

SETRAPCO v. BARBARA A. STIEFEL FOUNDATION

[Rwanda SUPREME COURT – RCOMA 0153/12/CS (Kayitesi R., P.J., Rugabirwa and Mukandamage, J.) 04 April 2014]

Commercial procedure – Lack of the status by the defendant – The objection of lack of status by the defendant is of public order, it must be admitted and examined at any stage of proceedings– Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 142.

Commercial procedure – Suing of private corporations, non-governmental companies and associations with legal personality – The claim is inadmissible in case it is initiated against private corporations, non-governmental companies and associations with legal personality under representation of individuals without the legal status – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 31, 5°.

Facts: SETRAPCO Ltd entered into a construction contract with BARBARA A. STIEFEL FOUNDATION relating to students' hostels which had to be executed within 180 days at a price of 129,670,559 Rwf. Due to misunderstanding, SETRAPCO Ltd filed a case to the Commercial High Court requesting to be paid the balance of 29,908,359 Rwf plus various damages because it accomplished its duties. During the hearing, BARBARA A. STIEFEL FOUNDATION raised an objection of inadmissibility of the claim of SETRAPCO stating that the contract on which SETRAPCO based its request of damages has been quashed by the judgment RCOM 0210/11/HCC rendered on 29 November 2011. The Court decided that the claim of SETRAPCO Ltd is inadmissible because it cannot request damages basing on the contract quashed by the judgment mentioned above.

SETRAPCO Ltd appealed to the Supreme Court but at the beginning of the hearing, BARBARA A. STIEFEL FOUNDATION raised an objection of inadmissibility of the claim of SETRAPCO ltd because it was sued when it was represented by Rwamuranga Steven and Penny Ensley while they have legal status to represent it before the Courts, but rather, the legal status is vested with Barbara A. Stiefel.

SETRAPCO Ltd states that the objection has no merit because BARBARA A. STIEFEL FOUNDATION did not raise it in its defence submission and in the course of preliminary hearing.

Held: 1. The ground for inadmissibility of the claim may be raised by a party or the Court on its own motion in case it is of public order.

2. The claim is inadmissible in case it is initiated against private corporations, non-governmental companies and associations with legal personality under representation of individuals without the legal status. The claim of SETRAPCO Ltd is not admissible since it sued BARBARA A. STIEFEL FOUNDATION under representation of Penny Ensley and Stephen Rwamurangwa while they have no legal status to represent it before the courts.

Objection of lack of status of the defendant sustained.

**Appeal rejected.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 31, 5^o and 142.

No case referred to.

Authors cited:

S. Guinchard, Droit et Pratique de la Procédure Civile, 5^e Edition, Dalloz, Paris, 2006-2007, p. 22.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] On 19 August 2010, BARBARA A. STIEFEL FOUNDATION represented by Barbara A. Stiefel entered into construction contract of students' hostels of Kayonza Modern Secondary School with SETRAPCO Ltd. The school is located in Kayonza District, Eastern Province, and parties agreed the completion period to be 180 days at the price of 129,670,559 Rwf.

[2] Later on, SETRAPCO Ltd filed a case against Barbara A. Stiefel Foundation to the Commercial High Court and the claim was registered under RCOM 0291/11/HCC. The appellant was requesting the balance of 29,908,359 Rwf in addition to various damages because it executed the construction of the building above mentioned.

[3] During the hearing before the Commercial High Court, the counsel for BARBARA A. STIEFEL FOUNDATION raised an objection of inadmissibility of the claim of SETRAPCO Ltd because the contract of 19 August 2010 on which it bases the damages has been quashed by the judgment RCOM 0210/11/HCC rendered by the same Court on 29 November 2011. The Court decided that the claim of SETRAPCO Ltd is inadmissible because it cannot request damages basing on the contract quashed by the judgment RCOM 0210/11/HCC it appealed to the Supreme Court.

[4] SETRAPCO Ltd appealed to the Supreme Court and the claim was registered under RCOMA 0153/12/CS which was jointed to the case RCOMA 0010/12/CS as they were related.

[5] On 31 January 2014, the Supreme Court rendered the judgment RCOMA 0010/12/CS - RCOMA 0153/12/CS in which it quashed the judgement RCOM 0210/11/HCC rendered by the Commercial High Court on 29 November 2011 because Barbara A. Stiefel has personally filed a case for annulment of the contract mentioned above while she would have done so on behalf of BARBARA A. STIEFEL FOUNDATION. Moreover, the court postponed the hearing of the case RCOMA 0153/12/CS between BARBARA A. STIEFEL FOUNDATION and SETRAPCO LTD on 18 March 2014.

[6] On that very day, the case was heard in public, SETRAPCO Ltd represented by Ritararenga Didas, its Managing Director, assisted by the counsel Ngirumpetse JMV while BARBARA A. STIEFEL FOUNDATION was represented by the counsel Niyondora Nsengiyumva.

[7] At the beginning of the hearing, the representative of BARBARA A. STIEFEL FOUNDATION raised an objection relating to inadmissibility of appeal of SETRAPCO Ltd because it sued BARBARA A. STIEFEL FOUNDATION under representation by Rwamurangwa Steven and Penny Ensley while they do not have the legal status to represent it before the courts, but rather, the status is vested with Barbara A. Stiefel. He added that SETRAPCO Ltd immediately sued it before the Commercial High Court while article 13 of the contract they concluded provides that they shall seize courts only if the mediation process fails.

[8] Concerning the hearing on merit, SETRAPCO Ltd requests BARBARA A. STIEFEL FOUNDATION to pay the balance of 29,908,359 Rwf in addition to various damages and interests because it executed the construction of the school above mentioned. SETRAPCO Ltd keeps stating that it may also be paid by Kayonza District since it is the beneficiary. BARBARA A. STIEFEL FOUNDATION states that it cannot pay those damages to SETRAPCO Ltd because it did not comply with the contract they concluded; rather it is SETRAPCO Ltd which should pay damages requested in its cross appeal submissions.

II. ANALYSIS OF LEGAL ISSUES

The objection of inadmissibility of appeal of SETRAPCO Ltd resulting from filing a case against a wrong party (lack of status of defendants).

[9] The counsel for Barbara A. Stiefel Foundation states that the appeal of SETRAPCO Ltd could be inadmissible because it filed a case against BARBARA A. STIEFEL FOUNDATION under representation by Rwamurangwa Steven and Penny Ensley as proved by written submissions in first instance while they do not have the legal status to represent it before the Courts. He added that SETRAPCO Ltd should have filed a case against BARBARA A. STIEFEL FOUNDATION represented by Barbara A. Stiefel since she is the one vested with the legal status to represent it as decided by the Supreme Court in the judgment RCOMA 0010/12/CS - RCOMA 0153/12/CS rendered on 31 January 2014. Therefore, he added that its appeal does not meet the requirements set out by article 2 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, for its admissibility.

[10] He further states that the fact that SETRAPCO Ltd did not sue BARBARA A. STIEFEL FOUNDATION under legal representatives as provided for by the law, implies it was summoned in violation of the provisions of article 31 5° of the law n° 21/2012 of 14/06/2012 referred to above which provides that private corporations, non-governmental companies and associations with legal personality are summoned in the name of their legal representative.

[11] He argues that BARBARA A. STIEFEL FOUNDATION has raised the objection before the Commercial High Court, but the latter did not examine it as it did not admit the claim of SETRAPCO Ltd since the court found that it should have not filed a claim while the contract

was annulled by the judgment RCOM 0210/11/HCC. Therefore, he requests the court to analyse the objection and sustain it.

[12] The counsel for SETRAPCO Ltd states that the objection has no merit because BARBARA A. STIEFEL FOUNDATION did not mention it in its defence submissions of 15 March 2013 and raise it in the preliminary hearing of 28 March 2013.

[13] Furthermore, he states that SETRAPCO Ltd legally sued BARBARA A. STIEFEL FOUNDATION because Rwamurangwa Steven and Penny Ensley signed the construction contract of 19 August 2010, and that Barbara A. Stiefel vested them with the power of attorney to represent BARBARA A. STIEFEL FOUNDATION considering her letter of 19 August 2010.

THE VIEW OF THE COURT

Concerning the admissibility of the objection

[14] Article 142 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that the request for inadmissibility of a claim may be made by a party or court at its own motion. Request for inadmissibility of a claim shall be raised by the court on its own initiative if its reasons are of the nature of public law and order such as exceeding the time limit within which to appeal or lack of status, capacity or interest to sue.

[15] Even if this objection of lack of legal status of the defendant was not examined at the first instance, the Court finds that it is of public order which must be examined at any stage of proceedings. Therefore, the objection raised must be admitted and examined.

Concerning the merit of the objection

[16] Article 31, 5° of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that legal representatives are summoned in the name of the private corporations, non-governmental companies and associations with legal personality they represent.

[17] The Law Scholars including Serge Guinchard state that for the claim to be admitted, both the plaintiff and the defendant must have status; otherwise the claim cannot be admitted¹.

[18] The plaintiff's submissions of 28 November 2011 before the Commercial High Court indicates that SETRAPCO Ltd sued BARBARA A. STIEFEL FOUNDATION in the name of its legal representatives who are Penny Ensley and Stephen Rwamurangwa, requesting to be paid the balance of 29,908,359 Rwf which it did not pay after the completion of the construction mentioned above as well as various damages.

¹ “La qualité est une condition d’existence de l’action, exigée tant en demandant qu’en défense. Le défaut de qualité donne lieu à une fin de non-recevoir”, par SERGE GUINCHARD, *Droit et Pratique de la Procédure Civile*, 5^{ème} Edition, Dalloz, Paris, 2006-2007, p. 22.

[19] The Court finds that the evidence in the case file including the construction contract of 19 August 2010 concluded between BARBARA A. STIEFEL FOUNDATION and SETRAPCO Ltd, the letter of 16 August 2011 that Barbara A. Stiefel wrote to SETRAPCO Ltd requesting it to receive the payment of 4,385,495Rwf equivalent to the works carried out as provided for in the contract, the letter of 26 July 2011 that Barbara A. Stiefel wrote to Ritararenga Didas; the legal representative of SETRAPCO Ltd notifying him that not all works as agreed were completed but a part of them which they were seeking to clear the payment. Finally, the letter of 23 August 2011 of Barbara A. Stiefel wrote to SETRAPCO Ltd notifying it that its refusal to accept the payment of 4,385,495 Rwf would then lead to the meeting aiming at amicable settlement, failure of which SETRAPCO Ltd would refer the case to the courts as provided for by the contract they concluded; therefore, it implies that Barbara A. Stiefel is the legal representative of BARBARA A. STIEFEL FOUNDATION in Rwanda because she regularly signed in that capacity.

[20] The Court finds with no basis the statement made by made SETRAPCO that Penny Ensley and Stephen Rwamurangwa had the power of attorney conferred by Barbara A. Stiefel of representing BARBARA A. STIEFEL FOUNDATION before courts, because the document of 19 August 2010 indicates that Barbara A. Stiefel has vested them with the power to approve the works done and related invoices and before the payment.

[21] Basing on laws and explanations provided above, the Court finds that the appeal of SETRAPCO is inadmissible because it sued BARBARA A. STIEFEL FOUNDATION represented by Penny Ensley and Stephen Rwamurangwa while they do not have the legal status to represent it before the courts.

III. THE DECISION OF THE COURT

[22] Admits the objection of lack of status of the defendant raised by BARBARA A. STIEFEL FOUNDATION;

[23] Decides that it has merit;

[24] Decides that the appeal filed by SETRAPCO Ltd against the judgment RCOM 0291/11/HCC is inadmissible;

[25] Orders SETRAPCO Ltd to pay 35,250 Rwf of court fees within eight day, otherwise it shall be deducted from its property by the government coercion.