

RWANDA / JUDGMENT

NZABANDORA v. RWANDA REVENUE AUTHORITY

RADA0042/11/CS

COURT

Supreme Court

DECIDED

28 March 2014

CASE / FILE NUMBER

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NZABANDORA v. RWANDA REVENUE AUTHORITY

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NZABANDORA v. Rwanda Revenue Authority [Rwanda SUPREME COURT – RADA0042/11/CS (Mugenzi, P.J., Munyangeri and Kanyange, J.) March 28, 2014] Administrative law- Various damages- The employer cannot be condemned to pay damages because its employee issued official documents without competence to do so- When the person who claims damages for abuse of procedure does not provide evidence that the other party did so knowingly and maliciously, no damages are awarded. Facts: Nzabandora Alexandre brought a case against Rwanda Revenue Authority (RRA) before the High Court asserting that he requested official documents (business licence and authorisation of transport) of his car in that Authority and he was given those official documents by the employee of RRA called Uwishema Eugène, but later he was addressed a letter by RRA stating that the car does not belong to him and in addition it stated that Uwishema Eugène is the competent employee to issue such official documents, that is he is charged of forgery and he was imprisoned, hence he claims damages for that. That Court held that the claim is not founded. Nzabandora appealed before the Supreme Court asserting that the High court

disregarded that RRA stated that the documents issued by its employee were forged yet the business licence and transport authorization he produced suffice for proving that the car belongs to him, and it did not award him damages for both material and moral damage yet he claimed them. RRA argues that Nzabandora provided the document indicating that the car belongs to him but latter another document indicating that it does not belong to him was produced, moreover, RRA asserts that the document Nzabandora was given by Uwishema should not be considered as issued by RRA since it does not issue documents indicating the owner of the property, but instead for the taxation purposes the car is registered on somebody, basing on the principle that in case of movable properties the possession equals to ownership. It further argues that what Uwishema did should be imputed to him and he should account for that, since he did not do so within the limits of the attributions he was given by his employer. It also lodged an incidental appeal claiming damages of abuse of procedure, damages relating to distorting its name, the counsel's honorary and the proceedings fee. Held: The fact that Nzabandora was issued official documents by the employee, while it was he himself who requested them and they were issued to him as he requested them (indicating that the car belongs to him) using that employee, he cannot turn back and request the condemnation of RRA because it detected errors in it and announced it, yet it he who sought them in his interests, therefore, damages he claims for them are not founded. RRA should be awarded damages of abuse of procedure, as long as it did not prove that the appellant did so knowingly and maliciously. It can be awarded the counsel's honorary and proceedings' fee since it had some expenses in this case.

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RRA cannot be awarded damages relating to the distortion of its name since it does not p̄roof how it has been distorted by being sued. The appeal has merit in parts Court fee is on the defendant. Statutes and statutory instruments referred to: Law n° 15/2004 of 12/6/2004 relating evidence and its production before courts, article 3 No case referred to. The judgement

BACKGROUND OF THE CASE [1] NZABANDORA Alexandre brought a case against Rwanda Revenue Authority (RRA) asserting that he requested official documents (business license and transport authorization) of his car RR 1117 A that was in litigation between him and the Ministry of defense and he received them in accordance with the law by the employer of the institution called UWISHEMA Eugène, and he was surprised by receiving the letter from RRA on 18/12/2009 stating that that car does not belong to him but instead it belongs to RUCAMUKIBATSI Alexis, and notified him that UWISHEMA Eugène is not the competent employee to issue such documents, that in addition he is charged of issuing forged documents, therefore he claims damages arising from the fact that RRA denied his official documents, and for having caused his imprisonment. [2] On 26/07/2011 the High court rendered the judgment and held that the claim of NZABANDORA is not founded, that the official documents he was given on 13/05/2009 and 16/05/2009 none of them proves that the car RR1117A included therein has ever been registered in his names, albeit it is indicated he bought it with RUCAMUKIBATSI because no modification was made, therefore the court has no basis to rule that the car belongs to him. [3] NZABANDORA appealed against the judgment before the Supreme Court arguing that the high court disregarded that RRA put

forward that official documents issued by it employee was forged which led to his imprisonment, whereas they indicate that the car belongs to him, and not having awarded him damages of material and moral damage he has had yet he claimed them. [4] The hearing of this case was conducted in public on 18/02/2014 NZABANDORA assisted by Me NTIHEMUKA whereas RRA was represented by Me KABIBI Spéciose. .

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ANALYSIS OF LEGAL ISSUES To know whether RRA can be condemned to payment of damages due to having given the official documents of the car to NZABANDORA, which lead to his prosecution and imprisonment [5] NZABANDORA Alexandre and his counsel Me NTIHEMUKA argues that the statement of the High Court that he did not produce original documents indicating that the car does belong to him is not founded because even the business licence and the transport authorization he produced were sufficient to prove that the car belongs to him. [6] They assert that the fact that the court based on testimony of employees of RRA and rules that he is mentioned on the registration certificate of 1995 since that car was bought by him in 1996, it is also not founded because the court should have not based on their testimonies yet they were his adversary in this case, therefore he should be awarded damages since stating that his official documents are forged caused him a loss as timber dealer with the capital equal to 3.000.000 Rwf living nearby the border, and he had the interest of 700.000 Rwf at least. [7] They explain that all these were lost because he was ordered to appear in the prosecution two times a day per week which led him to relocating to Kigali which stopped him from carrying on his business, therefore he claims damages equal to 5.000.000 Rwf because all his businesses became appropriated by others [8] Counsel NTIHEMUKA and NZABANDORA he assists assert that the prosecution filed the dossier containing his charges, since it found that all elements of the crime were not present and the judgment confirmed that official documents were issued in accordance with laws, therefore the fact that RRA denied that they were issued by it, which caused him a loss and therefore it has to pay damages [9] Counsel KABIBI Spéciose the counsel of RRA asserts that NZABANDORA provided the document issued by RRA indicating that the car belongs to him, and after that another document indicating that the car does not belong to him, the former was certificate of ownership whereas the latter was issued in violation of the law, That RRA proved before the court that the document termed certificate of ownership NZABANDORA was issued by UWISHEMA should not be considered as it was issued by RRA, since it does not issue certificates of ownership, but instead for taxation purposes the car was registered to someone basing on the principle that “in case of movable property, the possession is worth ownership” [10] She asserts that UWISHEMA Overstepped his competence, since no authority to certify that the car is registered on NZABANDORA, moreover he issues the document yet it was not in his competence, most especially he signed as a proxy (pp) yet he did not prove the power delegated by the authority in charge of vehicles who was to sign, that in testimonies heard before the court it was testified that UWISHEMA who issued the document that NZABANDORA puts forward was on grade 5 yet the officer in charge of vehicles is on grade 7 and there were employee on the sixth grade, therefore he had not to issue to NZABANDORA the document of the car registered on

RUCAMUKIBATSI.

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- [11] Me KABIBI further asserts that RRA does not refute that the car does not belong to NZABANDORA or he should be issued the certificate of ownership, its argument is that is that UWISHEMA should be personally liable of what he did, since he did not do that in terms of attributions accorded to him by the employer, that in RRA registers, it is obvious that the car is registered on RUCAMUKIBATSI, as for the fact that it is registered on him should not be claimed against RRA, since the documents it issues are those relating to carrying out business, but they do not grant any right to have the car registered on somebody to the extent that NZABANDORA can be issued the documents indicating that the car's owner. COURT FINDINGS [12] The basis of NZABANDORA Alexandre's claim for damages is the fact that he was given the official documents by the employee of RRA and later it stated that they are forged, which led him to being charged of the crime of forgery for which he was imprisoned, and therefore he incurred a certain loss. [13] The Court finds that NZABANDORA was issued the official documents (certificate of ownership) by the a incompetent officer as RRA argues should not take away its responsibility in case it may exists on its shoulder, since the law provides that there may be the liability of the employer for the faults committed by to the extent that the victim may be paid damages by the employer, but the fact that the documents that NZABANDORA was issued by the employee UWISHEMA while it was he himself who requested them and they were issued to him as he requested them (indicating that the car belongs to him) using that employee without authority, he cannot turn back and request the condemnation of RRA because it detected errors in it and announced it, and there be ignoring that it was he who who took the initiative and sought them in that status and in his interests, therefore, damages he claims for them are not founded. [14] The Court further finds that in resorting investigation organs, RRA did so maliciously (with bad faith), there is no basis on which court may hold that it may damages him damages for his imprisonment since it is not empowered with detention and he does not it is itself that requested his detention, the fact that he does not prove what he alleges as provided by article 3 of the law 15/2004 of 12/06/2004 relating to evidence and its production before courts, therefore this ground has no merit either.
2. Damages claimed by RRA in the cross appeal [15] Me KABIBI Spéciose in incidental appeal on the appeal of NZABANDORA request that RRA be awarded damages of abuse of procedure since the judge in the High court did not award those damages, yet they claimed by RRA, therefore, he disregarded that it is NZABANDORA who abused the procedure knowing that he was issued the official documents in bad faith. She asserts that RRA should be awarded 5.000.000 Rwf including damages of abuse of procedure and the proceedings fees. [16] The counsel of NZABANDORA asserts that it RRA that turned back and stated that the documents it issued itself were forged, and therefore it should claim damages for that in addition. Court findings

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[17] The court finds that RRA should not be awarded damages on the grounds of abuse of procedure, as long as it does not prove the plaintiff did so knowingly and maliciously, but for the counsel's honorary and proceedings' fee, it should be awarded it because it has had some expenses in this case, therefore, it is awarded, in the discretion of the court 500.000 Rwf since the amount it claims is excessive. . THE DECISION OF THE COURT [18] Decides that the appeal of NZABANDORA Alexandre has no merit [19] Decides that the across appeal of RRA has merit in part. [20] Decides that the Judgment RAD 0139/10/HC/KIG rendered by High Court on 26/07/2011 is nsustained a part form the damages.; [21] Orders NZABANDORA Alexandre to pay 47.900 Rwf of the court fees

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