

## ARPEQ v. SEGATABAZI

[Rwanda SUPREME COURT – RCAA 0025/13/CS (Kayitesi. Z., P.J., Kayitesi. R. and Rugabirwa, J.) April 10, 2015]

*Law determining the jurisdiction of Courts – Appeal – Objection of inadmissibility of appeal – Appellate jurisdiction of the Supreme Court over judgments heard and decided in the second instance by the High Court – In case the grounds which were based on for adjudication at the first instance are different from those of the second instance, the party is allowed to appeal against it to the Supreme Court – Organic law N° 03/2012/OL of 13 June 2012 determining the organization, functioning and jurisdiction of the Supreme Court as it is amendment to date, article 28(5).*

**Fact:** Considering ARPEQ’s documents dated on 22 November 2011 and the other one of 06 December 2011 whereby ARPEQ personally admitted that it owes Segatabazi a debt of 150,000,000Frw which led him to file a claim at Intermediate Court of Gasabo praying that ARPEQ pays him that debt which is comprised of a loan, contribution he paid together with bonus which he was promised by defendant, including interest arising from all amount calculated on 18% until its payment. He prayed also to be awarded damages of procedural cost and the counsel’s fees.

The Court affirmed that his claim had merit in part and orders ARPEQ to pay the debt it was given and the bonus promised, all amounting to 105,648,178Frw.

Both parties appealed to the High Court against this decision and Court then ruled that Segatabazi wins a sum of 150,000,000Frw and ordered the provisional execution on 48,693,484Frw and also ordered it to pay Segatabazi procedural damages and the Court fees.

ARPEQ appealed against this decision to the Supreme Court claiming that the case had not been accorded due attention it deserved in the High Court claiming that the judge confused ARPEQ with profit making entities, to the contrary it is a non-profit project.

At the beginning of the hearing ARPEQ’s appeal, Segatabazi raised the objection of inadmissibility for ARPEQ’s claim stating that the appellant had lost the case on the first and second instances on similar grounds.

The defence on that objection, ARPEQ states that the Intermediate Court found that Segatabazi should not be reimbursed the amount relating to pension contribution whereas the High Court awarded them, which means that ARPEQ won on this ground and lost it for the first time in High Court, which means that it is the first time ARPEQ appeals against it, it is evident that the respondent does not interpret well article 28 paragraph 5 of the organic law N° 03/2012/OL of 13/06/2012, therefore praying to affirm that the objection raised by Segatabazi is baseless.

**Held:** A case lost by a party to proceedings in the first and second instances based on similar grounds shall not be appealed for to the Supreme Court but if the grounds which are based on at the first instance are different to those of the second instance; he/she is allowed to appeal against it to the Supreme Court.

**The objection has no merit,  
Hearing on the merits of the case scheduled on 02/06/2015;**

## **Suspends the Court fees.**

### **Statutes and statutory instruments referred to:**

Organic law N° 03/2012/OL of 13 June 2012 determining the organisation, functioning and jurisdiction of the Supreme Court as it is amendment to date, article 28(5).

**No case referred to.**

## **Judgment**

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

[1] This case began at Intermediate Court of Gasabo whereby Segatabazi Protais filling a case against ARPEQ for the debt worth 150,000,000Frw (composed of 48,693,694Frw which he lent to ARPEQ, 44,352,822Frw of pension contribution he paid in ARPEQ and 56.953.484Frw of the bonus which he was promised by ARPEQ) and in addition for interests arising from all the amounts prayed for calculated on 18% until time of their payment; procedure cost of worth 5,000,000Frw and the counsel's fees worth 7,500,000Frw. The Court found that the claim of Segatabazi has merit in part, and ordered ARPEQ to pay him 48,693,694Frw which had been lent to her and 56,953,484Frw in form of bonus which the appellant promised the respondent, all amounting to 105,648,178Frw.

[2] Both parties appealed against this decision to the High Court. In the case with reference number RCA041/13/HC/KIG and RCA 0550/13/HC/KIG of 08 November 2013, and that Court ruled that Segatabazi won for 150,000,000Frw, ordered the provisional execution on 48,693,484Frw and also ordered ARPEQ to pay to Segatabazi procedural cost of 1,000,000Frw and Court fees.

[3] ARPEQ appealed against this decision to the Supreme Court claiming that the case was not given due attention it deserved while in the High Court and that the judge confused ARPEQ with the profit making entities, contrary to its real status of Non-profit making entities; the claim was recorded on N° RCAA 0025/13/CS.

[4] Before the case could be heard before the Supreme Court, ARPEQ lodged a summary procedure attached on the judgment N° RCA 0025/13/CS praying that the provisional execution ordered by the High Court be suspended but the Supreme Court on the judgment of summary procedure N° RC 0004/13/CS rendered on 10 January 2014 ruled that its claim had no merit.

[5] The hearing of the case N° RCA 0025/13/CS conducted in public on 24 March 2015, ARPEQ represented by Counsel Bikotwa Bruce whereas Segatabazi Protais was represented by Counsel Niyomugabo Christophe.

[6] At the beginning of the hearing, Counsel Niyomugabo Christophe raised the objection of inadmissibility for ARPEQ's claim stating that it had lost the case on the first and on the second instance on similar grounds, therefore based on article 28 paragraph 5 of the organic law N° 03/2012/OL of 13 June 2012 determining the organisation, functioning and jurisdiction of the Supreme Court as it is amendment to date, the appeal of ARPEQ should not be admitted.

## **II. ANALYSIS OF LEGAL ISSUE**

### **Whether ARPEQ lost the case at Intermediate Court and also at High Court on the similar grounds which is leading to the inadmissibility of the appeal**

[7] Niyomugabo, the counsel for Segatabazi states that his client filed a claim based on the ARPEQ's documents dated 22 November 2011 and the other one of 06 December 2011, whereby ARPEQ admitted the debt it owes Segatabazi amounting to 150,000,000Frw. The Intermediate Court and High Court based on those documents; at Intermediate Court Segatabazi won 105,648,178Frw whereas in the High Court he won 150,000,000Frw, there is no other ground which led ARPEQ to lose the case in those Courts, apart from admitting the debt in writing. Therefore he prays this Court to declare the appeal inadmissible based on article 28 paragraph 5 of the organic law N° 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court.

[8] Bikotwa Bruce, the Counsel for ARPEQ argues that at the Intermediate Court Segatabazi filed a case for 150,000,000Frw which includes 48,693,694Frw he lent ARPEQ, 44,352,822Frw of the pension contribution he paid to ARPEQ and an amount worth 56,953,484Frw in form of bonus ARPEQ promised the respondent. In the case RC 0280/12/TGI/GSBO rendered on 19 September 2012, the Court found that Segatabazi should not be reimbursed 44,352,822Frw relating to pension contribution, which means that ARPEQ won on this ground and lost it for the first time in High Court, which means that it is the first time ARPEQ appeals against it, it is evident that the respondent does not interpret well article 28 paragraph 5 of the organic law N° 03/2012/OL of 13/06/2012 mentioned above because it stipulates that a case lost by a party to proceedings in the first and second instances basing on similar grounds, therefore praying to affirm that the objection raised by Niyomugabo, the Counsel for Segatabazi is baseless.

## **THE VIEW OF THE COURT**

[9] Article 28 paragraph 5 of the Organic law N° 03/2012/OL of 13 June 2012 determining the organization, functioning and jurisdiction of the Supreme Court as amended to date, stipulates "that a case lost by a party to proceedings in the first and second instances based on similar grounds shall not be appealed against to the Supreme Court".

[10] The Court finds that the claim of Segatabazi in Intermediate Court of Gasabo annex 5, praying to court to order ARPEQ to pay him the debt of 150,000,000Frw, he argues that ARPEQ personally admitted the debt in the document entitled "permanent resolve of Protais's matter" dated 22 November 2011 and the other one called "the statement to resolve for good the problem of Segatabazi Protais which is allocated to him" dated 06 December 2011, those documents further adduce that the debt is composed of 56,953,484Frw in form of bonus which ARPEQ promised Segatabazi together with the debt amounting to 93,046,516Frw which includes 48,693,694Frw of the amount Segatabazi loaned to ARPEQ and 44,352,822Frw of the contribution he paid in ARPEQ (annexes 9-10 and 58-60).

[11] The Court finds that the Intermediate Court separated and examined each part of claim constituting the debt in dispute, where Segatabazi was awarded 48.693.694Frw, resulting from the amount loaned to ARPEQ and 56,953,484Frw in form of bonus which ARPEQ promised him based on her documents mentioned above (paragraph 4 and 8 of the judgment RC 0280/12/TGI/GSBO rendered on 19 September 2012), concerning pension

contributions of 44,352,822Frw Segatabazi Protais contributed to ARPEQ. The Court rules that he could not be awarded them basing on article 21 and 23 of the internal rules of ARPEQ and article 30 of the Law N° 20/2000 of 26/07/2000 relating to non-profit organisation. Generally, Segatabazi is awarded only 105.648.178Frw instead of being 150,000,000Frw he prayed for.

[12] The Court finds that ARPEQ appealed against the basis of bonus of 56.953.484Frw and the procedure of payment of the money which was loaned to him at the High Court, and the Court finds that the appeal on gratitude has no merit based on her document dated 06 December 2011 whereby she admitted bonus (paragraph 12 of the judgment RCA 0421/13/HC/KIG; RCA 0550/13/HC/KIG rendered on 08 November 2013).

[13] The Court finds that Segatabazi appealed to the High Court praying to be awarded pension Contribution he has in ARPEQ amounting to 44.352.822Frw, which he had lost on the first instance based on articles 21 and 23 of the internal rules of ARPEQ and also based on article 30 of the Law N° 20/2000 of 26/07/2000 relating to non-profit organisation, the High Court ruled that they should be awarded to them based on the document originating from ARPEQ dated 06 December 2011 whereby it admitted to give them back to him and also on article 28 of the Law N°15/2004 of 12/06/2004 relating to evidence and it's production provides that private deed in which a party admits a debt, leads to the other party to win the case.

[14] Therefore the Court finds that relating to claims made by Segatabazi's Counsel that ARPEQ lost the case on similar grounds on the first and the second instance, that Courts based on the documents which ARPEQ personally admitted that it owes Segatabazi 150,000,000Frw is not true because on the first instance he was awarded only 105,648,178Frw whereas on the second level he won 150,000,000Frw, resulting from the pension contribution of amount worth 44,352,822Frw which Segatabazi had lost in the Intermediate Court, but which he later won on the second level in the High Court because the High Court relied on the document originating from ARPEQ.

[15] Considering the explanations provided above, the Court finds that the grounds which were based on at the first and second instance in rendering the judgment to be different, therefore the ARPEQ's appeal should be admitted because it is in conformity with article 28 paragraph 5 of the organic law N° 03/2012/OL of 13 June 2012 determining the organisation, functioning and jurisdiction of the Supreme Court as amended to date.

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

[16] Admits the objection of inadmissibility of ARPEQ's appeal which was submitted by Segatabazi Protais because it was lawfully filed.

[17] Decides that the objection has no merit.

[18] Decides that the hearing of the case on merit will continue on 02 June 2015.

[19] Suspends Court fees.