

KZ NOIR(R) Ltd v. KUBWIMANA ET AL

[Rwanda COMMERCIAL HIGH COURT– RCOMA 0232/14/HCC (Kadigwa, P.J.) 12 June 2014]

Arbitration law in commercial matters – Jurisdiction to hear an urgent claim relating to arbitration – One of the parties to arbitration may request the court, before or during arbitral proceedings, for an interim measure – Law n^o 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, article 3 and 10.

Commercial procedure – Determination of the subject matter – The subject matter of the claim shall be determined by the claims made by respective parties – In examination of admissibility of the claim, the Court is not limited to the title of written submissions, in contrast it considers its content and the pleadings of the parties – Law n^o 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 4.

Commercial procedure – Not to hear on merit the case annulled by the appellate Court – In case the appellate Court annuls the judgement, it cannot hear it on merit, rather it is heard by the competent Court to hear it at the first instance level in case the plaintiff intends to continue the proceedings – Law n^o 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 172.

Facts: KZ NOIR (R) Ltd entered into a contract with Kubwimana Chrysologue and Kubwimana Philippe with a clause providing that any conflict relating to it shall be referred to the arbitration. Both parties turned to arbitration but pending the decision on merit, KZ NOIR (R) Ltd filed the summary procedure to the Commercial Court of Musanze requesting it to take provisional measures but the court it rejected the claim because there is no related main suit.

KZ NOIR (R) Ltd appealed to the Commercial High Court stating that its claim should be admitted and examined because the main suit was pending before arbitration and that is in accordance with the law.

In appeal, Kubwimana Chrysologue and Kubwimana Philippe stated that interim measures fall under jury of arbitrators who are competent to settle the matter.

Held: 1. One of the parties may, before or during arbitration process, request the Court to take interim measures and the Court may do so as long as it is in accordance with arbitration agreement. Therefore, the Commercial Court of Musanze should have admitted the claim referred to it.

2. The subject matter of the claim shall be determined by the claims made by the respective parties. When it is clear in the details of the claim figured out in submissions and pleadings of the plaintiffs that it was intending to request the Court to take interim measures, the title of submission is not the sole to be considered.

3. The Court that annuls the appealed judgment shall not hear it on merit; rather, it should be heard by the competent court to hear the case at first instance level in case the parties intend to

pursue the proceedings. Therefore, the appealed case should be heard by the Commercial Court of Musanze.

**Appeal has merit.
Appealed case is quashed.
Court fees to the defendants.**

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 4 and 172.

Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, article 11 and 23.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The parties made a contract with a clause stipulating that any related conflict shall be submitted to arbitration. In the case R.COM 0144/TC/MUS rendered by the Commercial Court of Musanze on 21 April 2014 the plaintiff filed a summary procedure as set in the subject matter. The Court rejected it because of lack of main suit by virtue of article 316 of Code of civil, commercial, labor and administrative Procedure.

[2] The Plaintiffs were not satisfied with the decision since they were convinced that the fact that the main suit was pending before arbitration was sufficient and in accordance with the arbitration law. They set out as an example of article 11 and 23 of the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters.

[3] The legal issue to be analyzed in this case is whether the summary procedure attached to the main suit referred to arbitration shall be received by the Court that normally has jurisdiction to hear cases of such nature.

II. ANALYSIS OF LEGAL ISSUES

[4] The first instance court decided that the case it was filed is a summary procedure normally heard following the special procedure related to such cases as provided for by the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

[5] The plaintiffs argued that the claim they submitted to the court was intending to request it to take interim measures as provided for by articles 11 and 23 of the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, even if the title of their submissions outlined that they were filing for an urgent claim.

[6] The court finds that the first instance Court considered only the title of plaintiffs' submissions indicating that they lodged an urgent claim and it ignored the content of their submissions and pleadings explaining that they filed a claim requesting the court to take interim measures as provided for by article 11 and 23 of the Law n° 005/2008 of 14/02/2008.

[7] The Court finds fact that the court that rendered the judgment in the first instance considered solely the title of the plaintiff's submission explaining that they filed an urgent claim and ignored its content and their pleadings, is inconsistent with article 4 of the Law n° 21/2012 of 14 June 2012 relating to the civil, commercial, labour and administrative procedure providing that the subject matter of the claim shall be determined by the claims made by the respective parties. These claims shall be indicated in the plaintiff's and defendant's submissions.

[8] The court finds that it is not only the title of the written submissions that can be considered while its content and pleadings of the plaintiffs indicated that their claim was intending to request the court to take interim measures as provided for by the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters.

[9] Articles 3 and 10 of the Law n° 005/2008 of 14/02/2008 above mentioned provide that "the court mentioned by the law is a competent court in the Judiciary of Rwanda". The Court finds that the court which rendered the judgment at the first instance level should have admitted this claim by virtue of article 11 of the mentioned law providing that "One of the parties to arbitration may request the court, before or during arbitral proceedings, for an interim measure and of which the court may grant. Such a measure shall not be contrary to arbitration agreement".

[10] The court finds without merit the statement made by Buhuru Célestin, the counsel for the defendants in appeal that interim measures fall under the competence of arbitration because pursuant to article 19 of the Law n° 005/2008 of 14/02/2008 above mentioned provides that arbitration may take such decisions at request of one of parties in arbitration.

[11] Considering the aforementioned reasons, the court finds that the decision taken in the appealed judgment R.COM 0144/TC/MUS rendered by the Commercial Court of Musanze on 21 April 2014 should be quashed.

[12] Pursuant to article 172 providing that the court which annuls the appealed judgment shall not hear it on merit, the court finds that the claim filed by the plaintiff in appeal, shall be admitted by the competent court to hear it on merit at the first instance, in case the plaintiff intends to continue the proceedings.

III. THE DECISION OF THE COURT

[13] The Commercial High Court :

[14] Admits the appeal of KZ NOIR (R) Ltd and finds it with merit;

[15] Decides that the claim of KZ NOIR (R) Ltd shall be heard by the Court which heard it at the first instance level;

[16] Decides that the appealed judgment R.COM 0144/TC/MUS rendered by the Commercial Court of Musanze on 21 April 2014 is quashed;

[17] Orders Chrysologue Kubwimana and Philippe Kubwimana to jointly pay the court fees.