

RWANDA / JUDGMENT

RRA v. NDEKEZI v HEIFER PROJECT INTERNATIONAL-RWANDA

RCOMA 0031/11/CS

COURT

Supreme Court

DECIDED

27 March 2015

CASE / FILE NUMBER

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Text

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RRA v. NDEKEZI v HEIFER PROJECT INTERNATIONAL- RWANDA [Rwanda SUPREME COURT – RCOMA 0031/11/CS (Mugenzi, P.J., Rugabirwa and Kanyange, J.) 27 March 2015] Tort law – Vicarious liability of employees – Both employees must jointly pay the money that had to be paid as tax but which was embezzled and never traced due to the faults of their employees – Law of 30/07/1888 relating to contracts or obligations, article 260. Tort law – Damages – No damages must be awarded to any party since it lost and won the case in part. Facts: This case emanates from tax issue that occurred between Rwanda Revenue Authority and Heifer Project International-Rwanda when the employee of that project paid the tax on income for their institution's employees and give a cheque to the employees of Rwanda Revenue Authority without demonstrating the name of the paid person while that employee had already lied on account which had to be written on that cheque. After it was identified that the tax was not paid but without the knowledge of the Rwanda Revenue Authority, the latter wrote to the taxpayer demanding the payment of that tax as well as the moratory interests thereto. Heifer Project

International-Rwanda responded that it could not pay the tax already paid. Latter, it sued Rwanda Revenue Authority to Commercial High Court and the latter ordered Rwanda Revenue Authority to no longer demand the payment of that tax and its interests. Rwanda Revenue Authority appealed to the Supreme Court stating that Heifer Project International-Rwanda must pay the imposed tax and its moratory damages as that amount was not deposited on its the account. To these grounds of appeal, Heifer Project International-Rwanda responded that no mistake was committed by the Commercial High Court when it confirmed that such tax was already paid at the time when issued to Rwanda Revenue Authority's employee a cheque as that amount was withdrawn from its account as it was followed by the payment receipt. Held: 1. Master and employers must be held liable of the tortious acts of their employees while the latter are performing their duties. Therefore, Rwanda Revenue Authority must bear responsibility of the effects occasioned by the fault of its employee who confirmed that the money whose cheque was issued and received by him was deposited on its account while he knew that it was not done. This is the same way around for Heifer Project International-Rwanda due to its employee whom issued a cheque to the employee of Rwanda Revenue Authority while that cheque was not revealing the name of the beneficiary which led that money to go missing without trace. Therefore Heifer Project International-Rwanda must pay a half of the tax that was imposed at the time when those manoeuvres were discovered while another part must be incumbent to Rwanda Revenue Authority due to the faults committed by its employee and led to that money to go missing without trace. However, both institutions are entitled to suing their employees.

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No damages must be awarded to either party because each one lost and won the case in part. Therefore even the advocate and procedural fees granted at the first instance have no merit. Appeal has merit in part; Cross appeal has no merit, Plaintiff must pay 30.189.106 Frw of the due tax and their related damages; Judgement rendered by the Commercial High Court is quashed; Parties must jointly pay the court fees. Statutes and statutory instruments referred to Law of 30/07/1888 relating to contracts or obligations, article 260. No case was referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On December 11, 2003 Rwanda Revenue Authority notified Heifer Project International –Rwanda of the due tax on income of their employee equivalent to 43.520.927 Frw. Heifer Project International-Rwanda immediately paid 5.000.000 Frw cash in consequence and issued cheque n° 1374597 equivalent to 38.520.927 Frw for the remaining due tax and that amount had to be withdrawn from account n° 101-1118002-90 open in BCDI-Head Quarter after the deposit is made on that very account. [2] On December 13, 2003 the civil servant in RRA issued a payment receipt to the Heifer Project International-Rwanda numbered n° 1031250 proving that the institution has received 38.520.927 Frw for the remaining due tax. On May 22, 2008 Rwanda Revenue Authority made another request for payment that Heifer Project International- Rwanda owes and related moratory damages and the totality was 60.378.213 Frw since 38.520.927 was never deposited on its account. Heifer Project International-

Rwanda responded that it cannot make a double payment of the tax. [3] Heifer Project International- Rwanda sued Rwanda Revenue Authority before Commercial High Court and ruled that its claim was substantiated and ordered Rwanda Revenue Authority to never demand Heifer Project International-Rwanda to pay tax 38.520.927 Frw and related moratory damages because the payment was already made. The Court ordered Rwanda Revenue Authority to pay 2.000.000 Frw for procedural and advocate fees. [4] Rwanda Revenue Authority appealed against the judgment to the Supreme Court lamenting that Heifer Project International-Rwanda must pay the tax equivalent to 38.520.927 Frw for due tax and the moratory damages thereto since that amount has never been deposited to its account. To that, Heifer Project International-Rwanda responded that it could not make the double payment and moratory damages since the whole payment was already made.

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[5] The case was heard in open session on February 17, 2015. Rwanda Revenue Authority was represented by counsel Gasana Raoul while Heifer Project International-Rwanda was represented by Kabera Johnson, the counsel. II. ANALYSIS OF LEGAL ISSUES Whether Heifer Project International-Rwanda has already made the payment of the due tax equivalent to 38.520.927 Frw [6] Gasana Raoul counsel for Rwanda Revenue Authority states that the Commercial High Court confirmed that Project International-Rwanda paid to that institution the remaining amount of tax equivalent to 38.520.927 Frw on income of employees without taking into account the fact that such amount was never deposited to its account because the cheque that was issued to its employee as security of the payment was not bearing the name of the paid institution but rather bear the account number n° 102029003 which is not that of that institution and that none knows the whereabouts of the employees of both institution who were wanted for embezzling the public fund. [7] Counsel for Rwanda Revenue Authority explained that though its employee has been given by the employee of Heifer Project International-Rwanda the cheque of 38.520.927 Frw and that though such amount was withdrawn from its account, on January 7, 2004 by unidentified person using that very cheque as aforementioned and that though the employee of that institution gave Heifer Project International-Rwanda the payment receipt proving the payment of 38.520.927 Frw, it cannot exonerate it of its obligation to pay it because that amount is not the tax which had been paid and subsequently embezzled; it is rather the amount of money that has been stolen while in possession of Heifer Project International-Rwanda that the latter was planning to pay as tax. [8] Kabera Jonson counsel for Heifer Project International-Rwanda that the Commercial High Court committed no mistake when it confirmed that the payment of 38.520.927 Frw had been already made as due tax since the cheque of 38.520.927 Frw was issued to its employee and that such amount of money was withdrawn using that very cheque which was also followed by the issuance of the payment receipt as a proof of the due tax, but that such a tax was embezzled by the employees of that institution, Rwanda Revenue Authority, as found by the Commissioner General of that institution when the latter wrote to the Prosecutor General notifying him of

embezzlement of the public fund committed by the the employees of that institution. [9] With regard to the fact that the used cheque in payment bears the number instead Rwanda Revenue Authority, counsel for Heifer Project International-Rwanda responded that its employee asked the employee of Rwanda Revenue Authority the account number of that institution that had to be written on that cheque, but because the employees of Rwanda Revenue Authority had a criminal intent of embezzling 38.520.927 Frw paid as tax, he responded that the account number of Rwanda Revenue Authority was n° 102029003 which is the one he wrote on that cheque since had not learnt it by heart. He added that from investigation conducted by that institution, it was found that such account is open under the name of young brother of the employee of that institution who received that cheque.

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THE VIEW OF THE COURT [10] Article 260 paragraph 3 of the civil Code Book Three provides "master and employers are liable of the tortious acts of their employees while on duties." [11] With regard to this case, the Court finds that an employee of Heifer Project International- Rwanda had committed a mistake of issuing the cheque bearing the number n° 1374597 for the payment of 38.520.927 Frw to the employee of Rwanda Revenue Authority without marking the name Rwanda Revenue Authority to which the tax was due but instead wrote the account number which is not open under the name of that institution and as a consequence, such an amount was never deposited to the account of that institution as the payment of that tax but rather that money was not traced after it was withdrawn on January 7, 2004. [12] The Court finds further that the employee of Rwanda Revenue Authority had also committed a fault of giving Heifer Project International-Rwanda a payment receipt dated December 13, 2003 indicating that the whole payment of tax equivalent to 38.520.927 Frw was already executed while well aware that such a amount was not deposited on the account of Rwanda Revenue Authority because that cheque was not bearing the name and that fault occasioned the embezzlement of that amount of money without trace as aforementioned. [13] Pursuant to those explanations, the Court finds that the fact that 38.520.927 Frw was not traced due to the faults of both employees as mentioned above, lead to both Heifer Project International-Rwanda and Rwanda Revenue Authority being held liable the effects of their employees as provided for by article 260 paragraph 3 of the book referred to above. Hence bityo Heifer Project International-Rwanda must pay 30.189.106 Frw equivalent to a half of 60.378.213 that the Commissioner General demanded the payment after he discovered that the tax in issue was not paid while another part of that tax and its damages must be incumbent on Rwanda Revenue Authority due to the fault that had been committed by its employee as highlighted above. [14] The Court finds however that Heifer Project International-Rwanda and Rwanda Revenue Authority are entitled to right to sue their employees at any time they would be arrested with regard to the loss incurred as highlighted above.

2. Whether cross appeal filed by Heifer Project International-Rwanda is substantiated [15] Kabera Johnson counsel for na Heifer Project International-Rwanda states that they file cross appeal requesting Rwanda Revenue Authority to pay 1.000.000 Frw for advocate fees at this instance that must be added to 2.000.000 Frw for procedural fee that was granted at the

first instance and the totality is 3.000.000 Frw. [16] Gasana Raoul counsel for Rwanda Revenue Authority states that Heifer Project International-Rwanda must not be granted any damage in at this instance since it committed the fault of the tax equivalent to 38.520.927 Frw as explained above and that it must not be awarded 2.000.000 Frw for procedural and advocate fees that was granted at the first instance but rather Rwanda Revenue must be awarded 1000 000 Frw for advocate fees. THE VIEW OF THE COURT

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[17] The Court finds that no damages ust be granted at this instance because each party lost and won the case in part. Hence, even 2.000.000 Frw for procedural and advocate fees as awarded by the first instance court to Heifer Project International-Rwanda has no merit. TIII. HE DECISION OF THE COURT [18] Holds that appeal filed by Rwanda Revenue Auththority has merit in part; [19] Holds that cross appeal filed by Avoka Heifer Project International-Rwanda has no merit; [20] Orders Avoka Heifer Project International-Rwanda to pay Rwanda Revenue Authority 30.189.106 Frw equivalent to the due tax and its related damages; [21] Quashes the judgment RCOM 0237/10/HCC rendered by Commercial High Court on March 24, 2011; [22] Orders both Rwanda Revenue Authority and Heifer Project International-Rwanda to jointly pay the court equivalent to 100.000 Frw, that is each party must pay 50 000Frw.

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