

KABANGO v GOVERNMENT OF RWANDA

[Rwanda SUPREME COURT-RAD 00001/2019/SC- (Rugege, P.J, Cyanzayire, Rukundakuvuga.) May 2019

Administrative procedure – A claim against an administrative authority who failed to comply with the court decision – Ministry – An administrative authority to be summoned – The minister shall be summoned as the ministry’s administrative authority, and as an overall coordinator and a responsible person for all the ministry’s functions – Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 184.

Facts: Kabango sued the Government of Rwanda to the High Court claiming to have been deprived of the ownership of his immovable property consisting of a land and its contents. The High Court ruled that his claim has merit in part, and awarded him the house equivalent value and some other various damages.

The plaintiff was not satisfied with the court’s ruling and subsequently appealed to the Supreme Court, which held that his appeal is founded and ordered the Government of Rwanda to give him back his land or its proportional equivalence computed on its current market value. The Government of Rwanda applied for review of the case but the Supreme Court dismissed such application and maintained the previous judgment.

The plaintiff again seized the Supreme Court praying it to summon the Minister in charge of Environment and ask him why he did not comply with the Court’s order.

The Government of Rwanda raised an objection of inadmissibility alleging that the Court sued a wrong person. The Government further explained that it should not have been the Minister to be sued, instead, the Court should have summoned the Permanent Secretary, as a person in capacity of bills payments as per the Organic law on State finances and property.

In his defence, the claimant argues that the Permanent Secretary reports to Minister and that all case-related correspondences were handled by Minister himself and the latter has never declared himself incompetent over the issue.

The Court found the Government’s objection baseless, and proceeded with the merit of the case. The claimant submits that the execution of judgment did not go well, since he never agreed with the Ministry as to the value of the disputed land, and accordingly requests the judgment to be executed as ordered, since resorting to other alternative execution other than the Court’s ruling would be construed as non- execution.

The State Attorney submits that the Minister has never declined the execution of the Court’s decision as such, that there only occurred a misunderstanding over the execution modalities, since part of the disputed land was a Government swamp land, which made it impossible to award him all hectares as decided by the court.

Held: 1. In a claim against a ministry over a failure to execute the Court’s judgment, the Minister shall be summoned to justify reasons of the non- compliance.

2.The fact that the disputed land for which the Court ordered restitution comprised of a swamp land, a public property out of ownership to individual persons, constitutes a practical obstacle for the Ministry in the execution of the Court’s judgment. Therefore, nothing herein should be regarded as failure by the Minister to comply with the Court’s judgment.

The objection has no merit.

The claim is unfounded.

Court fees cover expenses incurred in this case.

Statutes and statutory instruments referred to:

Organic Law n° 12 /2013 of 12/07/2013 on State Finance and property, articles 3,11,18,19 and 21;

Law no 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure, articles 3 and 184;

Prime Minister’s order n° 006/03 of 30/01/2017 drawing up a listing of swamp lands, their characteristics and boundaries and determine modalities of their use, development and management.

No cases were referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] This case started from the High Court, Chamber of Musanze whereby Kabango Antoine sued the Government of Rwanda alleging to have been deprived of the ownership over his immovable property consisting of 5 hectares of land and all other properties that are erected on it, located in Burera District, which was donated to Ruhengeri Diocese while he was still in exile. The Court heard the case RAD 002/11/HC/MUS on 04/04/2012, and ruled that Kabango’s claim has merit in part, and he wins for his former house valued at 4,529,015 FRW and he is awarded moral damages amounting to 1,000,000 Frw, counsel fee of 300,000 Frw, all totalling to 5,829,015 Frw.

[2] Kabango Antoine appealed to the Supreme Court and the appeal was registered to RADA 0019/12/CS, and heard on 29/09/2014. The Court held that the appeal of Kabango Antoine has merit and ordered the Government of Rwanda to give him back his land or else give him its proportional equivalence computed on the very land current market value. The Court again ordered the Government of Rwanda to pay Kabango Antoine 7,329,015 Frw that includes 4,529,015 Frw for the house value, 2,000,000 Frw for moral damages and 800,000 Frw for the counsel and procedural fees.

[3] The Government of Rwanda applied for case review and the application was registered to RS/REV/AD 004/15/CS and heard on 22/04/2017. The Court maintained the ruling of case RADA 0019/12/CS rendered by the Supreme Court on 26/09/2014.

[4] Kabango Antoine again lodged the case to the Supreme Court on 05/03/2019 praying it to summon the Minister in charge of Environment for him to justify reasons of non-compliance with the Court's judgement RADA 0019/12/CS heard on 26/09/2014¹

[5] The hearing was scheduled on 14/05/2019 and heard in public, Kabango Antoine appeared in person assisted by Counsel Mutembe Protais while the Government of Rwanda was represented by State Attorney Batsinda Aline.

[6] State Attorney Batsinda Aline argued that the application of Kabango Antoine should not be admitted on ground that he sued a wrong person and this constitutes an objection that has to be first examined.

II. LEGAL ISSUES AND THEIR ANALYSIS

Whether Kabango Antoine sued a wrong person

[7] State Attorney Batsinda Aline urges that the application filed by Kabango Antoine should not be admitted nor examined since he sued a wrong person. She elucidates that preparation and implementation of cash flow plans fall under the duties of Permanent Secretary; as provided for under sub-paragraph 9, paragraph one, article 18 and sub-paragraph 5, paragraph one, article 19 of the Organic Law n0 12/2013 of 12/07/2013 on State Finances and Property.

[8] State Attorney Batsinda Aline further urges that the inadmissibility of the case due to the suing of a wrong person is further clarified by the article 3 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure .²

[9] Counsel Mutembe Protais assisting Kabango argues that the objection raised lacks merit on ground that the Permanent Secretary reports to Minister and that all case-related correspondences were handled by Minister himself and the latter has never declared himself incompetent over the issue.

DETERMINATION OF THE COURT

[10] The State Attorney submits that the Court should have summoned the Permanent Secretary as a person in charge of cash-flow plans. The Court rejects this objection since the minister remains the administrative authority for the ministry, thus a coordinator and responsible for all the ministry's functions. Regarding the management of State Finances and property, the Organic Law n0 12/2013/OL of 12/09/2013 on State Finances and property clearly highlights the role of the minister in the management of State Finances and property.

¹ He invokes article 184 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure (CCLAP) that provides that a claim against an administrative authority who fails to comply with the Court's judgment is filed by the way of unilateral application.

² That article reads: Unless otherwise provided by the law, a claim is admissible in court only if the claimant has standing, interest and the capacity to sue.

[11] Article 3, 210 of the above mentioned Organic Law n0 12/2013/OL of 12/09/2013, in its terms, defines an executive head of an organ as a head who coordinates all the functions of the organ. For the case of a ministry, it is the minister who coordinates all its functions above stated. Among other duties in assignments of an executive head, article 21 of the aforementioned Organic Law includes the following :

- to provide strategic guidance on the priorities to be funded in the preparation of the budgets of the public entities under his/her responsibility ;
- to provide guidance on budget reprioritisation where necessary in accordance with relevant legal provisions ;
- to monitor the use of public funds and management of assets at the disposal of the public entities under his/her responsibility ;
- to advise the chief budget manager on effective use of public funds.³

[12] In the light of the foregoing duties in the functions of a minister as the executive head of an administrative organ, the Court confirms his considerable role in the management of State finances and property. The Court also finds that the Permanent Secretary reports to the minister, thus implicating the minister's upper hand in all functions of the Permanent Secretary. This is so true that even every time the Parliament, Chamber of Deputies requires both the minister and Permanent Secretary to appear before it and explain policies, programs and utilization of the ministry's budget as provided in the paragraph 4 of article 11 of the above indicated Organic Law No 12/09/2013/OL of 12/09/2013. The Court, more so, established the Minister's role in this issue, through the case-related correspondences that he has been personally handling.

[13] Based on the foregoing and seeking to understand the Minister's non-execution of the Court's judgment, the Court finds no relevance in the raised objection of suing a Minister, in lieu of Permanent Secretary and consequently declares the State Attorney's objection baseless.

Whether the Minister in Charge of Environment failed to execute the Court's judgment to an extent that puts him in a liability as per provisions of article 184 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure

[14] Counsel Mutembe Protais assisting Kabango Antoine advances that the wish is to request the Ministry to execute the judgement as it was initially decided, since resorting to other alternative execution other than the Court's ruling would be construed as non- execution.

[15] Kabango Antoine submits that the execution of the Court's judgment did not go well since he never agreed with the Ministry over the disputed land value. Referring to his land valuation expertise, he values his land at 78,150,000 Frw while the Ministry values the land at 45, 891,640 Frw equating it to 3.8037 hectares with 1,206.5 Frw per a square meter. Another point of disaccord lies in the Ministry's expertise that reduces his land surface area to 3. 8037 hectares yet the Court has confirmed 5 hectares.

³ Article 18, 90 of the Organic Law n° 12/2013/OL of 12/09/2013 on State finances and property provides that the chief budget manager shall be the Permanent Secretary.

[16] He elucidates that the Court's decision of the case RADA 0019/12/CS is clearly stated more importantly in its ruling in the paragraph 14, whereby requirement is to abide by the contents of paragraph 12 that follows: "all has to be executed in observance of the value of his 5 hectares of land plus the house on it...., he has to be given his land back, or else, be awarded its equivalent value calculated on the current market price...". He also submits that he met all the Court's requirements by presenting the 5 hectares land valuation expertise report of February 2015 that values his land at 78,150,000 Frw per the current market value.

[17] Counsel Mutembe Protais defends that the Ministry should not seek to base the judgment execution on its own valuation expertise, since the very expertise contradicts the Court's ruling, unless the Ministry recourses to the very Court for possible modifications. He argues that he sees no other reasons that will make the Court's judgment be executed differently.

[18] State Attorney Batsinda Aline urges that the Ministry has never failed to execute the judgment, she advances that there only occurred disagreements on the execution modalities. She justifies the Ministry's good will to sort out the issue by some funds, computed in reference to the Ministry's valuation expertise report, that were once deposited to Kabango's bank account. She also refutes that the sole Kabango Antoine's land valuation report serves the referencing tool, since it has never been confirmed by the Court. She even goes further to discard the Kabango Antoine's new claim, since the latter was summoned and notified of the Ministry's land valuation report, with which he agreed and submitted his bank account thereof.

[19] State Attorney Batsinda Aline further explains that the land Kabango Antoine claims for comprises the State swamp land, and that is the reason for which he did not get all the 5 hectares. She even explains that the Ministry's report indicates that the land that Kabango Antoine claims for reduces to 3.8067 hectares, the rest is the State swamp land of Kabaya-Kilimbi which features on the list of State swamp lands as per the Prime Minister's order no 006/03 of 30/01/2017 drawing up a listing of swamp lands, their characteristics and boundaries and determining modalities of their use, development and management.

[20] Counsel Mutembe Protais completely rejects all the submissions of State Attorney Batsinda Aline, and he instead says that Kabango Antoine has never entertained any talks with the Ministry of Environment and he never agreed to be paid 45,000,000 Frw.

DETERMINATION OF THE COURT

[21] Article 184 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that "An administrative authority that fails to execute a court judgment may be summoned to the court that issued the decision to justify reasons of the non-compliance".

[22] This is the very provision that Kabango Antoine referred to in the filing of his claim, it usually serves in the event an administrative authority fails to execute the court's judgment, neither he provides the reasons for such a non-execution. When this occurs, the aggrieved litigant recourses to the Court for it to summon the authority in question to justify reasons of the non-compliance. In instance of no tangible reasons, the Court might impose him/her a sanction.

[23] Apparently, the Minister in charge of Environment did not fail to execute the Court's judgment, instead the Ministry, in the process of execution hit an obstacle that evolves around the facts that in restituting the land to Kabango, the Court included the State property (swamp lands)⁴, normally out of ownership to individual persons as detailed in the letter number 0611/16.01 of 09/05/2019⁵. This scenario, the Supreme Court finds it no different from that of a litigant who might stubbornly want to grab unrelated somebody's property just because the Court has mistakenly awarded it to him/her.

[24] The Court finds that a good number of elements of evidence prove that the Ministry of Environment has demonstrated a good will to execute the Court's judgement, among others appear:

- The letter number 0134/16.01 of 07/03/2018 that the Permanent Secretary in the Ministry of Land and Forestry addressed to Kabango Antoine notifying him of the Ministry's consent to temporarily pay him 7,329,015 Frw he won in the case RADA 0019/12/SC and that amount meant to include the value of the then house on the land, moral damages as well as counsel and procedural fee. The Ministry also notified him that the remaining land value payment will follow suit after land valuation counter-expertise report.
- The letter number 0624/16.03 of 01/10/2018, the Permanent Secretary in the Ministry of Land and Forestry addressed to Kabango Antoine notifying him that the amount determined by the Ministry's land valuation report stands at 45,891,640 Frw counted for 3.8037 hectares and not five (5) hectares, valued at the current market price depending on the land location, and asking Kabango to provide the bank account for deposit.
- The letter number 1147/16.01 of 04/12/2018, the Minister of Environment wrote to Kabango Antoine reiterating the above mentioned letter of the Permanent Secretary, again requesting Kabango to provide for his bank account for payment deposit.
- The letter number 0010/16.03 of 04/01/2019, the Permanent Secretary in the Ministry of Environment (the former Ministry of Land and Forestry) addressed to Kabango Antoine requesting him to bring his property valuer so that they sit to talk and together find ways of sorting out the case.
- The fact that the Ministry of Environment has deposited 7,329,015 Frw on Kabango's bank account on 3rd /04/2019 as it appears on payment order of which the Court has a copy, and the Bank deposit account was submitted by Kabango Antoine himself via his letter of 26/02/2019 addressed to Minister just in reply to the Minister's of 04/12/2018.

⁴Prime Minister's order N^o 006/03 of 30/01/2017

⁵ In that letter, the Permanent Secretary in the Ministry of the Environment was notifying the Ministry of Justice /Attorney General on the challenges encountered while trying to execute the court's judgment. It highlights that among other challenges, there was a concern that the Court relied on the size of the disputed land of 5 hectares, but never bothered to determine its actual value, this made every litigant to come up with a different expert valuation report. In addition, they faced a challenge of disagreement over the actual size of the land. The letter reads that the 5 hectares that Kabango Antoine underlines in a court judgment, of which he presents a valuation report, comprise Kabaya-Kilimbi swamp land.

[25] The Court finds that Kabango Antoine's disagreement with the Ministry of Environment over the non-execution of the Court's judgement will not be settled via the provisions of the aforementioned article 184 of the Law n0 22/2018 of 29/04/2018. Instead, the disagreement will be sorted out through other legally accepted mechanisms.

[26] Based on the foregoing, the Court finds Kabango Antoine's application that seeks to know reasons of the Ministry's failure to execute the Court's judgment in case RADA 0019/12/CS, void of merit.

Whether the Government of Rwanda deserves damages

[27] State Attorney Batsinda Aline claims for damages arguing that Kabango Antoine wilfully dragged the Government of Rwanda into unnecessary lawsuit yet he clearly knew that he was peacefully and agreeingly paid. She thus requested 2,000,000 Frw for damages and procedural fee incurred.

[28] Counsel Mutembe Protais assisting Kabango Antoine in the case, pleads that fining him is actually abusive, since he is already a victim trying to obtain justice in his rights and he has been struggling with this case for over 10 years ; thus he should not be fined for any damages since he cannot even afford them.

DETERMINATION OF THE COURT

[29] The Court finds that Kabango Antoine had the right to seek justice every time he deemed his rights violated, thus the Court finds no need to fine him over the alleged dragging a person into unnecessary lawsuit. The Court again finds that the Government of Rwanda did not suffer any loss that will make it deserve damages, given that the Government is represented by its employees that are monthly paid and get some other employment allowances. Consequently, the Court finds the damages amounting to 2,000,000 Frw claimed by the Government of Rwanda baseless.

III. DECISION OF THE COURT

[30] Declares the objections raised by the Government of Rwanda void of merit;

[31] Finds baseless the application filed by Kabango Antoine.

[32] Orders that the court fee deposited by Kabango Antoine covers expenses incurred in this case.