

KANAMUGIRE v. KIGALI CITY ET AL

[Rwanda SUPREME COURT – RADA 0001/13/CS (Mugenzi, P.J., Munyangeri and Gakwaya, J.) 15 May 2013]

Administrative procedure – Failure to execute the Court decision – Penalty – The person to be sued in the case lodged against an administrative institution which failed to execute the court's decision – The administrative authority is the one to be sued in the Court, since, by virtue of the law, he/she is the person to be summoned in the name of the institution – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 31 – Law n° 10 N° 10/2006 of 03/03/2006 determining the structure, organization and functioning of the City of Kigali, article 73.

Administrative procedure – Penalty for non compliance with the court's decision – If the reasons for non compliance with the court's decision are valid, the administrative authority may, depending on circumstances, be given an extended time limit within which to execute the judgment, before the penalty is imposed – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 31, 347 and 348.

Facts: Kanamugire file the case to the Supreme Court requesting that Kigali City and its Mayor be summoned to provide the reasons why the Judgment RADA 0046/12/CS which ordered his expropriation compensation is not executed and requests the court to force them to execute it.

Kigali City adduces that the delay to pay him was due to the prolonged negotiation between it and RSSB with the purpose of convincing the latter to undertake the obligation of paying him because it is the one which was allocated the land. As for the Mayor, he argued that he should not have been summoned, for he is not the budget manager of Kigali City or the responsible to execute the Court decisions. Instead, it is the duty of the executive secretary and accordingly, he is the one to be summoned.

Held: 1. The administrative authority is the one to be sued in the Court, since, by virtue of the law, he/she is the person to be summoned in the name of the institution.

2. If the reasons for non compliance with the court's decision are valid, the administrative authority may, depending on circumstances, be given an extended time limit within which to execute the judgment, before the penalty is imposed.

The claim has merit.

The defendants are ordered to execute the judgment not later than 15 December 2013.

Statutes and statutory instruments referred to:

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure 31, 347 and 348.

Law no 10 N° 10/2006 of 03/03/2006 determining the structure, organization and functioning of the City of Kigali, article 73.

No cases referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Pursuant to the Judgment RAD A 0046/12/CS rendered by the supreme court on 16/11/ 2012, ordering Kigali City to compensate Kanamugire Rwaka Laurent the sum of 86.186.205 Rwf for the expropriated property, Kanamugire continuously requested Kigali City to execute the judgment but in vain, for the reason that it was still negotiating with RSSB which was allocated the land to pay that amount.

[2] Kanamugire sued to the Supreme Court requesting to summon Kigali City and its mayor so as to explain the reason why the Judgment RADA 0046/12/CS is not executed. The hearing was held on 15 October 2013, Kanamugire assisted by Counsel Mutembe Protais, Kigali City represented by the Deputy Attorney General, Sebazungu Alphonse and the Mayor of Kigali city, Ndayisaba Fidèle represented by Counsel Rutabingwa Athanase.

II. ANALYSIS OF THE LEGAL ISSUE

Determine the reason why Kigali City does not execute the judgment which it lost in favour of Kanamugire.

[3] Kanamugire states that it has now been a long time since he begun requesting Kigali City to compensate him for his expropriated property as it was ordered by the Supreme Court on 16 November 2012 but in vain. Therefore, pursuant to article 347 and 348 of the law no 21/2012 of 14/ 04/2012 relating to the civil, commercial, labour and administrative procedure, the court should summon them to justify the reason why the judgment is not being executed, if necessary to order Kigali city and its mayor to execute it forcibly.

[4] The counsel for Kigali City adduces that the delay in the payment of Kanamugire was due to the prolonged negotiation between Kigali City and RSSB which had to understand that it is the one to pay because the expropriated land of Kanamugire was allocated to it. He acknowledged before the court that within two months the issue shall be solved and Kanamugire will get paid.

[5] The Counsel for the Mayor of Kigali City argues that it is not the mayor to be summoned for not paying Kanamugire because he should not be considered as having denied paying Kanamugire as long as he is not the budget manager of Kigali City or in charge of the execution of the judgments; rather, the Executive Secretary is the one in charge of that. The Counsel for Kanamugire rebutted this ground as baseless because the institution with the legal personality is represented by its administrator.

[6] The Counsel for the mayor of Kigali City further states that if the explanations he submitted are not admitted, he requests for a period of two months for Kanamugire to be paid.

[7] The court finds that on the issue of executing the judgment, it is not the Executive Secretary of Kigali City who should be summoned as alleged by the counsel for the Mayor of Kigali City, rather, it is the Mayor, because the law provides that it is the mayor who is summoned before the court on behalf of Kigali City, as provided for by article 31 of the law

no 21/2012 mentioned above, and article 73 of the law no 10 of 3/ 3/2006 determining the structure, organization and functioning of the City of Kigali.

[8] Pursuant to article 347 of the law no 21/2012 stated above, the Court finds that Kigali City had to pay Kanamugire within 6 months after the delivery of the judgment, but a year has elapsed without being paid.

[9] Article 348 of that Law provides in its second paragraph, that if the reasons are valid, the administrative authority may, depending on circumstances, be given an extended time limit within which to execute the judgment, before providing other punishments stated in the third paragraph of the same law, in case he fail to perform within a given period.

[10] The court finds that the Kigali City and its Mayor's reasons for the delay of Kanamugire's payment due to the negotiations which were still going on and the fact that Kanamugire was also continuously being informed about its progress constitutes a justified reason which leads the Court to give an extended time limit of 2 months as requested by the defendants and admitted by Kanamugire.

III. THE DECISION OF THE COURT

[11] Decides that the claim of Kanamugire has merit;

[12] Orders Kigali City and its Mayor to execute the Judgment RADA 0046/12/CS rendered on 16 November 2012 concerning the compensation awarded to Kanamugire not later than 15 December 2013.