RWANDA DEVELOPMENT BOARD (RDB) v. SUCCESSION OF MUBUMBYI

[Rwanda SUPREME COURT – RADA 0050/12/CS (Mutashya, P.J., Rugabirwa and Gakwaya, J.) November 28, 2014]

Administrative procedure – Objection – Admissibility of intervener application – For the person to intervene in the case for the purposes of being awarded some rights, he/she must have the proper right separate from the principal claim in the sense that right would allow him/her to seize the court separately, the status and interest that bestow him/her with the right to intervene in that case and his/her claim has to be connected with the principal claim – Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure, articles 113, 175 and 119.

Facts: The heirs of Mubumbyi sued Rwanda Development Board (RDB) before the High Court claiming that it pays them 1385tons of cement or its monetary value at the time of delivering the judgment, moral damages and procedural fees because their father deposited 36,000,000Frwon the account of CIMERWA on 07/07/1994. That Court ordered RDB to pay that cement or its monetary value of 235,450,000Frw, damages and procedural fee.

RDB appealed before the Supreme Court arguing that the heirs of Mubumbyi should not be give the cement and the damages they claim because they do not produce the sales contract between CIMERWA and Mubumbyi, and in case the Court views it otherwise it should award them 36.000.000Frw which Mubumbyi deposited on the CIMERWA account.

In the Supreme Court, Kantengwa intervened requesting that RDB gives her 30% of the proceeds of the debt accruing from the cement that they would gain in this cases he requested so basing on the minutes of the meeting of Mubumbyi's family which indicates that the family accepted to pay her that amount of money due to the fact that they took from her the vehicle that she was bequeathed by her husband and twenty thousand United States dollars (USD 20,000) she was bequeathed in the will made by Mubumbyi Manasseh in 1996 which she was not given by the heirs of Mubumbyi.

At the beginning of the hearing, the heirs of Mubumbyi raised an objection of inadmissibility of the application for the voluntary intervention lodged by Kantengwa asserting that she has no status and interest that grants her the right to intervene for she was not legally married with Mubumbyi and her application is not connected with the principal claim and the Supreme Court has no jurisdiction over that application because the will made by Mubumbyi is invalid as it infringes on the rights of heirs and the minutes of the family meeting also should not be considered as they were not signed by all family members.

In her defence, Kantengwa Epiphanie asserts that her application should be admitted pursuant to Law N°59/2008 of 10/09/2008on prevention and punishment of gender - based violence and also on the judgment RS/Inconst/Pen 0003/10/CS, she has the status to intervene because she lived with Mubumbyi Manasseh as a wife and husband for a long time acquiring property although they did not have any child. Therefore, she explained that she intervened to protect her rights of 30% of the money which will be got from the payment of the debt as agreed in the family meeting to be paid to her and they cooperate to recover the debts and the 20.000US which wasbequeathed by Mubumbyi which the heirs refused to give it to her.

Held: 1. The person seeking to intervene in the case must have the status to initiate a principle claim against the other party in the intervention claim. Therefore for Kantegwa not being able to initiate a claim against RDB separately claiming for the 30% of the money got from the debt of the cement and 20.000USD indicate that she has no status to intervene in this case.

2. For the decision taken in this case cannot prejudice the interests of Kantengwa and she cannot lodge a third opposition against it and also her claim is not connected with the principal claim but it is fused with it, demonstrates that she has no status to intervene ant the two claims are not connected. Hence her claim is inadmissible because it does not meet the criteria.

The objection aiming at the inadmissibility of the voluntary intervention of has merit; The hearing in substance will resume.

Statutes and statutory instruments referred to:
Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 113, 175 and 119.

Authors cited:
Albert FETTWEIS, "Manuel de Procédure Civile", 2 ème Edition, Bruxelles, 1987, p.411.
Serge GUINCHARD, Droit et Pratique de la Procédure Civile, 5 ème Edition, Dalloz, Paris, 2006-2007, p.554.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The heirs of Mubumbyi Manasseh mentioned above initiated a claim against Rwanda Development Board (RDB) before the High Court, Kigali claiming that the latter pays them 1385 tons of cement or its monetary value plus the aforementioned damages since, their father Mubumbyi Manasseh paid 36,000,000Frw for it which he deposited on the account of CIMERWA in Bank of Kigali on 07/0/1994, yet he died on 25/05/1998 before their delivery.

[2] The High Court rendered the judgment RAD 0146/11/HC/KIG on 12/09/2012, and ordered RDB to pay the family of Mubumbyi Manasseh which is composed of Bimenyimana Xavier, Twizerimana Ananias, Icyimanimpaye Esther, Mukandayisenga Solange, Uwamariya Christine, Nyirahabimana Thamari, Niyibizi Jean, Ntakirutimana Samuel, and Niyitegeka Elson represented by Mukankusi Monique 1385 tons of cement or its current monetary value equivalent to 235, 450,000Frw at the delivery of the judgment and pay them the proceedings fee equal to 1,000,000Frw.

[3] RDB appealed against this judgment before the Supreme Court asserting that it cannot give the heirs of Mubumbyi Manasseh 1385 tons of cement since they have no sale contract indicating that CIMERWA accepted the offer of Mubumbyi Manassseh, but in case the Court views it otherwise it should award them 36,000,000Frw that Mubumbyi deposited on the account of CIMERWA excluding interest and damages claimed in this case.

[4] Kantengwa Epiphanie voluntarily intervened in this case claiming that this Institution should pay her 30% of the debt of cement that they will be awarded in this case, she claim this basing on the minutes of the meeting of the Mubumbyi's family which took place on 24/02/2002 indicating that the family accepted to pay her that amount since they have dispossessed her of her car of Benz brand with number plate 2628 that she was bequeathed by her husband and it should pay her 20,000 USD that she was not paid by heirs of the deceased and she requests this basing on the will made by Mubumbyi Manasseh on 25/06/1996.

[5] This case was heard in public on 28/10/2014, in the absence of RDB that defaulted yet it was summoned in accordance with the law and Counsels Niyondora Nsengiyumva and Kuradusenge Jacques were representing the heirs of Mubumbyi Manasseh stated above while Shema Adamu, Nsanzamahoro Abdounour and Uwitonze Jehady were represented by Counsel Ruberwa Silas and Kantengwa Epiphanie represented by Counsel Ndahimana Jean Bosco.

[6] At the beginning of the hearing, counsels for the heirs of Mubumbyi Manasseh raised an objection of inadmissibility of the voluntary intervention of Kantengwa Epiphanie on the ground that she does not possess the status and interest to intervene in this case due to the fact that she was not legally married with Mubumbyi Manasseh and her claim is not related to the principal claim instituted by the heirs of Mubumbyi Manasseh.

II. ANALYSIS OF THE LEGAL ISSUE.

➢ **Whether the voluntary intervention of Kantengwa Epiphanie meets the legal requirements for its admissibility.**

[7] Counsel Niyondora Nsengiyumva and Counsel Kuradusenge Jacques representing Mubumbyi Manasseh's heirs asserts that the intervention of Kantengwa Epiphanie should not be admitted basing on article 2 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure[1] since she does not have status to intervene in this case because she was not legally married with Mubumbyi Manasseh and they did not give birth to any child as Kantengwa Epiphanie concedes herself in her court submission; and that it is instead the heirs of Mubumbyi Manasseh who have the status to sue RDB for the debt of cement it owes them.

[8] Counsels for heirs of Mubumbyi Manasseh assert that another ground for the inadmissibility of of Kantengwa Epiphanie intervention is that she does not have the legitimate interest[2] to intervene in this case since her interest is inexistent as the recovery of the debt the aforesaid institution owes them is yet to mature as they are yet to know if they will win the case, instead her interest will exist from the time of recovery of the debt they will have been awarded by the court ruling against it; therefore Kantengwa Epiphanie will bring the claim once those who accepted to give her 30% of the subject matter in this case will have refused to pay it to her.

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[1] That article state that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit.

[2] Article 2 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure provides that in order for his/her claim to be admitted, the intervening party must prove legitimate interest, his/her direct personal material or moral interest.

[9] They add on that another ground for inadmissibility of the of Kantengwa Epiphanie's intervention in this case is that it was instituted in violation of article 119 of Law N° 21/2012 stated above because this claim is not related to the principal claim. They explain that Kantengwa Epiphanie intervened in this case claiming to be awarded 20,000USD plus 30% of the amount arising from the debt of cement that is the subject matter of this case and she bases this on the will made by Mubumbyi Manasseh on 25/06/1996 and the minutes of the meeting of the family of Mubumbyi Manasseh of 24/02/2002. However, her claim should not be admitted since it is not related to the claim instituted by the heirs of Mubumbyi Manasseh claiming that RDB pays those 1385 tons of cement plus related damages as indicated in their claim stated above.

[10] Counsels for heirs of Mubumbyi Manasseh also assert that the claim of Kantengwa should not be admitted because the Supreme Court is not competent to hear, at the first instance, claims relating to execution of a will that Kantengwa Epiphanie instituted before it at the first instance pursuant to article 119 of Law N° 21/2012 sated above. On the contrary, if Kantengwa Epiphanie found that that will was valid, she should have instituted a lawsuit in another court that is competent.

[11] They explain that the holographic will made by Mubumbyi Manasseh on 25/06/1996 which indicates that he bequeathed to Kantengwa Epiphanie the car of Benz brand with number plate 2628 and 20,000USD is not valid as it infringes on his heirs' rights related to their property. Another ground for which this will should not be considered valid is that it is similar to a remunerated mandate that Kantengwa Epiphanie was given by Mubumbyi Manasseh to recover debts and that mandate was terminated by the death of the principal pursuant to article 544 CCB III.

[12] In conclusion, they assert that the minutes of the meeting of the family of Mubumbyi Manasseh of 24/02/2002 she invokes in support of her application for intervention in this case claiming to be awarded 30% of the amount arising from the debt of cement which is subject of litigation should not be considered valid since it was not inked by the members of the family of Mubumbyi Manasseh; but it was rather signed by Mukankunsi Monique and Kantengwa Epiphanie who are not legally married with Mubumbyi Manasseh. They add that the fact that those minutes were signed by three children that Mubumbyi Manasseh have with Mukankusi Monique who are parties to this case, namely Nyirahabimana Thamari, Icyimanimpaye Esther and Twizerimana Ananias cannot be the basis for its validity since other children of Mubumbyi Manasseh did not give them authority to represent them in the signature of that document.

[13] Counsel Ruberwa Silas representing Shema Adamu, Nsanzamahoro Abdounour and Uwitonze Jehady asserts that Kantengwa Epiphanie has no status to intervene in the case since she is not the spouse of Mubumbyi Manasseh and she is not his heir, instead the children of late Mubumbyi Manasseh are the ones with the right to institute the claim against the aforementioned institution over the debt of cement stated above left by their father.

[14] He asserts that another ground indicating that the claim of Kantengwa Epiphanie should not be admitted is that the Supreme Court does not hear at the first instance the case relating to succession. Besides, the claim of Kantengwa Epiphanie is not related to the principal claim instituted by the heirs of Mubumbyi Manasseh requesting that the aforementioned institution pay them the debt of cement stated above.

[15] In conclusion, he asserts that Kantengwa Epiphanie should not be admitted to intervene in this case basing on the case RS/Inconst/Pen0003/10/CS between Gatera Johson and Kabalisa Teddy rendered by the Supreme Court on 07/01/2011 which ruled that those who live together as a husband and wife without being legally married share the common property once one of them decides to become legally married, because Kantengwa Epiphanie did not prove that there is any property she co-earned with late Mubumbyi Manasseh.

[16] Counsel Ndahimana Jean Bosco assisting Kantengwa Epiphanie asserts that her application to intervene in this case should be admitted and examined pursuant to article 39, paragraph 2 of Law N° 59/2008 of 10/09/2008 on prevention and punishment of any kind of gender based violence[3] and the judgment RS/Inconst/Pen 0003/10/CS stated above because she has status and interest to intervene in it because she lived with Mubumbyi Manasseh as husband and wife for a long time and commonly earned assets even though they did not give birth to any child.

[17] He explains that even if Kantengwa Epiphanie cannot bring the claim against RDB on his own for recovering the debt of cement stated above since she is not the heir of Mubumbyi Manasseh, she has however intervened in this case to protect her interests equal to 30% of the amount that will arise from the debt claimed in this case and her interest has come into existence on 24/02/2002 when the members of the family of Mubumbyi Manasseh resolved that they will jointly recover debts and award her 30% of the recovered amount, but they did not give her 20,000USD bequeathed by her husband paid by Ndayambaje and Mvano.

[18] He further asserts that the claim of Kantengwa Epiphanie should be admitted since it is related to the principal claim instituted by the heirs of Mubumbyi Manasseh with regard to 20,000USD stated above.

[19] She explains that the will made by Mubumbyi Manasseh on 25/06/1996 is valid since by the time it was made in 1996, there was no law her husband did not breach any law since there was no law to that effect but he abode by the custom that allowed him to bequeath all his properties as he believed they lived together in harmony as the custom did not provide for the succession reserve.

[20] He further explains that the minutes of the meeting of the family of Mubumbyi Manasseh on 24/02/2004 is valid because it was signed by all members of his family, and they resolved that Kantengwa Epiphanie will be awarded 30% of the amount that will be recovered from the debts that they will be paid including the debt of cement which is subject of litigation in this case.

[21] Kantengwa Epiphanie explains that those minutes are valid since she signed them together with Mukankusi Monique and three children of Mubumbyi Manasseh and Mukankusi Monique; namely Nyirahabimana Thamar, Twizerimana Ananias and Icyimanimpaye Esther plus other members of the family including the elder brother of the *de cujus* called Mudeyi Modeste and his cousin and other different witnesseswhile Shema Adamu, Nsanzamahoro Abdounour and Uwitonze Jehady who intervened in this case did not sign on them since they were yet to be declared the children of late Mubumbyi Manasseh.

[3] That article state that "If a person who has been illegally married want to get legally married and he /she was living with many husbands/wives, he shall first of all share the commonly owned belongings with those husbands/wives equally.

[22] In the end, Counsel Ndahimana Jean Bosco assisting Kantengwa Epiphanie asserts that Nyirahabimana Thamar, Nsanzamahoro Abdounour and Uwitonze Jehady who are parties to this case cannot challenge these minutes whereas they were signed by their mother Mukankusi Monique basing on the principle that no one can invoke his or her own turpitude to claim any right.

THE VIEW OF THE COURT

[23] Article 113 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labor and administrative procedure provides that "voluntary intervention is done when a person, on his or her own volition, intervenes in a case where he or she is neither a plaintiff nor a defendant in order to have it declared that the claim of the litigation belongs to him or her or to make sure that his or her interests are not compromised by the court's decision". And article 114 of that Law provides that "In order for his/her claim to be admitted, the intervening party must prove legitimate interest, his/her direct personal material or moral interest". Again, article 119 of the previously stated law provides that "forced or voluntary interventions shall be admissible only if: 1^0 they are interconnected with the original claim; 2^0 their scope is within the jurisdiction of the court seized with the original claim".

[24] As for the legal scholar Albert FETTWEIS, in his book entitled *Manuel de Procédure Civile*, has explained that the person who intervenes in the case with intent to be awarded something (aggressive intervention) must fulfil the following conditions: 1° he/she must have his/her own right different from the principal claim to the extent that that right cannot be prejudiced by any effect that may occur on the main claim. 2° He/she must have status and interest allowing him or her to intervene in that case. 3° the intervention claim must be interconnected with the main claim to the extent that their joint hearing becomes necessary to avoid contradictory rulings[4].

[25] In addition, the legal scholar Serge Guinchard in his book entitled *Droit et Pratique de la Procédure Civile*[5] has explained that for the application for intervention to be admitted the intervener must have status, interest and statusentitling him or her to the right to take the decision to seize the court on his/her own and the hearing of his/her claim should be able to stand even when the principal claim is no longer there because it was dropped by the claimant or it was dismissed.

[26] With regard to the status of Kantengwa Epihanie to institute the claim against RDB requesting that it gives her the amount resulting from the debt of cement which is at issue in this case, the opinions of legal scholars stated above indicate that the person allowed to

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[4] The aggressive intervention: 1° he/she must have his/her own right different from the principal claim to the extent that that right cannot be prejudiced by any effect that may occur upon the main claim. 2° He/she must have status and interest allowing him or her to intervene in that case. 3° The intervention claim must be interconnected with the main claim. Sufficient interdependence is considered to exist where the joint hearing becomes preferable to avoid conflicting judgments. By Albert FETTWEIS, "Manuel de Procédure Civile", 2 ème Edition, Bruxelles, 1987, p.411.

[5] The intervener must fulfill ordinary requirements for admissibility of any claim: capacity, interest and status. These are appreciated without any exclusion or changes in the same circumstances as if the intervener had filed the case with the court on his/her own initiative. The main intervener exercises a personal right and his/her claim is independent and should survive disappearance of the main claim. The main intervention is affected neither by self-deprivation of the right to action that extinguishes the initial claim nor its inadmissibility" by SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5 ème Edition, Dalloz, Paris, 2006-2007, p.554.

intervene in another person's case is the one with the status that would have allowed him/her to institute the claim on his or her own against his/her opponent to the intervention claim.

[27] In light of those opinions, the Court finds that it is obvious that Kantengwa Epiphanie has no status to intervene in this case because she could not, on her own, institute the claim against RDB requesting that it gives her 30% of the amount resulting from the debt of cement which is the subject matter of this case and 20,000USD because she is not the heir of Mubumbyi Manasseh as she concedes herself before the Court, status; but instead it is the heirs of Mubumbyi Manasseh who have this status since they are the ones who have the right to recover the debt of cement at issue in this case inherited from their parent.

[28] With regard to knowing whether Kantengwa Epiphanie has interest that would allow her to intervene in this case, pursuant to article 113 of Law N° 21/2012 stated above, the person who voluntarily intervenes in a case pending between other persons is the one who enters it in order to ascertain that the court decision does not compromise their right.

[29] Basing on those explanations, the Court finds that the decision that will be taken in this case between RDB and the heirs of Mubumbyi Manasseh with regard to the debt of cement at issue in this case will not compromise the interest of Kantengwa Epiphanie because it will not prejudice her in any respect. It is, therefore, obvious that she has no interest that would allow her to intervene in this case.

[30] The Court finds that another reason why Kantengwa Epiphanie has no interest that would allow her to intervene in this case is that she cannot oppose it through third party apposition after its pronouncement since pursuant to article 175 of Law N° 21/2012 stated above the person who opposes the judgment of others is the person who has never been the party to it but who seeks its nullification because it prejudices his/her interests. However, it is not the case for Kantengwa Epiphanie who is not the heir of Mubumbyi Manasseh as explained above and it is obvious that she rather has an independent action (autonomous action) with regard to her possibility to institute her autonomous claim at any future time she would wish against the members of the family of Mubumbyi Manasseh basing on the will drawn by Mubumbyi Manasseh on 25/06/1996 and the minutes of 24/02/2002 on which she bases her application for intervention in this case.

[31] With regard to knowing whether there is interconnectedness between the application for intervention of Knatengwa Epiphanie and the principal claim instituted by the heirs of Mubumbyi Manasseh, the provisions of article 119 of the Law stated above considered in conjunction with the opinions of legal scholars cited above indicate that both claims have to be interconnected to the point they should be heard jointly to avoid contradictory judgments.

[32] With regard to this case the dossier indicates that the heirs of Mubumbyi Manasseh instituted the claim against RDB requesting that it pays them 1385 of cement or their equivalent in terms of money their father Mubumbyi Manasseh bought from CIMERWA but died before its delivery to him as indicated by evidence in the dossier including the deposit bank slip of 07/07/1994.

[33] However, the dossier indicates that Kantengwa Epiphanie intervened in the case RADA 0050/12/CS requesting the RDB gives her 30% of the amount they will be awarded in this case resulting from the debt of cement stated above plus 20,000 USD and she requests that basing on the will drawn by Mubumbyi Manasseh on 25/06/1996 and the minutes of the

meeting of the family of Mubumbyi Manasseh of 24/02/2001 allowing her to be given that amount.

[34] Basing on those explanations, the Court finds that the claim of intervention in this case instituted by Kantengwa Epiphanie should not be admitted since it does not meet the requirement set under article 119, 1° of the Law stated above because, on one hand, it is not interconnected with the principal claim, but it conforms to it in substance since all of them request that RDB pays the amount resulting from the aforesaid debt of cement, on the other hand, it is an independent claim with regard to the evidence they base on to request that amount since the heirs of Mubumbyi Manasseh claim it basing on the contract of sale, yet Kantengwa Epiphanie request it basing on the will drawn by Mubumbyi Manasseh on 25/06/1996 and the minutes of the meeting of the family of Mubumbyi Manasseh of 24/02/2002.

[35] Basing on the foregoing laws and opinions of legal scholars, the Court finds that the claim of intervention in this case filed by Kantengwa Epiphanie must not be admitted because it does not meet the legal requirements as explained above.

III. THE DECISION OF THE COURT

[36] It holds that the incident raised by the heirs of Mubumbyi Manasseh for inadmissibility of the application for voluntary intervention in this case by Kantengwa Epiphanie has merit;

[37] It dismisses the application for intervention in this case instituted by Kantengwa Epiphanie;

[38] It holds that the hearing of the case between RDB and the heirs of Mubumbyi Manasseh will take place on 27/01/2015.