

NKURUNZIZA v. MUDOGO ETAL.

[Rwanda SUPREME COURT – RADA 0026/12/CS (Mukanyundo, P.J., Rugabirwa and Hitiyaremye, J.) October 10, 2014]

Administrative procedure – Cross appeal – The effect for filing a cross appeal when the respondent intends to get from it what he was denied in the first instance – The respondent is not allowed to lodge a cross appeal against the other respondent who won the case against him/her, if the intention of the cross appeal is to get what he was denied at the first instance. In this case, his/her requests should be requested through appeal – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedural, article 167 – Law n° 18/2004 of 29/06/2004 relating to the civil, commercial, labour and administrative procedural, article 162(2).

Fact: The State of Rwanda leased the piece of land to Nkurunziza and this led Mudogo to sue them at the High Court stating that the State of Rwanda should not have leased his piece of land because he bought it from Kankundiye, therefore the emphyteutic lease should be quashed and be paid damages. The Court held that the piece of land which is in litigation belongs to Mudogo because it was granted to him before the State of Rwanda leased it to Nkurunziza. Therefore, the emphyteutic lease is quashed and Mudogo must be given back that piece of land, and both respondents must jointly pay damages to him.

Nkurunziza appealed against that judgment at the Supreme Court stating that the High Court should have held that the piece of land belongs to him because he holds its documents including emphyteutic lease which cannot be challenged, even though the certificate was drawn on the basis of a cancellable or invalid contract.

The State of Rwanda filed a cross appeal whereby it raised the objection of inadmissibility of the Mudogo's claim by the High Court because after lodging the administrative appeal, he delayed to sue, therefore this Court's decision of 14 March 2012 must be quashed. The Counsel for Mudogo states that the cross-appeal must not be admitted.

Held: The respondent is not allowed to lodge a cross appeal against the other respondent who won the case against him/her, if the intention of the cross appeal is to get what he was denied at the first instance. In this case, his/her requests should be requested through appeal.

**The objection raised by the State of Rwanda is rejected because it was filed in contradiction with the procedure;
The Court fees are suspended.**

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedural, article 167.

Law n° 18/2004 of 29/06/2004 relating to the civil, commercial, labour and administrative procedural, article 162(2).

Cases referred to:

SNCTPC-China Road v. BEST LTD, RCOMA 0196/12/CS, rendered by the Supreme Court, February 21, 2014.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Mudogo Selemani sued the State of Rwanda (Ministry which has land in its attributions) and Nkurunziza François Xavier at the High Court stating that the State of Rwanda should not have leased his piece of land which is located at Rusororo Sector, Gasabo District to Nkurunziza because he bought it from Zafarani Kankudiye on 13 November 1980, therefore the emphyteutic lease n°1493/GAS/RUS of 29 August 2011 which the State of Rwanda gave him, should be quashed in order for him to repossess it and also be paid various damages.

[2] The Court held that the piece of land in litigation belongs to Mudogo Selemani because it was given to him before the State of Rwanda (Ministry which has the land in its attributions) leased it to Nkurunziza François Xavier. Therefore, the emphyteutic lease between that Ministry and Nkurunziza François Xavier is quashed. It ordered that Mudogo Selemani be given back that piece of land, and ordered that the State of Rwanda and Nkurunziza François Xavier jointly pay 3,000,000Frw of damages to Mudogo Selemani.

[3] Nkurunziza François Xavier appealed against that judgment to the Supreme Court stating that the High Court should have held that the piece of land belongs to him because he possesses its documents including emphyteutic lease which cannot be challenged, even though the certificate was drawn on the basis of a cancellable or invalid contract.

[4] The Counsel for the State of Rwanda (Ministry which has the land in its attribution) filed cross appeal in which it raised the objection relating to the fact that the High Court should not have admitted Mudogo Selemani's claim because after lodging the administrative appeal, he delayed to refer the case to this court; therefore, the decision of 14 March 2012 made by this Court which held that his action is admitted must be quashed. The Counsel for Mudogo states that this cross appeal must not be admitted.

[5] On 09 September 2014, the hearing of the case was held in public on that objection, Nkurunziza François Xavier represented by the Counsel Ruzindana Ignace, Mudogo Selemani represented by the Counsel Munyamasoko Jovit whereas the State of Rwanda (Ministry which has the land in its attribution) was represented by the State attorney Malala Aimable.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the cross appeal filed by the State of Rwanda should be admitted.

[6] The Counsel for the State of Rwanda, Malala Aimable states that he raises the objection in its cross appeal in order for the Supreme Court to rule that the High Court should not have admitted the claim of Mudogo Selemani because after his administrative appeal, he delayed to sue since the period of six(6) months which was provided for by article 339 of the law n° 18/2004 of 29/06/2004 relating to the civil, commercial, labour and administrative procedural which was into force at the time Mudogo sued had expired; therefore the High Court judgment of 14 March 2012 which held that his claim was admitted, must be quashed.

[7] Munyamasoko Jovit, the Counsel for Mudogo Selemani argues that the fact that the State of Rwanda did not appeal against that decision of the High Court of 14 March 2012 mentioned above on the objection, it cannot appeal against it through its cross appeal because this cross appeal is allowed to the party for the request of damages only.

[8] Ruzindana Ignace, the Counsel for Nkurunziza François Xavier states that according to the provision of article 167(2) of the Law n° 18/2004 of 29/06/2004 mentioned above, the States of Rwanda cannot use its cross appeal for request of the damages only.

THE VIEW OF THE COURT

[9] Regarding the Cross appeal, article of 167 of the Law n° 21/2012 of 14/06/20122004 relating to the civil, commercial, labour and administrative procedural, provides that “the respondent may also file a cross appeal before or during hearings, even if he/she did not protest anything when he/she was served with a copy of the final judgment. A cross appeal may be filed by the respondent against the appellant or against other respondents. It shall not be solely based on obtaining compensation”.

[10] As it was ruled in the judgment RCOMA 0196/12/CS rendered by this Court on 21 February 2014¹, Law scholar named “Talendier” explains that the respondent is not allowed to lodge an appeal against the fellow respondent who won the case against him/her when he intends to get from his appeal what he was denied at trial. In this case, it is a main appeal that should be filed².

[11] Regarding this judgment, it is indicated in the file that on 14 March 2012, the High Court admitted the claim of Mudogo Selemani because it was filed in accordance with the procedure. On 8 March 2013, that Court rendered the judgment RAD 0176/10/HC/KIG in the merit and ruled that the piece of land in litigation belongs to Mudogo Selemani. It ordered the State of Rwanda and Nkurunziza François Xavier to jointly pay 3,000,000Frw of damages to him.

[12] The case file also demonstrates that the State of Rwanda did not appeal against that decision together with the judgment on merit RAD 0176/10/HC/KIG within the appeal time limit of 30 days provided for by article 162(2) of law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedural which was into force at that time, which stipulated that the appeal against an interlocutory judgment shall be made only jointly with the final judgment.

[13] In its submission of 9 September 2014 and before this Court, the State of Rwanda, which is sued in appeal level, raised the objection in its cross appeal requesting that the decision of the High Court of 14 March 2012 on the objection which held that the claim of Mudogo Selemani was admitted, should be quashed because after his administrative appeal, he filed beyond the provided time limit.

[14] Notwithstanding the provision of article 167 of Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure mentioned above, the

¹ Judgment RCOMA 0196/12/CS Société Nationale Chinoise des Travaux, Ponts et Chaussées SNCTPC-China Road v. BEST LTD rendered by the Supreme Court on 21 February 2014.

² Talendier, Traité de l'appel en matière civile (E-BOOK-free), Section Dixième, l'appel incident est-il recevable d'intimé à intimé.

Court finds that this article provides only that the respondent in appeal who did not appeal in the period of 30 days could also file a cross appeal before the hearing or in the course of it against the appellant or against other respondents, whereas the law scholar differentiated the instance the respondent is entitled to lodge a cross appeal against another respondent and the instance he is not entitled to do so as it is motivated above.

[15] Therefore the Court finds that the fact that the State of Rwanda lost the case on the first instance concerning the objection raised by Nkurunziza François Xavier for inadmissibility of the claim of Mudogo Selemani, which the Court rejected, but the State of Rwanda did not appeal against that decision in the main appeal, it cannot at turn request its prayers which were rejected in first instance to be considered through its cross appeal.

III. DECISION OF THE COURT

[16] Decides that the objection raised by the State of Rwanda for inadmissibility of the claim of Mudogo Selemani, is rejected because it was filed in contradiction with the procedure;

[17] Decides that the High Court decision of 14 March 2012 admitting the claim of Mudogo Selemani is sustained;

[18] Schedules the hearing of this case in merit on 13 January 2015;

[19] Suspends the court fees.