

MUREBWAYIRE v. RWANDA REVENUE AUTHORITY (RRA)

[Rwanda HIGH COURT – RADA00004/2018/HC/KIG (Hitimana, P.J.) 27 April 2018]

Execution of the judgment – Disputes regarding the execution of judgment – Disputes regarding the execution of judgement are heard by the court that rendered the final judgment or that made a foreign judgment enforceable in Rwanda.

Execution of the judgment – Entirety of the judgment – The court decisions must be executed as they were rendered unless they were reversed in the appeal.

Facts: After being dismissed from work, Murebwayire sued Rwanda Revenue Authority in the Intermediate Court of Nyarugenge. The Court ordered RRA to pay her salary arrears, damages for unfair dismissal, leave compensation, moral damages, procedural and counsel fees and also to be reimbursed the court fees deposit. RRA appealed to the High Court, which held that it should not pay her leave allocation instead it ordered RRA to pay counsel fees on the appellate level.

Disputes arose during the execution of the judgment when that institution wanted to deduct pay as you earn tax, pension and health insurance scheme contribution from the costs awarded by the Court, it alleged that the damages she was awarded was computed on the gross salary whereas Murebwayire was demanding to be paid the whole amount as ordered by the Court.

RRA raised an objection of lack of jurisdiction arguing that the issue to be examined is to determine whether the money ordered by the Court is taxable, which is not under its jurisdiction but in the jurisdiction of the commercial courts, it also raised another relating to inadmissibility on the ground that it was lodged beyond the statute of limitation.

Murebwayire argues that the law provides for the disputes regarding the execution of judgment to be brought before the court that rendered the final judgment and it did not provide for the time limit for lodging the claim. The court overruled both objections and the case was heard on merits.

Murebwayire argues that after the lawsuits with Rwanda Revenue Authority, she began to demand RRA to pay what the court ordered in the judgment and RRA replied that that it was going to pay 1,017,867Frw and the salary arrears of three months while the Court had ordered to be paid 1,577,019Frw, damages equivalent to 4,731,060Frw but RRA paid 3,005,604Frw, damages awarded by the court, court fees deposit, procedural and counsel fees were paid as ordered by the Court. This means that RRA had to pay 8,658,079Frw instead it paid 6,0731,471Frw, for that Murebwayire is demanding a balance of 2,584,608Frw. Pursuant to article 151 al. 4 providing that court rulings are binding on all parties concerned, be they public authorities or individuals, she requests to be paid the balance of 2,584,608Frw.

Rwanda Revenue Authority argues that the damages equivalent to 6 months which she was awarded was computed on the gross salary and the Court held that during the payment the deductions provided by the law should be deducted. This led RRA during the execution to make the provided deductions which includes income tax (TPR) CSR and RAMA and thus on the salary arrears of three months the deductions were TPR, RSSB and RAMA. For damages for unfair dismissal equivalent to 6 months salary the deductions were income tax, RSSB and RAMA and she was also paid the counsel fees

Held: 1. Disputes regarding the execution of judgement are heard by the court that rendered the final judgment or that made a foreign judgement enforceable in Rwanda.

2. The money awarded to the plaintiff equivalent to three months' salary is not for damages but instead its her salary arrears which she was not paid when she was still an employee because she was paid 1/3 and remained 2/3 and it was calculated on the gross salary. Since it's a salary all deductions which have to be deducted from an employee's salary have to be taken from it, therefore that deduction cannot be construed as changing the decision of the court.

3. Regarding the damages awarded by the court, the decision of the court must be executed by all concerned institutions in case there was no remedy of appeal exercised to reverse its rulings.

4. Court fees is awarded in the court's discretion in case what the party is asking for is excessive.

**Overrules the objection of lack of jurisdiction and that of inadmissibility;
The money for salary arrears is the one to be deducted on the deductions provided by the
law, for other costs awarded by the Court have to be paid as ordered by the Court;
Court fees on the government treasury.**

Statutes and statutory instruments referred to:

Organic Law N°03/2012/OL of 13/06/2012, determining the organization, functioning and jurisdiction of the Supreme Court, article 47.

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 208.

Cases referred to:

Ntukamazina v Prime Insurance Ltd (EX-COGEAR LTD), RSOC00001/2016/CS, rendered by the Supreme Court on 20/01/2017.

I. BACKGROUND OF THE CASE

[1] Murebwayire Justine an employee at Rwanda Revenue Authority was dismissed and subsequently she sued RRA in the case RAD00193/2016/TGI/NYGE, claiming that she was unfairly dismissed, the judgment was rendered on 08/11/2016, the Intermediate Court of Nyarugenge ordered RRA to pay Murebwayire Justine – salary arrears of three months equivalent to 1,577,019Frw, damages for unfair dismissal of 788,510Frw (Gross salary) x 6 = 4,731,060 Frw, leave compensative indemnity of the year 2011, 2012, and 2013 amounting to 788,510Frw x 3 = 2,365,530Frw, moral damages of 1,000,000Frw, procedural and counsel fees equivalent to 1,000,000Frw and to reimburse the court fees of 50,000Frw, all equivalent to 10,673,609Frw + 50,000Frw.

[2] RRA appealed against the rulings of the case in this Court, which ordered that 2,365,530Frw which was ordered to be paid to Murebwayire Justine for leave compensative indemnity for the year 2011, 2012 and 2013 should not be paid it, ordered RRA to pay her 300,000Frw for counsel fees on the appellate level and the rest of the judgment were sustained.

[3] Disputes which arose in the execution of the judgment concerns the deductions which RRA made from the money which the Court awarded to Murebwayire Justine, which she argues that it should be given to her in its entirety while RRA argues that income tax, pension contribution and the contribution for RAMA have to be deducted because the damages she was awarded were computed on the gross salary

[4] The counsel for RRA raised an objection of lack of jurisdiction on the ground that the issue at hand is determining whether that money is taxable, which is not in the jurisdiction of this court. He also raised another objection regarding the statute of limitation.

[5] The issue to be analysed is whether this Court has the jurisdiction to hear the case lodged by Murebwayire Justine. If it has that jurisdiction, it will further examine whether there is a statute of limitation for filing a claim relating to the disputes which arise in the execution of the judgment and determine whether it was respected, so that her claim is inadmissible. In case it is admitted, the court will analyse whether RRA has the right to deduct income tax, pension contribution and that of health insurance from the damages the Court awarded to Murebwayire Justine.

II. ANALYSIS OF THE LEGAL ISSUES

A. Whether the Court which adjudicated the case at the last instance is the competent court to hear claims relating to the disputes which arose in the execution of the judgment, regardless of the issue on which those disputes originated.

[6] The counsel for Rwanda Revenue Authority argues that this Court lacks jurisdiction because the money which RRA was ordered to pay was computed on the gross salary, on which income tax, pension contribution and contribution for health insurance (RAMA) had to be deducted, thus the issue of determining whether they should be deducted or not is in the jurisdiction of commercial courts.

[7] The counsel for Rwanda Revenue Authority argues that depending on how the claim was formulated, disputes arose in the execution of the judgment, the claim is in the jurisdiction of the High Court which adjudicated the case but the material element is not in its jurisdiction.

[8] The counsel for Murebwayire Justine states that article 208 of the law relating to the civil, commercial, labour and administrative procedure provides that disputes regarding the execution of judgment shall be brought before the court that rendered the final judgment, therefore the arguments of the counsel for Rwanda Revenue Authority that the Commercial courts are the ones with jurisdiction lack merit.

THE VIEW OF THE COURT

[9] The Court finds with no merit the statements of the counsel for Rwanda Revenue Authority that this court has no jurisdiction because the claim submitted to this court is that of the disputes regarding the execution of judgement. As submitted by the counsel for Murebwayire Justine, article 208 of the law relating to the civil, commercial, labour and administrative procedure provides that disputes regarding the execution of judgement shall be brought before

the court that rendered the final judgment or that made a foreign judgement enforceable in Rwanda. The arguments of the Rwanda Revenue Authority's counsel that the issue to be examined by the court of determining whether income tax should be deducted from the costs ordered by the court falls in the jurisdiction of the commercial courts, is with no merit because the claim to the court which it has to settle are disputes which arose in the execution of the judgment, which is in its jurisdiction.

[10] Therefore, the objection is overruled because the seized court has jurisdiction.

B. Whether there is statute of limitation in which Murebwayire's claim had to be lodged.

[11] The counsel for Rwanda Revenue Authority argues that the claim of Murebwayire Justine should not be admitted because the statute of limitation was not respected, because such claims have to be lodged within two months from the time the judgment was executed, that period of two months is provided by article 208 of the Law relating to civil, commercial and administrative procedure.

[12] The counsel for Murebwayire Justine argues that the objection raised is groundless because article 208 of the Law relating to civil, commercial and administrative procedure does not provide for a limitation in which the claim has to be filed.

VIEW OF THE COURT

[13] The Court finds the arguments of the counsel for Rwanda Revenue Authority that the statute of limitation was not respected in filing the claim with no merit because he does not demonstrate the legal basis of his assertion, that it had to be lodged within two months beginning from the date on which the judgment was executed, because article 208 of the Law relating to civil, commercial and administrative procedure does not provide for a limitation of two months within which the claim should be filed. Therefore, the objection raised by the Rwanda Revenue Authority is overruled.

C. Resolving the disputes which arose in the execution of the judgment.

Whether RRA is allowed to deduct income tax, pension and health insurance contribution from the money which the court ordered to be given to Murebwayire for her salary arrears and damages for unfair dismissal.

[14] The counsel for Murebwayire argues that after the lawsuits with Rwanda Revenue Authority, she requested RRA to execute the court's decision, however in reply to her letter, RRA contradicted the decision of the court, whereby it stated that it was going to pay her 1,017,867Frw for the salary arrears of three months, while the Intermediate Court had ordered a total of 1,577,019Frw, damages for unfair dismissal equivalent to 4,731,060Frw but RRA paid 3,005,604Frw however moral damages, court fees, procedural and counsel fees were paid as ordered by the Court. This means that RRA had to pay 8,658,079Frw instead it paid 6,0731,471Frw, therefore Murebwayire is demanding a balance of 2,584,608Frw. Pursuant to article 208 of the relating to the civil, commercial, labour and administrative procedure, the counsel for Murebwayire finds that there are disputes regarding the execution of the judgment

mentioned above which should be heard by the High Court because it's the one which heard this case on the last instance as provided by that article.

[15] The Counsel for Murebwayire Justine further argues that pursuant to article 151 *litera* 4 of the constitution of Republic of Rwanda which provides that court rulings are binding to all parties concerned, be they public authorities or individuals. They cannot be challenged except through procedures determined by law, he finds that RRA violated that article and contradicted the courts' rulings illegally.

[16] The Counsel for Murebwayire further argues that this was malfeasance on the party of RRA as it was also emphasized in the judgment RSOC00001/2016/CS paragraph 13 and 14 whereby the Court found that no deductions should be made on the damages awarded to a former employee, instead the decisions of the court should be executed as they are.

[17] The counsel for Rwanda Revenue Authority argues that in the judgment RADA 00183/HC/2016/HC/KIG paragraph 23 on page 11, the High Court held that the damages of 6 months equivalent to 4,731,060Frw which was awarded to Murebwayire Rwanga Justine was computed on the gross salary and held that during the payment the deductions provided by the law should be made, in case she is not contented she can file the case to a competent court (see Judgment RADA00183/HC/2016/HC/KIG, p. 11). He adds that Murebwayire was awarded 2/3 of three months' salary of May, June and July of which she was not paid when she was temporary suspended which was computed on the gross salary. This led RRA to make deductions provided by the law i.e. pay as you earn (TPR) and RAMA when executing the judgment as follows: on the salary arrears of three months equivalent to 1,577,019Frw, the deductions were; 425,106Frw for TPR, 42,054Frw for RSSB, 91,992Frw for RAMA. All deductions total to 559,152Frw and was paid 1,017,867 Frw (net). For the 4,731,060Frw damages for unfair dismissal equivalent to 6 months' salary the deductions were 1,323,318Frw for pay as you earn, 126,162Frw for RSSB and 275,976Frw for RAMA. All deductions equal to 1,725,456Frw and she was paid 3,005,604 Frw. Murebwayire was also paid 300,000Frw for counsel fees.

[18] The counsel for Rwanda Revenue Authority argues that regarding the laws based on by the RRA, article 13 *litera* 1 of the Law N°16/2005 of 18/08/2005 on direct taxes on income providing that employment income includes all payments paid to an employee in cash or in kind such as: 1° wages, salary, leave pay, sick pay and medical allowance, payment in lieu of leave, fees, commissions, bonuses including gratuity and incentives (.....) 7° other payments made in respect of current, previous or future employment. And for the deduction of pay as you earn on the damages for unfair dismissal equivalent to six months it based on the Law N°16/2005 of 18/08/2005 mentioned above in its article 13 *litera* 7, which provides that tax also applies to other payments made in respect of current, previous or future employment. Regarding the deductions for pension, it relied on article 7 of the Law N°05/2015 of 30/03/2015 governing the organization of pension schemes.

[19] The Counsel for Murebwayire Justine argues that the three months' salary arrears were computed on the net salary, therefore RRA should not have made any further deductions.

THE VIEW OF THE COURT

[20] The Court finds that the salary of three months awarded to Murebwayire her counsel requested them as demonstrated in paragraph 17 of the judgment RAD00193/2016/TGI/NYGE rendered by the Intermediate Court of Nyarugenge on 09/11/2016 he claimed for 2/3 of 788,510, which is 525,673 times 3 which totals to 1,577,019. Both parties agree that Murebwayire Justine's gross salary was 788,510.

[21] The Court finds that the amount cited in the previous paragraph is not for damages but it's for the salary which Murebwayire Justine should have been paid when she was still an employee of RRA, whereby she was paid 1/3 and remained a balance of 2/3 the amount ordered by the Intermediate Court to be paid to Murebwayire Justine. which was computed on the gross salary of 788,510Frw. Therefore, since it was for the salary which Murebwayire had to be paid when she was still an employee of RRA, it is obvious that the decision of the Court did not alter how salaries are computed or to order not to make the necessary deduction from the salary. Therefore, it was right for the RRA to deduct pay as you earn, pension and contribution for health insurance from 1,577,09Frw which is equivalent to 2/3 of her salary of May, June and July 2015 and it cannot be construed as altering the court's decision, because that is also the spirit of the decision, because even the 1/3 of the salary which she was paid those deductions were made, thus they should also be deducted on the remaining 2/3.

[22] Regarding other costs awarded to Murebwayire which are not salary which include damages for unfair dismissal and counsel fees. The Court finds that the issue of determining whether pay as you earn, pension and health insurance contribution are deducted as contested by the counsel for Murebwayire Justine, this issue was settled by the Supreme Court in the Judgment RSOC00001/2016/CS rendered on 20/01/2017.

[23] The Court finds that in the case cited in the previous paragraph, Ntukamazina Jean Baptiste was awarded damages for unfair dismissal equivalent to 134,185,600Frw. The counsel for Prime Insurance argued that those damages have to be taxed and that even RRA gave guidance on that issue while Ntukamazina contested it. The Supreme Court held that in the circumstance there was no remedy of appeal exercised to reverse the ruling of judgment RSOCAA0001&0002/16/CS, this Court finds that this judgment has to be enforced as it was rendered.

[24] The Court finds that article 47 of the Organic Law N°03/2012/OL of 13/06/2012, determining the organization, functioning and jurisdiction of the Supreme Court provides that the judgments and decisions of the Supreme Court shall be binding on all other courts of the country. Since this issue was settled by the Supreme Court in the judgment cited in the previous paragraph, it's the same position which should be taken by this court, so that Murebwayire Justine is given all damages she was awarded in the judgment which she seeks to be executed without any deductions made by RRA, however as explained above this does not apply to 1,577,019Frw equivalent to 2/3 of the salary for May, June and July of 2015 on which deductions have to be made.

D. Procedural and counsel fees

[25] The counsel for Murebwayire argues that his client should be awarded 1,000,000Frw for procedural and counsel fees and refunded 75,000Frw of the court fees she deposited.

[26] The counsel for RRA argues that Murebwayire should not be awarded the counsel fees because she is the one who initiated unnecessary lawsuits. Therefore, it should be set aside and in addition to that it's excessive.

[27] The counsel for RRA further argues that pursuant to article 258 of civil book III, RRA requests for procedural and counsel fees of 1,000,000Frw because she dragged it in unnecessary lawsuits. RRA has specialist who represent it in the court who are allocated special benefits for them to carry out that job; which is normal because even the advocates who represents some institutions are salary earners but they are awarded counsel fees. For RRA to be awarded counsel fees was held by the Supreme Court in the Judgment RCOMAA0021/15/CS rendered on 03/11/2017. Therefore, the requests of RRA should be awarded because they have merit.

THE VIEW OF THE COURT

[28] The Court finds that the 1,000,000Frw for the counsel fees requested by the counsel for RRA should not be awarded because the claim of Murebwayire has merit, thus she has no fault to be charged with damages basing on article 258 of Civil Book III.

[29] The court finds that the counsel fees of 1,000,000Frw requested by the counsel for Murebwayire should not be awarded in their entirety because it is excessive, in the courts discretion is awarded 500,000Frw.

III. THE DECISION OF THE COURT

[30] Overrules the objection of lack of jurisdiction and that of inadmissibility raised by Rwanda Revenue Authority.

[31] Holds that the claim lodged by Murebwayire Justine has merit.

[32] Holds that the deductions provided by the law should be taken from the 1,577,015Frw equivalent to 2/3 of the gross salary of May, June and July of 2015 only other costs awarded to Murebwayire by the High Court must be paid to her in whole without any deductions made as motivated above.

[33] Orders Rwanda Revenue Authority to pay Murebwayire Justine 500,000Frw for counsel fees and to reimburse 75,000 of the court fees deposit.

[34] Orders that the court fees deposit remains in the government treasury as court fees.