

KANYARUKIKO v. WORLD VISION RWANDA

[Rwanda SUPREME COURT– RS/REV/SOC 0001/16/CS – RSOCAA00002/2016/SC
(Mutashya, P.J., Karimunda and Ngagi, J.) March 09, 2018]

Labour procedure – Objection – Summoning of the association without a legal personality – An association without legal personality which was a party in the case and cease to exist can be summoned being represented by its head because its activities belong to its members who are also in solidum – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 2.

Facts: Kanyarukiko sued World Vision Rwanda to the Intermediate Court of Gasabo claiming that he was not given what he is legally entitled to, including those stipulated in the World Vision regulations, He also claims damages for not being paid his salary and other benefits for his new post of SD Operator, intentionally refusing to give him a written employment contract, unfair dismissal. Thus, he requests related damages.

World Vision Rwanda appealed to the High Court and that Court found its appeal with merit and ordered Kanyarukiko to pay World Vision procedural and counsel fees.

Kanyarukiko appealed to the Supreme Court arguing that the High Court should not have admitted the appeal of World Vision Rwanda because it was lodged after the time limit, and that Kisaro ADP Committee should not have been forced to intervene for the first time on the appellate level without being requested for, he also criticises the High Court decision that he was an employee of Kisaro ADP Committee disregarding the evidence he submitted to it which proves that he was an employee of World Vision Rwanda and it is the one which should have terminated the contract he concluded with Kisaro ADP Committee as a branch of World Vision Rwanda, he adds that the Court did not consider that he worked on the post of SD Operator while he produced its evidence. That court found his appeal with no merit.

Kanyarukiko again filed a claim to the Supreme Court requesting for the rectification and interpretation of the judgment RSOCAA0002/12/CS because his appeal was registered on RSOCAA0002/14/CS, but he was given a copy of judgment with a different number and that some paragraphs of the judgment include the statements of the court which are not clear to the extent that they can be construed differently. That Court held that the typographical error should be rectified and that nothing is confusing in the mentioned paragraphs.

He again applied for a case review to the Supreme Court, Kisaro ADP raised an objection of inadmissibility of the claim on the ground that there was no new element in the case.

Kanyarukiko replied that they did not submit on that objection because he did not notice it. He as well raised the objection relating to the appearance of the parties before the court because Kisaro ADP Committee no longer exists, thus it cannot be still summoned in this case.

Kisaro ADP Committee argues that the objection of the plaintiff is groundless because the fact that Kisaro ADP Committee does no longer exist, it does not prevent it from suing or being sued for what took place during its existence, especially that this case in which it was summoned to intervene is for a case review and it was filed when Kisaro ADP Committee was still operational and the motif which led Kanyarukiko Jean Jacques Cesar to file a case is the termination of

employment contract that he concluded with Kisaro ADP Committee which means that it should be in this case. World Vision Rwanda states that if Kisaro ADP Committee was a party in the case which is subject to the case review, the plaintiff cannot state that it should not appear before the Court.

Held: In case of an association without legal personality was a party in the case and cease to exist, it can be summoned being represented by its head because its activities belong to its members who are also in solidum, therefore Kisaro ADP must stay in the case.

**Objection overruled.
The case in merit will proceed.
Court fees suspended.**

Statutes and statutory instruments referred to:

Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 2 and 185.

No cases referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] This case begun in the Intermediate Court of Gasabo, Kanyarukiko Jean Jacques César suing World Vision Rwanda for not giving him what he is entitled by the law and internal rules of World Vision Rwanda, he claims also for salary and other benefits on his new post as SD Operator which he begun to work on since 05 November 2009, having refused to put their employment contract in writing adamantly while he kept reminding them, unlawful dismissal, and harassment at work because of his opinion of requesting for a written employment contract.

[2] Kanyarukiko Jean Jacques César as an employee of World Vision was requesting for damages equivalent to 125,892,536Frw plus 176,040USD. On 07/12/2012, the Intermediate Court of Gasabo rendered the judgment RSOC0107/11/TGI/GSBO, and ordered World Vision Rwanda to pay Kanyarukiko Jean Jacques César 26,279,472Frw and 108,000USD.

[3] World Vision Rwanda was not contented with the ruling and appealed to the High Court which rendered the judgment RSOCA0004/13/HC/KIG on 08/01/2013, and found the appeal of World Vision Rwanda with merit and ordered Kanyarukiko to pay World Vision Rwanda 100,000Frw for procedural fees and 300,000Frw for counsel fees.

[4] Kanyarukiko Jean Jacques César was not satisfied with the rulings of the case and appealed to the Supreme Court arguing that the High Court should not have admitted the appeal of World Vision Rwanda because it was lodged after the time limit, that Kisaro ADP Committee should not have been forced to intervene for the first time on the appellate level without any request and also that the High Court held that he was an employee of Kisaro ADP Committee

disregarding the evidence proving that he was an employee of World Vision Rwanda and World Vision is the one which should have terminated the contract it concluded with Kisaro ADP Committee as its branch.

[5] In the judgment RSOCAA0002/12/CS rendered on 15/01/2016, the Supreme Court found the appeal of Kanyarukiko Jean Jacques César without merit and sustained the judgment RSOCAA0004/13/HC/KIG rendered by the High Court on 10/03/2014.

[6] Kanyarukiko Jean Jacques César again filed a claim before the Supreme Court requesting for rectification and interpretation of the judgment RSOCAA0002/12/CS, rendered on 15/01/2016, on the ground that his appeal was registered on RSOCAA0002/14/CS, which is different from the copy of the judgment he was given because it has RSOCAA0002/12/CS, therefore he requests for rectification of the case number. And he further stated that in paragraphs 11, 17, 19, 22, 40, 41 and 45 of that judgment, contains ambiguous views of the court to the extent that it can be construed differently and that is the reason he is seeking its interpretation so that he understands the view of the Court in those paragraphs.

[7] On 24/06/2016, the Supreme Court rendered the judgment RS/RECT & INTER/SOC0001/16/CS, and held that the typographical error has to be rectified and the number of the judgment is RSOCAA0002/14/CS instead of RSOCAA0002/12/CS, it also held that there is no ambiguity in paragraph 11, 17, 22, 40, 41 and 45 of that judgment.

[8] Kanyarukiko Jean Jacques César applied for a review of the case RSOCAA0002/14/CS. Requesting that the following issues be examined:

1. Whether there are conclusive elements of evidence which were not noticed by the court and if there were grave errors in the judgment of the case which can be based on for its review, for the court to re-examine the admissibility of the World Vision's appeal in the High Court;
2. Whether there are elements of evidence which were not noticed by the Court and if there was confusion of the facts which can be a ground for its review, for the Court to re-examine whether Kisaro ADP Committee was in the organizational structure of World Vision Rwanda
3. Whether there are conclusive elements of evidence which were not noticed by the court and serious errors were committed during the judgment of the case which can be based on for its review, so that the Court can again examine whether Kanyarukiko Jean Jacques César was an employee of World Vision Rwanda;
4. Examining the damages he requests for.

[9] The case was heard in public on 20/02/2018, Kanyarukiko Jean Jacques César assisted by Counsel Rutaganira Alexandre, World Vision Rwanda was represented by Counsel Muhozi Paulin and Gasarabwe Claudine, while Kisaro ADP Committee was represented by Habarurema Phocas assisted by Counsel Gatera Kanisa.

[10] Kisaro ADP Committee raised an objection of inadmissibility of the application for review of the case on the fact that the grounds he relies on are not new because they were all produced before the court, Kanyarukiko Jean Jacques César argued that they did not respond to

that objection because they did not notice it. On his side he raised the objection relating to the appearance of the parties before the Court because Kisaro ADP Committee no longer exists. The issue of whether Kisaro ADP Committee which ceased to exist should continue to be summoned was the first to be analyzed by the Court.

II. ANALYSIS OF THE LEGAL ISSUE

Whether Kisaro ADP Committee should be removed from the case because it ceased to exist

[11] Kanyarukiko Jean Jacques César avers that Kisaro ADP Committee address is unknown and does not exist anywhere, therefore it should not be party to this case; he prays that the hearing continues without Kisaro ADP Committee because it no longer exists. He argues that if the hearing proceeds as if it exists, and in case the Court awards anything to them, the one who will appear before the Court representing Kisaro ADP Committee while it no longer has a known address in Rwanda, should first indicate the address of Kisaro ADP Committee, its functions and its owners.

[12] Kisaro ADP Committee argues that the statements of the plaintiff are groundless because Kisaro ADP Committee having ceased to exist does not prevent it from suing or being sued for what happened during its existence, this claim for which it was forced to intervene is for a case review and it was filed when Kisaro ADP Committee was still operational and the motif which led Kanyarukiko Jean Jacques Cesar to file a case is the termination of employment contract that he concluded with Kisaro ADP Committee, that means that it should be in this case in anyway. For the summon to be signed by its former administrator, should not cause any problem because he was the one who used to sign it and it is still the same claim continuing. Therefore, those remaining issues do not concern the plaintiff, rather it is for Kisaro ADP Committee.

[13] The counsel for World Vision Rwanda state that if Kisaro ADP Committee was a party to the case which is being reviewed, then Kanyarukiko Jean Jacques César cannot claim that Kisaro ADP Committee should not appear in this case.

VIEW OF THE COURT

[14] Article 2 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit. The provisions of the paragraph one of this Article shall also apply to the associations, organizations and institutions without legal status which cannot file cases before courts without precluding their possibility to be sued. Whereas article 185 of this Law provides that an application for review can only be made by persons who were parties to or represented in the challenged judgment.

[15] The case file indicates that Kisaro ADP Committee was a party to the case in the High Court after that this Court decided to subpoena it. The file also indicates that Kanyarukiko Jean Jacques César appealed against that decision to the Supreme Court, and in the judgment RSOCAA0002/12/CS rendered on 15/01/2016, this Court found without merit his appeal and consequently, the judgment RSOCA0004/13/HC/KIG rendered on 10/03/2014 by the High Court

of Kigali was sustained, implying that Kisaro ADP continued to be a party to the case and that is how it continued in the case RSOCAA0002/12/CS which was rendered on 10/07/2015 whose number was rectified to RSOCAA0002/14/CS which was subject to review.

[16] The case file also indicates that in the previous instances, Kisaro ADP Committee was sued and represented by its head. That the association was composed of 12 people as indicated in the document of 29/11/2010, titled ADP Committee Election Report and Habarurema Phocas was elected to be its head and he is the one who represented it before the Court.

[17] The court finds that as it was stated in the court session of 20/02/2018, that even though Kisaro ADP Committee no longer exists because it winded up its activities, it cannot be a reason to remove it from the case as alleged by Kanyarukiko Jean Jacques César because it did never have the legal personality so that laws regulating the dissolving of the companies or organizations with legal personality apply, instead, Kisaro ADP Committee is a name its members chose to use, that is to say even its alleged activities are for its members not for the association and are the ones with obligations *in solidum*, therefore Kisaro ADP Committee must remain a party in the case, because being inoperative does not stop it from suing or being sued for what transpired when it was still active. The Court further finds that for the summon to have been signed by its former president, there is no problem because he was the one who used to sign on its behalf and it is the same issue (claim) which still continues, therefore the case should remain as it was in previous instances, if not so it would be contrary to the provision of article 2 of the aforementioned Law N°21/2012 of 14/06/2012 providing that institutions may be sued and the legislator provided it purposely to protect the interest of the nonmembers which may be indebted to the association.

[18] Pursuant on the motivations above, the Court finds with no merit the objection regarding the appearance of the parties before the Court requesting that Kisaro ADP Committee be removed in this case.

III. DECISION OF THE COURT

[19] Overrules the objection raised by Kanyarukiko Jean Jacques César.

[20] Holds that the hearing of the case will be heard in merit on 8/05/2018.

[21] Court fees suspended