

RWANDA / JUDGMENT

NKURUNZIZA v. MUDOGO ET.AL

RAD 0002/15/CS

COURT

Supreme Court

DECIDED

26 March 2015

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NKURUNZIZA v. MUDOGO ET.AL

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Text

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NKURUNZIZA v. MUDOGO ET.AL (2) [Rwanda SUPREME COURT – RAD 0002/15/CS (Kayitesi Z, P.J., Kayitesi and Munyangeri, J.) 26 March, 2015] The law of administrative procedure-Summary procedure-The provisional suspension of enforcement of the judgment until the judgment for which the review was sought is rendered-When the judgment ordering the custodian of land titles to rectify land titles and be registered on the other person is requested that it be reviewed, the ground that when the land is registered on another person, he has full rights over it and can change its structure and remove all activities carried out thereon or sell it and thus be transferred in the hands of another person, and continues to transferred and cause difficulties in its enforcement when it modified on clear grounds. – In case it is held to suspend the enforcement of the judgment pending the case of appeal, the appeal against such judgments should be expediated -- The suspension of enforcement is a way of avoiding legal insecurity that may arise from the possibility of having two different and opposing decisions taken by the same court when the judgment against which the review was applied for was enforced because it passed to force of res judicata and later on it is changed-The law no 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 190. Facts: Mudogo sued the State of

Rwanda and Nkurunziza before the High Court claiming he be restituted his land that the State let to Nkurunziza and request different damages. That court held that the land subject of litigation belongs to Mudogo and ordered the State of Rwanda and Nkurunziza to jointly pay him various damages. Nkurunziza appealed before the Supreme Court asserting that the Court disregarded that land was his property he was given by the State of Rwanda in accordance with laws, and given the emphyteotic lease agreement that cannot be nullified. That Court held that his appeal is not founded and ordered the emphyteotic lease agreement registered on Nkurunziza and Mudogo be nullified, and the custodian of land titles must register that land in the name of Mudogo Seleman, and ordered Nkurunziza and the State of Rwanda to pay various damages. Nkurunziza instituted the application for review asserting that from the time the judgment was rendered, there has been conclusive evidence proving injustice caused by the judgment for which the review is sought. He also instituted a summary procedure claim requesting the suspension of enforcement of the judgment RADA 0026/13/CS pending the ruling of the Court on the application for review. Nkurunziza asserts that he request the decision suspending the provisional enforcement of the judgment , since the enforcement of that judgment can cause a serious loss, since in case Mudogo may sell that plot can cause him and Muhongayire who has never been a party to this case a serious loss, as they would be deprived of the property without grounds. Mudogo defends himself asserting that he won the case and he has the full right over his land and there is no evidence to prove that he is about to sell that land and he seized the court request that the State restitute him his land. Held: 1. When the judgment ordering the custodian of land titles to rectify land titles and be registered on the other person is requested that it be reviewed, the ground that when the land is registered on another person, he has full rights over it and can change its structure and remove all activities carried out thereon or sell it and thus be transferred in the hands of another person, and continues to transferred and cause difficulties in its enforcement when it modified on clear grounds

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2. In case it is held to suspend the enforcement of the judgment pending the case of appeal, the appeal against such judgments should be expediated
3. The suspension of enforcement is a way of avoiding legal insecurity that may arise from the possibility of having two different and opposing decisions taken by the same court when the judgment against which the review was applied for was enforced because it passed to force of res judicata and later on it is changed. A summary procedure claim for suspension of the enforcement of the judgment is founded; the enforcement of the judgment N° RADA 0026/13/CS is suspended until the judgment RS/REV/AD 0001/15/CS is rendered. The court fees are suspended. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure ,article 190. No cases referred to.

Judgment

BACKGROUND OF THE CASE [1] The Ministry in charge of land leased to Nkurunziza François Xavier the land located in Bisenga Cell, Rusororo Sector and gave him the contract of long term lease. After that contract Mudogo Selemani resorted to different organs seeking the restitution of that land for which he has the authentic deed he bought with Zafarani Kankundiye on 13/11/1980, after the failure to reach the common ground, he seized the High Court claiming the restitution on his land, and the award of various damages. [2] The Court of first instance rendered the judgment RAD 0176/10/HC/KIG on 8/03/2013 and held that the land belongs to Mudogo Selemani, and ordered the State of Rwanda alongside Nkurunziza Nkurunziza François Xavier to pay him 3,000,000 Rwf of damages due to abuse of procedure the force he used, few activities he carried out on that land and the counsel's honorary. [3] Nkurunziza François Xavier appealed before the Supreme Court arguing that the Court disregarded that land is his ownership he was given by the State of Rwanda in accordance with the law and he was given an emphyteosis that cannot be nullified. [4] In the judgment N° RADA 0026/13/CS rendered on 13/02/2015, the Supreme Court held that the appeal of Nkurunziza François Xavier is not founded, the incidental appeal of Mudogo Selemani is founded and ordered that the emphyteosis n° 1493/GAS/RUS registered on Nkurunziza François Xavier and Muhongayire Annonciata be invalidated and the custodian of land titles has to register that land on Mudogo Selemani, it ordered Nkurunziza François Xavier with the State of Rwanda to pay Mudogo Selemani 1,000,000 Rwf of the proceedings fee and the counsel's honorary in addition to 3,000,000 Rwf of damages ordered at the first instance each paying ½ of that amount.

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[5] Nkurunziza François Xavier appealed before the submitted and made an application for review of the judgment RADA 0026/13/CS, asserting that from the time the judgment was rendered there has been the discovery of conclusive evidence that clearly indicates injustice caused by the judgment for which the review is sought, his claim was registered on RS/REV/AD 0001/15/CS. He also instituted a summary procedure claim requesting the suspension of enforcement of the judgment stated above within the period the Court is yet to rule on the claim applying for review, the summary procedure claim was given n° RAD 0002/15/CS. [6] The case was heard on 24/2015, Nkurunziza François Xavier represented by Counsel Rusanganwa Jean Bosco and Mudogo Selemani represented by Counsel Munyamasoko Fiat, the State of Rwanda represented by State attorney Cyubahiro Fiat. LEGAL ISSUES AND THEIR ANALYSIS To know whether there is a ground that can suspend the execution of the judgment RADA n° 0026/13/CS within the period this Court is yet to rule on the claim applying for review [7] Counsel Rusanganwa the counsel of Nkurunziza François Xavier asserts that after the institution of the application for review of the judgment RADA 0026/13/CS before this Court, Nkurunziza instituted a summary procedure claim¹ in the case N°RS/REV/AD 0001/15/CS aiming at requesting the Supreme Court to suspend the enforcement of the judgment for which he applied for review, because the enforcement of that judgment can cause a serious loss. [8] He explains that in the enforcement of that judgment, the

custodian of the land titles can nullify the contract of emphyteosis n° 1493/GAS/RUS of the plot n° 1493 and register it on Mudogo Selemani. In case the latter may sell it, it can cause a serious loss to Nkurunziza and Muhongayire Annonciata who has never been a party in this case since they would be losing their property without a cause, yet it is not party of the object matter, they would lose whatever they have invested on that land planting the grazing grass of different varieties and what they paid for the activities of the population that were there. He asserts that in case Nkurunziza may win in case for which the application for review was made yet that the judgment was enforced, it would be difficult to find the activities on that land since it can require the restart, he therefore finds that the effects of enforcing this judgment are worse than those of having it suspended, since the situation will remain intact. [9] Counsel Rusanganwa asserts that an ground for the suspension of enforcement of this judgment is that in enforcement, the custodian of land titles would register the land object matter of the case to Mudogo Selemani and become the holder of emphyteosis since the court ordered that it belongs to him, thus it would be overstepping since what the court awarded Mudogo was not what he requested, thus it may affect the enforcement of the judgment. [10] Munyamasoko, the counsel for Mudogo asserts that the fact that the enforcement of the judgment can affect Nkurunziza and his wife since they co-own that land but who has not been a party to the case, it has no veracity since Nkurunziza represented her, unless she proves that theya are not governed by the community of property and the spouse of the party cannot invoke that he or she would have been summoned in the case. [11] With regard to the concern that in case the judgment is enforced Mudogo can sell the land, me Munyamasoko asserts that apart from the fact that Mudogo has own the case and thus he has full 1 The file indicates that he paid the Court fee.

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rights over his land, there is no single evidence that Nkurunziza produces to prove that Mudogo is going to sell that land and the Court takes decisions when there are evidence produced according to article 9 of the Law No 21/2012 of 14/2912 relating to civil, commercial, labour and administrative procedure and article 3 of the Law No 15/2004 of 12/6/2004 of evidence and its production, therefore the concern of Nkurunziza is just emotional, it should not be the ground to suspend enforcement of the judgment. [12] With regard to the fact that the Court ordered the custodian of land titles to immediately register that land on Mudogo which means that he would become the tenant yet he is the owner, and thus the court gave Mudogo what he did not claim, Counsel Munyamasoko asserts that it based on the regulation of the President of the Supreme Court n° 0001/15 where he requested that courts must nullify the land titles issued in fraud and order the custodian of land titles to immediately register that land on the true owner, thus that ground is not founded. [13] With regard to the fact that Mudogo was given what he had not claimed, Counsel Munyamasoko asserts that Mudogo seized courts requesting the restitution of his land the State leased to Nkurunziza, which was subject of litigation since 2010 before the High court, and he does not indicate another object matter, other than the restitution of the land, in addition to that it not now that Nkurunziza realizes that. [14] Counsel Cyubahiro, the State

attorney asserts that the concern of Nkurunziza is understandable, since in case the judgment may be enforced the land can be registered on Mudogo and it would impose some difficulties to put the situation in statu quo ante in case he may sell, and the judgment changes and he finds it does not pose any difficulty if the enforcement of the judgment is suspended, and in case the hearing of the case for is expediated , it cannot affect Mudogo. COURT FINDINGS [15] Article 190 of the law N° 21/2012 of 14/6/2012 relating to civil, commercial, labor and administrative procedure provides for that “An application for review shall not prevent the execution of the contested judgment, unless the execution has been suspended by the court to which the review has been referred for justified reasons.” [16] The court finds that the dossier indicates that there the application for review (Judgmen N° RS/REV/AD 0001/15/CS) that Nkurunziza filed with the Court, but he instituted the summary procedure claim (Judgment N° RAD 0002/15/CS) requesting that the enforcement of that Judgment be suspended within the period the court is yet to rule on the application for review. [17] With regard to the grounds that Nkurunziza puts forward that the enforcement of that judgment can adversely affect him with his family, the land titles of the land subje matter of litigation can be immediately changed by the custodian of the land titles, especially he was given injuctions to expediate that action, and the land be registered on Mudogo, the Court finds that that ground is sufficient so that the enforcement of the judgment be suspended within the period the judgment on the application for review is yet to be rendered, since in case the land is registered on Mudogo, he has full rights over it as Nkurunziza asserts he change itsb destination and removes the activities carried out over it, and he may even sell it and be transferred to another person and be sold between various people.

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[18] The court thus finds that in case the judgment for which the application for review was made changes, and Nkurunziza wins, there would be difficulties in enforcement in case his activities on that land would have changed, for instance raising buildings thereon yet it was destined for agriculture or its restitutions in case might have been subjected to sale among several people, these serious effects that may arise in the enforcement of this judgment are the same as those in the view of the State Attorney can cause trouble. [19] The Court also finds that those difficulties that may arise in the enforcement of the judgment and how it may affect Nkurunziza in case he wins the case for which the application for review is made are far from what Mudogo may face in case he waits a while for its enforcement in case he wins the case, which the reason why in case the suspension of enforcement of the judgment, the hearing of the appeal for such cases has to be expediated, since there should not be the disregard of the provisions of article 190 of the Law No 21/2012 of 14/6/2012 stated above. [20] The Court also finds that the suspension of execution of the judgment aims at avoiding legal insecurity that may result from the fact that there may be in the same court the two contradictory decision, whereas the judgment for the application for review is made was enforced because it has become the law, and later on it is modified. [21] Basing on the foregoing explanations and laws, the Court finds that there are good and sufficient reasons for the suspension of enforcement of the judgment N° RADA 0026/13/CS rendered on

13/02/2015 by the Supreme Court. III. COURT DECISION [22] It holds that summary procedure claim instituted by Nkurunziza François-Xavier for the suspension of the execution of the judgment N° RADA 0026/13/CS rendered on 13/02/2015 by the Supreme Court is founded; [23] It orders that the execution of the judgment N° RADA 0026/13/CS rendered on 13/02/2015 by the Supreme Court is suspended until the judgment in the case N° RS/REV/AD 0001/15/CS for which the review is applied is rendered; [24] It holds that the court fee is suspended.

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