

## NGABONZIZA ET AL v. MIRAVUMBA

[Rwanda SUPREME COURT – RADA 0052/13/CS (Kayitesi R, P.J., Mukandamage and Rugabirwa, J.) January 10, 2014]

*Administrative procedure – Summary procedure claims – Stay of execution of the Judgment before the adjudication of the third party opposition claim instituted against it – The stay of execution does not prejudice the principal suit as long as the Judge did not mention anything about it – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 180 and 320.*

**Facts:** Ngabonziza and Mugabo Semahore sued the Rwanda Natural Resources Authority (RNRA) in the High Court, praying that the plot n° 11528 be registered in the names of Ngabonziza and the plot n° 11508 be registered in the names of Mugabo Semahore. The court ordered that those plots be registered on their names. Miravumba lodged a third party opposition against that judgment, but before the judgment on the merits of the third party opposition claim, he filed a summary procedure claim purportedly to stay the execution of the judgment RAD 0084/12/HC/KIG, on the ground that he also possesses the documents of those plots, and consequently the court ordered the stay of its execution.

Ngabonziza and Mugabo Semahore appealed against that order in the Supreme Court submitting that the Judge prejudiced the judgment on the merits, and the request of Miravumba in the summary procedure claim is the same as the one in the principal claim and that there is no urgency because Miravumba could wait for the hearing of the case. In the defence of Miravumba, he stated that the urgency is demonstrated by the fact that Ngabonziza and Mugabo were given enforcement formula on the judgment of which the third party opposition was lodged against, and the court ordered RNRA to issue to them the authentic deeds of the plots, to the extent that if it happens that those plots have been registered on their names, it would cause an irreversible loss to Miravumba.

**Held:** 1. The decision of the Judge on the summary procedure claim, ordering to stay the execution of the judgment on the immovable property before the adjudication of the third party opposition claim, does not prejudice the judgment on the principal claim as long as the Judge did not make any decision on the merit of the case.

**The appeal is without merit.  
Court fees to the appellants.**

**Statutes and statutory instruments referred to:**

Lawn° 21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, articles 180 and 320.

**No case referred to.**

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

[1] Ngabonziza Bosco and Mugabo Semahore Jules sued Rwanda Natural Resources Authority (RNRA) in the High Court, praying that the plot n° 11528 be registered in the names of Ngabonziza and be awarded its documents, and plot n° 11508 be registered in the names of Mugabo Semahore Jules and also be awarded its documents, that court ordered in the Judgment RAD 0084/12/HC/KIG that those plots be registered on their names.

[2] Miravumba Olivier lodged a third party opposition against that judgment in the High Court, and the case was recorded on RAD 0092/13/HC/KIG, but before trial on its merit, he filed a summary procedure case, n° RADA 0094/13/ HC/KG purportedly to stay the execution of the judgment RAD 0084/12/HC/KIG, the court found the claim with merit and ordered the stay of its execution because Miravumba also possesses the documents of that plot which were awarded to him by the competent organs and that it accommodates his houses, therefore his dispossession would result in loss.

[3] Ngabonziza Bosco and Mugabo Semahore Jules appealed against that Court Order in the High Court adducing that the Judge prejudiced the principal claim on its merit, that he did not demonstrate the irrevocable loss Miravumba would incur if the judgment has been executed, that there is no urgency and that he has no interest in the judgment he applied the third party opposition against and also in the summary procedure claim.

[4] The hearing of the case was held in public on 31 December 2013, Ngabonziza Bosco and Mugabo Semahore Jules represented by Karamira Jacques, the Counsel, the Rwanda Natural Resources Authority (RNRA) represented by Rubango Epimaque, the State Attorney and for Miravumba Olivier, assisted by the Counsel Buzayire Angèle.

### II. ANALYSIS OF THE LEGAL ISSUE

**Whether there must be a stay of the execution of judgment RADA 0084/12/HC/KIG prior to the trial of the case RADA 0092/13/HC/KIG of a third party opposition filed against it.**

[5] Karamira Jacques, the Counsel for Ngabonziza Bosco and Mugabo Semahore Jules argues that the Court decided that the execution of the judgment RAD 0084/12/HC/KIG be stayed because if it executed, it will cause irretrievable loss to Miravumba, yet it did not demonstrate that loss, especially that the subject matter is the execution of the decisions of the courts, while it is Muravumba who holds the documents of the unconstructed land and which does not belong to him.

[6] The Counsel Karamira Jacques also states that in making that order, the Judge prejudiced the case on its merit in contravention of the provision of article 320 of CCLAP because in the Judgment RAD 0084/12/HC/KIG, the Rwanda Natural Resources Authority(RNRA) was ordered to issue to his clients the land title deeds, and the request of

Muravumba in the principal claim is exactly the same as in the summary procedure claim, that's to say the obstruction of the issuance of those documents which were to be issued to Ngabonziza and Mugabo.

[7] Karamira Jacques, the Counsel states again that there is no urgency because there is no reason why Miravumba cannot wait for the trial of his case because his request consisting of opposing the issuing of the title deeds would be granted to him on the merits of the case. He adds on that Miravumba has no interest in the case against he filed a third party opposition and even in the summary procedure claim, because the plot which he claims to be his, of which he alleges to have bought it from Nyiraneza Félicité, is plot n° 3554, while the one for Ngabonziza is plot n°11528 which was awarded to him by Kigali City and Mugabo owns the plot n° 11508 awarded also by Kigali City , thus he has no interest in opposing against two plots at once, especially that Mugabo has no connection with the plot n° 3554 which Miravumba pretends to own.

[8] Buzayire Angèle, the Counsel for Miravumba Olivier states that the court highlighted in article 11 of the appealed judgment, whereby he based on the defence of Miravumba and clearly demonstrated that the urgency is demonstrated by the fact that the judgment RAD 0084/12/HC/KG of Ngabonziza and Mugabo was affixed with the enforcement formula and ordered the Rwanda Natural Resources Authority(RNRA) to issue to them the land title deeds, to the extent that if those plots are registered in their names, it will cause Miravumba a irreversible loss.

[9] She also states that he demonstrated that loss in the letter of 02/02/2012 which the Executive Secretary of Kimironko sector wrote to Miravumba and that of the Mayor of Gasabo District demonstrating that there are constructions which Miravumba erected on those plots, especially that he also demonstrates that he has the documents issued to him by the competent organs.

[10] Concerning the fact that the Judge prejudiced the merit of the case, Buzayire, the counsel states that it is groundless because the Judge ordered to stay the execution of the judgment RAD 0084/12/HC/KIG until the judgment on the merit of the case RAD 0092/13/HC/KIG and the preliminary hearing has been scheduled to 21 November 2013. She is also of the view that in the principal claim Muravumba filed a third party opposition against the judgment RAD 0084/12/HC/KIG, which is different from the subject matter in the summary procedure claiming for the stay of its execution.

[11] Regarding the interest Muravumba has in both cases, Counsel Buzayire adduces that the third party opposition was lodged against the judgment of Ngabonziza, Mugabo and Rwanda Natural Resource Authority, therefore is of the view that the issue of the plots will be examined during the hearing of the case on merit.

[12] RUBANGO Epimaque, the State Attorney states that there is no urgency for the execution of the judgment RAD 0084/12/HC because it is at the trial of the related third party opposition case that the Rwanda Natural Resource Authority (RNRA) will know whom the land title deeds should be recorded to.

## **THE VIEW OF COURT**

[13] Article 180 paragraph 4 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that “an opposition by a third party shall not automatically suspend execution of the challenged judgment, unless the execution is suspended by the court upon request of one of the parties, and article 320 paragraph 1 states that the summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit”.

[14] These articles explain that in order for the execution of the judgment which has been attacked through the third party opposition to be stayed, the litigant should submit his request to the court seized with the principal claim, implying that he/she must also present the grounds thereto for the judge to analyse them and makes a provisional order, but without prejudicing the merits of the principal suit.

[15] The Court finds that in the appealed case on summary procedure, the Judge demonstrated that is urgent to stay the execution of the Judgment RAD 0084/12/HC/KIG because it has already been sealed with the enforcement formula, and ordered for the stay of its execution until the case RAD 0092/HC/13/KIG in which Muravumba filed for a third party opposition be heard on its merits, because he also avers that he possesses the documents of the plots of land of which the land title deeds are going to be issued for by Rwanda Natural Resources Authority (RNRA).

[16] Therefore, the Court finds the order does not prejudice the merits of the principal suit, because the Judge did not rule about the person who should be issued with the land title deeds among Ngabonziza, Mugabo and Miravumba.

[17] Regarding the loss Miravumba would incur due to the execution of the Judgment RAD 0084/12/HC/KIG, the court finds that it is not the primary ground which should be relied on to order for the stay of execution, but as it was held by the previous court, it would be better if the execution is stayed in order to really determine the recipient of the title deed of the said plots; and this will be debated in the course of the hearing of the case in merit.

[18] Accordingly, basing on the statements above, the court finds that the appeal filed by Ngabonziza and Mugabo is without merit.

### **III. THE DECISION OF THE COURT**

[19] Decides that the appeal of Ngabonziza Bosco and Mugabo Semahore Jules against the judgment RADA 0094/13/HC/KIG, requesting the stay of execution of the judgment RADA 0084/12/HC/KIG is without merit.

[20] Orders Ngabonziza Bosco and Mugabo Semahore Jules to jointly pay the court fees of 14,200 Rwf, and failure to pay in a period of eight days, that amount of money is to be deducted from their assets through government coercion.