

RWANDA / JUDGMENT

WALTER RAFFO v. MUNYAMPIRWA_en**RLR V.1-2018****COURT**

Supreme Court

DECIDED

21 April 2017

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WALTER RAFFO v. MUNYAMPIRWA [Rwanda SUPREME COURT – RS/REV/INJUST/RCOM0002/16/CS (Mugenzi, P.J., Gakwaya and Mukamulisa, J.) April 21, 2017] Law determining jurisdiction of courts – The decision taken by foreign courts which requires to be approved by Rwandan courts – The foreign deeds issued by the foreign officers which requires to be approved by the Rwandan courts, are those which endows the right to its holder, to the extent that the holder can seek the government coercion to enforce it – Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, articles 91 and 92 – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 204. Facts: This case originates from the sale contract of shares in Guest House Kibuye S.A concluded between Walter Raffo and Munyampirwa. The Government of Rwanda repossessed that hotel which caused disputes among the shareholders, and consequently Walter Raffo (the buyer) sued Munyampirwa before the Commercial High Court requesting to be refunded the value of his shares he had in that hotel. The Commercial High Court decided that Munyampirwa must refund those shares. Munyampirwa was not satisfied with the decision of the Commercial High Court, therefore appealed before the Supreme Court, that Court found the appeal with merit in part.

Thereafter, Walter Raffo initiated another lawsuit against Munyampirwa before Nyarugenge Commercial Court, requesting for performance of the contract concluded on 25/08/2005 and also claiming for various damages, the court rejected his claim on the ground that the same parties already litigated the subject matter. He appealed to the Commercial High Court, which also found the appeal without merit on the same ground as of those of the previous court. Walter Raffo referred this issue to the Office of Ombudsman arguing that he has prejudiced because he was ordered to pay the debt that Munyampirwa owed to BCR while he was not involved in acquiring it. The Ombudsman requested the President of the Supreme Court that the concerned judgment be reviewed due to injustice. Walter Raffo died before the case for the review of that judgment due to injustice was heard and the deceased was replaced by his heirs in the case. During the hearing, Munyampirwa raised several objections of inadmissibility, which includes the one that the death certificate of Walter cannot be based on by the Rwandan Courts before being subjected to exequatur procedure in the High Court. In their defence, the heirs of Walter Raffo argue that there is no need to order for exequatur, because it is conducted on the judgments or decisions which have to be enforced in Rwanda while in this case, the certificate is an element of evidence, which does not require enforcement. Held: 1. The foreign deeds issued by the foreign officers which requires to be approved by the Rwandan courts, are those which endows the right to its holder, to the extent that the holder can seek the government coercion to enforce it. Therefore, the death certificate does not require to first be approved by the Rwandan courts, since its purpose is not for acquiring any right to the extent that government coercion can be used to enforce. The objection is overruled.

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Court fees suspended. Statutes and statutory instruments referred to: Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, articles 91 and 92. Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 204. No case referred to. Authors cited: Serge Guinchard, Thierry Debard, *Lexique des termes juridiques*, 23e édition, Paris, 2015- 2016, p.463.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 11/04/1999, Munyampirwa Pascal concluded with Walter Raffo a contract of sale and purchase of shares in Guest House Kibuye SA at a price of 250,000USD, and agreed that the disputes that will arise will be resolved by Sweden Courts. [2] The Guest House Kibuye SA had some difficulties and consequently the Government of Rwanda took over that Guest House, there after Walter Raffo sued Munyampirwa claiming to be compensated the value of his shares in the Guest House Kibuye SA. On 26/12/2010 the Commercial High Court rendered the judgment RCom 0094/09/HCC, whereby it ordered Munyanyampirwa to refund Walter Raffo his shares in the Guest House Kibuye SA worth 170,000,000Frw. [3] Munyampirwa appealed to the Supreme Court, and in its judgment RCOMA0074/10/CS of 13/07/2012, it found his appeal with merit in part, it held that he do not have to refund Walter Raffo any share, instead the latter was ordered to pay 1,000,000Frw in damages.

[4] Walter Raffo initiated another lawsuit against Munyampirwa before Nyarugenge Commercial Court, requesting for performance of the contract concluded on 25/08/2005, which stipulated that they will jointly open a bank account in the Bank of Kigali, on which the Privatisation Secretariat should deposit the fund that the Government of Rwanda should pay to take over Guest House Kibuye, and also claimed for various damages. In the judgment RCOM01158/14/Nyge rendered on 31/01/2014, that court decided that the subject matter was litigated upon by the same parties and on the same grounds, therefore the claim is inadmissible. [5] Walter Raffo appealed to the Commercial High Court and in the judgment RCOMA0087/14/HCC rendered on 28/03/2014, it found the appeal without merit on the ground that the claim before the Commercial Court had already been decided, it also held that Walter Raffo should not be the only one to be refunded his share, because he is a shareholder of the same category as of Munyampirwa and others, and it is also clear that the money has

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been paid to clear the debt Guest House Kibuye SA owed to BCR, therefore they have to share the loss. [6] Walter Raffo, referred his claim to the Office of the Ombudsman arguing that he was prejudiced when he was ordered to jointly pay Munyampirwa's debt in BCR while he was not involved in acquiring it, the Office of the Ombudsman realised that the loan agreement of 158,217,605Frw concluded between Munyampirwa and BCR when he bought Guest House Kibuye SA, should not affect Walter Raffo and it requested the President of the Supreme Court that the judgment RCOMA0087/14/HCC of 28/03/2014 be reviewed due to injustice and the latter transferred it to the court registry, so that it can be heard again. [7] On the side of Munyampirwa, objections of inadmissibility based on various grounds were raised, among them includes regarding security deposits furnished by the foreigners, the one relating to the right person to resume the proceedings after the death of Walter Raffo and the last one relating to the fact that in rendering the judgment RCOMA0087/14/HCC which review due to injustice is under exam the court based on the judgment RCOMA0074/10/CS, thus requesting its revision would be altering a judgment with another, and also the plaintiff changed the subject matter because in his claim he mentions the grounds of injustice but he explains the case in merits, which should not be admitted by the Supreme Court because another party does not accept it. [8] The case was heard in public heard on 07/02/2017, Counsel Habimana Pie representing Walter Raffo while Counsel Bizimana Shoshi represented Munyampirwa Pascal, the latter requested the Court to first examine whether the death certificate for Walter Raffo which was issued in a foreign country can be based on by the Rwandan Courts before it has been subjected to the proceedings of exequatur. The Court decided to first examine that objection. II. ANALYSIS OF LEGAL ISSUE Whether the death certificate of Walter Raffo, issued by the civil status officer in Philippines has to first be approved through the exequatur procedure in Rwanda for it to be based on by the court in this case. [9] Counsel Bizimana Shoshi representing Munyampirwa argues that the death certificate produced by Walter Raffo's side proving that he died cannot be based on by the Rwandan Courts before subjecting it to the exequatur procedure, since basing on it to acknowledge his heirs would be enforcing that certificate, therefore he requests that it should first be subjected to the

mentioned procedure by the High Court. [10] On the side of Walter, Counsel Habimana Pie argues that there is no need for the court to order for the exequatur procedure because it is conducted on the judgments which have to be enforced, while for this case, the death certificate was produced as an element of evidence which does not require to be enforced. VIEW OF THE COURT [11] Article 91 of the Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as amended and complemented to date provides that “The High Court shall hear complaints which require execution of cases and

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decisions taken by foreign Courts”, article 92 of that Organic Law N°51/2008 provides that “Authentic deeds which have proof to have been written by foreign authorities may also be executed in Rwanda by the High Court if they have the following evidence” which are listed in this article, while article 204 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “Except where international agreements provide otherwise, judgments rendered by foreign courts and foreign deeds issued by foreign officials shall not be subject to execution in Rwanda, unless they are rendered enforceable by the competent Court”. [12] As demonstrated in the legal provisions mentioned above, the Court finds that the deeds issued by foreign officials which are subject to exequatur procedure in courts of Rwanda are those intended to be executed in Rwanda as demonstrated in the provisions mentioned above. [13] The court finds that, as explained by the Legal Scholars, the deeds intended to be executed are those which endows the right to its holder to the extent that he can seek the government coercion to enforce it, which is not the case for the death certificate, like the one produced in the case for Walter Raffo, since its purpose is not for acquiring any right to the extent that government coercion can be applied¹, instead its purpose is to prove that he is no longer alive, so that it can be based on to determine the legal effects. [14] Therefore, the court finds that the death certificate of Walter Raffo issued by the civil status officer² in Philippines, does not require to first be subjected to exequatur procedure by the Rwandan court, for it to be used as an element of evidence in the case between Walter and Munyampirwa which was appealed before this court, therefore the objection raised by Munyampirwa on this issue is overruled. III. THE DECISION OF COURT [15] It declares that the objection raised by Munyampirwa Pascal relating to the death certificate of Walter Raffo issued in a foreign country to first be approved by the Rwandan Court, is overruled. [16] It orders that the hearing of the proceedings will resume on 13/06/2017; [17] It decides that the court fees are suspended. 1 1 “Exécutoire, signifie que celui auquel l'acte en question a reconnu un droit, peut faire procéder à son exécution forcée par les soins d'un officier public qui a compétence pour requérir la force publique”: Serge Braudo, Dictionnaire de droit privé Français, 1996-2017, www.dictionnaire-juridique.com, consulté le 21 Avril 2017. -“Qui permet de procéder à l'exécution avec, au besoin, le concours de la force publique” Serge Guinchard, Thierry Debard, Lexique des termes juridiques, 23e édition, Paris, 2015-2016, p.463. 2 OFFICE OF THE CIVIL REGISTER GENERAL-Republic of the Philippines.

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