

RWANDA / JUDGMENT

NZABAMWITA ET AL v. STIPPAG RWANDA

RCOMAA 0003/13/CS

COURT

Supreme Court

DECIDED

17 January 2013

CASE / FILE NUMBER

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NZABAMWITA ET AL v. STIPPAG RWANDA [Rwanda SUPREME COURT – 2013 SC – RCOMAA 0003/13/CS (Mutashya, P.J., Mukanyundo and Kayitesi, J.) January 17th , 2013] Commercial law – Contract of construction– The value of contract done into business name used by people on their own will instead of being a company–When in the company every party signed him self, cannot be considered an uncomptent party since the law isn't define him as incompetent– Any person can ask the cancellation of the contract signed with an error if he implemented that contract, even if it is an typing error. Law n°21/2012 of 14/06/2012, relating to the civil, commercial, labour and administrative procedure articles 91 and 96, – order of 30/07/1888 putting in places the book III of civil codes of law: article 8 and 23. Facts: The appellants entered into a contract of constructing 60 houses for the respondent, and once finished, be sold and interests be shared, which 60% for the respondent and 40% for the appellants. In that contract, they concluded that the disputes likely to arise should be settled amicably, failure of which the case shall be referred to arbitrators. The conflict arose from the execution of the contract, and the appellants filed the case to the arbitration tribunal which decided that their case has merit in part. The respondent appealed to the Commercial High Court which decided that the arbitration award be quashed,

holding that the arbitration clause was concluded in contradiction with the law. The appellants appealed to the Supreme Court stating that judge erred and has not considered their defence.

Held:1. The respondent cannot pretend that the company of one of the appellant was represented by both appellants because pursuant to the documents which are in file, they demonstrate that rather than being a company they share, it is a trade name used by one of them who represents it for the reason that if it was a company would not be represented by two individuals and the respondent used to pay each one on his own bank account. This proves that the appellants entered into the contract with respondent individually instead of on behalf of the company. The respondent cannot claim that he cannot enter into contract with persons who do not have capacity due to the fact that they represent a company that has no legal personality; while if the law did not deprive him of the capacity, every individual has ability to conclude a contract.

2. The respondent shall not object to the validity of the contract due to irregularities even of a formal defect only which one of the parties to the contract has disregarded and performed the contract and in addition, the conditions for the validity of the contract which are: the consent of the party to the contract, the capacity to contract, the undoubted subject matter and a licit cause, were complied with. Appeal granted. The judgment is quashed and arbitration award confirmed. The court fees to the respondent. Statutes and statutory instruments referred to: Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 91, 96.

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Order of 30/07/1888 putting in places the book III of civil codes of law: article 8 and 23. Authors Cited Encyclopédie Dalloz, Confirmation, Civil III, 2e éd., 1991, p 3.

Judgment

I.THE BRIEF BACKGROUND OF THE CASE

- [1] On 07/03/2003 STIPPAG SARL currently STIPPAG RWANDA signed a contract with NZABAMWITA Emile (named ARGEC in business style) and RURANGIRWA Célestin, and accepted to build for STIPPAG RWANDA in its plot no 811 located to Gisozi 60 houses to be sold, and then share benefits, STIPPAG RWANDA will take 60%, NZABAMWITA Emile and RURANGIRWA Célestin to take 40%. The settlement of litigation arising from the execution of this contract will be resolved peacefully, in case of its default they will be settled by an arbitrator.
- [2] It came out conflicts from the execution of this contract, NZABAMWITA Emile and RURANGIRWA Célestin took the case against STIPPAG to the arbitrator, and decision was taken 01/8/2012, saying that the case is received at one of its status, and ordered STIPPAG to pay 212,234,198 rwf after deducting 30% of income tax, 750,000 rwf of valutors and rwf7.800.000 remained to the arbitrator honorary.

- [3] STIPPAG RWANDA appealed against this decision to the high commercial court and took decision RCOMA 0301/12/HCC on 28/02/2013 and ordered to cancel the decision of arbitrator, explained that the contract contained provisions on how the conflicts will be settled by the arbitrator and was done illegally because the Entreprise ARGEC signed with STIPPAG RWANDA that contract without any legal, says that NZABAMWITA and RURANGIRWA can ask the court to order registration on their own names all STIPPAG's houses they hold.
- [4] NZABAMWITA and RURANGIRWA assisted by Me RUKANGIRA Emmanuel appealed against that decision in supreme court saying that judge made a mistake and had confusion on ARGEC company since this is the name of business of NZABAMWITA and has no relation with RURANGIRWA Célestin, and using it does not require any legal personality.
- [5] They said that the judge did not consider explanations for NZABAMWITA Emile and the judge ruled ultra petita.
- [6] The public hearing was held on 03/09/2013, however before substantial, the supreme court has to examine possible incidents on lack of competence that raised by the lawyer of STIPPAG RWANDA, and decided that the case is in its competence, explained that this case was heard for the first time by the high commercial court because the arbitration is not a court to decide in substantial hearing of the case that held on 3/12/2013, NZABAMWITA Emile and RURANGIRWA Célestin assisted by Me Rukangira Emmanuel and Me Buzayire Angèle and STIPPAG assisted by Gahunde Mafutamingi assisted by Me Rutabingwa Athanase.

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II. LEGAL ISSUE OF THE CASE AND THEIR ANALYSIS

1. The issue of identifying persons that STIPPAG signed with a contract
- [7] Me RUKANGIRA assisting NZABAMWITA Emile and RURANGIRWA Célestin says that they consider ARGEC as a company but is a business name that used by NZABAMWITA Emile himself, and RURANGIRWA Célestin signed on his own name, that contract took place between STIPPAG RWANDA and NZABAMWITA Emile and RURANGIRWA Célestin.
- [8] He said that STIPPAG RWANDA signed that contract knowing the persons signed with as individual not as a company. He says that another evidence to prove that STIPPAG RWANDA didn't signed the contract with ARGEC, is that everyone was receiving his own correspondence.
- [9] He says that STIPPAG RWANDA was paying them through an individual account number in bank of kigali , and the account name of Nzabamwita Emile was ARGEC/Nzabamwita, and Rurangirwa Célestin on his own account.

- [10] The lawyers for NZABAMWITA and RURANGIRWA says that the judge did not consider the arguments where they specified that if the contract has an error and if the execution was done without considering the error, he has no reason to request for its cancellation basing on the article 96 of the law No 21/2012 of 14/06/2012 above said. The article 96 of the law No 21/2012 of 14/06/2012 above said, stipulates that no one can ask the cancellation of the contract execution with error.
- [11] Me RUTABINGWA Célestin assisting STIPPAG RWANDA says that in the contract signed on 07/03/2003 between STIPPAG assisted by Me Gahunde Mafutamingi and Entreprise ARGEC assisted by NZABAMWITA Emile and RURANGIRWA Célestin, they did not write "prestataires" in plural but "prestataire" in singular, which means that ARGEC represented both parties and even in the meeting of 19/12/2011 on planning of arbitration session STIPPAG RWANDA refused to signed because the contractors have no competence as individual when they represent a company.
- [12] Regarding to the fact that STIPPAG was paying the money salaries through their personal accounts, Me Rutabingwa said that doesn't mean that NZABAMWITA Emile and RURANGIRWA Célestin were not sharing ARGEC.
- [13] Regarding the fact that STIPPAG RWANDA executed that contract without asking it to be revised for the error, means that the contract was legal and they came to be aware of the error when they decided to join the arbitrator and before the agreement of 07/03/2003 two parties worked without any contract. 1Article 96 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure " A person who executes a convention knowing that it has irregularity shall not object to its validity ".

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- [14] He continues saying that every time you came to discover an error to the contract cannot be revised because even the article 96 of the law no 21/2012 of 14/06/2012 for which they referred to the case, came into force after signature of the above said contract. THE VIEW OF THE COURT
- a. The issue of identifying persons that STIPPAG signed with a contract
- [15] In different papers provided in the file, from the agreement of 7th march 2003 itself, the that all persons signed are recorder ARGEC represented by NZABAMWITA Emile and RURANGIRWA Célestin, it is the evidence that is totally different [and] give difference between RURANGIRWA Célestin and ARGEC represented by NZABAMWITA Emile because if ARGEC could be a company, will not be represented by two people at the same time, basing on the mission's act in the case Célestin RURANGIRWA Célestin and Emile NZABAMWITA Emile (ARGEC), and this shows that ARGEC is a particular name NZABAMWITA Emile, if not, it could start by recording ARGEC then STIPPAG RWANDA saying that all those people represents it at the same time, which is not possible.

[16] It appears to the Act of Mission given to arbitrator the following: In trial :

1. Célestin RURANGIRWA.....
 2. Emile NZABAMWITA,the fact there is N° 1) and 2), it is the evidence that he share with STIPPAG RWANDA to determine the mission of arbitrators (act of mission) they are two different people. The bottom of that act of mission, people who signed NZABAMWITA Emile (ARGECE) in his own names and RURANGIRWA Célestin, and this appear the way in conclusion of arbitrator and they even didn't consider NZABAMWITA Emile and RURANGIRWA Célestin as they constitute ARGECE and represent it.
- [17] The court declares that basing to the different documents contained in the file, ARGECE is totally different of RURANGIRWA Célestin, and that business name is used by NZABAMWITA Emile instead of being a company that they both share. also STIPPAG RWANDA does not refuse the fact that was paying the salaries separately but NZABAMWITA Emile on his personal account in BK named ARGECE/NZABAMWITA, the court found that the above people signed the contract with STIPPAG RWANDA on their own name but not as ARGECE but as NZABAMWITA Emile and RURANGIRWA Célestin.
- b. Regarding to the value of contract between STIPPAG RWANDA and NZAMAWITA Emile (ARGECE) and RURANGIRWA Célestin. [18]. Regarding the value of contract article 8 of the order of 30 July 1888 putting in place the third relating to civil laws or contract to be signed the following are evidences in order for a good contract: (1) personal willing to contract, (2) capacity, (3) subject (4) cause and the article 23 of the above said order says that everyone has capacity to contract.

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[19]. Basing on the above said articles, the court declares saying that RURANGIRWA Célestin and NZABAMWITA Emile had no capacity to signed contract is not a reality because RURANGIRWA Célestin or NZABAMWITA Emile/ARGECE all have capacity and everyone signed on his own name but not in the name of ARGECE as it stated above. [20]. The court declares that if that contract could have error, the fact that STIPPAG executed them means that he accepted any effect from it (confirmation tacite), and this is a strong evidence that the contract cannot be cancelled basing on the article 96 of the law n° 21/2012 of 14/06/2012 above said law, stipulating that no one can ask the cancellation of the contract executed, even though it is a typing error the other did not consider that the contract will continue to have it value2 basing on the article 91 of the law n° 18/2004 of 20/6/2004 above mentioned into force at that time; for this point, the court shares the same views with doctrines3. [21]. Basing on the above explanations, the court declares that the contract signed on 07/03/2003 (agreement of 07/03/2003) between STIPPAG RWANDA and NZABAMWITA Emile/ARGECE and RURANGIRWA Célestin has value and NZABAMWITA Emile/ARGECE and RURANGIRWA Célestin have capacity to contract, the appeal for NZABAMWITA Emile/ARGECE and RURANGIRWA Célestin is received, and decides that the judgment of the high commercial court on this case is revised. III.THE DECISION OF THE COURT [22].The Court

decides that this appeal of RURANGIRWA Célestin and NZABAMWITA Emile/ ARGEC is granted; [23]. The court decide that the ruling of the case RCOMA0301/12/HCC are changed of the high commercial court to 28/02/2013 is revised, but remain the decision of arbitration; [24]. The court order STIPPAG RWANDA to pay court fees equal to 12,100 rwf in the deadline of 8 days. 2 La confirmation tacite est celle qui résulte de l'attitude de la partie à laquelle il appartient de se prévaloir de la nullité.....forme de confirmation tacite : l'exécution volontaire de l'obligation annulable (voir Encyclopédie Dalloz, Civil III, 2ème éd., 1991, Confirmation, p 3. 3 Idem, p.4. : la confirmation rend inattaquable par son auteur l'acte confirmé

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