

NYIRAMANA v. NAYINO

[Rwanda SUPREME COURT – RCA005/13/CS (Mutashya, P.J., Rugabirwa and Gakwaya, J.) February 10, 2014]

Civil procedure – Summary procedure claim – Execution of judgment – Claim for suspension of execution of judgment – Summary procedure claims should fulfil three main requirements which are: urgency in order to prevent an irretrievable loss that would otherwise result from delay , the provisional nature of the decision and the fact that it should not prejudice the merits of the principal suit – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and commercial procedure, articles 316 and 320.

Facts: This judgment RCA005/13/CS derives from the judgments RCA0112/12/HC/KIG and RCA0112/12/HC/KIG rendered by the High Court on 07 June 2013 in which Nyiramana sued Nayino but lost the case and was ordered to hand back all the assets which were in disputes. Afterwards, Nyiramana applied for review of both cases and the application was recorded under RC0385/13/HC/KIG and after its recording; she lodged a summary procedure claim RC0038/13/HC/KIG requesting for the suspension of the execution of both the aforementioned judgments until the ruling of the case RC 0385/13/HC/KIG. However, the court declared her summary procedure claim without merit.

Nyiramana being unsatisfied with the ruling, she appealed to the Supreme Court. She invokes, among her reasons of appeal, the fact that she was expelled from the house without taking into account that she could not find another dwelling nor other means of living, and that the seized properties include her house she constructed on her own which was not the subject matter of the case and that in case the respondent is given possession of all the assets in disputes, it would be hard to take them back.

As for her, Nayino Patricie states that she won the judgment whereby she was awarded her assets 7 years ago; but they were never handed back to her, and that evidence in respect to the house Nyiramana alleges was not at issue in the case, shall be presented during the hearing of the case on merits. She argues in addition that the prayers of Mukamana do not require celerity, therefore she should execute the judgment that is final and thus enforceable, without pretending that her family would become destitute and homeless because for her, she has also spent 7 years in such a situation because she was not given possession of the assets she was awarded by the judgment she has won.

Held: 1. Summary procedure claims should fulfil three main requirements which are: urgency in order to prevent an irretrievable loss that would otherwise result from delay, the provisional nature of the decision and the fact that it should not prejudice the merits of the principal suit.

2. The fact that there are some of the assets included in the execution of judgment while they are not part of the matter of litigation and those awarded to the child under the care of the applicant, this is not a relevant ground for the suspension of execution of the final judgment since there is no supporting evidence thereto, and if it were the case, they would be considered as a dispute regarding the execution of judgment of which settlement is provided for by the law.

3. The decision of the High Court confirming that the appellant did not provide evidence proving urgency of her claim for suspension of execution of the judgment is not erroneous. In

this Court too, she was unable to indicate the irretrievable loss likely to be suffered in case she wins the case pending before the High Court.

**Appeal without merit.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and commercial procedure, articles 316 and 320.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] After Nyiramana Chantal became party to cases RCA0111/12/HC/KIG and RCA0112/12/HC/KIG rendered by the High Court on 07 June 2013 but lost them and was ordered to hand back the properties to his opponent Nayino Patricie, she filed an application for case review and it was recorded under number RC0385/13/HC/KIG.

[2] After filing that claim, she also initiated a summary procedure claim which was recorded under number RC0038/13/HC/KIG whereby she prayed for suspension of the execution of the aforementioned judgment until the trial of judgment RC0385/13/HC/KIG.

[3] The judgment was pronounced on 10/09/2013, and the Court ruled that the summary procedure claim was without merit. Afterwards, Nyiramana Chantal filed a claim for rectification of the error relating to her identification and this was done in the rectifying judgment RC0042/13/HC rendered on 24 September 2013.

[4] Unsatisfied with the outcome of the rendered judgment, Nyiramana Chantal appealed to the Supreme Court. She invokes, among her grounds of appeal, the fact that she was expelled from the house while disregarding that she could not find another shelter and that she cannot secure her living by any other means, and that there is a house seized while it was not part of the subject matter of the claim.

[5] The case was heard in public on 04 February 2014 where Nyiramana Chantal was represented by Counsel Butera Dismas while Nayino Patricie was represented by Counsel Kamali Nyampatsi Valens.

II. ANALYSIS OF LEGAL ISSUE

[6] The legal issue to be examined in this case is to know whether the summary procedure claim filed with the High Court by Nyiramana Chantal fulfilled the legal requirements for the suspension of the execution of judgment N° RCA0111/12/HC/KIG and N° RCA0112/12/HC/KIG for which she applied for review.

[7] Counsel Butera Dismas representing Nyiramana Chantal states that his client was expelled from the house disregarding that she could be homeless and there is no other way she could secure her living. He further argues that there is a house that was seized while it was not included in the subject matter of the case. In addition, he alleges that the execution of that judgment would result in a big loss due to the fact that the seized properties include the house in which Nyiramana lives, the houses she constructed on her own that she rents to gain her living and her children as well such that if all these properties are handed to her opponent, it would result in a big loss due to the fact that she would be expelled from the house and fall in total destitution with her children and would be unable to regain them while the case is still pending.

[8] Counsel Kamali representing Nayino Patricie states that Nayino won the case for her properties 7 years ago; but they were not handed back to her. He added that the house she claimed to belong to her child was not part of the subject matter of the litigation and that; this will be presented at the right time. He further argues that the court bailiff has seized the house located in Byumba to secure payment in compensation of what Mukamana was ordered to hand back. He also argued that the claims of Nyiramana are not urgent which implies that she must hand back what she has lost in the final judgment to be enforced; He states in addition that her alleged reason that they would become destitute and homeless is irrelevant as it is 7 years that Nayino is homeless because she was not given back her properties and due to that she lives in Kamonyi with her daughter while she is very old.

OPINION OF THE COURT

[9] Article 316 of Law N°21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure provides that “When there is need to have an interim ruling on a matter which requires urgent resolution, an action shall be filed in accordance with the ordinary procedure regarding principal suits, before an urgent applications judge in the jurisdiction where the urgent measure is required in accordance with ordinary summons procedure”. In addition, article 320 of the same law states that “The summary procedure judge shall decide by way of orders, but without prejudicing the merits of the principal suit”.

[10] The analysis of these provisions, as even held in other previous decisions of this Court, indicates that summary procedure claims should fulfil three main requirements which are: the urgency in order to prevent irretrievable loss that would otherwise result from the delay, the provisional nature of the decision and the fact that it should not prejudice the merits of the principal suit.

[11] The Court finds that the grounds presented by Nyiramana Chantal for the suspension of execution of the judgment for which she initiated an application for case review do not demonstrate any urgency or irretrievable loss as held by the High Court, because the argument that if she is expelled from the house she would become homeless should not be assimilated to irretrievable loss since the house cannot be moved and in case it may be sold in order to avoid its repossession by Nyiramana Chantal in case she wins the case on the application for case review she has initiated, the law provides for other remedies to get it back.

[12] Concerning the claim that the properties to be attached in execution of the judgment she lost include some that are not part of the subject matter of litigation and those granted to the child under her guardianship, the Court finds that, though she does not produce irrefutable

evidence thereof, this is not a ground for suspension of the execution of the final judgment; and if it is the case, they would be considered as disputes arising from the execution of judgment and this is well regulated by the law¹.

[13] The Court finds that the judge of the High Court did not error by confirming that Nyiramana Chantal did not present evidence to substantiate the urgency of her claim for suspension of the execution of the judgment N° RCA0111/12/HC/KIG and N° RCA0112/12/HC/KIG rendered by the High Court pending the adjudication of the case N° RCA0385/13/HC/KIG. Moreover, even before this Court, she failed to demonstrate any likely irretrievable loss in case she wins the case pending before the High Court.

III. DECISION OF THE COURT

[14] The Court admits the appeal on the summary procedure claim filed by Nyiramana Chantal, but finds it without merit;

[15] The Court orders Nyiramana Chantal to pay court fees amounting to 21,800Frw within the fixed time; default of which, payment shall be sought through State's coercion.

¹ See article 208 of Law N°21/2012 of 14/06/2012 relating to to civil, commercial, social and administrative procedure.