

RWANDA / JUDGMENT

HAGENGIMANA v. UWIHOREYE

RLR V:1-2017

COURT

Supreme Court

DECIDED

10 May 2015

CASE / FILE NUMBER

RCAA0006/13/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2015-05-10
- Case/document no.: RCAA0006/13/CS
- Collection: Supreme Court

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HAGENGIMANA v. UWIHOREYE [Rwanda SUPREME COURT – RCAA0006/13/CS (Hatangimbabazi, P.J., Mukamulisa and Hitiyaremye, J.) July 10, 2015] Law determining jurisdiction of courts – Exequatur – In order for the court to approve the execution of decisions taken by foreign courts in Rwanda, it shall consider whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; whether the case was finally heard and determined in accordance with the laws of the country of origin; whether a copy of the judgment is by all means authentic in accordance with such laws; whether the right of defence was respected – Organic Law N°51/08 of 09/09/2008 determining the organisation, functioning and jurisdiction of the Court as amended to date, article 91. Civil procedure – Burden of proof – Every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 9. Damages – Damages for being dragged into lawsuits – Procedural costs and counsel fees – The litigant who was not satisfied with the ruling of the High Court is entitled with the right to appeal against the judgment; therefore damages relating to being dragged into lawsuits can be awarded to the applicant – The litigant deserves to be awarded procedural expenses and counsel

fees because he ought to spend money for case follow up and hired an advocate because of appeal claim – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 162. Facts: Uwihoreye filed the claim to the High Court of Kigali requesting the execution of the judgment of divorce rendered by the court in United State of America in Rwanda. In the course of the hearing Hagengimana intervened voluntarily whereby he requested the claim of Uwihoreye to be considered without merit alleging that the judgment rendered by the court in United States contravenes the Rwandan Law because he was not given the opportunity to exercise the right to defense, that the hearing was held in absentia and that the judgment concerning the juvenile case was provisional and rendered in absentia as well. The high court decided the claim to have merit and ordered the aforementioned judgment to be executed in Rwanda, therefore dismissing the voluntary intervention by Hagenimana on the ground that the judgment for which it is requested to be executed in Rwanda did not contradict Rwandan law, that it was final as it is referred to as final decree on its first page and that it fulfils the conditions of an authentic document as it was approved by the Rwandan Embassy in United States of America which affixed its stamp to the copy and finally the case relating to the custody of children was heard in the case titled “Juvenile and Domestic relations”. Hagengimana appealed to the Supreme Court stating that the judge at the High Court disregarded the fact that the provisions of the law referred to for divorce decision are in contradiction with the Rwandan law and misunderstood the facts. He also alleges that this judge disregarded the fact that it was Uwihoreye who had the burden to provide evidence indicating that Hagenimana was served summons to appear in the case relating to the custody of children and that relating to divorce which was delivered in United States of America. Uwihoreye presents his grounds against the appeal claim stating that there is nothing Hagenimana has criticized the judgment rendered by the High Court because he himself admit that the judgment delivered in United States of America become final; and therefore it should be executed. Uwihoreye states in addition that the evidence to prove this admission

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that it became final relies on the fact that he subsequently got married to another spouse relying on that divorce judgment. Uwihoreye raised a cross-appeal beside the appeal claim lodged by Hagenimana whereby he requested the payment of expenses incurred for case follow up and counsel fees. Hagenimana states that the request for damages for being dragged into unnecessary lawsuits is groundless because the claimant does not provide supporting evidence while concerning the compensation for expenses incurred for case follow up and counsel fees, he prays the court to examine the request thereto. Held: 1. The appellant cannot request that the judgment should not be executed in Rwanda under allegations that he was not summoned to appear and to present his grounds while he does not produce evidence to support it.

2. There is no ground to award damages to the respondent for being dragged into unnecessary lawsuits, because as long as the appellant was not satisfied with the decision of the High Court, he had the right to appeal against it.

3. The respondent deserves to be awarded procedural expenses and counsel fees he requested because it is understandable that he ought to spend due to the appeal claim lodged by the appellant and seek the representation of a counsel on appeal level; therefore the appellant should pay him 500,000Frw of damages since this amount is in range. Appeal without merit. Cross appeal with merit in part. Court fees to the appellant. Statutes and statutory instruments referred to: Organic Law N°51/08 of 09/09/2008 determining the organisation, functioning and jurisdiction of the supreme Court, article 91. Law N°21/2012 of 14/06/2012, relating to the civil, commercial, labour and administrative procedure, articles 9 and 162. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Uwihoreye Dancille got civilly married to Hagenimana Athanase Athanase with whom they had three children. on 20 May 2011, the court in Virginia State in America known as Fairfax County Circuit Court adjudicated on the case filed by Uwihoreye against Hagenimana for divorce, and this court declared it with merit on the ground that it was a whole year the spouses did not cohabit, therefore it is impossible to concile them. It granted the divorce between Hategekimana Athanase and Uwihoreye. [2] Regarding their sharing of their assets, the court decided that it will be the Rwandan court which will determine their fate.

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- [3] After this ruling, Uwihoreye filed a case to the High Court of Kigali requesting it to order the judgment on divorce which was rendered by the court in America be executed in Rwanda. [4] In the Course of the hearing before the High Court, Hagenimana Athanase intervened in the case in order to protect his interests. The Court declared the claim of Uwihoreye with merit and therefore ordered the judgment to be executed in Rwanda and declared the intervention claim of Hagenimana without merit. [5] As far as the motivation of this decision is concerned, the court held that it is the right of Hagenimana to intervene in the case, but that he has no interest to obstruct the execution of the judgment in Rwanda because Uwihoreye filed a claim of divorce to an American Court and won it, and Hagenimana was notified the judgment and did neither lodge opposition nor appeal against it. [6] The High Court found without merit the reasons presented by Hagenimana for the inexecution of the judgment in Rwanda, including the fact that the Court in America rendered the judgment in contradiction with the Rwandan law, because he did not indicate the provisions of American law referred to by the judge which are in contradiction with the Rwandan law as far as the judgment on divorce is concerned, therefore the divorce ruling is valid in Rwanda too, as it does not contradict any Rwandan public order principles. [7] It explained that concerning the issue relating to the sharing of assets, the judge declared that they will be examined by Rwandan courts, while concerning the issue of children custody, it was settled in another lawsuit which was rendered on 3 March 2006 in the Court named Fairfax County in the case known as "Juvenile and Domestic relations". [8] It found also that Hagenimana lives in

Switzerland while Uwihoreye dwells in America, therefore the American court judge found that Hagenimana abandoned his family for a period exceeding one year, the ground for which this court granted the divorce. Indeed, the Rwandan law allows the divorce if the spouse abandon the family for more than 12 months. [9] The court explained in addition that the judgment rendered in America is final as indicated by its title on the first page of the minute whereby it is mentioned "Final decree" and this fulfills the test of authenticity as approved by the Rwandan embassy in America which affixed the stamp on that minute. [10] It explained again that Hagenimana does not present evidence to support his statements according to which he alleges that he was not given time to defend himself, or indicate that the judgment was by default, or that he lodged an opposition or appeal claim. Therefore, it complied with the law, and should be executed in Rwanda because its ruling does not contradict with general principles of Rwandan public order. [11] Hagegengimana Athanase Appealed to the Supreme Court, alleging that the judge of the High Court disregarded that fact that the provisions of the law referred to for granting the divorce are in contradiction with Rwandan Law. He alleges in addition that the judge was misled and disregarded that it was the burden to prove the summon of Hagenimana to appear in children custody and divorces cases rendered in America lies on Uwihoreye.

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- [12] Counsel Sayinzoga Jean Pierre who represents Uwihoreye Dancille states that the appeal grounds of Hagenimana lack merit and that Uwihoreye raises a cross-appeal claim in order to request the payment of procedural expenses he incurred. [13] The hearing of the case was held in public on 26 May 2015, whereby hagenimana was represented by counsel Bimenyimana Eric while Uwihoreye Dancille was represented by Sayinzoga Jean Pierre. II. ANALYSIS OF LEGAL ISSUES Whether the High Court in Kigali should not have ordered the exequatur in Rwanda of the judgment N°2011-296 rendered by "THE FAIRFAX COUNTY CIRCUIT COURT" in Virginia State of America on 20 May 2011. [14] Counsel Bimenyimana Eric who represents Hagenimana Athanase states that the parties to this case are Rwandan by nationality, the reason why they should be subject to Rwandan Law, and that the ground for appeal by Hagenimana relies on the fact that the judge of the High Court ordered the judgment rendered by American Court to be executed in Rwanda while the laws referred to for its adjudication are inconsistent with Rwandan laws. He states in addition that the intention of Hagenimana is to indicate that the judgment should not be executed; rather, it should remain unenforced. [15] He explains again that the Court in America adjudicated on the divorce case in disregard of article 10 of the preliminary title of civil code (C.C. Book 1) because it did not address the issue relating to the custody of children as the decision taken before was of an interim character, and Hagenimana was not summoned to appear and present his defence in the court which heard this issue relating to the children custody. He states in addition that the said Court disregarded the provision of article 9 of the Law N°27/2001 relating to the protection of the child which provides that the primary consideration shall be in the best interests of the child. [16] He goes on stating that

Hagenimana have never been summoned in the divorce case in order to allow him to exercise his right to defence, therefore, articles 18(3°) of the Constitution and 10 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure were disregarded, and thus, the High Court should not have requested Hagenimana to produce evidence relating to the respect of his right to defence; rather, this should have been the duty of Uwihoreye who filed the case in America because he is the one who picked the summon of the defender and that if she did not notified them to him, she should bear all related consequences. [17] Counsel Bimenyimana states that another irregularity relies on the fact that the judgment on divorce was rendered without attempt to reconcile the spouses, and for him, the provision of article 243 of the preliminary title of civil code book 1 was violated. [18] He states further that the High Court misunderstood the facts, because it held that the divorce was granted on the ground that it was a period of year Hagenimana abandoned his family whereas it was granted on ground that before even the submission of the divorce action, Hagenimana was not living with her wife for a period of the year. He adds that the decision of Court in America disregarded the rwandan law which provides that the divorce is pronounced in case one of the spouse abandon the household for a period of 3 years.

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- [19] Counsel Sayinzoga Jean Pierre for Uwihoreye Dancille replies that the first ground of the appeal of Hagenimana is without merit because he did not indicate the laws referred to which are inconsistent with the Rwandan law. Rather, the ground of divorce in America which consists of the abandonment of the household for a period of the year is also valid in Rwanda. [20] Concerning the custody of the children, he states that it was decided on by the FAIRFAX COUNTY COURT in the case referred to as “Juvenile and domestic relations” on 3 March 2006, therefore alleging that that case relating to the children custody was interim lacks merit. He states in addition that even the statements of Hagenimana according to which he was not summoned are untrue because he was summoned but did not appear, and after the judgment was rendered he was notified it but did not lodge an opposition nor an appeal; therefore, he cannot exercise the remedies in Rwandan Court that he did not exercise in American courts. [21] Counsel Sayinzoga goes on stating that Hagenimana does not have any ground of critics against the judgment rendered by the High Court because he himself acknowledge that the judgment rendered in America became final, therefore it should be executed. He adds that the fact to show that Hagenimana believes the judgment became final is that he got married to another wife basing on the judgment on divorce, therefore his statements that it did not follow the law should be considered without merit. [22] Concerning the statements of Hagenimana, that he was not summoned in the divorce case rendered in America, Counsel Sayinzoga replies that he considers them without merit because there is evidence about the course of the hearing that may be found by the court if examined. THE VIEW OF THE COURT [23] Article 91(2) of the Organic Law N°51/08 of 09/09/2008 determining the organization, functioning and jurisdiction of courts as amended to date, provides for the items to be examined by the High Court in order to order the

execution of the decision taken by foreign Courts in Rwanda; those items consist of: 1° whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; 2° whether the case was finally heard and determined in accordance with the laws of the country of origin; 3° whether a copy of the judgment is by all means authentic in accordance with such laws; 4° whether the right of defense was respected. [24] Article 9(1) of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure states that every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case. [25] The Court finds that Hagenimana Athanase does not provide evidence to support the grounds that the judgment rendered in America should not be enforced in Rwanda because he was not summoned in order to exercise his right to defense while he value them, therefore the

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court has no basis to confirm the deprivation of his right to defense which is provided for by article 18 of the constitution. [26] Additionally, as far as Hagenimana does not deny the notification of the judgment to him of which he did not criticize, especially that he states in his submissions that what he needs is the statu quo of the ruling, therefore the court finds that such submissions result in contradictions because if it remains unenforceable, the justice would be granted in part. [27] Considering the grounds as aforementioned, the court finds that the default to be summoned alleged by Hagenimana, on ground of which the exequatur should not be granted in Rwanda, is groundless. [28] The court finds further that other defects relating to the way the decision was taken as alleged by Hagenimana, do not relate to the provisions of article 91(2) of the stated Organic Law N°51/08 of 09/09/2008. In addition, among those raised defects, include those relating to the judgment on the children custody while it is different from divorce case as it was indicated by the High Court; therefore those irregularities should not be considered as far as the issue to be examined in this case consists whether the decision on divorce taken in a foreign country could be executed in Rwanda. [29] Pursuant to all provided explanations, this court finds that nothing would have prevent the High Court to order the execution of the judgment which was rendered in Viriginia State in America by “THE FAIRFAX COUNTY CIRCUIT COURT” on 20 May 2011 in Rwanda. Concerning the cross appeal raised by Uwihoreye Dancille, which is accessory to the appeal lodged by Hagenimana Athanase. [30] Counsel Sayinzoga for Uwihoreye Dancille raises a cross appeal claim accessorially to the appeal lodged by Hagenimana in compliance with article 167 of the Law relating to civil commercial, labour and administrative procedure; therefore he requests the payment of 5,000,000Frw in damages, 500,000Frw of procedural expenses and counsel fees from Hagenimana for dragging him in unnecessary lawsuits. [31] Counsel Bimenyimana Eric for Hagenimana states that damages for being dragged into unnecessary lawsuits are groundless because he does not present evidence to support them and concerning the procedural expenses and counsel fees, it is up to the court to examine their merit. VIEW OF THE COURT [32] The court finds that there are no grounds for Uwihoreye to be awarded damages for being dragged into unnecessary lawsuits, because as long as Hagenimana was not satisfied with the ruling of the High Court, it is his right to lodge an appeal against it in

compliance with article 162 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure. [33] The court finds Uwihoreye deserves to be awarded that the procedural and counsel fees he requested because he ought to engage some expenses due to the appeal claim lodged by Hagenimana, and ought to hire the service of an advocate to represent him in the court, therefore he should be paid 500,000Frw by Hagenimana since this amount is in range.

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III. DECISION OF THE COURT [34] Declares the appeal lodged by hagenimana without merit; [35] Declares the cross-appeal raised by Uwihoreye Dancille has merit in part; [36] Orders hagenimana Athanase to pay 500,000Frw to uwihoreye Dancille for procedural and counsel fees; [37] Upholds the ruling of the High Court, exception made of 500,000Frw of procedural and counsel fees to be paid by Hagenimana to Uwihoreye; [38] Orders Hagengimana to pay 100,000Frw of court fees.

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Prepared on 11 October 2026 · Esheria