

RWANDA / JUDGMENT

NKONGORI V. RWANDA CIVIL AVIATION AUTHORITY (RCAA) ET.AL

RADAA 0001/10/CS

COURT

Supreme Court

DECIDED

6 June 2010

CASE / FILE NUMBER

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Text

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NKONGORI V. RWANDA CIVIL AVIATION AUTHORITY (RCAA) ET.AL [Rwanda SUPREME COURT – R.AD.AA 0001/10/CS (Mutashya, P.J., Hatangimbabazi and Rugabirwa,J.) June 06, 2010] Civil procedure – The determination of the penalty forcing the execution – The person who is charged the amount of the penalty forcing the execution in case it is the Government institution – The Court determine the penalty which forces the administrator himself to implement the judgment in case it will not be executed – Law n° 18/2004 of 29/01/2004 relating to the civil, commercial, labour and administrative procedure , article 350 and 351. Civil procedure – The submission of the claim for the first time at appeal level – The claim is inadmissible when the party files it for the first time at the Supreme Court and without being debated on in the previous Courts. Fact : after Nkongoli won Rwanda Civil Aviation Authority (RCAA) at the High Court, whereby it ordered it to give him 4,946,406Frw to Nkongoli of the salary arrears for six months that he did not be remunerated, 200,000Frw of the procedure cost and 22,975Frw of the Court fees. Rwanda Civil Aviation Authority (RCAA) appealed at the Supreme Court; then it held that the rulings of

the appealed judgment are sustained and ordered that the judgment should be executed as it is rendered. Nkongori filed a claim at the Supreme Court suing Rwanda Civil Aviation Authority (RCAA) together with Masozera its Director General because they did not respect the decisions of the Courts mentioned above; thus he requests that they be charged the penalty forcing the execution the judgment they lose; final liquidation ; employment certificate and the other things that law grants to him. Held : 1. The fact that the respondent does not execute the judgment nor appear to the Court for explaining the reason why he did not execute it, it is considered as there is no reasonable grounds which prevented him/her to execute it

2. The Court determine the penalty which forces the administrator himself to implement the judgment in case it will not be executed therefore the administrator is the general director of Rwanda Civil Aviation Authority because is the one who has in his attribution to administrate its performance and activities every day, he must pay himself the amount of the penalty forcing the execution each month since the deliverance of this judgment till the day the judgment R.AD.A 0012/07/CS will be executed
3. The claim is inadmissible when the party files it for the first time at the Supreme Court and without being debated on in the previous Courts. The claim is admitted. The claim has the merit in party.

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With the court fees to the director general of Rwanda Civil Aviation Authority. Statutes and statutory instruments referred to: Law n° 18/2004 of 29/01/2004 relating to the civil, commercial, labour and administrative procedure, article 350 and 351 Organic law n° 14/2004 of 26/05/2004 establishing general provisions governing Public Institutions, article 5 and 6 No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] The High Court of Republic at Kigali rendered the judgment R.AD.0055/06/HC/KIG on 15 June 2007 and held that Nkongori John wins Government of Rwanda and Aviation Authority. [2] That Court ordered Government of Rwanda to give 5,000,000Frw to Nkongori John of damages because he was unlawfully dismissed on the post of director general of Rwanda Civil Aviation Authority since he was not be informed about the decision which he was taken to suspending or dismissing him on job. [3] Rwanda Civil Aviation Authority was ordered to pay 4,946,406Frw to Nkongoli of the salary arrears for six months that he did not be remunerated, 200,000Frw of the procedure cost and 22,975Frw of the Court fees. [4] On the appeal of Government of Rwanda (Rwanda Civil Aviation Authority), the Supreme Court rendered the judgment R.AD.A 0012/07/CS on 27 March 2009, and held that the rulings of the judgment are sustained; it ordered that the judgement be executed as it was rendered. [5] On 10 June 2010, Nkongori John filed a claim at the Supreme Court suing Civil Aviation Authority and its general director, Sir Richard Masozera, for the fact they did not implement the decisions of the Courts mentioned above, in requesting that they be charged the penalty forcing the execution of these judgment they lose. [6] The judgment was heard in public on 08 July 2010, NKONGORI John

assisted by Counsel Rwangampuhwe whereas Rwanda Civil Aviation Authority and Richard Masozera did not appear in the court while they were lawfully summoned. II. ANALYSIS OF THE LEGAL ISSUE [7] In this judgment , the Court is going to examine the following three question:

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1. Whether Rwanda Civil Aviation Authority and its general director have the reasonable grounds which prevented them to execute the judgment R.AD.A 0012/07/CS rendered by the Supreme Court?
 2. Whether Rwanda Civil Aviation Authority and its general director could jointly pay the amount of the penalty forcing the execution in case it will be necessary to be charged the penalty?
 3. Whether in this judgment Nkongori John could be awarded the amount which he requested for final liquidation and the employment certificate and the other things he is granted by the law?
1. Concerning the issue of determining whether Rwanda Civil Aviation Authority and its general director have the reasonable grounds which prevented them to execute the judgment R.AD.A 0012/07/CS. [8] Nkongori John states that Civil Aviation Authority and its general director, Sir Richard Masozera refused to execute the judgment R.AD.A 0012/07/CS rendered by this Court on 27 March 2009. He explains that the judgment ruled that the rulings the judgment R.AD. 0055/06/HC/KIG rendered by the High Court of Republic on 12 June 2007 is sustained, and it ordered that it must be performed as it was rendered. [9] Ngongori and his Counsel explain that Civil Aviation Authority and its general director refused to give him the following amount that he won for in the judgment mentioned above: 4,946,406Frw of the salary arrears for six months that he did not remunerated, 200,000Frw of the procedure cost and 22,975Frw of the court fees. [10] They request that Civil Aviation Authority and its general director should be charged the penalty forcing the execution of the judgment R.AD.A0012/07/CS because they had undermined and refused to execute it. The other thing is that Richard Masozera, general director of that Government institution; he refused to implement the instructions that he was given by his superior authorities that they requested him to execute that judgment including Minister of justice, Minister of infrastructure and the ombudsman, while the government of Rwanda paid him the amount he won for in that judgment. [11] Article 351 Of the Law n° 18/2004 of 29/01/2004 relating to the civil, commercial, labour and administrative procedure as it amended and completed to date, provides for that“ an administrative authority that fails to execute a court judgment may, upon application by an interested party, be summoned to the court that issued the decision to justify reasons of the non compliance. If the reasons are valid, the administrative authority may, depending on circumstances, be given an extended time limit within which to execute the judgment. If the reasons are without merit (....) the court that rendered the decision may impose a penalty for non compliance to an administrative authority for as long as the judgment remains unexecuted”. [12] According to what provided by article 551 of the

law mentioned above, the Court is finding that the director general of Rwanda Civil Aviation Authority did not appear to the Court on the hearing day of 08 July 2010 while he was lawfully summoned, so that he could explain to it the reason why he did not execute the judgment rendered by this Court on 27 March 2009,

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therefore it is obvious that there is not reasonable grounds which prevented him to execute that judgment.

2. Concerning the issue of determining whether Rwanda Civil Aviation Authority and its general director should jointly pay the amount that they are charged of the penalty forcing the execution of the judgment. [13] Nkongori John requests that this Court should order Rwanda Civil Aviation Authority and its general director jointly pay him 500,000Frw each month that are computed since the judgment R.AD.A 0012/07/CS became binding on 27 March 2009 till they pay him the amount he won for. [14] Article 350, paragraph one of the law mentioned above provides for that Ingingo ya 350, igika cya mbere, y'Itegeko ryavuzwe haruguru iteganya ko "Iyo urubanza rwabaye itegeko rutegeka Leta, ubutegetsi bw'Akarere cyangwa bw'Umujyi cyangwa ubw'ikigo cya Leta kuriha amafaranga rwagennye, ayo mafaranga agomba kwishyurwa mu mezi atandatu
- (6) uhereye ku munsu w'imenyeshwa ry'urubanza". [15] The file is demonstrating that the Supreme Court rendered the judgment R.AD.A 0012/07/CS, declared that the rulings of the judgment R.AD. 0055/06/HC/KIG rendered by the High Court of Republic on 15 June 2007 is sustained; it ordered that it should be executed as it is. Thus it is obvious that the administration of the Government of institution, (Rwanda Civil Aviation Authority), was ordered to pay Nkongori the amount that won for worth to 5,169,381Frw composed by 4,946,406 of the salary arrears for six months that he did not remunerated, 200,000Frw of the procedure cost and 22,975Frw of the court fees. [16] According to explanations which Nkongori John presents in this Court for Rwanda Civil Aviation Authority and its general director refused to execute that judgment, and also according that in the case file there is no letter which this director wrote to his superior authorities in informing them that he executed that judgment, yet they requested them, it is clear to the Court that the judgment R.AD.A 0012/07/CS was not executed , because Nkongori was not be given the amount he won for that are mentioned above, therefore the fact he requests for the penalty forcing the execution, it is reasonable as it is provided for by article the Law n° 18/2004 of 29/01/2004 relating to the civil, commercial, labour and administrative procedure as it is amended and completed to date. [17] Concerning the one who must pay, according to what are provided for by article 351 of the law mentioned above, it is obvious that the administrator is the one who refused to implement what are ordered in the judgment without motive; the Court finds in this judgment , that administrator is the general director of Rwanda Civil Aviation Authority because is the one who has in his attribution to administrate its performance and

activities everyday as it is provided for by article 5 and 6 of organic law n° 14/2004 of 26/05/2004 establishing general provisions governing Public Institutions. [18] Therefore the Court finds that there is no ground which leads Civil Aviation Authority to be charged the penalty forcing the execution, because the penalty which is mentioned in article 351 stated above, it forces the administrator himself to implement the judgment which became

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binding; therefore the general director of Rwanda Civil Aviation Authority is the one himself who must pay the amount of the penalty forcing the execution each month since the deliverance of this judgment till the day the judgment R.AD.A 0012/07/CS will be executed because of the motivations mentioned above, 500,000Frw that Nkongori requests must be awarded them since the Court finds them in range.

3. Concerning the issue of determining whether Nkongori John should be awarded the final liquidation, employment certificate and the other things he is granted by the law. [19] Nkongori states that Rwanda Civil Aviation Authority shall give him together the execution of the judgment that he requested the amount of final liquidation, the employment certificate and the other things he is granted by the law. [20] In this judgment, the subject matter is, requesting that Rwanda Civil Aviation Authority and its general director should be charged the penalty forcing the execution of the judgment R.AD.A 0012/07/CS which was rendered by this Court. The other things that Nkongori John requests to be given final liquidation, employment certificate were not debated on, to mention them right now, the Court finds that it like to file them for the first time at the Supreme Court while the law do not allow them , therefore that claim must not be admitted. III. THE DECISION OF THE COURT [21] Accepts to admit the claim of Nkongori John because it was lawfully submitted. [22] Held that the issue has the merit in part. [23] Orders the Director General of Rwanda Civil Aviation Authority to pay to Nkongori John 500,000Frw each month since the deliverance of this judgment till the day the judgment R.AD.A 0012/07/CS will be executed. [24] Orders him to pay the Court fees of this judgment worth to 10,200Frw, if he fails to do so in time, they will be deducted in his assets by the Government coercion.

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