

## **RWEMA v. RWANDA DEVELOPMENT BOARD (RDB)**

[Rwanda SUPREME COURT – RADA0048/13/CS (Mutashya, P.J., Nyirinkwaya and Kayitesi R., J.) April 15, 2016]

*Administrative procedure – Preliminary objection to admissibility – The principle of res judicata (claim preclusion) – A matter that has been adjudicated by a court having jurisdiction is conclusive and therefore may not be pursued further by the same parties.*

*Arbitration – Terms of reference – If the terms of reference provide for the period of arbitral proceedings but silent on what to be done in case the award is issued after the lapse of that period, in that case the award cannot be invalidated.*

*Arbitration – Arbitration agreement – When the parties agree to resolve any disputes arising from the contract by binding arbitration a party cannot sue in ordinary court when that dispute was adjudicated through arbitration and consequently an award issued.*

**Fact:** Rwema concluded a contract with TERRACOM SARL for selling their products and services countrywide.

In 2007 TERRACOM SARL was bought by Lap Green Networks but Rwema was not paid for what he had worked for and pursuant to article 5.2.6 of the contract the Government of Rwanda concluded with Lap Green Networks which bought TERRACOM SP SARL that stipulates that the debt that institution owed before 30 June 2007 will be paid by the government of Rwanda, he requested RDB which had the privatization secretariat to pay him the money they owed him and also damages originating from it, but all was in vain.

Rwema sued RDB in the Commercial High Court which ordered the compensation of the debts between Rwema and RWANDATEL SP SARL. Rwema was not contented with the decision and appealed in the Supreme Court which ruled that Rwema should pay 1,871,151Frw to RWANDATEL SP SARL and RWANDATEL SP SARL to pay Rwema Muhamahoro Pascal 2,200,000Frw for the value of the printers and advertisement billboard and to give him back three EVDOS and one laptop.

Rwema applied for the case review whereby he relied it on the judgment RP0140/09/TB/NYGE and RPA0406/10/TGI/NYGE and in the judgment rendered by the Supreme Court, RWANDATEL SAR was ordered to pay him 8,978,846Frw and 300,000Frw for the counsel fees.

After that judgment, Rwema seized the commercial Court but his claim was inadmissible because the Court declared that he should first resort to the arbitration as it is provided for by the contract he concluded with RWANDATEL SP SARL. RDB and Rwema agreed to begin the arbitral process. The arbitration committee issued an award declaring the claim filed by Rwema inadmissible because it was already examined and decided by the ordinary Courts and the decision is now binding.

Rwema seized the High Court whereby RDB raised a preliminary objection to admissibility on the ground that the contract on which Rwema bases on provides for the arbitration, and also if his claim is an appeal against the award issued by the arbitration committee it is also inadmissible because that award is not subject to appeal as provided in the arbitration contract. The Court held that the appeal of Rwema against the final award issued by the arbitration committee is rejected.

Rwema appealed in the Supreme Court contending that the High Court joined two different contracts which have no link, because the first contract he concluded with Rwandatel related to the commercialisation of cash power and it is from this contract that the first judgment arose and was settled. In contrast, the present case between them relates to second contract of 4 January 2006 for sale of airtime cards on their behalf.

He states in addition that even if the proxy document concluded with RDB issued he power to the arbitral tribunal to hear the case at first and last instance the dispute likely to arise between them, he signed the terms of reference without due diligence and he realised that it prejudiced his interests later, but that there is still a remedy for him in article III(7) of the said terms of reference which state that the maximum time limit for the Arbitral tribunal to deliver its award is fixed at 30 days starting from the signature of the arbitration clause while however it delivered its award far beyond the specified period, therefore this award should be disregarded.

In its defence, RDB argues that the appeal is inadmissible because the previous cases were related to contract of 04 January 2006 and also the terms of reference between Rwema and RDB stipulates that the arbitration proceedings will take place within 30 days but it does not provide for what will be done in case they exceed and that the article which provides for the 30 days cannot supersede the principle that the parties are the ones who opt the arbitration, and determine the procedure.

**Held:** 1. A matter that has been adjudicated by a court having jurisdiction is conclusive and therefore may not be pursued further by the same parties.

2. The claim that a party signed a document without verifying has no merit when he does not prove that he signed the contract under duress.

3. When the parties agree to resolve any disputes arising from the contract by binding arbitration award, a party cannot sue in ordinary court when that dispute was adjudicated through arbitration and consequently an award issued, the party cannot seize the ordinary courts.

4. If the terms of reference provides for the period of arbitral proceedings but silent on what to be done in case the award is issued after the lapse of that period, in that case the award cannot be invalidated.

**The claim has no merit.  
Court fees to the appellant.**

**Statutes and statutory instruments referred to:**

Ministerial Order N°16/012 of 15/05/2012 determining arbitration rules of Kigali  
International Arbitration Centre, article 29.

**No cases referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] This claim originates from the dealership contract Rwema Muhamahoro Pascal concluded with TERRACOM SARL on 04 January 2006 to act as a Service Provider so that he sells for them their products which include services, mobile phones and their airtime, landline phones and the internet services in different parts of Rwanda.

[2] TERRACOM was sold in 2007 but Rwema Muhamahoro Pascal was not paid for what he had worked for. Consequently, he relied on article 5.2.6 of the contract the Government of Rwanda concluded with Lap Green Networks which bought TERRACOM SP SARL that stipulates that the debt that institution owed before 30 June 2007 will be paid by the government of Rwanda, and requested RDB which had the privatization secretariat to pay him the money they owed him and also the damages originating from it. This was done in vain, and he sought for redress in the Commercial High Court and in the judgment RCOM0358/08/HCC that Court ordered for the compensation of the debts which Rwema Muhamahoro Pascal owed to RWANDATEL SP SARL.

[3] Rwema Muhamahoro Pascal was not satisfied with that decision and appealed in the Supreme Court, which in the judgment RCOMA0021/09/CS ruled that Rwema Muhamahoro Pascal should pay 1,871,151Frw to RWANDATEL SP SARL. It also ordered RWANDATEL SP SARL to pay to Rwema Muhamahoro Pascal 2,200,000Frw for the values of printers and advertisement billboard and give him back EVDOS 3 with one laptop.

[4] Rwema Muhamahoro Pascal applied for the review of the case on the basis of the criminal cases RP0140/09/TB/NYGE and RPA0406/10/TGI/NYGE. On 15 March 2013 the Supreme Court rendered a judgment RS/REV/RCOM0011/11/CS in which it ordered RWANDATEL SARL to pay him 8,978,846Frw and the counsel fees amounting to 300,000Frw.

[5] After that judgment, Rwema Muhamahoro Pascal seized the commercial Court but his claim was inadmissible because the Court declared that he should first resort to the arbitration as it is provided for by the contract he concluded with RWANDATEL SP SARL.

[6] RDB and Rwema Muhamahoro Pascal agreed to begin the arbitration process. On 4 December 2012 the Arbitration Tribunal issued an award declaring the claim filed by Rwema Muhamahoro Pascal inadmissible because it was already examined and decided by the ordinary Courts and the decision is now binding.

[7] Rwema Muhamahoro Pascal seized the High Court whereby the state attorney raised a preliminary objection of admissibility on the ground that the contract on which Rwema Muhamahoro Pascal bases on provides for the arbitration, and also that if his claim is an appeal against the award issued by the Arbitration Tribunal, it should also be inadmissible because that award is not subject to appeal as provided in the arbitration contract. In case it finds it admissible, it should declare that it lacks merit because as it was held by the arbitration tribunal that the claim he submitted was already decided by the Courts. (The objection of the authority of res judicata). The High Court held that the appeal of Rwema Muhamahoro Pascal against the definitive award issued by the arbitration tribunal on 04 December 2012 between Rwema Muhamahoro Pascal and RDB is inadmissible.

[8] After the judgment rendered by the High Court, on 26 June 2013, Rwema Muhamahoro Pascal appealed to the Supreme Court and the hearing was scheduled on 02 February 2016. On that day, the hearing did not take place because the quorum included a

judge who adjudicated the case which was in review and it was postponed on 15 March 2016 in order to change the quorum.

[9] On that day, the judgment was heard, Rwema Muhamahoro Pascal represented by Counsel Tuyishimire Jean Paul, RDB represented by Counsel Kayigi Léon.

## **II. ANALYSIS OF LEGAL ISSUES**

### **Determining whether the appeal against the arbitration award filled by Rwema Muhamahoro Pascal should have been admitted in the High Court.**

[10] Rwema Muhamahoro Pascal argues that the High Court joined two different contracts which do not have any link and this led it to declare that the one rendered on 04 January 2006 was already adjudicated upon while the first contract he concluded with RWANDATEL was to sell cash power which was the subject matter of the case which was closed, and the judgment which is pending now is based on the second contract of 04 January whereby he sold for them airtime and telephone.

[11] He also argues that the Court refused to admit his claim on the basis of article VI of the letter of engagement he entered into with RDB which gave the arbitration tribunal the competence to hear on the first and last instance the disputes which will rise between them while he signed that letter without verifying it and he finds it prejudicing his interests. He states however that he has a remedy in article III(7) of the engagement letter whereby it provides that the arbitration tribunal could issue a provisional or a final award but in anyway the proceedings cannot exceed 30 days beginning from the signature of the engagement letter.

[12] He continues to state that according to the provisions of this article, the competence of the arbitrators ceased on 17 August 2012 because the engagement letter was signed by the parties on 18 July 2012, implying that after that date whatever was done and the award issued are invalid, which means that the award issued by the arbitration tribunal is invalid since it was issued on 04 December 2012 when the competence of the arbitration tribunal had ceased.

[13] Counsel Tuyishimire Jean Paul claims that the counsels for RDB have not produced that final judgment so that they may debate upon it. He prays to the Court to examine whether those 30 days exceeded really so that his client gets relief.

[14] Counsel Kayigi argues that the appeal is inadmissible because the previous cases were related to contract of 04 January 2006. He further argues that in terms of reference between Rwema Muhamahoro Pascal and RDB, it is stipulated that the arbitration proceedings will take place within 30 days but it does not provide for what will be done in case they exceed. He further states that the article which provides for the 30 days cannot supersede the principle that the parties are the ones who opt for the arbitration, and determine the procedure.

## **VIEW OF THE COURT**

[15] Regarding the contract of 04 January 2006, the Court finds that there is a judgment RCOM0358/08/HCC whereby Rwema Muhamahoro Pascal sued for the contract of sale of cash power he concluded with RWANDATEL. In that case, RWANDATEL filed a cross appeal requesting also to be paid by Rwema Muhamahoro Pascal 37,173,008Frw resulting

from the contract of selling for them airtime which they concluded on 04 January 2006, consequently the Court ruled that there should be compensation of the debts.

[16] The Court finds that the contract of 04 January 2006 on which Rwema Muhamahoro Pascal relies his arguments, Courts adjudicated upon it as stated above and for instituting it again in the arbitration or in courts of law as a legal action, contravenes the principle of *res judicata*; therefore his appeal on this ground has no merit.

[17] Concerning the provisions in the terms of reference between Muhamahoro Pascal and RDB, the Court finds that article VI stipulates that the arbitration tribunal has jurisdiction on first and last instance over the subject matter.

[18] The Court finds that arbitration is a kind of a contract in which parties enter into with the purpose of settling their disputes problems swiftly without going to courts and that contract should be performed by both parties like any other contracts between the parties.

[19] The Court finds that arguments of Rwema Muhamahoro Pascal that article VI of that letter which stipulates that the arbitration tribunal has jurisdiction over the subject matter on the first and last instance was inserted in later and he signed without verifying, lacks merit because he does not prove that he signed the contract under duress for the contract to be invalid, and he does not also prove how that document was added in later.

[20] The Court finds that the fact that Rwema Muhamahoro Pascal consented to that terms of reference and signed it, he should comply with its provisions especially that it is the one which regulates the parties as provided for by article 29 of Ministerial Order N°16/012 of 15/05/2012 determining arbitration rules of Kigali International Arbitration Center which reads that “the Arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference [...]”.

[21] The Court finds that because Rwema Muhamahoro Pascal transcended the provisions of the terms of reference and appealed against the final award of the arbitration tribunal when it was adjudicated on the first and last instance as provided for by the engagement letter he signed himself, he contravened it while it is the one which regulates the parties as it is explained, therefore this ground of appeal lacks merit.

[22] Regarding the arguments of Rwema Muhamahoro Pascal that the arbitration tribunal adjudicated the case after the 30 days provided in article III of the terms of reference had exceeded, thus the award is invalid; the Court finds it with no merit because the terms of reference did not provide what would be done in case the arbitration committee exceeds 30 days without issuing an award, and also it is not provided that in that case the award would be invalid, thus this is not likely to invalidate the award issued on the first and last instance.

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

[23] It holds that the claim of Rwema Muhamahoro Pascal has no merit;

[24] It sustains the rulings of the judgment RAD 0091/12/HC/KIG rendered by the High Court at Kigali;

[25] It orders Rwema Muhamahoro to pay the court fees.