case, there is a letter of 30 December 2010, Counsel MBONYIMPAYE Elias wrote again to the general director of RECO/RWASCO whereby its subject matter was : to apply the administrative appeal before you and requesting the annulment of the decision you took for disconnection the electricity to HABUMUGISHA Jonas and AYINKAMIYE Adidja also he remedied him the provisions of article 339 of the law n°18/2004 of 20/6/2004 mentioned above. There is also the letter of 18 February 2011 which was written by the general director of RECO/RWASCO to HABUMUGISHA Jonas for responding the letter of Counsel MBONYIMPAYE Elias whereby he informs that the subscription contract they entered to was terminated because it does not comply with the Rwandan law and that of the republic democratic of Congo. [14] The case file demonstrates that Counsel MBONYIMPAYE Elias wrote another letter of 11 April 2011 whereby it's subject matter was: the second administrative appeal before you and to annul the decision for disconnecting the electricity to HABUMUGISHA Jonas and AYINKAMIYE Adidja. In the case file there is a letter of 3 May 2011, which the General director of RECO/RWASCO wrote to HABUMUGISHA Jonas, in responding his letter of 11 April 2011 where he applied for informal appeal to EWSA for annulment the decision of disconnecting the electricity to them, informing him that they were surprised by the way he did not give small value to what they wrote to him in the letter n° 11.07.029/593/11/CTX-DIR/YM/ju of 18 February 2011 whereby they explained well the reason for terminating the contact they concluded. [15] Supreme court is finding that the analysis mentioned above demonstrating that HABUMUGISHA Jonas lodge an informal appeal to the general director of RECO/RWASCO because of the termination electricity subscription contract which they concluded with EWSA (REG Ltd). It is finding also the termination contract made by the administration of EWSA (REG Ltd) does not includes in the type of the decisions of administration which are mentioned in article 339 of the law n° 18/2004 of 20/6/2004

Page 6

mentioned above because the provision of that article regards with the unilateral administrative decision without applying the law, taken by incompetent authority or exhausting the power he has, does not concern with the contracts which the government administrators or the public institutions concludes with the individuals in term of providing to them the good service, which

means in case the public institutions terminates the contract, and the other party did not satisfy with it, he shall file an administrative claim before the competent Court to hear it on merit but he could not request to the Court to cancel the administrative decision of terminating the administrative contract they concluded. [16] Even if HABUMUGISHA Jonas would not file a claim of requesting the cancellation of the decision taken by EWSA (REG Ltd) of terminating the contract they concluded, the Supreme Court finds that it would be possible, the Courts would not admit his claim because basing on article 339, paragraph 4 of the law n° 18/2004 of 20/6/2004 mentioned above he should file it within the period of six months which is starting from 18 February 2011, the official day he was informed about the termination of the contract they concluded, therefore the fact that he submitted the claim at the High Court on 10 October 2011, it means that after eight months, it should not be admitted. [17] Supreme Court finds in additional that the legislator did not provide in article 339 of the law n° 18/2004 of 20/6/2004 mentioned above, that the one who will not satisfy with the administration decision shall apply the informal appeal the times he/she wishes, like HABUMUGISHA Jonas would like to mean, it means that the informal appeal against administration must be done once also in case the person who lodged an informal appeal did not satisfy with the decision, he/she has six months of filing a claim to the Court which must be started from the day he got the response. [18] Basing on what provided above, the Supreme Court finds that the appeal of HABUMUGISHA Jonas has no merit. Determining whether EWSA (REG Ltd) should be given the amount which it request on its cross appeal against the appeal of HABUMUGISHA Jonas [19] Counsel IYAMUREMYE Maurice states that EWSA (REG Ltd) request this Court to order HABUMUGISHA Jonas to pay to it 1,000,000Frw of being dragged into vexatious ligations and 1,000,000Frw of the counsel fees. [20] Counsel MBONYIMPAYE Elias states that the damages requested by EWSA (REG Ltd), should not be given the merit because the grounds of appeal of HABUMUGISHA Jonas are reasonable in addition to that it is EWSA (REG Ltd) that caused the problem which results the judgments.

Page 7

VIEW OF THE COURT [21] Article 162, paragraph 1 of Law n° 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure provides for that Any person who was a party to the proceedings in the first instance may appeal the judgement if he/she has an interest therein, except when the law provides otherwise [22] The Court finds that the requested damages by EWSA (REG Ltd) for being dragged into vexatious litigation has no merit because it is the right of the party to appeal against the judgment in case he/she does not satisfy with its rulings, therefore it must not be awarded those damages. [23] The Supreme court is finding that the counsel fees which EWSA (REG Ltd) requests for it should be awarded it because it searched a Counsel, but the fact that what it requests is excessive, in its discretion it awards to it 800,000Frw. III. DECISION OF THE COURT [24] It holds that the appeal of HABUMUGISHA Jonas has no merit; [25] It holds that the claim of HABUMUGISHA Jonas should not be admitted by the High Court; [26] It orders HABUMUGISHA Jonas to pay to EWSA (REG Ltd) the counsel fees worth to 800,000Frw; [27] It orders HABUMUGISHA Jonas to pay the Court fees.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/6805/7084>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/habumugisha-jonas-v-rwanda-energy-group-reg-ltd-ewsa-reco-rwasco-administrativecontracts-supreme-court-2016>

Prepared on 14 October 2026 · Esheria