

## RE SOCOBICO INDUSTRIES S.A.

[Rwanda SUPREME COURT – RS/INTER/CIV0001/14/CS (Mukanyundo, P.J., Hatangimbabazi and Gakwaya, J.) June 20, 2014]

*Civil procedure – Application for interpretation of a judgment – An application for interpretation of the judgment must demonstrate an error or a decision which is ambiguous or susceptible to divergent interpretation – This kind of claim has no merit when the issue or the provision requested to be interpreted was not subject to debate in the course of the hearing of the case in respect of which it is requested interpretation – Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, article 154.*

**Facts:** ECOBANK Ltd gave a loan to SOCOBICO Industries S.A and the latter provided the mortgage of an industrial house located on plot N°1109 and other buildings erected and those will be erected thereon. In that loan contract, they agreed that in case SOCOBICO Industries S.A fails to pay, the properties it has mortgaged shall be auctioned without recourse to judicial proceedings.

ECOBANK Ltd requested the Intermediate Court of Nyarugenge to issue an order for auctioning that mortgage because SOCOBICO Industries S.A has failed to pay its loan and the President of that Court ordered the auction of that mortgage. Pursuant to that order, the court bailiff auctioned that mortgage which was then acquired by TRUST Industries Ltd.

SOCOBICO Industries S.A filed a claim at the Intermediate Court of Nyarugenge stating that the auction was unlawfully conducted. That Court held that the auction is invalidated because it was unlawfully conducted, it ordered TRUST Industries Ltd to reimburse to SOCOBICO Industries SA the amount of money which were paid after conducting the auction, it ordered ECOBANK Ltd, Notary and TRUST Industries Ltd to pay jointly pecuniary damages, moral damages and procedural fees and counsel fees to SOCOBICO Industries SA.

ECOBANK Ltd, TRUST Industries Ltd and Notary were not satisfied with the ruling of the judgment and appealed to the High Court stating that the Intermediate Court disregarded that the auction was conducted in realization of the provided mortgage and disregarded the laws as well as the statements of the parties. That Court ruled that the auction remains valid and also held that the damages awarded in the appealed judgment are set aside.

SOCOBICO Industries SA appealed before the Supreme Court stating that the house price was enough for the payment of the loan of ECOBANK Ltd and it is not thus clear why both the house and its goodwill were sold; that Court ordered TRUST Industries Ltd to give back to SOCOBICO Industries SA the goodwill which it seized in the auction. It also ruled that the counterclaims of ECOBANK Ltd and TRUST Industries Ltd have no merit.

SOCOBICO Industries SA filed application for interpretation of paragraph 121 of the judgment RCAA0011/13/CS rendered by the Supreme Court because it finds that the decision of the Court cannot be executed in case the Court did not determine the value of the goodwill, therefore it is requesting to determine the value of goodwill which it ordered to give back to the former.

**Held:** An application for interpretation of the judgment must indicate an error or a decision which is ambiguous or susceptible to divergent interpretation. This kind of claim has no

merit when the issue or the provision requested to be interpreted was not debated on in the course of the hearing of the case in respect of which it is sought to be interpreted.

**The claim has no merit.**

**Statutes and statutory instruments referred to:**

Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, article 154.

**No case referred to.**

**Author cited:**

Albert FETTWEIS, *Manuel de procédure civile*, 2<sup>e</sup> édition, Liège, 1987, p.259.

## **Judgment**

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

[1] On 09 September 2008, SOCOBICO Industries S.A mortgaged industrial house located on plot N° 1109 and other buildings erected and to be erected thereon, located in Nyarugenge District, Kigali City to secure the loan of 379,000,000Frw it was given by ECOBANK Ltd (To secure and guarantee the repayment of all amounts owed in principal debt, interests, commissions and fees of which it is or would be the debtor, the borrower allocates in favor of the Bank the real estate as detailed below as well as buildings erected or to be erected thereon: it is the building affected exclusively for industrial use located in the plot N° 1109 in Nyarugenge/Kigali). Under that loan contract, they agreed that if SOCOBICO Industries S.A fails to pay, the mortgage which it provided shall be auctioned without recourse to judicial proceedings.

[2] SOCOBICO Industries S.A did not repay that loan and ECOBANK Ltd requested the Intermediate Court of Nyarugenge to issue an order for auction of that mortgage it was given. The President of that Court ordered that the mortgage which was given by SOCOBICO Industries S.A shall be auctioned on 16 August 2010. Basing on that decision, the court bailiff auctioned the mortgage on 17 September 2010 and it was bought at the price of 320,150,000Frw by TRUST Industries Ltd represented by Mugabo Claver.

[3] SOCOBICO Industries S.A was not satisfied with that auction, and it filed a claim at the Intermediate Court of Nyarugenge stating that it was unlawfully conducted. That Court rendered the judgment on 25 November 2011 whereby it held that the claim of SOCOBICO Industries S.A has merit in part and ruled that the auction conducted on 17 September 2010 is invalidated because it was unlawful; it ordered TRUST Industries Ltd to give back 11,498,750Frw to SOCOBICO Industries SA because it is obvious that it was paid after conducting the auction; it ordered ECOBANK Ltd, Notary Uwitonze Nasira and TRUST Industries Ltd to pay jointly 60,000,000Frw of pecuniary damages, 7,500,000Frw of moral damages and 1,500,000Frw of procedural fees and counsel fees to SOCOBICO Industries SA.

[4] ECOBANK Ltd, TRUST Industries Ltd and Notary Uwitonze Nasira were not satisfied with the ruling of the judgment and appealed to the High Court stating that the Intermediate Court disregarded that the auction was conducted on the provided mortgage and disregarded the laws as well as the statements of the parties. That Court ruled that the appeal has merit and that the auction conducted on 17 September 2010 remains valid. It also held that the damages awarded in the appealed judgment are dismissed.

[5] SOCOBICO Industries SA was not satisfied with the ruling and appealed to the Supreme Court invoking the following grounds:

1. The fact that the judge of the High Court heard the case which he would not have admitted because the subject matter was the disputes regarding the execution of the judgment which means that the delivered judgment should not be subject to appeal, according to article 219 of Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative ruled that the appeal procedure.
2. The fact that the High Court disregarded that house price was enough for the repayment of the loan of ECOBANK Ltd and it is not thus clear why both the house and its assets of business were sold.
3. The fact that the Court disregarded the procedures which were not followed such as absence of publication of the auction;
4. The fact that only two persons attended the auction and the mortgages were sold at a very low price in comparison with the real value while Notary was in possession of the report of the expert demonstrating the value of the mortgage, but she decided to sell it at that price; on top of that the offered price was not paid immediately because the check drawn bounced and the amount was paid after two months.
5. The fact that the judge changed the subject matter because it was the disputes regarding the execution of the decision of Court.
6. The fact that the judge misinterpreted the scholar's writings about the difference between the Goodwill and immovable property; also the judge violated the procedure of selling the mortgage without recourse to judicial proceedings, and the fact that the judge did not order refund to SOCOBICO Industries SA of the balance of auction proceeds.

[6] The Supreme Court rendered the judgment RCAA0011/13/CS on 15/11/2013 and held that the appeal of SOCOBICO Industries SA has merit in part. It ordered TRUST Industries Ltd to give back the goodwill which it seized during the auction of 17 September 2010 to SOCOBICO Industries SA and ordered that the counterclaims of ECOBANK Ltd and TRUST Industries Ltd have no merit.

[7] On 17 January 2014, SOCOBICO Industries SA filed application for interpretation of paragraph 121 of the judgment RCAA0011/13/CS rendered by this Court on 15 November 2011.

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

**Whether the ground of the claim filed by SOCOBICO Industries SA with the Supreme Court is in the framework of judgment interpretation.**

[8] In its claim for interpretation of the judgment RCAA 0011/13/CS, SOCOBICO Industries SA states that basing on the nature of the goodwill, it realizes that the decision of the Court cannot be executed except in case the Court decides the value of things which must be given back to SOCOBICO Industries Ltd; therefore, that judgment is imprecise in respect to ascertainment of what shall be given back to the winner. Thus, it requests the Supreme Court to determine the value of elements of the goodwill which it ordered to be given back to the former.

[9] In addition, SOCOBICO Industries SA states that if one considers the structure or definition of Goodwill (Fonds de commerce), it is clear that it is something of which value fluctuates; therefore it cannot be given back without determining its monetary value. This had been clearly requested during the hearing, whereby Counsels for SOCOBICO Industries SA submitted to the bench the valuation demonstrating clearly the value of that goodwill and which is increasing since its appropriation; that is from the day of auction on 17 September 2010; moreover that value cannot be given back in kind.

## **VIEW OF THE COURT**

[10] Article 154(1) of Law N°21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure provides for that “applications seeking to rectify an apparent error on the record or clarifying a decision which is ambiguous or susceptible to divergent interpretation shall be decided in camera without adversarial arguments and without alteration regarding the winning party, explanatory notes on how the case was ruled, and what the law stipulates as well as the decision taken by court”.

[11] The Supreme Court finds that in judgment RCAA0011/13/CS, paragraph 121, the Court ordered TRUST Industries Ltd to give back elements of the goodwill of SOCOBICO Industries SA which it seized in auction of 17 September 2010.

[12] The Supreme Court finds that before the Intermediate Court, when SOCOBICO Industries SA filed a claim, it requested for the following:

- To resolve the disputes that arose in execution of the judgment;
- To restore to the plaintiff the properties constituting its goodwill allocated fraudulently to TRUST Industries Ltd by ECOBANK Ltd and the Notary;
- Shortfall from 17/09/2010 until the date of restitution;
- Moral damages and interests and procedural fees as well;
- The provisional appointment of an independent third party as the manager of the company at issue.

[13] In addition, the Supreme Court finds that in the conclusion of its submissions before the Intermediate Court, SOCOBICO Industries SA requested the following:

- To admit this claim and decide it has merit;
- To order the restitution of the goods constituting the goodwill of SOCOBICO SA in their value;
- To condemn the defendants to pay jointly and severally damages and costs as explained and ordered above;

- To order the invalidation of the sale of 17/09/2010;
- To decide on any other issue pursuant to the law.

[14] Concerning the request of SOCOBICO Industries SA, except its prayer to the Intermediate Court of Nyarugenge to order its opponents to reconstitute to it the value of the Goodwill and its submission to the Supreme Court of the document it calls the valuation (Valuation: Estimation of the total loss of SOCOBICO Industries SA following the occupation of its goodwill by TRUST Industries Ltd) made by itself demonstrating its value, the Supreme Court finds that either in its submission of appeal or in its pleading during the hearing, SOCOBICO Industries SA did no longer request to be awarded the monetary value of the Goodwill instead of its components. Therefore, in case the Court did not examine anything in respect to the value of the goodwill and nothing in this respect is stated in its motivation of the judgment to be interpreted<sup>1</sup>, it is clear that to determine the value of the Goodwill in terms of money in the judgment interpreting the other is going beyond the interpretation of the judgment as it was rendered and would rather amount to deciding on the subject matter which was not heard<sup>2</sup>.

[15] According to the motivations in the previous paragraph, the Supreme Court finds that basing on article 154(1) of Law N°21/2012 of 14/6/2012 mentioned above, judgment RCAA0011/13/CS was not rendered in ambiguous way or a way susceptible to divergent interpretation because its paragraph 121 is clear enough whereby the Court ordered Trust Industries Ltd to give back to SOCOBICO Industries SA the components of its goodwill, it acquired through the auction<sup>3</sup>; therefore it finds that SOCOBICO Industries SA actually requests to decide on an issue which was not debated on during the hearing.

[16] In light of all those grounds, the Supreme Court finds that the claim of SOCOBICO Industries SA for interpretation of the judgment does not fulfill legal requirements because it does not demonstrate any error or decision which is ambiguous or susceptible to divergent interpretation; therefore it has no merit.

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

[17] The Court decides that the claim of SOCOBICO Industries SA for interpretation of the judgment RCAA0011/13/CS rendered on 15 November 2013 has no merit.

[18] The Court rules that there is no ground for interpreting paragraph 121 of the judgment RCAA0011/13/CS.

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<sup>1</sup> “The reasons for a decision must be interpreted one in light of the other and the decision must be interpreted in the light of the reasons”, Cass. 12 décembre 1980, Pas., 1981, I, 432 in Albert FETTWEIS, *Manuel de procédure civile*, 2<sup>e</sup> édition, Liège, 1987, p.259).

<sup>2</sup> “That is why while interpreting the judgment the judge, cannot extend, limit or amend the rights he/she has granted. He/she must confine him/herself to ascertaining the meaning and scope of provisions of the judgment without denaturing them. He/she must maintain his/her original decision, giving it a better shape without being able to amend or supplement the judicial act ' Albert FETTWEIS, *ibidem*.

<sup>3</sup> “It is in the exercise of its sovereign power that a Court of Appeals, which states exactly that, pursuant to Articles 1351 of the Civil Code and 461 of the new Civil Procedure Code, the judges hearing a dispute concerning the interpretation of a previous decision cannot, under the pretext of determining their meaning, amend its specific provisions, decides that there is no room for interpretation of a judgment which is unambiguous”, Cass., soc., 23 mars 1995, JCP G 1995, IV, 1257.