

ARPEQ v. SEGATABAZI (2)

[Rwanda SUPREME COURT – RC 0004/13/CS (Kayitesi Z., P.J., Mugenzi and Hitiyaremye, J.) January 10, 2014]

Civil procedure – Summary procedure – Provisional execution of the judgment – Suspension of provisional execution of the judgment – Provisional execution order shall be issued by the court on its own motion, even without a security if the evidence of litigation is an authentic deed or the matter of litigation is the debt acknowledged by the debtor in the case – The provisional execution is not necessarily conducted on the entire judgment – The grounds submitted by the plaintiff for suspension of provisional execution of judgment that its execution is likely to result into damage should be examined while considering also the damage and loss the respondent has indicated he is also likely to suffer in case of suspension of the execution of the judgment he/she won – Law N° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, articles 212(2), 213 and 214.

Facts: After the plaintiff of Segatabazi against ARPEQ before the Intermediate Court of Gasabo requesting payment of 150,000,000Frw which includes 48,693,694Frw of loan, 44,352,822Frw of contributions in ARPEQ and 56,953,484Frw of bonuses promised by ARPEQ plus related interests, procedural and advocate fees which the Court found with merit in part and ordered ARPEQ to pay him 105,648,178Frw which equals to the sum of 48,693,694Frw of loan and 56,953,484Frw of bonuses, both parties appealed against this decision to the High Court which awarded 150,000,000Frw to Segatabazi and ordered the provisional execution of the judgment concerning the amount of 48,693,484Frw.

ARPEQ appealed against this decision to the Supreme Court arguing that the High Court did not give due consideration to the case and that it confused ARPEQ with companies while it is a non-profit Organization. Meanwhile, on 14 November 2013, the professional bailiff initiated the judgment's execution procedure concerning the High Court decision which ordered its provisional execution and warned ARPEQ to execute the judgment within 3 days, failure to do so; its assets shall be seized.

Before the hearing of the case by the Supreme Court, ARPEQ initiated a summary procedure claim incidental to its appeal claim praying the suspension of the execution of the judgment which was ordered by the High Court until the trial of the appeal claim. It argues that the judge ordered the provisional execution of the judgment on his/her own motion and that the Court ruled beyond the matter referred to it by subdividing the debt while the plaintiff claimed payment of the entire debt amounting to 150,000,000Frw. For him, this is in contradiction with the provisions of articles 4, 7 and 19 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure.

Segatabazi and his Counsels state that the decision of the High Court is flawless because the loan of 48,693,694Frw was acknowledged by ARPEQ; therefore this ground should not be considered especially that it does not even have any relationship with grounds for suspension of judgment execution provided for by article 214 of the aforementioned Law N° 21/2012 of 14/06/2012.

Held: 1. Provisional execution order shall be issued by the Court on its own motion, even without a security if the evidence of litigation is an authentic deed or the matter of litigation is the debt acknowledged by the debtor in the case.

2. The High Court did not rule beyond the matter referred to it by ordering the provisional execution in respect to the sum of 48,693,694Frw because the provisional execution was conducted on part of the debt acknowledged by the appellant; and on top of that it is not prohibited to execute the judgment on the part of the debt.

3. Even if ARPEQ may have a single bank account through which it expects to get a loan this cannot be considered as the ground for the suspension of the provisional execution of the judgment especially that those grounds submitted by ARPEQ should be examined hand in hand with the statements of Segatabazi that he was granted bank loans he failed to pay to the extent that his assets are likely to be auctioned at any time. In addition, if ARPEQ is likely to suffer the damage and loss, its creditor would also face the same fate; therefore the grounds of ARPEQ should not be considered.

**The claim is without merit.
Court fees to the plaintiff.**

Statutes and statutory instruments referred to:

Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, social and administrative procedure, articles 212(2), 213 and 214.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case commenced at the Intermediate Court of Gasabo whereby Segatabazi Protais sued ARPEQ over the debt amounting to 150,000,000Frw (composed of 48,693,694Frw lent to ARPEQ, 44,352,822Frw of his contributions in ARPEQ and 56,953,484Frw of bonuses promised by ARPEQ) plus 18% of interests due on the total amount until its full payment, procedural fees amounting to 5,000,000Frw and counsel fee amounting to 7,500,000Frw. The Court found Gatabazi's claim with merit in part and ordered ARPEQ to pay him 48,693,694Frw of loan and 56,953,484Frw of bonuses, the total amount being 105,648,178Frw.

[2] Both parties appealed against the decision to the High Court and in the judgment RCA 041/13/HC/KIG and RCA 0550/13/HC/KIG rendered on 8 November 2013, this Court ruled that Segatabazi is awarded 150,000,000Frw, ordered the provisional execution of the judgment for the amount of 48,693,484Frw and ordered ARPEQ to pay procedural fees amounting to 1,000,000Frw to Segatabazi and bear the court fees.

[3] ARPEQ appealed against the judgment to the Supreme Court arguing that the case was not given due consideration by the High Court and that the Judge confused ARPEQ with commercial companies while it is a nonprofit organization. The case was registered under N° RCAA 0025/13/CS.

[4] On 14 November 2013, the professional baillif notified ARPEQ of his order to provisionally execute the judgment within three (3) days as decided by the High Court, failure to do so, its assets will be seized.

[5] Before the hearing of the case in the Supreme Court, ARPEQ initiated a summary procedure claim incidental to the case N° RCA 0025/13/CS requesting suspension of provisional execution of the judgment ordered by the High Court until the hearing of appeal claim by the Supreme Court.

[6] The public hearing on the summary procedure claim was conducted on 7 January 2014, in presence of Segatabazi who was assisted by Counsel Niyomugabo Christophe and Counsel Dukeshinema Beatha while ARPEQ was represented by counsel Bikotwa Bruce and Nduwamungu Jean Marie Vianney.

II. ANALYSIS OF LEGAL ISSUES

a) Whether the decision of the judge ordering the provisional execution of the judgment is unlawful.

[7] Counsels for ARPEQ state that their claim relies on the fact that the judge of the High Court ordered the execution of the judgment on his own motion for the sum of 48,693,484Frw while Segatabazi has never partitioned the amount of his claim since it was relating to the recovery of 150,000,000Frw. They state in addition that even if Segatabazi demanded the provisional execution for the sum of 48,693,484Frw in the High Court, he based his prayer on the grounds submitted by ARPEQ concerning the origin of the debt which was the subject of the claim; therefore the provisional execution should not have been ordered while ARPEQ did not yet agree with Gatabazi about the amount of the loan since there is still a problem of evidence of how he spent these 48,693,484Frw and that the decision of the court went beyond the matter referred to it and subdivided the debt, and therefore it contravenes the provisions of articles 4, 7 and 19 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, social and administrative procedure.

[8] Segatabazi and his advocates state that the decision of the High Court is flawless because in the copy of the judgment rendered by the Intermediate Court on page 2, paragraph 3, in the copy of the judgment delivered by the High Court on page 5 paragraph 3 and in appeal court submissions, ARPEQ admitted the debt of 48,693,694Frw; therefore this ground should not be considered since it does not even relate to grounds for suspension of judgment execution provided for by article 214 of the aforementioned Law N° 21/2012 of 14/06/2012.

OPINION OF THE COURT

[9] Article 212 of the above mentioned Law N° 21/2012 of 14/06/2012 provides that “Provisional execution order shall be issued by the court on its own motion, even without a security if: 1) the evidence of litigation is an authentic deed, 2) the matter of litigation is the debt acknowledged by the debtor in the case”.

[10] Article 214 of Law N° 21/2012 of 14/06/2012 mentioned above, states that “A debtor may request suspension of provisional execution before an appeal court in the following ways: 1) to request the suspension of the provisional execution because it has been ordered in a manner that is inconsistent with the law; 2) a security deposit of valuable sufficient to cover the principal amount of the penalty, interest and costs awarded; 3) only part of the total damages awarded by the provisional execution to be paid if the execution on the whole amount is unjustified.

[11] The Court finds that, concerning the debt of 48,693,484Frw which Counsels for ARPEQ state it is not agreed on by both sides, there is a correspondence from the Legal Representative of ARPEQ, Rwabigwi Cyprien, in which he states that Segatabazi has invested the said amount of money in the construction of one of the school buildings and continues stating that they requested him to be patient until his payment (identification code 8); therefore these statements indicate that this Legal Representative acknowledges that debt. It is also shown in the file that Counsel Bikotwa for ARPEQ stated before the Intermediate Court that¹“they accept to pay him 48,693,694Frw acknowledged by the Association” while before the High Court, Counsels for ARPEQ state that “ in respect to the amount of 48,693,694Frw it admits, ARPEQ...prays to pay Segatabazi in installements of 5,000,000Frw per trimester in order to avoid interruption of its activities”². In addition, Counsel Nduwamungu states in paragraph 5 of the submissions submitted on behalf of ARPEQ in this case before the Supreme Court that “the said amount known as a loan which the Association has accepted to pay back, is a loan he granted to the latter which amounts to 48,693,694Frw”. Therefore, all these statements indicate that the loan of 48,693,694Frw is acknowledged by ARPEQ and thus the ruling of the court is not in contradiction with article 212(2) of the aforementioned Law N° 21/2012 of 14/06/2012.

[12] Concerning the fact that the judge issued an order of provisional execution for the sum of 48,693,694Frw by partitioning the debt and upon his own motion since none prayed for it, the Court finds that, though it was not even necessary to be requested because the respondent admitted the existence of the loan, Counsels for ARPEQ stated before this Court that Segatabazi prayed for provisional execution concerning the sum of 48,693,694Frw; thus it is clear that this amount of money is part of an identified and admitted debt different from the entire debt as explained in the previous paragraph. Therefore, the statements of Counsels for ARPEQ should be disregarded.

[13] Pursuant to the above explanations, the Court finds that the decision of the High Court on the provisional execution of the judgment is not illegal and does not violate the provisions of article 214 of the aforementioned Law N° 21/2012 of 14/06/2012.

[14] As for the ground that the decision ordering the provisional execution of the judgment is in contradiction with the provisions of articles 4, 7 and 19 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, social and administrative procedure and that the judge ruled beyond the matter referred to the court, the Court finds that this is not the case because this provisional execution was conducted on the part of the debt acknowledged by ARPEQ. In addition to that, nothing prevents the provisional execution from being conducted on part of the debt as provided for by article 213 of Law N° 21/2012 mentioned above and supported by legal scholars whereby they state that provisional execution does not necessarily cover the execution of the entire judgment³.

¹ The judgment RC 0280/12/TGI/GSBO delivered by the Intermediate Court of Gasabo, between Segatabazi Protais and Association pour la Promotion de l'Education de Qualité (ARPEQ), on 19/09/2012, Paragraph 3.

² Judgment N° RCA 421/13/HC/KIG; RCA 0550/13/HC/KIG rendered by the High Court at its headquarters in Kigali, between Segatabazi Protais and Association pour la Promotion de l'Education de Qualité (ARPEQ) on 08/11/2013, Paragraph 17.

³ L'exécution provisoire n'a pas obligatoirement pour effet de permettre l'exécution du jugement dans sa totalité. See Jean Vincent, *Procédure Civile*, Paris, Dalloz, 1976, p.748.

[15] Moreover, the Court finds that the provisions of articles 4, 7 and 19 of the above mentioned Law N° 21/2012 of 14/06/2012 concern the determination of the subject matter of the case, immutability of the claim, judgment on the subject matter and the content of a claim and these have no relationship with the provisional execution of judgment claim because it is not beyond what was referred to the court; therefore the statements of ARPEQ's Counsels are groundless.

b) Whether other grounds submitted by ARPEQ are enough to suspend the provisional execution of the judgment.

[16] Other grounds presented by ARPEQ on which it relies its request to suspend the provisional execution of the judgment consist of the fact that it applied for a loan in Bank of Kigali and therefore it realises that in case the execution of the judgment may continue its bank account in Bank of Kigali would be frozen and this would prevent the award of the requested loan. On top of that, even students would fail to get food since it is the sole account held by ARPEQ on which school fees are paid.

[17] Segatabazi states that in his capacity of a contractor and trader he had an idea of establishing a school and later, he decided to look for other members who specialize in education so that they may partner and they formed ARPEQ and established a school. In the course of its expansion, it fell short of money and Segatabazi authorized ARPEQ to use his own funds amounting to 48,693,694Frw while waiting for the bank loan and it is over this very amount of money that the provisional execution is being conducted. He further argues that the suspension of provisional execution should be rejected because ARPEQ is being selfish and disregards that he is also indebted to the extent that the collateral he pledged may be auctioned at any time.

[18] In addition, Counsels for Segatabazi argue that the statements of ARPEQ that it has a single account are groundless because, aside the account it opened in Bank of Kigali titled Regional Positive Choice (RPC) with the purpose of avoiding payment of the debt it owes to Segatabazi, it usually has another bank account open in *Banque Rwandaise du Développement* (BRD).

[19] Concerning the grounds of ARPEQ against the freezing of its bank account open in Bank of Kigali, the Court finds that ARPEQ owns other bank accounts as proven by the correspondence of its Legal Representative addressed to Bank of Kigali on 27 November 2013. Therefore, it is clear that it is not the only bank account on which tuition fees for ARPEQ School are deposited; except that even if it were the only account owned by ARPEQ, this would not be the only reason to sustain this ground. In addition, the Court finds that the grounds submitted by ARPEQ should be examined considering that Segatabazi also argues he has applied for loans from the bank which he has failed to pay to the extent that his assets are likely to be auctioned at any time and that if ARPEQ may incur damage or loss, even its creditor would face the same fate; therefore the statements of ARPEQ are groundless.

III. DECISION OF THE COURT

[20] The Court decides that the summary procedure claim initiated by Association pour la Promotion de l'Education de Qualité (ARPEQ) requesting suspension of provisional execution of the judgment decided in judgment RCA 0421/13/HC/KIG and RCA 0550/13/HC/KIG delivered by the High Court at its headquarters in Kigali is without merit.

[21] The Court orders Association pour la Promotion de l'Education de Qualité (ARPEQ) to pay court fees amounting to 11,400Frw.