

RWANDA / JUDGMENT

RUTERANA v. CORAR

RCOMAA 0101/10/CS

COURT

Supreme Court

DECIDED

15 June 2012

CASE / FILE NUMBER

RCOMAA 0101/10/CS

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Text

Page 1

RUTERANA v. CORAR [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0101/10/CS (Mukanyundo, P.J., Havugiyaremye na Kayitesi, J.) 15/06/2012] Damages – Insurance contract – Basing on insurance contract made between the two parties which states that when a vehicle is stolen, the insurance company compensates it within 30 days with the effect from the day the incident was reported. In case the vehicle is recovered before 30 days are over, there is no compensation according . Insurance Contract, article 49-52. Facts: One called Ruterana said that his vehicle Toyota Coaster got lost from his driver called Gahamanyi who also claims that he had leased it to Gasamunyiga. Ruterana was informed by his driver Gahamanyi about the loss of the vehicle. Basing on theft insurance contract he had with CORAR, he immediately reported the case to the company for compensation. He also forwarded the case Rwandan Police and Interpol. Thereafter the vehicle was recovered from South Sudan in Juba and brought back to Rwanda. Ruterana refused to take back the vehicle and continued with the case to Commercial High Court. The court ruled out that Ruterana must be compensated by CORAR with amount worthy 30.230.000 Rwf. CORAR appealed to the Supreme Court saying that Ruterana did not deserve any compensation since the vehicle was recovered before 30 days. In addition to that, the driver

Gahamanyi had leased it to somebody, so it was not theft at all. When the vehicle was recovered by police and Interpol in South Sudan, they informed Rwandan Police but Ruterana deliberately refused to get it back. He rather insisted on claiming for compensation. Ruterana further claimed that the vehicle was not in good condition. So he wanted to be given 60.000 Rwf instead of 35.000 that he was being given before the recovery of the vehicle. He also claimed for his lawyer payment. Held: In this case therefore no one found guilty of the vehicle theft since there was no concrete evidence to prove so. They were rather convicted of dishonesty. Therefore no insurance compensation the vehicle owner deserves according the contract between the two parties. Appeal is merit, The cross appeal is merit; Court fees to the appellant. Statutes and statutory instruments referred to: Insurance Contract, article 49-52. No Cases was referred to:

Page 2

Judgment

I. BRIEF BACKGROUND OF THE CASE

- [1] Ruterana Boudouin had a contract with CORAR referred to as "All Risks" in CORAR SA. The vehicle disappeared on 10th December 2009. Its driver Gahamanyi stated that he had leased it to Gasamunyiga Noel on the agreement that he would use it only for one day because Gahamanyi had gone to pick his driving license. He waited for Gasamunyiga to bring the vehicle back in vain. Gasamunyiga told the Supreme Court that they had to use the vehicle in Uganda four days and that he had given him an advance of 140.000 Rwf.
- [2] On 12th December 2009 Gahamanyi informed his boss of the vehicle theft who also forwarded the case to CORAR SA on 12 December 2009 requesting for compensation according to contract they had signed. On 17 December 2009, Ruterana again wrote to CORAR reminding them of the issue. He also forwarded the same case to Rwandan Police and Interpol. Later, the vehicle was recovered from Juba, in South Sudan. On 22th December 2009, Joseph Ruterana ambassador of Rwanda in Sudan informed Rwandan Police about the vehicle recovery which also informed all concerned parties.
- [3] CORAR said that when the vehicle was recovered, they told Ruterana to go and pick his vehicle but he refused. On 7th January 2010, he delegated an employee of CORAR called Nyamucakomeye to bring the vehicle to Rwanda, when the vehicle reached here he again refused to take it. He instead wrote to CORAR requesting for compensation but the company responded that it could not give him compensation because there was no evidence that the vehicle had been stolen. CORAR further said that the vehicle got lost due to dishonesty of Ruterana's driver. Thereafter, Ruterana took the case to the Commercial high court which ruled out that he deserved compensation worthy 30.230.000 Rwf.

- [4] CORAR through its lawyer Kazungu Jean Bosco appeal to Supreme Court making it clear with evidence that Ruterana deserved no any compensation whatsoever because his vehicle had been not stolen. He further said that even if it had been stolen, he would not get anything according to the law. In addition to that, the lawyer said that the Commercial High Court made their ruling without a clear analysis when it stated that it was CORAR duty to find out if the vehicle reached Rwanda in good condition or not.
- [5] The Court hearing that took place on 2nd June 2011, CORAR SA represented by its lawyers Kazungu Jean Bosco and Kayitare Serge in which Ruterana was represented by Lawyer Rukangira Emmanuel in presence of Egide Gahamanyi as a witness. II. LEGAL ISSUE OF THE CASE To know whether ruterana vehicle was stolen so that he could be compansanted by CORAR SA.

Page 3

- [6] CORAR lawyers state that they cannot compansate Ruterana because the vehicle has never been stolen. The lawyer misinterpreted articles 49 and 52 of insurance contract between CORAR SA and Ruterana. This is because Gahamanyi leased the vehicle and this means that Ruterana must sue his driver rather than CORAR.
- [7] It is said that the first lawyer made a mistake by saying that there is no tangible evedence that Gahamanyi played a big role in the vehicle theft yet he leased the vehicle to Gasamunyiga. It also said that another evedence which states that no thetf occured is case n° RP 0027/10/HK/KIG tried on 28 November 2011 tried by Kigali High Court which ruled out that Gasamunyiga is innocent of theft and dishonesty.
- [8] It also said that another reason why Ruterana should not be compansanted is the fact that the vehicle was recored 30 according to the article. Besides, when the vehicle recovered from Sudan by police and interpol, they informed ambassador of Rwanda in Sudan, Joseph Ruterana who later forwarded the case to Rwandan Police But Ruterana showed reluctance in tracking his vehicle until CORAR SA itself took initiative of bringing it back bearing precuration that issued by Ruterana on 7th October 2010. Ruterana insisted on requesting for compansation. Here the court is blamed for its ruling that CORAR was the one responsible of showing Ruterana the condition of his vehicle when it got recovered and yet that was Ruterana's duty.
- [9] In response to CORAR appeal Ruterana's lawyer said that the case that on which CORAR based on stating that there was no vehicle theft can't affect him because he was not involved in it. Additionally the case was not theft but dishonesty according to the ruling. The lawyer further clarified that Ruterana had no case that CORAR should not base on depriving him compansation. He again said that Gahamanyi had no hand in the the vehicle' disappearance. This is manifested in a manner we see that Gahamanyi went to Ruhengeri in tracking Gasamunyiga where he had taken poeple with the vehicle. Gahamanyi also informed Police of the vehicle's theft.

- [10] The lawyer continued supporting Gahamanyi of not accepting the vehicle because it was in a bad condition due bad road it travelled. So, CORAR was responsible to do its expertise, show him in which condition it was rather than forcing him to accept it.
- [11] The fact that Ruterana asks compensations yet the vehicle was found before 30 days, according to insurance contract, Ruterana's lawyer said that the vehicle had been found, it had not been handed over to him. Therefore he had to be compensated according to law.
- [12] In CORAR appeal, Ruterana's lawyer says that the High Commercial Court ruling regarding daily compensation for loss Ruterana made which is equivalent to 35,000 Rwf was little. He says that it would be at least 60,000 Rwf in 278 days until the day the case was cleared. Also he would be given a compensation which is equivalent to 2,000,000 Rwf, 10 percent of money he spent in courting and 2,000,000 Rwf for his lawyer. CORAR's lawyer says that Ruterana should not be given this money on the ground that he has no evidence.
- [13] Gahamanyi says that Gasamunyiga stole the vehicle since they had he took it saying that he was going to pick people from Kanombe Airport to Kigali city and return it the very day on 60,000 Rwf. Rather he took it to Kampala and Sudan. Gasamunyiga also sent an SMS lying to

Page 4

Gahamanyi that he had taken the same people to Ruhengeri. Gahamanyi do apologize for having leased the vehicle without the owner permission but he says that that does not mean connivance in the vehicle theft.

- [14] In the court analysis, it was stated that it is necessary to understand what theft is according to Rwanda Penal Code in article 396 where it states that whoever takes what is not his own acts theft. In such case, it must be clear that anything was taken without the owner's permission. In this case minibus Coaster plate No RAB 612 L of Ruterana was being used by Gahamanyi. Both the accuser and accused agree on the lease only that they defer on the duration the car would be used and where it would be used.
- [15] The court ruled out that regardless of the place the vehicle was used from, Gahamanyi is innocent of theft since theft according to law article 396 is to take something without the owner's consent. Gahamanyi leased the vehicle to Gasamunyiga without neither force neither force nor crookedness since he gave him its keys.
- [16] Regarding Ruterana's vehicle theft, in which his lawyer based requesting compensation. In his trial, RP 0027/10/HC/KIG of 28/11/2011, Gasamunyiga said if he had stolen the vehicle, he would not have looked for its insurance in his name in Sudan. He would rather forged other document to own the car and the court agree with him. What the court ruled as a fault was the fact that he took the vehicle to Sudan rather than Kampala according to the agreement.

- [17] As it stated in case RP 0027/10/HC/KIG of 28/11/2011, as it was mentioned above, Gasamunyiga and Ndumuhire are found guilty of simple dishonesty, which is dealt with social law. The court also ruled out that though Gasamunyiga took the vehicle in Sudan rather than Uganda according to the agreement, this does not mean theft according to Ruterana's observation. Thus CORAR does not owe anything to Ruterana because article 49 chapter one of CORAR insurance agreement with Ruterana state that CORAR insures the vehicle and its parts in case of theft and damage and this did not happen to Ruterana's vehicle.
- [18] As it was stated above, the court has ruled out that Ruterana's vehicle was disappeared on 10th December 2009. It was not stolen as it had been ruled by High Commercial Court for neither Gahamanyi nor Gasamunyiga was found guilty of theft according to Rwanda's law and CORAR agreement with Ruterana. Also Gasana Isabelle's case (Ruterana's wife) that she handed to police was turned down. The case RP 0027/10/HC/KIG of 28/11/2011 Gasamunyiga and Ndumuhire were not found guilty of theft but simple dishonesty which is dealt with social laws.
- [19] In addition to that, even if the vehicle had been stolen, still Ruterana deserved no compensation because the vehicle was found before 30 days according to article 52 of agreement between CORAR and Ruterana. The article states that 'When a vehicle is stolen, CORAR SA compensates the owner in 30 days from the date of the case.' This is cemented by Ruterana Joseph ambassador of Rwanda in Sudan who reported that the vehicle was found in Juba to Rwandan Police on 22 December 2009. On 7th January 2010 Ruterana Bouduin issued a procuration of bringing the vehicle back to Rwanda meaning that the 30 days that CORAR bases on issuing compensation had not finished. So, given that Ruterana informed his vehicle disappearance on 12th December 2009, CORAR owes him nothing.

Page 5

- [20] In article 41 of insurance contract between CORAR and Ruterana states that CORAR can repair the damaged vehicle and article 42 supplement it stating that the vehicle owner must present the cost of damage to CORAR to check it.
- [21] The court based on the mentioned reasons above, owes nothing to Ruterana. This person would have gone to see the vehicle as soon as it came and presented to CORAR.. Failing to do so therefore means that he deserves nothing according to the contract.
- [22] The court ruled out that even compensation that Ruterana request regarding the loss his vehicles disappearance in 278 days is baseless because he did not do anything to curd damage of the car when it had reached Rwanda. Furthermore, article 44 that the two parties signed states that CORAR compensates damage not days that the vehicle spent not working or devaluation caused by accident. Therefore Ruterana must bear the damage of his vehicle.

- [23] Given that the court decision went against Ruterana, he must not be given 2,000,000 Rwf of compensation, 10% of 2,000,000 Rwf that he spent courting and his lawyer's fees.
- [24] According to social laws especially in the article in article 258 of book III and 49 of insurance contract between CORAR and Ruterana, the latter explains that CORAR does not give any compensation when the vehicle was damaged by a family member or an employee of the vehicle owner. Also the court cannot pay any compensation when there a connivance of any sort in the vehicle's theft. The court therefore ruled that Ruterana must sue Gahamanyi because the latter leased the vehicle without permission of his boss.
- [25] Now that the vehicle was auctioned by the government ; this was said by both the accuser and the accused, Ruterana must ask the concerned institution the money from his vehicle. III.
- DECISION OF THE COURT
- [26] CORAR appealing is merit;
- [27] CORAR owes nothing to Ruterana;
- [28] Has accepted another appealing of Ruterana because it is done lawfully though it is no merit;
- [29] Has stated that the High Commercial ruling RCOM 0036/10/HCC of 20th October 2010 has changed.
- [30] Has ordered Ruterana to pay fine of the court which is equivalent to 41,000 Rwf and if he does not do it on time, his property will be confiscated.

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