

NTUKAMAZINA v. PRIME INSURANCE LTD (EX-COGEAR LTD)

[Rwanda SUPREME COURT – RSOC00001/2016/CS (Kanyange, P.J., Ngagi and Mukandamage, J.) January 20, 2017]

Execution of the judgment – Entirety of the judgment – The court decisions must be executed as they were rendered unless they were reversed in the appeal process – Constitution of the Republic of Rwanda of 2003 revised in 2015, article 151.

Execution of the judgment – The motion for a penalty forcing the execution of a judgment – The motion for a penalty forcing the execution of the judgment is requested during the hearing of the case in merit and not during the hearing of the case relating to the dispute arising from the execution of the judgment – Law N°21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, article 217.

Facts: In the labour case between Ntukamazina and Prime Insurance, Ntukamazina won the case and was awarded damages equivalent to 134,185,600Frw. After the judgment became final he requested for its execution from Prime Insurance Ltd. Disputes arose during the course of its execution because the Prime Insurance Ltd was only willing to pay 67,975,013Frw claiming that it is the adequate amount, of which Ntukamazina Jean Baptiste declined arguing that the decision of the judgment should be executed as it was rendered.

Ntukamazina seized the Supreme Court requesting it to resolve those disputes and prayed that the Court orders Prime Insurance Ltd to execute that judgment and also raised a motion for a penalty forcing the execution of the judgment to be imposed on Prime Insurance Ltd. He furthermore claimed for damages for vexatious lawsuits and counsel fees.

Prime Insurance Ltd raised an incident for intervention of Rwanda Revenue Authority (RRA) and Rwanda social Security Board (RSSB) on the ground that those institutions are the ones which led to the failure of enforcement of that judgment because of their money which has to be deducted from the one awarded by the court. In response to this incident, Ntukamazina argued that Prime Insurance has no interest for the intervention of RRA and RSSB.

The court immediately assessed the raised incident and rejected the intervention and made a bench ruling to proceed with the hearing of the case on merit.

In its defence, Prime Insurance Ltd argues that there is no disputes in the execution of the judgment because the money it deducted is provided for by the law which was also clarified by the concerned institutions and the reason why that money for RRA and RSSB was not debated upon was because both parties were aware that it had to be deducted.

Regarding the motion for a penalty compelling the execution of the judgment, it argues that it had the will to execute the judgment because it had issued a cheque and that Ntukamazina should have taken the money he was given and claim for the balance later. It also argued that Ntukamazina must pay damages for vexatious litigation and the counsel fees because he is the one who dragged it into lawsuits.

Held: 1. The fact that both parties do not agree on how the judgment should be executed demonstrate disputes arising from the execution of the judgment and hence they have to be resolved.

2. The court decisions must be executed as they were rendered unless they were reversed in the remedy of appeal.
3. The motion for a penalty forcing the execution of the judgment is requested during the hearing of the case in merit, thus it cannot be filed during the hearing of the case relating to the dispute arising from the execution of the judgment, for that the motion is rejected.
4. The defendant must pay to the plaintiff the damages for unnecessarily being dragged into lawsuits which made him spent his time and money for hiring a counsel and that of court fees deposit which must be awarded in the court's discretion.

Appeal has merit in parts;
The judgment RSOCAA0001&0002/16/CS should be executed as it was rendered and
the plaintiff be paid all the money he won for in the case;
The defendant must give damages for unnecessarily being dragged into lawsuits and
counsel fees;
The defendant must refund the court fees deposit.

Statutes and statutory instruments referred to:

Constitution of the Republic of Rwanda of 2003 revised in 2015, article 151.
Law N°21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, articles 216, 217 and 208.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] In the Judgment N°RSOCAA0001&0002/16/CS rendered on 14/10/2016 by the Supreme Court, Prime Insurance Ltd was ordered to pay a total of 134,185,600Frw in damages, which includes 43,248,000Frw for unlawfully dismissal, 7,208,000Frw for dismissal notice, 14,416,000Frw as compensation for termination of employment contract, 43,248,000Frw for employment certificate which was not given to him 23,065,600Frw for leave allocation and 3,000,000Frw for procedural and counsel fees.

[2] Following the delivery of that judgment, Ntukamazina Jean Baptiste petitioned the Supreme Court claiming that dispute arose in the course of its execution, because Prime Insurance Ltd was only willing to pay 67,975,013Frw claiming that it is the adequate amount, of which Ntukamazina Jean Baptiste declined arguing that the decision of the aforementioned judgment should be executed as it is.

[3] In his petition, Ntukamazina Jean Baptiste, seeks that this Court orders Prime Insurance Ltd to execute judgment N°RSOCAA0001&0002/16/CS thereby paying him 134,185,600Frw as ordered by the Court, to impose Prime Insurance Ltd a penalty forcing the execution of the judgment of 1,000,000Frw par day until it will finish the payment because it is evident that it reluctantly refused to execute the judgment. He also claims for damages equivalent to 5,000,000Frw for unnecessarily being dragged into litigation, 2,000,000Frw for counsel fees and 100,000Frw of court fees.

[4] On the other hand, Prime Insurance Ltd raised an incident for intervention of Rwanda Revenue Authority (RRA¹) and Rwanda social Security Board (RSSB²) on the ground that those institutions are the ones which led to the non-execution of that judgment because of their money which has to be deducted from the one awarded by the court. In response to this incident, Ntukamazina argued that Prime Insurance has no interest in the intervention of RRA and RSSB.

[5] The case was heard in public on 10 January 2017, Ntukamazina Jean Baptiste was assisted by Counsel Rutabingwa Athanase and Prime Insurance Ltd was assisted by Counsel Rutembesa Phocas; The court immediately assessed the raised incident and after analyzing article 116³ and 116⁴ of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, it rejected the intervention requested by Prime Insurance, thereby making a bench ruling to proceed with the hearing.

II. ANALYSIS OF LEGAL ISSUES

Whether there are disputes in execution of the judgment N°RSOCAA0001&0002/16/CS and how they can be resolved.

[6] Ntukamazina Jean Baptiste and his counsel Rutabingwa Athanase, argue that Prime Insurance Ltd lost the case and in the judgment to be executed, it was ordered to pay Ntukamazina Jean Baptiste the amount mentioned in it but instead of paying the whole amount it issued a cheque of 67,975,013Frw which does not amount to the one awarded to Ntukamazina Jean Baptiste.

[7] They further argue that the disputes regarding the execution of the judgment are demonstrated by the Prime Insurance Ltd's exhibition that it should not pay the 134,185,600Frw ordered by the Supreme Court on the allegation that some amount have to be deducted and given to RRA and RSSB. Furthermore, even Bank of Kigali Ltd refused to release the whole amount before those disputes are settled, thus there is no other means for Ntukamazina Jean Baptiste to get that money apart from returning before the Court, for it to decide especially that there is no other organ which can deduct it as provided by the Constitution of the Republic of Rwanda.

[8] Counsel Rutembesa Phocas, assisting Prime Insurance Ltd, argues that there are no disputes regarding the execution of the judgment because the amount deducted by Prime Insurance Ltd is provided for by the law and also the concerned organs clarified on it. He adds that the reason why the money for RRA and RSSB was not debated upon was because both parties were aware that it had to be deducted and even they sought for RRA's clarification after they explained it to Ntukamazina but failed to understand it, which indicated that the money awarded to Ntukamazina have to be charged of tax.

THE OPINION OF THE COURT

¹Rwanda Revenue Authority.

²Rwanda Social Security Board.

³ Forced intervention is the right of the parties to call on a person not a party to the case.

⁴ Forced interventions may be instituted by any interested party against all persons who are third parties to a case against which they can sue by a third party opposition in order to challenge them in one case.

[9] Article 208 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, provides that: “Disputes regarding the execution of judgment shall be brought before the court that rendered the final judgment or that made a foreign judgment enforceable in Rwanda. The court decides thereon within fifteen (15) days of the date of receipt of the application”.

[10] Article 151, *litera* 4, the Constitution of the Republic of Rwanda of 2003 revised in 2015, provides that: “[...] Court rulings are binding on all parties concerned, be they public authorities or individuals. They cannot be challenged except through procedures determined by law [...]”.

[11] The documents in the case file indicate that in the judgment N°RSOCAA0001&0002/16/CS, Prime Insurance Ltd was ordered to pay to Ntukamazina Jean Baptiste a total amount of 134,185,600Frw which includes 43,248,000Frw for unlawfully dismissal, 7,208,000Frw for dismissal notice, 14,416,000Frw as compensation for termination of employment contract, 43,248,000Frw for employment certificate which was not given to him 23,065,600Frw for leave allocation and 3,000,000Frw for procedural and counsel fees. However for the purpose of the execution of this judgment Prime Insurance Ltd wants to pay only 67,975,013Frw alleging that it has to deduct tax for the RRA and social security contribution for RSSB.

[12] With regard to determining whether there are disputes regarding the execution of judgment RSOCAA0001&0002/16/CS, as motivated in the previous paragraph, the Court finds that since the parties do not agree on the execution of the judgment, whereby Prime Insurance Ltd claims that some amount has to be deducted from the money Ntukamazina Jean Baptiste won in the case and on the contrary Ntukamazina Jean Baptiste argues that the judgment has to be enforced as it was rendered, demonstrates that there are disputes and hence they have to be resolved.

[13] Regarding the settlement of those disputes, the Court finds that pursuant to article 151 of the Constitution (mentioned above) no one is authorized to alter the court’s decision apart from the appealed Court,⁵ therefore Prime Insurance Ltd cannot claim that there is certain amount which has to be deducted from the damages of 134,185,600Frw which Ntukamazina Jean Baptiste won in the case N°RSOCAA0001&0002/16/CS, which became final. For the counsel of Prime Insurance Ltd to argue that the reason why it was not debated upon was because the parties were aware that there is some amount to be deducted lacks merit because it had to be debated upon for the court to adjudicate upon it.

[14] In the circumstance there was no remedy of appeal exercised to reverse the ruling of judgment RSOCAA0001&0002/16/CS, this Court finds that this judgment has to be enforced as it was rendered, and Ntukamazina Jean Baptiste be paid the whole amount he won in the case, that is 134,185,600Frw.

Whether a penalty forcing the execution of the judgment should be imposed on Prime Insurance Ltd and damages should be awarded.

[15] Ntukamazina Jean Baptiste and his counsel Rutabingwa Athanase argue that a penalty should be imposed on Prime Insurance Ltd to compel it to pay the damages it was ordered

⁵ The ordinary and extraordinary procedures of appeal are provided for by the Law N°21/2012 of 14/06/ relating to the civil, commercial, labour and administrative procedure, in article 155 – 161 (Opposition), 162 - 174 (appeal), 175 – 183 (Third party opposition), and 184 – 193 (Case review).

after losing the case N°RSOCAA0001&0002/16/CS because of its unwillingness to execute the judgment, they also state that they had previously requested for 100,000Frw per day but they realized that it was little therefore they request for 1,000,000Frw per day. They conclude by requesting that Prime Insurance Ltd be ordered to pay 5,000,000Frw in damages for vexatious litigation, 2,000,000Frw for counsel fees and 100,000Frw for court fees.

[16] Rutembesa Phocas, Counsel for Prime Insurance Ltd argues that Prime Insurance Ltd had the will of executing the judgment because on 25/11/2016 it issued a cheque of 67,975,013Frw, he goes on to state that Ntukamazina Jean Baptiste should have taken that money he was given and claim for the balance later. He further states that the damages claimed by Ntukamazina Jean Baptiste are baseless because he is the one who dragged Prime Insurance Ltd into lawsuits, thus he is the one who must pay 2,000,000Frw in damages for continuously dragging it into lawsuits and for counsel fees.

OPINION OF THE COURT

Regarding the penalty forcing the execution of the judgment.

[17] Article 216 of the Law N°21/2012 of 14/06/2012 mentioned above provides that: “Upon request by one of the parties, during trial of civil, commercial and labour cases a judge may, provide a sentence to the adversary to pay a fine for delay payment calculated on daily, weekly, monthly or annual basis in case of failure to respect the merits of judgment without prejudice to payment of a fine of moral damages if necessary [...]”. And article 217 of that Law provides that: “The claim intended for the penalty forcing the execution shall be admitted even if it is on the first instance or during the appeal level.

[18] The Court is of the view that the above mentioned articles imply that the motion for the penalty forcing the execution is requested during the hearing of the case in merit, inferring that it cannot be requested during the hearing of the case relating to the disputes arising in its execution.

[19] The Court finds that the motion for imposing on Prime Insurance Ltd a penalty forcing the execution of the judgment requested by Ntukamazina Jean Baptiste in this case which relates to the disputes arising in the execution of judgment N°RSOCAA0001&0002/16/CS is inadmissible.

Regarding damages.

[20] Regarding the damages claimed by Prime Insurance, the Court finds that they should not be awarded as it is evident that it was responsible for not executing judgment N°RSOCAA0001&0002/16/CS as it was rendered, therefore it was not unnecessarily dragged in lawsuits as claimed by its counsel.

[21] Regarding the damages claimed by Ntukamazina Jean Baptiste, the Court finds that he deserves them because he was unnecessarily dragged into this case whereby he spent his time and money for hiring a counsel and that of court fees deposit⁶⁷ but since the damages he

⁶ Article 3, paragraph one of the Ministerial Order N°002/08.11 of 11/02/2014 on court fees in civil, commercial, social and administrative matters. Provides that: “If the party who paid fees wins the trial, the judge shall order in the court decision the losing party to refund the winning party and determines the time within which to pay.[...]”.

requested for being unnecessarily dragged into lawsuit and counsel fees are excessive, the Court awards him 1,000,000Frw in damages of unnecessarily being dragged into lawsuits and 1,000,000Frw for counsel fees in its own discretion.

III. THE DECISION OF THE COURT

[22] Decides that the claim filed by Ntukamazina Jean Baptiste has merit in parts;

[23] Decides that the judgment N° RSOCAA0001&0002/16/CS must be executed as it was rendered, and Ntukamazina Jean Baptiste must be paid by Prime Insurance Ltd the whole amount of money he won in the case, which is 134,185,600Frw;

[24] Orders Prime Insurance Ltd to pay Ntukamazina Jean Baptiste 1,000,000Frw in damages for unnecessarily being dragged into lawsuits and 1,000,000Frw for counsel fees;

[25] Orders Prime Insurance Ltd to refund 100,000Frw of the Court fees Ntukamazina Jean Baptiste deposited.