

RWANDA / JUDGMENT

RUSIMBI v. KABERUKA**RCA 0503/15/HC/KIG****COURT**

High Court

DECIDED

19 January 2016

CASE / FILE NUMBER

RCA 0503/15/HC/KIG

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-01-19
- Case/document no.: RCA 0503/15/HC/KIG
- Collection: High Court

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RUSIMBI v. KABERUKA [Rwanda HIGH COURT – RCA 0503/15/HC/KIG (Kabagambe, P.J.) January 19, 2016] Civil procedure – third part opposition – the execution of the judgment – an opposition by a third party shall not automatically suspend execution of the challenged judgement, unless the execution is suspended by the court upon request of one of the parties – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 180. Civil procedure – Summary procedure – The summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 320. Facts: this judgment originate from the principal application of the Intermediate Court of Gasabo whereby Kaberuka requesting the Court that the Kigali City should not be pay Rusimbi expropriation fees basing on the property in litigation in the judgment RC 0010/15/TGI/GSBO, because he applied third party opposition against that judgment for claiming that property, and then that Court held that the summary procedure submitted by Kaberuka has the merit. Rusimbi appealed to the High Court in stating that the main claim did not comply with the law and also the claim of Kaberuka does not have any urgent, because there is a judgment which is become binding so that it could

not prevent the execution of the judgment. The other main claim which Kaberuka filed for the third party opposition, it should not prevent the execution of the

judgment.

Kaberuka defends in stating that the reason why he requests that to suspend the expropriation fees because they should award to one person while there is one another whom deserved it; in addition to that they have the certificate writes on that “succession Mukandekazi” which will be heard in Court because all children did not participate in selling. He continues in stating that the decision of decision of the urgent claim should not have the effect on the principal claim, also the third party opposition do not prevent the execution of the judgment, but the Court may decide on it if it is necessary; therefore the Intermediate Court complied with the law. Held : 1. an opposition by a third party shall not automatically suspend execution of the challenged judgement, unless the execution is suspended by the court upon request of one of the parties, therefore the claim is lawful.

2. The summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit, therefore it is clear that there is an urgent in requesting the suspension of the payment of expropriation fees.
3. Procedural and counsel fees shall not be awarded in the claim of summary procedure rather it is awarded together with the principal claim.

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The appeal has the merit. Statutes and statutory instruments referred to: Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 180 and 320 No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Kaberuka Victor filed claim at Intermediate Court of Gasabo requesting that the Kigali City should not pay Rusimbi John expropriation fees basing on the property in litigation in the judgment RC 0010/15/TGI/GSBO, because he applied third party opposition against that judgment for claiming that property, the petition is recorded on RC 0271/15/TGI/GSBO. That Court held that the summary procedural claim which is submitted by Kaberuka Victor has merit, that the payment of expropriation fees which must be paid to Rusimbi John by Kigali City is suspended in case the judgment RC 0271/15/TGI/GSBO was not rendered. Rusimbi John was not satisfied with the rulings of the judgment, and he appeals in stating that the main claim did not comply with the law and also the claim of Kaberuka does not have any urgent . [2] The issue to be examined in this judgment - Concerning with the ground of the main claim does not comply with the law - Concerning the urgent. II. ANALYSIS OF THE LEGAL ISSUES Concerning with the ground of the main claim does not comply with the law [3] Counsel Nkusi Dismas states that the Intermediate Court ordered the restriction of the payment

of the expropriation fees to Rusimbi John in case the main claim is unlawful for everyone, in addition to that there is a judgment which is become binding so that it could not prevent the execution of the judgment. The other main claim which Kaberuka filed for the third party opposition, it should not prevent the execution of the judgment. [4] Counsel Mukamazimpaka Hilarie requests that to suspend the expropriation fees because they should award to one person while there is one another who deserved it. They have the certificate writes on that “succession Mukandekezi” which will be heard in Court because all children did not participate in selling. [5] Counsel Uzabakiriho Irene argues that the decision of the urgent claim should not have the effect on the principal claim, also according to 180 of CPCCSA, the third party opposition

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do not prevent the execution of the judgment, but the Court may decide on it if it is necessary; therefore the Intermediate Court complied with the law. [6] According to article 180 alt 5 of Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that an opposition by a third party shall not automatically suspend execution of the challenged judgement, unless the execution is suspended by the court upon request of one of the parties. [7] The fact that Kaberuka Victor filed a third party opposition of the judgment RC 0010/15/TGI/GSBO, he files for the property which the Court held that it belongs to Rusimbi, then he filed a claim in requesting to be paid expropriation fees which should be given to Rusimbi John of the property he won for in the judgment of the third party opposition, paid by the Kigali City be suspended in case the judgment RC 0271/15/TGI/GSBO is not rendered. The Court finds that the Intermediate Court did not do anything unlawful because the law gives the power to the filed Court, in case it is requested by the party to suspend the execution of the judgement which was the subject to third party opposition. - Concerning the urgent [8] Counsel Nkusi Dismas states that the court did not consider in stating that the claim of Kaberuka Victor has the urgent however it does not there because no evidence produced also it bothers the judgment which becomes binding. Thus they request the court to overturn the rendered judgment by the Intermediate Court because it decided unlawful. [9] Counsel Mukamazimpaka Hilarie states that there was an urgent because there is a letter of 12 November 2015 wrote to Kaberuka by Kigali City, which responds to that Kaberuka Victor wrote in requesting to suspend the expropriation fees, that they give the expropriation fees in case there is no judgment which prevent it. [10] Counsel Uzabakiriho Irene states that there are the evidences which produced by Kaberuka to the Court that he based on in suspending the expropriation fees. [11] The Court is finding that article 320 of Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that the summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit. [12] The Court finds that the fact Rusimbi John is going to be paid the expropriation fees of the property he won for in the judgment he applied for the third party opposition by Kaberuka Victor, it is clear that there is an urgent in requesting that the payment of expropriation fees be suspended. Therefore it is finding that the decision of the Intermediate Court was lawful. - Concerning the damages [13] The counsels for Kaberuka Victor request the damages of the procedural fees and the counsel fees at the appeal.

Counsel Nkusi Dismas states that those damages are not paid in the summary procedure. [14] According to article 320 paragraph 4 of Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that damages and related

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expenses incurred by the party during the hearing of summary procedure shall be claim together with the principal application. III. DECISION OF THE COURT [15] It hold to admit the appeal submitted by Rusimbi John, after examined it finds that it has no merit; [16] It orders that the Court fees deposited by Rusimbi John in filling a claim are equal to expenses of this judgment.

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Prepared on 13 October 2026 · Esheria