

DELTA PETROLEUM LTD v. NSENGIYUMVA ET AL

[Rwanda SUPREME COURT – RC0001/14/CS (Rugege, P.J., Mugenzi and Munyangeri, J.)
September 12, 2014]

Civil procedure – Objection of lack of jurisdiction – Execution of judgment – Dispute arising from the execution of the judgment – Competent Court to hear the action concerning disputes arising from the execution of judgment – The Court which rendered the final judgment should be perceived as the court which tried definitely the case in merits, therefore disputes arising from its execution shall be heard by that Court because it is in good position to interpret the trial in merits for the execution of its ruling – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, social and administrative procedure, articles 195 and 208.

Facts: In order to execute the judgment RS/REV/INJUST /CIV 0005/13/CS rendered by the Supreme Court quashing the judgments RC 0235/12/TGI/NYGE and RCA 0195/13/TGI/NYGE but upholding the judgment RC 0496/12/TB/NYGE rendered by the Primary Court of Nyarugenge on 17 October 2012 in which Gahongayire sued Milimo Gaspard, several court bailiffs notified DELTA PETROLEUM Ltd in written form, ordering it to hand over the petrol station, located at Nyabugogo on plot n° 5686 it occupied to Gahongayire and to pay her the rent of the house on that plot.

DELTA PETROLEUM Ltd did not execute those orders, therefore another Court Bailiff known as Nsengiyumva John closed the doors of the petrol station house let by DELTA PETROLEUM and seized its wares and equipments upon Gahongayire Winifrida request. Afterwards, Gahongayire Winifrida sent a notice to DELTA PETROLEUM informing it to take its wares and equipments which were seized during the execution of the judgment, and failure to do so before 16 May 2014, they would be auctioned and DELTA PETROLEUM would bear any incurred loss.

This incident induced DELTA PETROLEUM to file the case before the Supreme Court requesting it to settle the disputes arisen from the execution of judgment RS/REV/INJUST/CIV 0005/13/CS. At the beginning of the hearing, Niyomugabo, the counsel for Nsengiyumva John, one of the defendants, requested the examination of the objection of lack of jurisdiction of the Supreme Court, arguing that this claim should have been filed to the Primary Court of Nyarugenge because DELTA PETROLEUM filed its case requesting the settlement of disputes regarding the execution of the judgment RS/REV/INJ/CIV 0005/13/CS delivered by the Supreme Court, disregarding that the judgment to be executed is RC 0496/12/TB/NYG tried in merits by the Primary Court of Nyarugenge. The counsels for DELTA PETROLEUM, counsels for Ghongayire and counsel for Milimo Gaspard state that this final judgment was delivered by the Supreme Court, therefore it has jurisdiction to hear it because the Law does not provide that the court which rendered the final judgment should be the one which tried it in merits. It is this objection that was debated upon by the litigants and the court resolved to first deliberate on it.

Held: The Court which rendered the final judgment should be perceived as the court which addressed the subject matter of the case in merits and tried it definitely; therefore disputes arising

from its execution shall be brought to that Court because it is in good position to interpret the trial in merits for the execution of its ruling.

**The objection of lack of jurisdiction raised by one of the litigants has merit.
The Supreme Court lacks jurisdiction to hear the case regarding disputes arose from the
execution of this judgment.
The case is transferred to the Primary Court of Nyarugenge which shall try it.**

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, articles 195 and 208.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 20 March 2014, the Court Bailiff from the Ministry of Justice Muhire Constantin notified DELTA PETROLEUM Ltd to hand the petrol station located at Nyabugogo on plot n° 5686, to Gahongayire not later than 8 April 2014, for execution of the judgment RS/REV/INJUST /CIV 0005/13/CS delivered by the Supreme Court which quashed the judgments RC 0235/12/TGI/NYGE and RCA 0195/13/TGI/NYGE but upholding the judgment RC 0496/12/TB/NYGE of 17 October 2012.

[2] Through a letter dated 2 April 2014, DELTA PETROLEUM informed the Court Bailiff that what he ordered DELTA PETROLEUM to execute is not provided in the judgment, therefore requested him to withdraw that order without being necessary to file the case to the court.

[3] On 22 March 2014, Rusanganwa Eugène the Court Bailiff in the Ministry of Justice ordered DELTA PETROLEUM to regularly pay the rent of the house located at Nyabugogo on plot n° 5686 to Gahongayire Winifrida not later than 24 April 2014.

[4] On 24 April 2014, DELTA PETROLEUM informed the Court Bailiff Rusanganwa Eugène that in the course of the performance of the lease contract of the house, it was paid a rent corresponding to five years (5). This was done on 17 October 2013, therefore there is no longer a due rent.

[5] On 12 May 2014, the Court Bailiff named Nsengiyumva John closed down the petrol station house rented by DELTA PETROLEUM and confiscated its wares and equipments upon the request of Gahongayire Winifrida.

[6] The counsel for DELTA PETROLEUM Ltd states that this was enforced without being served with an order and did not inform it about the judgment he was executing. He adds that

DELTA PETROLEUM asked the court bailiff to present the judgment which was to be executed and a writ of an order to pay he drafted but he dinied.

[7] On 15 May 2014 Gahongayire Winifrida sent a notice letter to DELTA PETROLEUM informing it to take back its wares and equipments which were confiscated in the course of the execution of judgment not later 16 May 2014, default of which they will be auctioned and DELTA will bear any incurred loss.

[8] This induced DELTA PETROLEUM to file a case in the Supreme Court requesting it to hear the dispute arisen from the execution of the judgment RS/REV/INJUST/CIV 0005/13/CS . The hearing was conducted in public on 10 June 2014, DELTA PETROLEUM represented by the Counsel Gatera Gashabana and Counsel Nkurunziza François Xavier, Nsengiyummva John represented by Counsel Niyomugabo, Gahongayire was represented by Counsel Niyomugabo Christophe and Counsel Gahongerwa Goretti, while Milimo Gaspard was represented by Counsel Nzirabatinyi Fidèle.

[9] At the beginning of the hearing, Counsel Niyomugabo who represents Nsengiyumva John requested that the objection of lack of jurisdiction of the Supreme Court be examined, arguing that the claim in this case should have been filed to the Primary Court of Nyarugenge because it is the one which delivered a final judgment whose execution disputes arose. On the contrary, Counsels for DELTA PETROLEUM, Counsels for Gahongayire and Counsel for Milimo Gaspard state that the final judgment was rendered by the Supreme Court. It is this objection that was debated by litigants and the Court resolved to first deliberate on it.

II. LEGAL ISSUE AND ITS ANALYSIS

Deliberation on the competent court to hear the case relating to disputes arising from the execution of the judgment for which Gahongayire requested enforcement.

[10] Concerning the objection raised by Counsel Niyomugabo for Nsengiyumva, he states that DELTA filed the case in compliance with article 208 of the Law of 14 June 2012 relating to civil, commercial, social and administrative procedure requesting the settlement of disputes arisen from the execution of the judgment RS/REV/INJ/CIV 0005/13/CS delivered by the Supreme Court, disregarding that the judgment which was being executed is RC 0496/12/TB/NYG as DELTA has been notified, for instance in the writ order of the Court Bailiff handed to Counsel Nkurunziza and in other documents.

[11] He states that even the RS/REV/INJ/CIV 0005/13/CS stated above quashed prior judgments and upheld the ruling of the judgment RC 0496/12/TB/NYG. He adds that the Supreme Court held that the judgment RC 0496/12/TB/NYG became final but the Intermediate Court erred in law and tried it in merits. Therefore, he finds that according to all these facts, the judgment which is being executed is the one rendered by the Primary Court, which also has jurisdiction to hear disputes likely to arise from its execution.

[12] Furthermore, he states that there are many documents which include Court bailiff order handed to Nkurunziza, counsel for DELTA PETROLEUM, in which the judgment and its ruling

were specified (0496/12/TB/NYG) and the reminder of its notification made, indicate that the judgment in execution process is the one rendered by Nyarugenge Primary Court.

[13] He further argues that the subject matter in that case was the attachment of common assets of Gahongayire and Milimo while the case before the Supreme Court did not address that issue as it quashed only the judgment rendered by the Intermediate Court which was filed beyond prescribed time limit for lodging an appeal.

[14] The counsel for Nsengiyumva states that even the defendants admit it themselves because in the submissions of counsel Nkurunziza, he mentions somewhere that the judgment in execution process is the one rendered by Nyarugenge Primary Court, and the instrument made by those who consented to voluntary execution of the judgment (they concluded a transaction with Gahingayire) indicates that the judgment in execution is 0496/12/TB/NYG.

[15] Nzirabatinyi, Counsel for Milimo states that even if his client is on the side of the so-called defendants, he finds however that the objection raised by the counsel for Nsengiyumva is groundless, the writs released by court bailiffs Rusanganwa and Muhire of which Counsel Niyomugabo states that they indicate the judgment which is being executed should not be considered because the Minister of Justice who commissioned them for the execution of the judgment stopped them before they start since Gahingayire raised that she had no trust in them. He states in addition that the court bailiff Nsengiyumva did not rely on the previous acts of those bailiffs.

[16] He explains that, pursuant to article 208 stated above, finds that the Supreme Court is the one competent over this case since it rendered the final judgment as that provision does not provide that rendering it in last resort refers to trying it in its merits. He provides instances of judgments rendered by foreign courts of which application is made to be enforceable in Rwanda and the courts which ordered their enforcement (exequatur) remain competent to hear and try potential cases relating to their execution as provided for by this article although they did not try them in merits. He states in addition that the fact for the Supreme Court to have rendered that judgment due to injustice upon application by the organ of Ombdsman in compliance with article 79 and 81 of the Organic Law relating to the Supreme Court demonstrates that it was rendered by this court in last resort.

[17] Nkurunziza and Gatera Gashabana, counsels for DELTA PETROLEUM state that the fact for the Supreme Court to have accommodated the ruling of the Primary Court entails that it is the Supreme Court which rendered the final judgment. They finds therefore that even the court bailiff Nsengiyumva, relied on the Supreme Court judgment because it rendered the judgment in the last resort whereby it upheld the ruling of the Primary Court. They state that the provision of article 208 should be understood literally without adding explanations consisting of the fact that the judgment has been rendered in “merits”, which is not mentioned. They argue that those who raised that objection intend only the delay of the case.

[18] Gahongerwa, Counsel for Gahongayire states that article 79 of the Organic Law on the Supreme Court does not relate with the issue in this case , therefore finds that the court which delivered this judgment in the last resort is the one which decided on its legal issue and this is the

Primary Court. The Supreme Court only redressed the injustice caused by the fact that the Intermediate Court to have admitted and heard the case which had become final.

II. THE VIEW OF THE COURT

[19] The case file indicates that the Supreme Court in the judgment RS/REV/INJ/CIV 0005/13/CS, quashed the judgments RC 0235/12/TGI/NYGE and RCA 0195/13/TGI/NYGE and confirmed the rulings of judgment RC 0495/12/TB/NYGE rendered on 17 October 2012 on the ground that the Intermediate Court of Nyarugenge admitted and heard the case while the time limit for appeal elapsed.

[20] Article 208 of the Law n°21/2012 of 14 June 2012 relating to civil, commercial, social and administrative procedure provides that disputes regarding the execution of judgement, whether pending or completed, shall be brought before the court that rendered the final judgment or that made a foreign judgement enforceable in Rwanda.

[21] The court which rendered the final judgment mentioned in that provision of 208 should be perceived as the court which examined the case definitely in its merits, decided on its subject matter and made some orders which should be executed, the reason why even the legislator provided in this provision of the law that disputes regarding the execution of judgement, whether pending or completed, shall be brought before the court that rendered the final judgment, because it is in good position to interpret its ruling in merits for its enforcement as stipulated in article 195 of the Law n° 21/2012 of 14/06/2012 that the execution of judgments and acts are intended to provide their beneficiary with the privileges of his/her right, either in kind or the equivalent.

[22] It is therefore clear that the Supreme Court delivered the judgment RS/REV/INJ/CIV 0005/13/CS and resolved only the issue relating to the compliance with the rules of procedure without examining it in merits, should not be requested to settle disputes regarding its execution while they are based on the ruling of the case in merits. Instead, the Primary Court of Nyarugenge and Intermediate Court of Nyarugenge heard it in merits but was upheld the decision of the Primary Court after the invalidation of the judgment of the Intermediate Court of Nyarugenge, therefore the existing final judgment which should be executed is 0495/12/TB/NYGE rendered by the Primary Court of Nyarugenge.

[23] Based on the motivation mentioned above, the Court finds that the claim filed by DELTA PETROLEUM for the hearing of disputes arisen from the execution of the judgment between Milimo and Gahongayire, which is 0495/12/TB/NYGE, is not in its jurisdiction, rather, it is in the jurisdiction of the Primary Court of Nyarugenge which delivered the final judgment on merits.

III. DECISION OF THE COURT

[24] Sustains the objection of lack of jurisdiction of the Supreme Court raised by Niyomugabo, Counsel for Nsengiyumva John;

[25] Decides that the Supreme Court has no jurisdiction to hear the claim relating to disputes arisen from the execution of judgment of which Gahongayire seeks enforcement.

[26] Orders this case to be transferred to and heard by the Primary Court of Nyarugenge.