

RWANDA / JUDGMENT

# SAFARI v. BYABAGABO

RCA0250/14/HC/KIG

## COURT

High Court

## DECIDED

17 May 2015

## CASE / FILE NUMBER

RCA0250/14/HC/KIG

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## SAFARI v. BYABAGABO

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### Text

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SAFARI v. BYABAGABO [Rwanda HIGH COURT – RCA0250/14/HC/KIG (Byakatonda, P.J.) May 17, 2015] Civil procedure – Appear before the court – The legal effect for the fact that there no party who appear before the Court – The fact that the parties did not appear before the Court without producing the motif it means that they did not want to plead which led to struck the judgment – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 57 Fact : Byabagabo gave a debt Nteziryayo of 15,000,000Frw then Safari accepted to be his guarantor, then after at the time of payment Nteziryayo and Safari did not pay for voluntary which led Byabagabo to file a claim to Intermediate Court requesting to be paid the various damages, that Court ordered Safari to pay Byabagabo 10,000,000Frw together with the Counsel fees. Safari was not satisfied with the ruling of judgment and he appealed at the High Court with stating that the judge of the Intermediate Court might not admit the claim because Byabagabo should firstly sue the one who owes him a debt before suing the guarantor, and also the debt was paid before filing the claim at the first instance Both parties were informed about the hearing day but they did not appear before the Court, In this judgment was analysed what will happen when no party who appears before the Court. Held : The fact that the parties

did not appear before the Court without producing the motif it means that they did not want to plead which led to struck the judgment. Appeal's claim is struck . With the court fees to the appellant. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 57 No case referred to.

## Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Safari Fidele subrogated Nteziryayo Eric the debt of 15,000,000Frw which he owes Byabagabo Murwanashyaka Gad, Nteziryayo Eric did not pay even Safari Fidele who subrogated him involuntary paid which led Byabagabo Murwanashyaka Gad to file a claim into the Intermediate Court requesting to be paid and to be awarded the various damages, the

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Intermediate Court based on the concluded contract, it gave the merit the claim submitted by Byabagabo Murwanashyaka Gad, it ordered Safari Fidele to pay Byabagabo Murwanashyaka Gad 10,000,000Frw and also 500,000Frw of the Counsel fees. [2] Safari Fidele was not satisfied with the ruling of judgment and he appealed at the High Court with the purpose of demonstrating that the judge of the Intermediate Court might not admit the claim because Byabagabo Murwanashyaka Gad should firstly sue the one who owes him a debt before suing the guarantor, and debt was paid before filing the claim at the first instance and also the judge should not admit the claim without suing the guarantee. [3] The judgment was heard in public but the Court was finding no party who appeared. [4] The issues to be examined in this judgment, is to determine what will happen if there is no party who appeared before the Court. II. ANALYSIS OF THE LEGAL ISSUES Concerning to determine what will happen if there is no party who appeared before the Court. [5] Safari Fidele was informed the date of preliminary hearing but he did not appear, Byabagabo Murwanashyaka Gad appeared the preliminary hearing and also he signed for the date of hearing but at that date no person who appeared. [6] The Court is finding that the fact Safari Fidele appealed and was informed the date of preliminary hearing while it is known well on that date announcing the date of hearing, his default means that he did not want to plead especially he did not produce the reason of his default and also the fact that Byabagabo Murwanashyaka Gad signed for the hearing date and failed to appear on that date without motif of his default means also he did not want to plead, therefore the judgment should be struck as it is provided for by article 57 of Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

III.DECISION OF THE COURT [7] Decides that the appeal claim submitted by Safari Fidele is struck [8] Sustains the judgment RC0087/14/TGI/NYGE [9] Orders Safari Fidele to pay the court fees equals to 75,000Frw beginning to what he deposited in filing claim.

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