WHITEFIELD INVESTMENT COMPANY LTD v THOMAS ET PIRON GRANDS LACS

[Rwanda SUPREME COURT– RS/INJUST/RAD 00001/2020/SC (Nyirinkwaya, Cyanzayire, Hitiyaremye, Rukundakuvuga and Muhumuza, P.J.) October 16, 2020]

Administrative procedure – Ex parte application – Third party opposition – Appeal against a judgment rendered on third party opposition – The judgment over ex parte application against which the third party opposition was initiated but of which the appeal was no longer admissible does not deprive the right to appeal to a party who was not satisfied with the ruling over the third party opposition.

The law on the judiciary – Responsibilities of the Judiciary – Responsibilities of the President of the Court – A decision taken by the President of the Commercial Court to invalidate the enforcement formula is not an administrative decision subject to annulment action of an administrative decision under article 178 of the Law relating to Civil, Commercial, Labour and Administrative Procedure, rather the legislator intended to include such decision within the scope of the administrative decisions which the President of the Court can take in the context of the organization of judicial proceedings.

Facts: Whitefield Investment Company Ltd filed a claim against Thomas et Piron Grands Lacs in arbitration to breach the contract for the construction of warehouses in the Free Trade Zone. Whitefield Investment Company LTD won the arbitration award and the Registry of Commercial Court affixed an enforcement formula to the arbitral award and on its decision called *recoverable costs*. At the beginning of judgment execution, Thomas et Piron Grands Lacs wrote to the President of the Commercial Court requesting for the invalidation of the enforcement formula.

After hearing from both sides, the President of the Court decided to invalidate that enforcement formula, this triggered the claimant to appeal to the President of the Commercial High Court to overturn the decision of the President of the Commercial Court, but he did not respond to that appeal, and for that, the claimant filed an administrative claim in the form of ex parte application to the Intermediate Court of Nyarugenge requesting for the reestablishment of the enforcement formula.

The Intermediate Court of Nyarugenge decided not to admit the claim and adjudicate it because it should not have been initiated as an ex parte application. The claimant appealed to the High Court which held that the appeal is well-founded, and ordered the reestablishment of the enforcement formula which was invalidated by the President of the Commercial Court.

The defendant initiated a third party opposition against it alleging that the decision of the President of the Commercial Court which invalidated the enforcement formula was not an administrative decision like others. The High Court held that the defendant's claim is founded, and that the related judgment is repealed.

The claimant appealed to the Court of Appeal, then it adjudicated by deciding not to admit the appeal because it does not fall within its jurisdiction. The claimant submitted a request in writting to the President of the Supreme Court applying for review of the judgment rendered by the Court

of Appeal on the grounds of being vitiated by injustice, the President of the Court approved the request.
The case hearing was conducted in public and it was determined whether the claimant's appeal would have been admitted in the Court of Appeal, where he states that the Court did not admit its appeal disregarding that according to the provisions of the law relating to the civil, commercial, labour and administrative procedure, a third party opposition concerns the court judgement on its merits and no longer subject to appeal and the judgment rendered under third party opposition is appealable only once. Which is contrary to the direction adopted by the Supreme Court where it was held that a third party opposition judgment is subject to appeal in case the one under third party opposition was also subject to appeal.

The defendant argues that the judgment rendered by the Court in the event of a third party opposition may be appealed only once depending on its nature but that it is not a principle. This means that after an appeal to the High Court no other appeal was permissible but it could occur at the request of the judge who took the decision to make changes on the previous decision, but without prejudice to the rights that others were granted by that decision.

On the issue of whether the decision of the President of the Court to invalidate the enforcement formula is an administrative decision that is subject to annulment under the provisions of article 178 of the Law relating to Civil, Commercial, Labour and Administrative Procedure which is into force, the claimant alleged that there are decisions which the President of the Court takes as a judge which follow ordinary remedies for their modification and the decisions taken by the President in his/her capacity as an authority which are reviewed through administrative organs of the judiciary. It is further asserted that the decision to invalidate the enforcement formula is an administrative decision, and any person who is not satisfied with it may resort to appeal before the President of the higher Court. This contradicts the High Court's ruling where it ruled that the decision of the President of the Commercial Court to invalidate the enforcement formula was not an administrative decision because it was taken on the basis of the grounds of parties or grounds of other concerned persons.

The defendant argues that the decision to invalidate the enforcement formula is an administrative decision but which is different from others because the President of the Court takes it without consultation and it does not relate to the execution of courts' decisions. It is further added that the legislator did not provide the appeal remedy for the decision to invalidate the enforcement formula, which means that such decision is not administrative, rather a judicial decision; therefore, the fact that the president of the court takes it without trial does not abolish its nature.

Held: 1. The judgment over ex parte application against which the third party opposition was formed but of which the appeal was no longer admissible does not deprive of the right to appeal to a party who was not satisfied with the ruling over the third party opposition. Thus, the appeal of Whitefield Investment Company Ltd should have been admitted by the Court of Appeal.

2. A decision taken by the President of the Commercial Court to invalidate an enforcement formula, is not an administrative decision to be annulled under article 178 of the Law relating to Civil, Commercial, Labour and Administrative Procedure, rather the legislator intended to include such decision within the scope of the administrative decisions which the President of the Court can take in the context of the organization and well functioning of case related issues. Thus, the decision of the President of the Commercial Court to invalidate the enforcement formula is not an

administrative decision to issue an action for annulment in accordance with the provisions of article 178 of the Law nº 22/2018 of 29/04/2018 relating to Civil, Commercial, Labour and Administrative Procedure.

The appeal should have been admitted to the Court of Appeal.
The judgment ruled by the Court of Appeal is quashed.
The judgment rendered by the High Court is upheld.

Statutes and statutory instruments referred to:
The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 151.
Law nº 22/2018 of 29/04/2018 relating to Civil, Commercial, Labour and Administrative Procedure, articles 9, 20, 142, 149, 172, 161, 168, 178,179, 181, 184, 192 and 243.
Law nº012/2018 of 04/04/2018 determining the organization and functioning of the Judiciary, article 43.

No case law referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Whitefield Investment Company Ltd brought Thomas et Piron Grands Lacs in arbitration for breach of contract for construction of warehouses in the Free Trade Zone, Whitefield Investment Company Ltd won the case, the Registrar of the Commercial Court affixed an enforcement formula on the arbitral award and on a decision called recoverable costs. By the time the case was being executed, Thomas et Piron Grands Lacs wrote to the President of the Commercial Court requesting for the invalidation of the enforcement formula.

[2] After hearing both sides on the issue, the President of the Court took a decision to invalidate the enforcement formula basing on the fact that a Kenyan Arbitrator Emmanuel Ochola Odhiambo decided in violation of the public order because he continued hearing the case knowing that he had been disqualified, and that another arbitrator had been appointed, therefore, maintaining the enforcement formula of his decision would be a violation of the right of Thomas et Piron Grands Lacs to be heard by a competent court.

[3] After the invalidation of the enforcement formula, Whitefield Investment Company Ltd, basing on article 243 paragraph 4 of Law nº 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure stating that the decision of the President of Court on invalidation of an enforcement formula is an administrative decision, article 178 of that law providing for the acceptance and filing of a claim seeking the revocation of the decision of the Administration, and article 179 of that Law providing the effects of such complaints, appealed to the President of the Commercial High Court to overturn the decision of the President of the Commercial Court, who did not respond to the appeal, Whitefield Investment Company Ltd filed an administrative complaint in the form of ex parte application in the Intermediate Court of Nyarugenge requesting for the revalidation of the enforcement formula.

[4] The judgment initiated to the Intermediate Court of Nyarugenge, the Chamber for administrative cases, and was subject to many appeals until to the Court of Appeal, the judgment rendered by that Court has been subject to review due to injustice.

[5] In the judgment RAD 00116/2019/TGI/NYGE delivered on 24/06/2019, the Intermediate Court of Nyarugenge ruled that the claim filed by Whitefield Investment Company Ltd was not admissible for consideration as it was not to be submitted in form of ex parte application. The Court's decision was based on the fact that Whitefield Investment Company Ltd had not indicated any urgency in overturning the decision to invalidate the enforcement formula and it is evident that the request is disputable and that it was necessary to notify all parties to the dispute before the Court decided.

[6] Whitefield Investment Company Ltd appealed and in the judgment RADA 00091/2019 / HC / KIG of 26/07/2019, the High Court held that the appeal of Whitefield Investment Company Ltd was founded, and ordered the reinstatement of its rights, and revalidation of the enforcement formula which had been invalidated by the President of the Commercial Court. The Court based its decision on paragraph 3 of article 178 of the law relating to Civil, Commercial, Labour and Administrative Procedure which states that the authority is required to respond in a period of one (1) month which runs from the date he/she received the informal appeal. If he/she does not respond, the request is considered as founded.

[7] Thomas et Piron Grands Lacs initiated the third party opposition against the decision, arguing that the decision of the President of the Commercial Court invalidating the enforcement formula was not a normal administrative decision, and that in the judgment against which the third party opposition was initiated, the Court erred in examining the case on the merits while in the judgment under appeal, the Court had ruled that the claim was not admissible, which meant that the case had to be retransferred to the Intermediate Court to be heard on the merits. Another error in the judgment against which it initiated third party opposition is that article 178 of the law relating to Civil, Commercial, Labour and Administrative Procedure aforementioned was alleged to have been misinterpreted because the rights claimed were not entitled to Whitefield Investment Company Ltd since they are not the persons who requested the invalidation of that enforcement formula.

[8] In the judgment RADA 00109/2019/HC/KIG of 17/09/2019, the High Court held that the third party opposition claim of Thomas & Piron Grands Lacs Ltd against the judgment RADA00091/2012/HC/KIG was founded, and that such judgment is quashed.

[9] The Court explained that it relied its decision on the procedures used to affix and invalidate the enforcement formula on the enforcement order, indicating that it is not the personal decision of the President of the Court as it was preceded by the fact that the enforcement formula is affixed by the Court Registrar, where the interested party writes to the President of the Court requesting its invalidation. The process is notified to all concerned parties, who shall also provide their opinion, and then the President of the Court shall decide. This means that the president is not the author of such decision, rather it is based on the grounds of the parties or the parties concerned by the enforcement formula, which is why it should not be attacked in accordance with the provisions of article 178 mentioned above, yet it is the one on which Whitefield Investment Company Ltd relied to file a lawsuit, implying that the claim was not filed in accordance with the law.

[10] Whitefield Investment Company Ltd lodged a second appeal and in the hearing, Thomas et Piron Grands Lacs Ltd raised an objection to dismiss the appeal of Whitefield Investment Company Ltd based on the provisions of article 192 of the law relating to civil, commercial, labour and administrative procedure mentioned above providing that the decision taken on the claim of ex parte applicate can be appealed only once, such procedure was not respected.

[11] Whitefield Investment Company Ltd contends that its appeal is based on article 168 of the aforementioned law, which provides that a judgment rendered by a court in result of third party opposition may be appealed in the same way as in other proceedings, and that a judgment in result of third party opposition may be appealed only once, thus, they state that the law allowed them to lodge one more appeal.

[12] In the judgment RADAA 00006/2019/CA of 06/12/2019, the Court of Appeal held that the objection of inadmissibility of the appeal of Whitefield Investment Company Ltd raised by Thomas et Piron Grands Lacs was founded, and therefore its appeal was dismissed. The Court based its decision on the fact that its claim was filed to the Intermediate Court in the nature of ex parte application, such claim was appealed to the High Court in that nature, and the third party opposition against it was initiated in the High Court still in the same form, and it was therefore not possible to be the subject of appeal before the Court of Appeal because such a claim is appealed only once, which is the position adopted in the cases decided by that Court, as well as the Supreme Court.

[13] Whitefield Investment Company Ltd wrote to the President of the Supreme Court requesting him to order the review of the judgment RADAA 00006/2019/CA due to injustice, and on 18/05/2020 in the order 259/CJ/2020 the President of the Supreme Court approved the request and ordered the Registry of the Supreme Court to record the case and it was registered to RS/INJUST/RAD00001/2020/SC.

[14] The case was heard in public on 15/09/2020, Whitefield Investment Company Ltd represented by Counsel Munyandamutsa Jean Pierre and Counsel Butare Emmanuel while Thomas et Piron Grands Lacs was represented by Counsel Ngirinshuti Jean Bosco and Counsel Nzirabatinyi Fidèle.

[15] The Court first agreed with them on the issues for determination in the instant case based on the submissions of both parties, which are the following. :

- Whether the appeal of Whitefield Investment Company Ltd would have been admitted to the Court of Appeal ;

- Whether the decision of the President of the Commercial Court to invalidate the enforcement formula is an administrative decision to be attacked pursuant to Article 178 of Law nº 22/2018 of 29/04/2018 on civil, commercial, labour and administrative procedure ;

- Whether Thomas et Piron Grands Lacs should be awarded damages.

II. ANALYSIS OF LEGAL ISSUES

A) Whether the appeal of Whitefield Investment Company Ltd would have been admitted to the Court of Appeal

[16] Counsel Munyandamutsa Jean Pierre and Counsel Butare Emmanuel for Whitefield Investment Company Ltd contend that the Court of Appeal held that its appeal was dismissed in violation of paragraph 3 of article 161 of Law nº 22/2018 of 29/04/2018 civil, commercial, labour and administrative procedure which provides that a third party opposition concerns the court judgement on its merits and no longer subject to appeal and article 168 paragraph 2 of that law which provides that a third party opposition judgement is subject to appeal only once.

[17] They also argue that the judgment RCAA 0050/11/CS in which the Supreme Court held that a third party opposition judgement is subject to appeal once the judgment under third party opposition could be subject to appeal, should not have been relied upon as a precedent by the Court of Appeal as it was decided on the basis of the law relating to civil, commercial, labour and administrative procedure of 2004 whereas a lawsuit was filed by Whitefield Investment Company Ltd in accordance with the Law of 2018.

[18] Counsel Ngilinshuti Jean Bosco and Counsel Nzirabatinyi Fidèle for Thomas et Piron Grands Lacs argue that article 168 paragraph 2 of the aforementioned law should not be read alone, rather it should be read together with the paragraph 1 of the same article reading that a judgment rendered following a third party opposition may be subject to the same procedures of appeal applicable to other judgments, the provisions of this paragraph imply that the judgment rendered by the Court in the event of a third party opposition may be appealed once depending on its nature but this is not the rule.

[19] They further contend that the decision taken on the claim filed as an ex parte application is appealed only once as defined in article 192 of the aforementioned law, which means that after an appeal to the High Court no other appeal was possible.

[20] They argued that although such claims are not subject to double appeal, they may be subject to appeal remedies because article 194 of the above-mentioned law provides that the applicant of or intervening party in an ex parte application may, if circumstances have changed, file an application for modification or revocation of the order to the judge who issued it, provided that the third party`s rights are secured.

DETERMINATION OF THE COURT

[21] The claim of Whitefield Investment Company Ltd requesting the Court to revalidate the enforcement formula was filed in the form of an ex parte application pursuant to article 178 of Law nº 22/2018 of 29/04/2018 on law on civil, commercial, labour and administrative procedure which provides in its last paragraph that in case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the applicant to be reinstated in his/her rights. The claim is filed within one (1) month by way of unilateral request.

[22] The procedure of appeal in relation to such claims is specified in article 192 of that law providing that an appeal against the judge’s order taken on an ex parte petition is exercised for only once. This is the basis of Whitefield Investment Company Ltd appeal to the High Court

against the decision of the Intermediate Court. This implies that after the Intermediate Court's decision, which was appealed to the High Court, no other appeal was possible because the ordinary remedies of appeal in that Court had already been exercised.

[23] The issue in this case is to determine what happens when there is a decision taken on a claim filed in form of an ex parte application that exhausted all ordinary remedies of appeal but against which the third party opposition was initiated as Thomas et Piron Grands Lacs did, and the High Court, in third party opposition judgment reversed the decision that was taken in the judgment under third party opposition. Should the appeal against that judgment rendered over third party opposition be admitted while the judgment under third party opposition was no longer subject to appeal under article 192 of the aforementioned law ?

[24] With regard to the third party opposition procedure, article 161 of the aforementioned Law relating to Civil, Commercial, Labour and Administrative Procedure, in its paragraph 3, states that the third party opposition is only exercised against the judgment decided on its merits and that could no longer be subject to appeal, while article 168 of that law in its last paragraph, reads that a third party opposition judgment may be appealed only once. The provisions of both articles imply that the judgment that may be subject to third party opposition is the one that exhausted ordinary remedies of appeal, and the judgment therein may be appealed only once.

[25] Therefore, the Court finds that since the judgment under third party opposition was no longer subject to appeal under article 192 of that law because it consists of the decision on the appeal against an order in relation to the ex parte application, and that no other appeal was possible; this does not deprive a party dissatisfied with the decision of the third party opposition judgment of the right to appeal in accordance with the provisions of articles 161 and 168, paragraph 2 of that law.

[26] The foregoing implies that the position adopted in the judgment RCAA 0050/11/CS should not have been referred to in this reviewed judgment because it was based on the Law n°18/2004 of 20/06/2004 on civil, commercial, labour and administrative procedure, and the Law n°21/2012 of 14/06/2012 on civil, commercial, labor and administrative procedure which replaced it did not provide anywhere that the third party opposition is only exercised against final judgment, and that a third party opposition judgment can be appealed once as provided for in the current law.

[27] These changes brought by this Law n° 22/2018 of 29/04/2018 relating to Civil, Commercial, Labor and Administrative Procedure, imply that the appellate court of the third party opposition judgment does not initially examine whether the judgment against which the third party opposition was initiated, could have been subject to appeal in order to decide on the admissibility of the appeal because such judgment is in fact final. Thus, a one-time appeal is a right granted to a party who is dissatisfied with the decision of the judgment rendered under third party opposition.

[28] The arguments of the legal counsel for Thomas et Piron Grands Lacs that the paragraph 2 of article 168 of the aforementioned law should not have been read in isolation, rather, it should be read in conjunction with its paragraph 1 which provides that a judgment rendered following a third party opposition may be subject to the same procedures of appeal applicable to other judgments to insinuate that the provisions of this paragraph imply that the judgment rendered by the Court in the event of a third party opposition may be appealed once due to its nature but that

this is not always the case, this Court finds it incorrect because the provisions of paragraph 1 of article 168 defines only the modalities of filing of such claims, where it indicates that they are filed in the same or similar procedures applicable to other judgements.

[29] The Supreme Court finds that, as in the case of other remedies of appeal, the Legislator did not intend to elaborate on the modalities of case filing, rather, he/she provided reference to other provisions, as in general the modalities of filing at any instance do not differ from the ordinary modalities of filing of a complaint at the first instance as provided for in article 20 of the aforementioned law which states that a claimant him/herself, his/her counsel or representative files a claim by submitting submissions in a court through an approved electronic means. It is in this context that they provided that opposition is formulated in the same way as filing any other claim (see paragraph 2 of article 142 of the law), that the ordinary appeal is conducted in the same way as filing a case (see article 149 of the law), that an application for review is instituted through the same procedure as filing ordinary claims (see paragraph 2 of article 172 of the law).

[30] Thus, it is also in that context that concerning an appeal against a third party opposition judgment, the Legislator, instead of repeating the claim file modalities, he/she opted to only state in paragraph 1 of article 168 that a judgement rendered following a third party opposition may be subject to the same procedures of appeal applicable to other judgements as described in article 20 above mentioned.

[31] Based on the foregoing, the Court finds that the appeal of Whitefield Investment Company Ltd would have been admitted by the Court of Appeal.

B) Whether the decision of the President of the Commercial Court to invalidate the enforcement formula is an administrative decision to be attacked pursuant to Article 178 of Law nº 22/2018 of 29/04/2018 on Civil, commercial, labour and administrative Procedure

[32] Counsel Munyandamutsa Jean Pierre and Counsel Butare Emmanuel, representing Whitefield Investment Company Ltd, argue that there are decisions made by the President of the Court as a judge (judicial decisions) and decisions he/she takes as an administrative authority (administrative decisions). When he or she takes a decision as a judge, such a claim goes through the registry of the court where it is recorded and tried. The party who is not satisfied with the decision may appeal. If he or she decides to act as the president of the court, it will not go through such procedures, not recorded, not considered for a trial to the extent of being subject to appeal.

[33] They further argue that Article 243 of the aforementioned law provides that the decision of the president of court on invalidation of an enforcement formula is an administrative decision, which means that the aggrieved party who is against the administrative decision is required to first lodge an informal appeal with the immediate superior authority to the one who took the challenged decision as specified by article 178 of that law because the decision is taken after considering the requirements for affixing enforcement formula.

[34] They also allege that the High Court violated the provisions of that article and held that the decision of the President of the Commercial Court to dismiss the enforcement formula was not an administrative decision because it is taken on the basis of the submissions of parties or on the grounds of persons concerned by the enforcement formula and this is not likely to disqualify it

from being an administrative decision, nor did the court specify its nature or the provision of the law referred to, which is contrary to article 151 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, in its subparagraph 3, stating that every judgment must indicate its basis, be written in its entirety, and delivered in public together with the grounds and the decision taken, and article 9, paragraph 1 of the Law relating to civil, commercial, labour and administrative procedure providing that a judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator (…).

[35] Counsel Ngilinshuti Jean Bosco for Thomas et Piron Grands Lacs argues that although article 243 of the aforementioned law provides that the decision to invalidate enforcement formula is an administrative decision, it is just an appellation because it is taken by the President of the Court, but it is not an administrative decision as such.

[36] Counsel Nzirabatinyi Fidèle, also representing Thomas et Piron Grands Lacs, argues that the decision of the President of the Commercial Court to invalidate the enforcement formula intends to enforce the courts' rulings and that considering the reading of article 243, paragraph 2, indicates that the legislator has provided for adversarial debate because he or she still takes such decision after notifying all the involved parties to the dispute, who also have 5 days to react. This implies that such decision is different from other administrative decisions he or she may take (purely administrative) without consulting anyone and which are not related to the execution of the courts' rulings.

[37] He further alleges that concerning other administrative decisions, such as the decision to impose a civil fine for case delaying tactics or the decision of the registrar to remove the case from the list, the Legislator provided that such decisions are appealed to the President of the Court, which is not the case about the decision of invalidation of enforcement formula because he/she did not provide for such an appeal, which also implies that it is not an administrative decision , rather, a judicial decision. Thus, the fact that the president of the court still takes it in his/her capacity as an authority does not alter that nature.

[38] With regard to the fact that the judge did not specify the nature of the decision taken by the President of the Commercial Court to invalidate the enforcement formula, Counsel Ngilinshuti Jean Bosco stated that the judge was not responsible to classify it because it was not the subject matter, and the fact that he had not explained the nature of that decision does not amount to injustice, as they would instead apply for an interpretation of the judgment in order to be get explained about its nature by the judge if they were interested.

[39] As for the fact that the judge lacked legal basis for the decision, he states that this is not true because the judge analyzed the provisions of articles 178 and 243 of the said law, and that the judge is not always required to rely on the provisions of law because even in its absence he is obliged to adjudicate in accordance with article 9 of that law, providing in its paragraph 2 that a judge cannot refuse to decide a case on any pretext of silence, obscurity or insufficiency of the law.

DETERMINATION OF THE COURT

[40] The matter of invalidation of the enforcement formula affixed on the enforcement order is provided in article 243 of the Law nº 22/2018 of 29/04/2018 on civil, commercial, labour and administrative procedure indicating that it is requested from the President of the Court that affixed it, and the procedure of its examination as well as the time limit thereto. Such article reads that:

> When an enforcement formula is unlawfully affixed on an enforcement order, any interested person may address a written request to the president of the court that affixed it for invalidation.
>
> An application for the invalidation of an enforcement formula must be notified to all parties to the dispute. The parties to the dispute react to the application on invalidation of the enforcement formula within five (5) days.
>
> Within forty-eight (48) hours following the period mentioned in Paragraph 2 of this Article, the president of the court or his/her delegate, based on the submitted application, takes a decision and provides the grounds for his/her decision.
>
> The decision of the president of court on invalidation of an enforcement formula is an administrative decision.

[41] The same article indicates that the decision to invalidate the enforcement formula from the enforcement order is preceded by adversarial debate between the parties to the disputes because the president of the court takes it after notifying them of the application for them to react. It also indicates the urgency that the Legislator accorded its consideration since the parties have five (5) days to react on it, and the President also has 48 hours following those 5 days to take a motivated decision.

[42] With regard to the annulment of administrative decisions, it is provided in article 178 of the law in title V relating to Special Proceedings, the chapter one relating to procedures in administrative matters and Section One relating to application for annulment of administrative decisions. Paragraph one of that article reads that the action for annulment of an administrative decision is admissible only if it relates to an explicit or implicit decision of an administrative authority

[43] In determining whether the decision of invalidation by the President of the Court that affixed the enforcement formula is an administrative decision under appeal basing on the provisions of the aforementioned article 178, it is first necessary to determine whether it has been taken by the administrative authority referred to in that article.

[44] The judicial power has administrative organs like other powers of the state corresponding to the responsibilities of adjudication entrusted to that organ. Such organs are provided for in Law nº 012/2018 of 04/04/2018 determining the organization and functioning of the judiciary. These include the High Council of the Judiciary, the Bureau of the Judiciary, the Inspectorate General of Courts, the General Secretariat of Courts, the Ordinary Courts and the Specialized Courts. These administrative organs are composed of judges, court registrars and other staff members governed by the Law governing the statutes of judges and judicial personnel and by the staff of the General Secretariat of the Courts governed by Law establishing the general statutes for public service.

[45] Due to the nature of the judiciary and its responsibilities, all courts are governed by judges. The responsibilities of the President of the Court are set forth in article 43 of the mentioned Law determining the organization and functioning of the Judiciary[1].

[46] By analysis of the provisions of that article, it is clear that the presidents of the courts can take administrative decisions and judicial decisions as the parties concur themselves. Concerning judicial decisions, any judge decides in response to the issues referred to by litigants, which are within the jurisdiction of the court he or she presides over or the president of the court, and administrative decisions are taken within the scope of his or her duties.

[47] In addition, the analysis of the administrative decisions that the authorities of the courts can take as stated in that article, they consist of decisions of two different types. The decisions relating to the organization and conduct of judicial work such as setting the hearing schedule, determining the hearing bench and trial judges, approval or rejection of complaints' registration in case the party disagrees with the registrar on the admissibility of the complaint, confirmation of the existence of conciliation in the course of pretrial conference. There are also decisions relating to the service organization, functioning and conduct of the staff of the court under his/her attributions such as the supervision of the performance of each employee of the court he or she presides, imposes disciplinary regime, establishes necessary measures to improve the work of the court and to ensure that cases are decided quickly and efficiently, to monitor and oversee the functioning of the lower courts to the court he/she presides.

[48] The Court finds that although the presidents of courts can take administrative decisions, either in the context of the organization and the smooth running of the administration of justice, or in terms of the organization of the service, functioning and conduct of the staff of the court he/she presides , the decisions they take are not subject to appeal under the provisions of article 178 of the aforementioned law because the way in which their decisions are reviewed or amended is provided for in the law governing the organization and functioning of the judiciary, through the organs of the administration of the judiciary according to their hierarchy, where the president of each court is responsible for the supervision of the functioning of the lower courts to the court he/she presides (from the President of the Intermediate Court up to the President of the Supreme Court and president of the High Council of the Judiciary as the superior organ of the Judiciary).

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[1]Every president of a court is responsible for the administration of the court. In general, he/she is responsible for the matters related to the cases adjudication, administration, organization and smooth running of activities and the conduct of the staff of the court he/she heads.
In that regard:
1 º he/she presides over the hearings in which he/she is taking part;
2 º he/she sets dates for hearings;
3 º he/she determines the judges on a bench and distributes cases among judges who adjudicate them; 4 º he/she adopts appropriate strategies to improve the court functioning and to expedite trial of cases;
5 º he/she supervises each staff member of the court under his/her responsibility and, depending on the staff member's level and in accordance with the disciplinary procedure provided under the legal provisions governing the staff member, exercises disciplinary authority over him/her and informs the president of the immediate higher court and the General Inspectorate of Courts;
6º he/she convenes and chairs the meetings of all court judges and other staff on a monthly basis and whenever necessary in order to examine the functioning of the court in general, the effectiveness and promptness of cases adjudication;
7º he/she monitors and supervises the functioning of lower courts.

[49] The Court also finds that when the article 178 of the law referred to is read together with the subsequent articles, especially article 181 empowering the court to order the administration to do or an injunction restraining the administrative authority from doing an act and prescribe a penalty for forcing execution, as well as article 184 indicating that, at the request of an interested party, the authority who refuses to comply with the court's rulings may be summoned to the court which has decided to explain the reasons for his failure, the authority referred to in such articles is not the president of the court as it is inconceivable that the courts that are competent to hear administrative cases be given the power to supervise the functioning or administration of other judicial organs, as it would lead to such assumption should they be allowed to review the decisions of other judicial organs, which would result in disarray in the administration of the Judiciary.

[50] Regarding the decision to invalidate the enforcement formula in particular, the Court finds that, in addition to the foregoing concerning the fact that the decisions taken by the presidents of the courts are not decisions attacked under article 178 of the aforementioned law, the Legislator intended to include such decision among administrative decisions likely to be taken by the President of the Court in the context of the organization and smooth running of the administration of justice as he or she normally does with other matters such as examining an appeal for a fine for delaying a case, registration of the claim that the registrar rejected , approving that a conciliation has been reached in pretrial conference. The foregoing intends to make certain decisions relating to the case more expeditious, and to facilitate the parties to defend their rights, without necessarily resorting to ordinary process of filing a complaint (filing a complaint with the court registry, case number allocation, setting up a bench, conducting hearing) and related remedies of appeal so that the decisions taken can be changed.

[51] The peculiarity of such administrative decisions in comparison to litigation, is that whenever the authority takes it, and where the litigant is not satisfied, the latter challenges it to be changed, and if that decision remains unchanged to the detriment of the party, he or she may appeal to the superior authority as described above or to the Inspectorate General of Courts to get the fair justice and if necessary, the authority who wronged him/her may be subject to disciplinary sanctions.

[52] Basing on the explanations provided which indicate that the decision of the President of the Commercial Court for annulment of the enforcement formula is not an administrative decision under the provisions of article 178 of the law relating to civil, commercial, labour and administrative procedure, the Court finds that there was no injustice in the judgment RADA 00109/2019/HC/KIG, and therefore it is sustained.

C) Whether Thomas et Piron Grands Lacs should be awarded damages

[53] Counsel Ngilinshuti Jean Bosco requests that Thomas et Piron Grands Lacs be awarded 10,000,000 Frw of damages for being dragged in unnecessary lawsuits, 5,000,000 Frw for counsel fees and 2,000,000 Frw for procedural fees.

[54] Counsel Munyandamutsa Jean Pierre, representing Whitefield Investment Company Ltd, argues that the damages claimed by Thomas et Piron Grands Lacs should not be awarded because they do not produce substantiating evidence.

DETERMINATION OF COURT

[55] The Court deems that damages for being dragged in unnecessary lawsuits should not be awarded to Thomas et Piron Grands Lacs for lack of substantiating evidence.

[56] Regarding the counsel and judicial fees, the Court deems that although the claim of Whitefield Investment Company Ltd should have been admitted by the Court of Appeal, its claim was not well-founded, and therefore, it must pay Thomas et Piron Grands Lacs the expenses incurred at the instant court, where it is awarded 500,000 Frw for the counsel fee and 300,000 Frw of procedural fees which are determined upon the discretion of the Court as it failed to provide explanations for the claimed amount.

III. DECISION OF THE COURT

[57] Holds that the appeal of Whitefield Investment Company Ltd should have been admitted by the Court of Appeal.

[58] Quashes the judgment of RADAA00006/2019 / CA rendered by the Court of Appeal on 06/12/2019.

[59] Holds that the decision of the President of the Commercial Court to invalidate the enforcement formula is not an administrative decision likely to be attacked in accordance with the remedies provided for by article 178 of the aforementioned law relating to civil, commercial, labour and administrative procedure.

[60] Upholds the judgment RADA 00109/2019/HC/KIG rendered by the High Court on 17/09/2019.

[61] Orders Whitefield Investment Company Ltd to pay to Thomas et Piron Grands Lacs 500,000 Frw for counsel fees and 300,000 Frw for procedural damages, totaling 800,000Frw.