

MURASHI ET AL v. COGEAR Ltd

[Rwanda SUPREME COURT – RCAA 0064/12/CS (Mukanyundo M., P.J., Rugabirwa and Gakwaya, J.) October 24, 2014]

Civil procedure – Objection of lack of jurisdiction – Material jurisdiction – The subject matter considered to determine the jurisdiction of the Court – The subject matter is determined by not only the prayers of every litigant which are indicated by the writ of summons but also defence submissions – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 4(1°), 19(4°) and 30 – Organic Law n° 01/2004 of 29/1/2004 determining the organization, functioning and jurisdiction of courts, article 43(3°, 7°).

Facts: This case started in Intermediate Court of Nyarugenge, whereby Murashi Isaïe and Rusanganwa Sylvain filed a case against COGEAR S.A that they rented its house which later caught fire as a result of its failure to repair where it leaked. Murashi Isaïe prayed for damages for his property he used in INGANZO Newsletter publication which were burnt in the house and those relating to the fact that COGEAR unlawfully terminated the contract. Rusanganwa Sylvain also prayed for damages resulting from the negligence of COGEAR to repair its house which prevented him from performing his computer work and also for termination of the contract without notice. In that judgment, COGEAR raised a counterclaim in which it requested court to order them to pay the unpaid rent.

Court passed the judgement and ruled that the claim filed by Murashi Isaïe and Rusanganwa Sylvain has basis and ordered COGEAR to pay damages for perished items used by Murashi Isaïe in INGANZO Newsletter and for moral damages. It ordered COGEAR SA to pay Rusanganwa Sylvain moral damages, counsel fees and 4% of prorated fee.

All litigants appealed to the High Court, COGEAR SA arguing that it communicated the notice before the termination of the lease contract concluded with Murashi Isaïe and Rusanganwa Sylvain but that the court disregarded the evidence and explanations submitted. Murashi Isaïe and Rusanganwa Sylvain claimed in turn that damages awarded by the Court are not based on the fact that it did not demonstrate the effects of contract termination yet it held that COGEAR SA resolved the contract unlawfully.

That Court decided that the appeal of Murashi Isaïe and Rusanganwa Sylvain had no merit, but found that of COGEAR Ltd with merit and ordered Murashi Isaïe to pay 1,018,333Frw of unpaid rent and 300,000Frw of counsel fee to COGEAR SA. It also ordered Rusanganwa Sylvain to pay 1,006,250Frw of unpaid rent and 300,000Frw of counsel fees to COGEAR SA.

Murashi Isaïe and Rusanganwa Sylvain appealed to the Supreme Court claiming that among three cases appealed against, the judge instead of examining all those appeals, he examined only the appeal of COGEAR Ltd; that the judge was characterized by contradictions in regard to reasons relied upon, that he annulled the valuation carried out by Electrogaz, instead of maintaining that valuation report as there was no any other report which contradicted it and the fact that the judge states that the evaluator relied on the hypothesis which was not right. At the beginning of the hearing, the counsel for COGEAR Ltd raised an objection of lack of jurisdiction stating that the case does not fall in the jurisdiction of the Supreme Court since the subject matter does not have a value of 20,000,000Frw as provided for by article 43 of the Organic Law n° 01/2004 of 29/1/2004 determining the organization, functioning and jurisdiction of the Supreme Court, which was into force at the time of appeal.

Held: 1. The subject matter is determined by the prayers of every litigant which are indicated by the writ of summons and defence submissions, and what the legislator intended to be mentioned in those documents is the object of the claim in summary, therefore in order to determine the value of the subject matter of the case, it should be understood that it is not only considered the statements in the writ of summons but it is also considered the plaint submissions and the claims of the parties in the course of the hearing.

**Objection of lack of jurisdiction rejected.
Appeal falls in the jurisdiction of the Supreme Court.
Court fees suspended.**

Amategeko yashingiweho:

Law n° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, articles 4(1°), 19(4°) and 30.

Organic Law n° 01/2004 of 29/1/2004 determining the organization, functioning and jurisdiction of courts, article 43(3°, 7°).

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] The case started in the Intermediate Court of Nyarugenge, whereby Murashi Isaïe and Rusanganwa Sylvain filed a case against COGEAR S.A stating that they rented its house which later caught fire due to failure to repair the house which was leaking. Murashi Isaïe prayed for damages for the loss of his items used in Inganzo Newsletter edition decimated by fire and damages relating to termination of the contract without notice. Rusanganwa Sylvain also prayed for damages for the loss incurred from the COGEAR SA failure to repair its house, which prevented him from performing his computer business and also to have terminated the contract without notice. In the course of this judgment, COGEAR SA filed a counterclaim requesting the court to order appellants to pay the unpaid rent.

[2] Court adjudicated the case number RC 43034/05/TGI/NYGE-RC0392/05/TP/KIG on 21 January 2011 and decided that the claims of Murashi Isaïe and Rusanganwa Sylvain have merit and ordered COGEAR SA to pay 165,000Frw for compensation of Murashi Isaïe's damaged items utilised for INGANZO newsletter editing and pay him 3,500,000Frw for general damages. In addition, it ordered COGEAR SA to pay 1,000,000Frw for general damages and 300,000Frw of counsel fees to Rusanganwa Sylvain and 4% equal to 186,600Frw payable to Public Treasury

[3] All litigants appealed to the High Court, COGEAR SA stating that it issued notice before the termination of the lease contract concluded on 20 May 2003 with Murashi Isaïe and Rusanganwa Sylvain but COGEAR SA states that the Court disregarded the evidence and arguments it submitted. Murashi Isaïe and Rusanganwa Sylvain state that the Court did not award damages based on the fact that there was no evidence about the adverse effects relating to the termination of the contract upon

the smooth running of their business while it admitted that COGEAR SA terminated the contract unlawfully.

[4] The Court delivered judgment on case file number RCA 0050-53-54/11/HC/KIG on 16 May 2012 and decided that the appeals of Murashi Isaïe and Rusanganwa Sylvain are without merit and that the appeal of COGEAR Ltd has merit. It ordered Murashi Isaïe to pay 1,018,333Frw of unpaid rent and 300,000Frw of counsel fees to COGEAR SA. It also ordered Rusanganwa Sylvain to pay COGEAR SA, 1,006,250Frw of unpaid rent, and 300,000Frw of counsel fees.

[5] On 15 June 2012, Murashi Isaïe and Rusanganwa Sylvain appealed to the Supreme Court and their appeal was recorded to RCAA 0064/12/CS. They state that among three appeals which were initiated, the judge, rather than examining all of them, he examined the appeal of COGEAR Ltd only; that he was characterized by contradictions in the provisions he relied on and that he quashed the valuation initiated by Electrogaz while it should have remained valid as long as there exists none which contradicted it, and that the judge asserts that the valuator relied upon a hypothesis which was not right.

[6] The hearing was conducted in public on 22 July 2014, Counsel Nkubana Milton and Counsel Muhawenayo Casimir representing Murashi Isaïe and Rusanganwa Sylvain while COGEAR Ltd was represented by Counsel Kazungu Jean Bosco. At the beginning of the hearing, the counsel for COGEAR Ltd raised the objection of lack of jurisdiction stating that the case does not fall in the jurisdiction of the Supreme Court because the value of the subject matter of the case does not reach 20,000,000Frw as provided for by article 43 of the Organic Law n° 01/2004 of 29/1/2004 determining the Organisation, functioning and jurisdiction of the Supreme Court which was into force at the time of the appeal.

II. ANALYSIS OF THE LEGAL ISSUES

To know whether Murashi Isaïe and Rusanganwa Sylvain appeals fall in the jurisdiction of the Supreme Court.

[7] Counsel Kazungu Jean Bosco states that COGEAR Ltd raises the objection relying to article 43 of the Organic Law n° 01/2004 of 29/1/2004 mentioned above since it stipulated that the Supreme Court had appellate jurisdiction to hear cases if the subject matter has the value equals or exceeding 20,000,000Frw while in this case no value of 20,000,000Frw has been stated.

[8] He explains that according to the statement of the claim on the writ of summons, its value does not reach 20,000,000Frw and that it does not appear anywhere in the file, and that the value in monetary terms was submitted late after the initiation of the claim without even the basis in terms of figures were fictitious and surrealistic. Therefore, their appeals do not fall in the jurisdiction of the Supreme Court due to the fact that they did not mention it in their first plaintiff submission and that nowhere in all rendered cases the courts have fixed an amount of 20,000,000Frw.

[9] In his conclusion, counsel Kazungu states that the judgment begun in the Court of Kigali City through the first submission done in the year 2005 by Counsel Munyankindi Joseph which was notified to COGEAR Ltd on 18/1/2006, with monetary figures they state. He continues that the claim remained as it was initiated and that the amount of money they mention does not exist in the document. and that The stated submission, he said is of the year 2010 and is not a plaintiff submission,

and the figures they state are not true since even if they debated on the jurisdiction of the court, that the claim was the same. Concerning damages, he states that in the submission of the year 2010, those damages were debated on but he says, it was not a new claim because they do not have a court fee payment proof since it is the continuation of the case of 2005.

[10] Counsel Nkubana Milton rejects the basis of the objection because Murashi Isaïe and Rusanganwa Sylvain indicated in their plaint, the scope and value of their claim's subject matter, and COGEAR Ltd mentions it in its defense submission whereby it states that figures were mentioned later, which does not mean at the adjournment but meaning they appeared in the documents submitted later, and further urges that COGEAR Ltd argues that those figures do not base on solid facts which means that they existed before.

[11] He states in addition that, in the course of awarding damages, the Intermediate Court of Nyarugenge held that it cannot revisit those requested by Murashi Isaïe and Rusanganwa Sylvain, rather, they should be awarded those supported by the evidence they produced; meaning that even those other damages were debated on. He states that even if those figures were not discussed in the High Court, Murashi Isaïe and Rusanganwa Sylvain mentioned them during their appeals and among their statements include the fact that the Court did not award them all prayed damages.

[12] Counsel Muhawenayo Casimir states that article 4 of the Law n° 21/2012 of 14/6/2012 relating to civil, commercial, labour and administrative procedure provides that the subject matter of the claim is determined by the plaint and submissions of the parties and that the complaint in this case was the request for damages amounting to 506,893,500Frw for Murashi Isaïe and 62,000,000Frw for Rusanganwa Sylvain and this appears in the writ of summons.

[13] He finally concludes that the writ of summons and submissions are determinants of the claim and that they are based on the submissions handed in 2010 which were also debated in the course of hearing.

OPINION OF THE COURT

[14] Article 43, litera 3(7°) of the organic Law n° 01/2004 of 29/1/2004 determining the organisation, functioning and jurisdiction of the Supreme Court which was in force at the time of the appeal, stipulates that “The Supreme Court also has final appellate jurisdiction over matters heard in the second degree by the High Court (...) if such matters involve judgments in respect of which there was an award of damages equal to or exceeding twenty million Francs (20,000,000Frw) or the subject matter in dispute is equal to or exceeding twenty million Francs (20,000,000Frw)”.

[15] Article 4, litera 1 of the Law n° 21/2012 of 14/6/2012 relating to civil, commercial, labour and administrative procedure provides that “The subject matter of the claim shall be determined by the claims made by the respective parties. These claims shall be indicated in the plaintiff’s and defendant’s submissions”.

[16] Article 19(4°) of the Law n° 21/2012 of 14/6/2012 mentioned above provides that “The claim must indicate the subject matter and grounds of the claim in brief”.

[17] Article 30 of the aforementioned Law n° 21/2012 of 14/6/2012 stipulates that “The summons shall be drafted by the court registrar. It shall contain the names, profession, and residence of the

plaintiff and of the defendant. It shall briefly state the subject matter and indicate the court the matter is referred to as well as the place, date and hour of appearance”.

[18] The Supreme Court finds that as it is specified in the summons at first instance, and in the writ of summons of Murashi Isaïe and Rusanganwa Sylvain, the subject matter is:

- Breach of contractual agreements;
- Unlawful termination of lease contracts;
- Procedural costs and counsel fees.

[19] The Supreme Court finds that it is clear in the writ of summons of Murashi Isaïe and Rusanganwa Sylvain of the year 2005 that they informed the court that they will submit their plaint submissions explaining their claim in details in the near future and that later, they submitted those submissions indicating that damages requested by Murashi Isaïe amount to 46,493,500Frw plus moral damages amounting to 15% of 46,493,500Frw while those requested by Rusanganwa Sylvain amounted to 15,620,620Frw, plus 15% of 15,620,620Frw for moral damage.

[20] The Supreme Court finds that since 24 July 2007, the first designated date for the hearing, till 24 April 2019. The Intermediate Court of Nyarugenge continued adjourning the hearing of this case, but on 11 May 2009, it examined the objection of lack of jurisdiction raised by COGEAR Ltd, and decided that the claim of Murashi Isaïe and Rusanganwa Sylvain falls in its material jurisdiction, meaning that it examined the value of damages they requested for.

[21] The Supreme Court finds that it is also clear in the file that in October 2007, they submitted updated submissions of their requested damages, whereby it is clear that Murashi Isaïe requests from COGEAR Ltd damages amounting to 506,893,500Frw, while Rusanganwa Sylvain requests 62,254,000Frw of damages, therefore, it finds that the statement of the appellants that they have communicated through their submissions to the Intermediate Court of Nyarugenge about the amount of damages they requested, meaning a total of 569,147,500Frw, should be sustained.

[22] Concerning the statements of COGEAR Ltd through which it argues that those amounts should have been indicated in the summons and writ of summons; the Supreme Court finds that they should not be sustained because what the legislator requires to be mentioned in those documents is the object of the claim in summary¹. Therefore, pursuant to the provision of the articles 4, litera 1, 19(4^o) and 30 of the aforementioned Law n° 21/2012 of 14/6/2012, it is not necessary for Murashi Isaïe and Rusanganwa Sylvain to indicate the amount of money they prayed for to Court to order COGEAR Ltd to pay.

[23] The Supreme Court finds therefore that even if article 43 of the Organic Law n° 01/2004 of 29/1/2004 determining the Organisation, functioning and jurisdiction of the Supreme Court which was in force at the time of the appeals, the legislator mentioned “the writ of summons” and following the statements above, it should be understood that it did not only consider the statements in that document but it did also consider the plaint submissions and the claims of the parties in the course of

¹“L’objet de la prétention est la chose demandée c’est-à-dire la reconnaissance d’un droit subjectif substantiel”, Loïc Cadet, droit judiciaire privé, deuxième édition, Litec, Paris, 1998, P. 456. “La notion d’objet de la demande: La demande en justice tend vers une certaine fin, le plaideur réclame des dommages et intérêts, l’exécution d’une clause contractuelle, l’annulation d’un mariage, l’établissement d’une filiation”, Jean Vincent et Serge Guinchard, procédure civile, 26e édition, Dalloz, Paris, 2001, P. 438.

the hearing. Consequently, their appeals fall in material jurisdiction of this Court due to the fact that Murashi Isaïe and Rusanganwa Sylvain stated clearly in the writ of summons that they will explain their claim through the submissions to be submitted to the Court shortly, they indicated the amount of money for damages claimed which exceeded 20,000,000Frw and they re-emphasised it in the hearing before the court.

[24] For all these reasons, the Supreme Court finds that the objection raised by COGEAR Ltd should not be sustained because Murashi Isaïe and Rusanganwa Sylvain appeals fall within its jurisdiction.

III. DECISION OF THE COURT

[25] Rejects the objection of lack of jurisdiction by the Supreme Court raised by COGEAR Ltd.

[26] Admits the appeals of Murashi Isaïe and Rusanganwa Sylvain to fall in the jurisdiction of the Supreme Court.

[27] Decides that the hearing of the case in merit will proceed on 16/12/2014.

[28] Orders that the court fees be suspended.