RWANDA / JUDGMENT

KAMATENESI_v_KING_FAYCAL_HOSPITAL_RWANDA_Ltd_english_419492_en

RLR V.2-2019

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KAMATENESI v. KING FAYCAL HOSPITAL RWANDA Ltd [Rwanda SUPREME COURT – RC00003/2018/SC (Mugenzi J.P, Karimunda and Muhumuza J). 27 June, 2018] Civil procedure – Disputes relating to execution of the judgment – When the unsuccessful party does not deny the amount of payment ordered by the Court in its decision and admits that he still existent and no one else must be ordered to pay on his behalf, this indicate that there are no disputes in the execution of the judgment. Civil procedure – Disputes relating to the execution of the judgment – When the claim qualified as disputes relating to execution of judgment is the confusion caused by the unsuccessful party or deliberately putting the winner in uncertainty by stating that he will be paid by someone else who is not linked to the case, the Court has obligation to indicate that the conduct of the unsuccessful party is a hindrance to the payment of the winner, and orders that the case must be executed by the unsuccessful party without any other complication. Facts: After the judgment rendered by Supreme Court on the appeal of King FaycaL Hospital Rwanda Ltd, whereby that Hospital argued that the judgment rendered by the high Court sustained the

damages awarded to Kamatenesi by the intermediate Court of Gasabo for the negligence of that Hospital which caused her to lose some parts of her body and the death of her fetus, the Hospital argued that if there are faults committed, the doctor who was on duty that night should be the one held liable, or consider what happened as an accident which occurs to women like her who usually don't have contraception. Kamatenesi raised an objection of lack of jurisdiction of Supreme Court because King FaycaL Hospital Rwanda Ltd lost the case in intermediate Court and in High Court on same grounds. The Supreme Court after examination of that objection sustained it, and awarded her counsel fee. After the adjudication of that case, Kamatenesi wanted it to be executed, King Faycal Hospital Rwanda Ltd notified her that it is not the one to pay. Thus, she filed a case before Supreme Court stating that she went to execute the judgment and failed to get the payment because King FaycaL Hospital Rwanda Ltd notified her that all its property was sold to Oshen Health Care Rwanda while all its debts were guaranteed by the Government of Rwanda Ltd, she added that they wrote to Oshen Health Care Rwanda requesting it to pay and replied that it cannot execute the judgment in which it was not a party. She requested the court to solve the disputes relating to the execution of the judgment. Her claim was also against Oshen Health Care which raised an objection of removing it from the case because it has no link with the judgment from which the disputes arose and it requested damages. The Court after examination of that objection, it found that in the judgment under execution, King FaycaL Hospital Rwanda Ltd admitted that it is existent, also that, Oshen Health Care was not party to the case, then it ordered the removal of Oshen Health Care in the case and ordered Kamatenesi to give it damages. King FaycaL Hospital Rwanda Ltd raised an objection of lack of jurisdiction of Supreme Court, arguing that after kamatenesi filed her claim, the Law No30/2018 of 02/06/2018 determining the jurisdiction of courts was published, which indicates that, the claim of Kamatenesi Jovia is not in the jurisdiction of Supreme Court. The Court found that in the new Law determining the

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jurisdiction of courts it is provided that the existing courts continue the work they had started, which include solving disputes relating to judgments they rendered. Therefore, the Court overruled that objection. The counsel for King FaycaL Hospital Rwanda Ltd, states that the decision of the Supreme Court is clear because it orders King FaycaL Hospital Rwanda Ltd to pay and is irreversible. He added that the Hospital does not refuse to pay and wrote to Kamatenesi for notifing her that she will be paid by the Government of Rwanda through ministry of Finance because it is, its guarantor, however he found that, it was a mistake because the recipient would have been the Government of Rwanda and a copy for information given to Kamatenesi Jovia. Held: 1. when the unsuccessful party does not deny the amount of payment ordered by the Court in its decision and admits that he still existent and no one else must be ordered to pay on his behalf, this indicate that there is no disputes in the execution of the judgment. 2.When the claim qualified as disputes relating to execution of judgment is the confusion caused by the unsuccessful party or deliberately putting the winner in uncertainty by stating that he will be paid by someone else who is not linked to the case, the Court has obligation to indicate that the

conduct of the unsuccessful party is a hindrance to the payment of the winner, and orders that the case must be executed by unsuccessful party without any other complication. There are no disputes relating to the execution of the judgment RCAA00019/2017/CS. The judgment RCAA00019/2017/CS must be executed within one month. Statutes and statutory instruments referred: Law No30/2018 of 02/06/2018 determining the jurisdiction of courts, article 105. Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 247. No cases referred to.

Judgment

I. BACKGROUND OF THE CASE [1] This case originates from the judgment RCAA00019/2017/SC rendered on 16/02/2018 by the Supreme Court on the appeal of King Faycal Hospital Rwanda Ltd. In that case, King Faycal Hospital Rwanda Ltd argued that in the judgment RCA00056-00057/2016/HC/KIG rendered on 21/04/2017 by High Court on the appeal against the judgment rendered by the intermediate Court of Gasabo, the Hospital was charged damages due to its negligence over Kamatenesi Jovia who was their patient and lost some of her body parts and her fetus died, rather if there was fault committed, the responsible person should be Dr Rwibasira Muganda John who was on duty that night or this might be considered as an accident which occurs to women like her who don't always have contraception. King Faycal Hospital Rwanda Ltd stated also that it was charged

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damages based on contradictory testimony of Dr Rwibasira Muganda John and the Court also disregarded the fact that Kamatenesi Jovia may give birth again. [2] The Court first examined the objection raised by Kamatenesi Jovia, who argued that the appeal of King Faycal Hospital Rwanda Ltd is not in the jurisdiction of Supreme Court because it lost the case in intermediate Court of Gasabo and in High Court on the same grounds. In interlocutory judgment rendered on 16/02/2018, the Supreme Court sustained the objection of lack of jurisdiction raised by Kamatenesi Jovia and decided that the appeal of King Faycal Hospital Rwanda Ltd is not under its jurisdiction, thus King Faycal Hospital Rwanda Ltd was ordered to pay Dr Rwibasira Muganda John 300,000Frw of procedural fees and 500.000Frw of counsel fees. [3] Kamatenesi Jovia states that, after this decision, she wanted to execute the judgment then King Faycal Hospital Rwanda Ltd told the Court bailiff that it was sold to Oshen Health Care on 25/04/2017, all its debts are guaranteed by Government of Rwanda, and Oshen Health Care told him that it has nothing to do with the judgment to be executed and is only in charge of the management of King Faycal Hospital Rwanda Ltd, she requests the Court to solve those disputes regarding the execution of the judgment so that she can obtain what she was awarded by the Court. [4] The public hearing was scheduled on 19/06/2018, but it did not take place on that day because Oshen Health Care stated that, it did not get time to respond to claimant's submissions, the hearing was postponed on 25/06/2018 so that parties to the case prepare and share submissions on both the objection raised and on the claim on merits. [5] On that day, the Court first examined the objection raised by Oshen Health Care that it has no link with the judgment under execution, it does not

understand why Kamatenesi Jovia filed a claim against it, it requests the Court to remove it from the case and to order her to pay 1,000,000Frw of counsel fee because it has been dragged into unnecessary lawsuit which obliged it to hire an advocate. [6] After hearing the explanations of all parties on that objection, the Court in its deliberations found King Faycal Hospital Rwanda Ltd was party to the case under execution and it stated that it exists, it found also that Oshen Health Care, was not party to the case under execution from which disputes arose, it decided that, there is no ground to order it to execute the judgment since it was not party to it, while the concerned party is available, it ordered to remove it from the case, and Kamatenesi Jovia was ordered to pay it 500,000Frw for counsel fee because it dragged it in a case which it has no link with. [7] King Faycal Hospital Rwanda Ltd raised an objection of lack of jurisdiction of Supreme Court, arguing that after the filing of the claim by Kamatenesi Jovia (on 17/05/2018), the Law No 30/2018 of 02/06/2018 regulating jurisdiction of Courts was published indicating that the claim of Kamatenesi Jovia is not in the jurisdiction of Supreme Court. It argues also that, the interpretation of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure demonstrates that disputes relating to execution of judgment are no longer solved by courts, but if this Court finds it otherwise, it should decide that since the publication of these new laws, Kamatenesi Jovia had to file the case in intermediate Court

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because it is the one that hears all cases that are outside the jurisdiction of other courts, or she should have filed the claim in High Court because it is the one which rendered the case under execution at the last instance, since the Supreme Court stopped on the objection of lack of jurisdiction. [8] After hearing the explanations provided by both parties on this objection, the Court deliberated and found the subject matter of Kamatenesi Jovia's claim is to request the Court to solve disputes relating to the execution of judgment rendered at last instance by the Supreme Court, there even decisions taken against King FaycaL Hospital Rwanda Ltd which it refuse to execute, it found also that article 105 of the Law No 30/2018 of 02/06/2018 determining the jurisdiction of Courts requires that while awaiting for new Courts to begin their work, the existing Courts continue working on what they have already started, among that work they have to solve the dispute relating to execution of judgment they rendered because the judgment on these kind of disputes are aimed at clarifying the decision of the Court . The Court concluded that, there is no legal basis to transfer the claim of Kamatenesi Jovia to intermediate Court or to High Court while she still has chances to be heard by Supreme Court and she can not be deprived those chances by the fact that the subject matter of her case in Supreme Court is now under the jurisdiction of another Court, the Court took decision on the bench that the concerned claim is within its jurisdiction and ordered the hearing to continue. [9] The case was heard in public, Kamatenesi Jovia was represented by Counsel Mwine Geoffrey while King FaycaL Hospital Rwanda Ltd was represented by Counsel Kayirangwa Claire. II.ANALYSIS OF LEGAL ISSUE II.1. Whether there are disputes relating to execution of the case RCAA 00019/2017/SC rendered by the Supreme Court on 16/02/2018. [10] Counsel Mwine Geoffrey, representing Kamatenesi Jovia, states that the Court bailiff went to recover the payment of Kamatenesi Jovia but failed because

King FaycaL Hospital Rwanda Ltd told him that all its property were sold to Oshen Health Care Rwanda however its debts are guaranteed by the Government of Rwanda. He explains how they wrote to Oshen Health Care Rwanda requesting for payment and replied that it cannot execute the judgment in which it was not party. He states that if King FaycaL Hospital Rwanda Ltd now admits to pay, it must be given time limit in which it must complete the payment because Kamatenesi Jovia cannot recover her payments from the Government of Rwanda or from Oshen Health Care Rwanda while they are the ones who lost the case. [11] Counsel Kayirangwa Claire, representing King FaycaL Hospital Rwanda Ltd, states that the decision of the Supreme Court in judgment under execution is clear because it ordered King FaycaL Hospital Rwanda Ltd to pay and it is impossible to reverse it. She explains that the hospital does not refuse to pay and it wrote to Kamatenesi Jovia notifying her that she will be paid by the Government of Rwanda through ministry of finance because it is its guarantor, but she finds herself that there was a mistake because the recipient might be the Government of Rwanda (ministry of finance) and inform Kamatenesi Jovia. She states that King FaycaL Hospital Rwanda Ltd cannot send Kamatenesi Jovia to recover her payments from the

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Government of Rwanda (ministry of finance) or from Oshen Health Care because they are not the ones who lost the case, she finds then that, the Hospital must write to ministry of finance and inform Kamatenesi Jovia. She states also that, the statement that the defendant must be given a time limit to pay is groundless because this would mean that the Court has decided on the execution of judgment while it is not the subject matter. VIEW OF THE COURT [12] Article 247, paragraph one, of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that within thirty (30) days from the day when the judgment is final [...], the party that lost the case may contact the winning party in order to make an agreement on the execution of the court decision [...] [13] The case file contains a document wrote on 27/03/2018, by Counsel Mwine Geoffrey to the manager of King FaycaL Hospital Rwanda Ltd informing him that the Hospital lost the case against Kamatenesi Jovia, and was ordered to pay 31,100,000Frw, and he requested it to pay amicably within seven days. On 18/04/2018, the Director of King FaycaL Hospital Rwanda Ltd replied to Counsel Mwine Geofrey that the Hospital exists only by name because it has been sold to Oshen Health Care and its guarantor Oshen Group S.A. and also beginning from 25/04/2016, all debts from its operations are guaranteed by the Government of Rwanda, he requested him then to discuss with the Government of Rwanda, and make an agreement on how they will be paid. [14] The case file also contains, a letter written by Oshen Health Care to Mukeshimana Juliette, a Court bailiff, who went to execute judgment, to inform her that it is not the one to pay for the liabilities of King FaycaL Hospital Rwanda Ltd because it has no link with the cases it lost, also that King Faysal Hospital is still legally existent with an appointed Chief Executive Officer whose mandate is to ensure a proper management of any outstanding business of the hospital at the date of takeover by Oshen Health Care Rwanda and this is clearly explained in the Concession agreement signed between the Government of Rwanda herein represented by MINECOFIN and Oshen Health Care Rwanda. [15] The Court finds

that King FaycaL Hospital Rwanda Ltd does not deny the amount it was ordered to pay in the courts' decisions and it states that it is still existent and it also acknowledges that neither the Government of Rwanda or Oshen Health Care Rwanda should be liable for the execution of judgments it lost because King FaycaL Hospital Rwanda Ltd is the only one which was ordered to pay, this was also emphasized by the letter written by Oshen Health Care Rwanda to Kamatenesi Jovia which states that the Hospital is still existent and has a Chief Executive Officer whose mandate is to ensure the proper management of any outstanding business of the hospital at the date of takeover by Oshen Health Care Rwanda according to the agreement it made with the Government of Rwanda, all this implies that, if the unsuccessful party in a Court case admits that he/she is the one to pay what the Court decided, this indicates that there are no disputes relating to the execution of judgment. [16] The Court finds that what was qualified as disputes relating to execution of judgment, is rather a confusion that King FaycaL Hospital Rwanda Ltd created in Kamatenesi Jovia instead of respecting the Court's decision, the Hospital has admitted before the Court that it mishandled

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Kamatenesi Jovia's issue, because instead of claiming the payment from its guarantor (Government of Rwanda) for the debts it acknowledges, it asked her to discuss this with the Government of Rwanda while it was aware that there is no link between them, it did all this, disregarding that the Law requires it to take initiative and indicate to Kamatenesi Jovia how to pay its debts from the case she won. [17] The Court also finds that King FaycaL Hospital Rwanda Ltd kept on delaying the execution of the Court's decision, instead of doing what was required so that Kamatenesi Jovia gets the payment for what she won in the case, its conduct became a barrier to means of payment because it was aware that Kamatenesi Jovia could not discuss with the Government of Rwanda to get paid while they have no link, that is why basing on the provisions of article 247 paragraph one of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure King FaycaL Hospital Rwanda Ltd has to be given a deadline of one month within which it must complete the payment of what it was ordered by the Court in the case it had against Kamatenesi Jovia. I.2 Whether the damages requested have merit [18] Counsel Kayirangwa Claire representing King FaycaL Hospital Rwanda Ltd states that if the Court finds with no merit the claim of Kamatenesi Jovia as she expects, it should order her to pay 1,000,000Frw for counsel fees. [19] Counsel Mwine Geoffrey, representing Kamatenesi Jovia, states that, there was no other way to get paid rather than resort to Courts, he finds that King FaycaL Hospital Rwanda Ltd is the one which caused this case, reason why it cannot be awarded counsel fee it requests, rather it should be ordered to pay Kamatenesi Jovia 1,000,000Frw which includes counsel and procedural fees. VIEW OF THE COURT [20] As motivated above, the Court finds that Kamatenesi Jovia resorted to Courts again to seek justice due to the confusion she was put in by King Faycal Hospital Rwanda Ltd, this implies that if the Hospital had complied with the decision of the Court without creating confusion or had explained to Kamatenesi Jovia how to get payment, it will not have been necessary to resort again to courts, the reason why counsel fee requested by King Faycal Hospital Rwanda Ltd is not awarded. [21] The Court finds that

procedural and counsel fee requested by Kamatenesi Jovia are worthy, however, as she cannot prove that she spent 1,000,000Frw on this case, she is awarded 800,000Frw including procedural and counsel fees. III. DECISION OF THE COURT [22] Decides that there are no disputes relating to the execution of the judgment RCAA00019/2017/CS rendered on 16/02/2018 by the Supreme Court.

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[23] Orders King FaycaL Hospital Rwanda Ltd to execute the judgment NoRCAA 00019/2017/CS rendered on 16/02/2018 by the Supreme Court within one month; [24] Orders King FaycaL Hospital Rwanda Ltd to give Kamatenesi Jovia 800,000Frw which includes procedural and counsel fees. [25] Orders King FaycaL Hospital Rwanda Ltd to pay court fees.

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