

## **MT LAW OFFICE Ltd v. PELLA RWANDA RESOURCES Ltd**

[Rwanda SUPREME COURT – RCAA 00003/2018/SC (Mutashya, P.J., Nyirinkwaya and Gakwaya, J.) April 13, 2018]

*Jurisdiction of Courts – Jurisdiction of the court on the second appeal – Despite the fact that in the previous courts neither the damages equivalent or more than those provided by the Law were awarded and the value of the subject matter was not debated upon, the issue of the value of the subject matter can be raised for the first time at the appealante level in order to determine the pecuniary jurisdiction of that court*

**Facts:** MT Law Office Ltd concluded with Pella Rwanda Resources Ltd a contract of providing legal services whereby Pella Rwanda Resources Ltd agreed to pay MT Law Office Ltd a legal assistance fee of USD 1,200.00. In their contract, they included a dispute resolution clause according to which any dispute between them will be settled amicably within 10 days but in case it fails, the matter will be submitted to an arbitrator.

MT Law Office Ltd sued Pella Rwanda Resources before the Commercial Court of Nyarugenge for not honouring its obligation of paying the legal fees and for refusing to settle their dispute amicably; consequently, it appointed its arbitrator and it requested the court to appoint another arbitrator for the other party so that together they can appoint a third one.

After overruling the objection of lack of jurisdiction of that Court, it found the claim with merit. It appointed the second arbitrator on the side of Pella Rwanda Resources Ltd. The latter was not contented with that decision and appealed before the Commercial High Court, which quashed the appealed judgment on all grounds because it found that the profession of legal advocacy is not commercial activity.

MT Law Office Ltd consequently seized Gasabo Intermediate Court, Pella Rwanda Resources Ltd raised again the objection of lack of jurisdiction, but it was overruled and the Court appointed the arbitrator on the side of Pella Rwanda Resources Ltd.

Pella Rwanda Resources Ltd appealed to the High Court and MT Law Office Ltd raised the objection of inadmissibility of Pella Rwanda Resources Ltd's appeal on the ground that the award is not subject to appeal, the Court overruled it on the ground that the case was civil in nature. With regard to the appeal of Pella Rwanda Resources Ltd, it held that Gasabo Intermediate Court should not have appointed an arbitrator to facilitate a civil case, instead that it had to hear the case in merit. Therefore, it referred the case to the Gasabo Intermediate Court for it to hear the case in merit.

MT Law Office Ltd was not contented by that decision and appealed before the Supreme Court. Pella Rwanda Resources Ltd again raised an objection of lack of jurisdiction of the Supreme Court because the subject matter does not have a value provided by the Law and there were no

damages equal to at least 50,000,000Frw awarded by the previous Courts, also that the value of the subject matter was not debated upon in the previous courts.

In its defence, MT Law Office Ltd argued that it filed a claim requesting the Court to appoint a second arbitrator, and alternatively, it requested the Court to examine in merits the issue of the fees which it is claiming to be paid which amounts to 900.000 USD equivalent to 765,024,365 Frw, as per the contract concluded, whereby Pella Rwanda Resources Ltd was ordered to pay the whole amount, fine for delay and various damages, they thus find the case in the jurisdiction of this Court.

**Held:** 1. Despite the fact that in the previous courts neither the damages equivalent or more than those provided by the Law were awarded and the value of the subject matter was not debated upon, the issue of the value of the subject matter can be raised for the first time at the appealante level in order to determine the pecuniary jurisdiction of that court.

**The objection of lack of jurisdiction is overruled.  
The hearing will resume in merit.  
Court fees are suspended.**

**Statutes and statutory instruments referred to:**

Organic Law N° 03/2012/OL of 13/06/2012 determining organization, functioning and jurisdiction of the Supreme Court, article 28, (2), 7°, and (4).

**Cases referred to:**

Murorunkwere v. Utamuriza, RCAA 0075/09/CS rendered by the Supreme Court on 20/05/2011.  
Nzamubara v. Ntawukuriryayo, RCAA 0097/10/CS rendered by the Supreme Court on 06/05/2011

## **Judgment**

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

[1] MT Law Office Ltd signed an agreement titled “Agreement for Performance - related to remuneration”. in this contract Pella Rwanda Resources Ltd agreed to pay MT Law Office Ltd the counsel fee in respect of three aspects: "Finder's fees, Legal Fees and Consulting fees" equivalent to USD 1,200.00. They agreed to resolve amicably any dispute that may occur within 10 days and submit it to the arbitration in case they fail to reach an agreement.

[2] MT Law Office Ltd first filed a claim against Pella Rwanda Resources Ltd before Nyarugenge Commercial Court for non-execution of its obligation of payment as provided in the contract, also that it refused to settle their dispute amicably, consequently, it appointed its arbitrator, it requests the Court to appoint the second one, so that together they appoint the third one.

[3] On 24/05/2016, the Commercial Court of Nyarugenge rendered the judgment RCOM00437/2016/TC/NYGE. Concerning the objection raised by Pella Rwanda Resources that MT Law Office Ltd filed the case before the commercial Court whereas it is a civil claim because it originates from labour contract of legal counsel, that Court overruled it, because the contract concerns commercial companies and the activities provided for in the contracts are commercial, with regarding to the merits of the case, the Court found the claim of MT Law Office Ltd with merit and it appointed a second arbitrator on the side of Pella Rwanda Resources Ltd.

[4] Pella Rwanda Resources Ltd, appealed to the Commercial High Court, and on 16/09/2016, that Court rendered the judgment RCOMA00329/2016/CHC/HCC, and held that the services of legal counsel are not commercial, quashed the appealed judgment and that the claim of appointing an arbitrator be filed before the civil courts.

[5] After the decision of the Commercial Court, MT Law Office Ltd filed a claim before the Intermediate Court of Gasabo, the subject matter being the appointment of a second arbitrator as provided in the contract it concluded with Pella Rwanda Resources Ltd, if not possible to examine the dispute between the two parties so that Pella Rwanda Resources Ltd be ordered to pay its debts and various damages.

[6] Pella Rwanda Resources Ltd raised again an objection of lack of jurisdiction, stating that the case of MT Law Office Ltd should be heard by commercial courts.

[7] In Judgment RC 00026/2017/TGI/GSBO rendered on 31/05/2017, the Intermediate Court of Gasabo held that it has jurisdiction to hear the case, admitted the claim of MT Law Office Ltd and later found it with merit and appointed an arbitrator on the side of Pella Rwanda Resources Ltd.

[8] Pella Rwanda Resources Ltd appealed to the High Court, and MT Law Office Ltd raised before that Court an objection of inadmissibility basing on article 13 of the Law N° 05/2008 of 14/02/2008 on arbitration and conciliation in commercial matters explaining that the award is not subject to appeal.

[9] In the Judgment RCA00189/2017/HC/KIG rendered on 06/12/2017, the High Court, ruled by that the objection raised by MT Law Office Ltd requesting the High Court to declare inadmissible the appeal of Pella Rwanda Resources because it is based on article 13 of the Law N° 05/2008 of 14/02/2008 on arbitration and conciliation in commercial matters whereas this is a civil case as held in the judgment RCOMA00329/2016/HCC rendered by the Commercial High Court and which is now *res judicata*.

[10] That Court also found with merit the appeal of Pella Rwanda Resources Ltd, it quashed the Judgment RC0026/2017/TGI/GSBO rendered by the Intermediate Court of Gasabo which appointed the arbitrator because it should not have appointed an arbitrator instead it would have heard the case in merit the case, it then referred the case before Gasabo intermediate Court for hearing in merits.

[11] By deciding so, the Commercial High Court motivated that the Law N° 051/2010 of 10/01/2010 establishing the Kigali international arbitration center and determining its

organization, functioning, and competence, in its article 5, provides that the competence of the center is limited to arbitration in commercial matters, thus, the arbitrator appointed by Gasabo Intermediate Court has no jurisdiction to hear disputes in civil matters.

[12] The Court further explained that there is no specific law relating to arbitration in other matters which are not commercial in force, since the promulgation of the Law N° 21/2012 of 14/06/2012 on the civil, commercial, social and administrative procedure which provides, in its article 367, that a specific law will be put in place for arbitration.

[13] In deciding that the case should be referred to the Intermediate Court of Gasabo, the Court relied on the provisions of article 26 of the Chief Justice's Practice Directions N° 002/2015 of 18/05/2015 governing civil, commercial, labour, and administrative procedure.

[14] MT Law Office Ltd was not contended with the decision and on 25/12/2017, it appealed before the Supreme Court, again Pella Rwanda Resources Ltd raised the objection of lack of jurisdiction of the Supreme Court.

[15] The public hearing was held on 06/03/2018, MT Law Office Ltd represented by Counsel Rwagatare Janvier, Counsel Rwenga Etienne, Counsel Mbagu Tuzinde Mbonymbuga, while Pella Rwanda Resources Ltd represented by Counsel Moise Nkundabarashi and Counsel Kayigirwa Telesphore, the Court first heard the submissions of both parties on the objection of lack of jurisdiction raised by Pella Rwanda Resources Ltd.

## **II. LEGAL ISSUE TO BE EXAMINED BY THE COURT**

### **Whether the case is not within the peculiar jurisdiction of the Supreme Court.**

[16] The Counsels for Pella Rwanda Resources Ltd explain that this case is not under the jurisdiction of the Supreme Court on the second appeal, because its jurisdiction cannot be determined by the documents filing a lawsuits as alleged by MT Law Office Ltd in its appeal submissions, but is rather determined either by the value of damages awarded which must be equivalent at least to 50,000,000Frw or the value of the subject matter determined by the judge in case it was litigated upon which is equivalent at least to that provided by article 28, paragraph 2 of the Organic Law N° 03/06/2012/OL of 13/06/2012 on the functioning, organization, and jurisdiction of the Supreme Court, with regard to this case, there are no damages awarded nor the value of the subject matter was not debated upon for the judge to determine the value.

[17] The Counsels for MT Law Office Ltd states that, in principle, they requested the Court for the appointment of a second arbitrator on the side of Pella Rwanda Resources Ltd as provided by contract which stipulate that any dispute between them will be solved by an arbitrator in case amicable settlement fails and in case the court views it otherwise they prayed that the Court examine the claim resulting from the debt of 900. 000 USD equivalent to 765,024,365 Frw originating from the contract signed, so that Pella Rwanda Resources Ltd be ordered to pay that amount, late fees and various damages. Based on these arguments, they find that the Supreme Court has jurisdiction to hear the case because the value of the subject matter exceeds 50,000,000Frw provided for by article 28, paragraph 2, 7° of the Organic Law N° 03/06/2012/OL of 13/06/2012 mentioned above.

[18] They further state that this article must be interpreted broadly together with the provision of paragraph 4 which stipulates that "in other cases, the jurisdiction of the Supreme Court is determined based on the amount, the value of the object of the dispute and the value of the object of the contract, in accordance with the paragraph 2, 7° of this article".

### **DETERMINATION OF THE COURT**

[19] Regarding the jurisdiction of the Supreme Court, article 28 paragraph 2, 7° of the Organic Law N° 03/06/2012/OL of 13/06/2012 on the functioning, organisation and jurisdiction of the Supreme Court, provides that the Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Court or by the Military which involve a judgment in respect of which there was an award of damages of at least 50,000,000Frw, or when the value of the case as determined by the judge in case of a dispute, is at least that 50,000,000Frw as for paragraph 4, this it provides that " in other cases, the amount of money, the value of subject-matter of the dispute and the value of the contract shall be based upon while determining whether such cases fall within the jurisdiction of the Supreme Court in accordance with the provisions of item 7 of Paragraph 2 of this article. "

[20] With regarding to this case, the Court finds that, though the lower courts, did not award damages equivalent to at least 50,000,000Frw, and there was no debate on the value of the subject-matter because the issue in those courts was only the appointment of the second arbitrator but nothing prevents that issue to be raised for the first time at this instance, so that the Court can determine whether or not the second appeal is within its jurisdiction basing on the value of the subject-matter. This is the position of this Court in various case laws<sup>1</sup>

[21] Concerning the value of the subject-matter in this case, the Court finds that based on the debt of USD 900,000 equivalent to 775,987,164 Frw and the value of the object of the contract which is the legal counsel fees of 1,200,000 USD, the value of the subject matter in this case, exceeds 50,000,000Frw which makes this case to be in the jurisdiction of the Supreme Court for the second appeal in accordance with the provisions of article 28, paragraph 2, 7°, as well as paragraph 4 of the above mentioned Organic Law, thus the objection of inadmissibility based on the value of the subject matter raised by Pella Rwanda Resources Ltd is overruled.

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

[22] Holds that the appeal of MT Law Office Ltd is in the jurisdiction of the Supreme Court.

[23] Declares that the hearing will resume on 12/06/2018.

[24] Declares that the court fees are suspended.

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<sup>1</sup> Murorunkwere v. Utamuraiza, RCAA 0075/09/CS rendered by the Supreme Court on 20/05/2011  
Nzamubara v. Ntawukuriryayo, RCAA 0097/10/CS rendered by the Supreme Court on 06/05/2011