

# **RUSHOMINTWALI v. MUNYANGANZO ET AL**

[Rwanda SUPREME COURT – RSOCAA0002/15/CS (Kanyange, P.J., Gatete and Munyangeri, J.) 09 June 2017]

*Labour procedure – Summoning – A company which was summoned for the purpose of giving information to the court cannot be considered as a party to that case to the extent that its shareholders cannot file a third party opposition against the rendered judgment.*

**Facts:** Munyangazo and Niyonzima filed *ex parte* application before the Intermediate Court of Ngoma, requesting that SOPEM be compelled to honour the employment contract and to pay damages for dismissal, that court awarded them those damages. Rushomintwali filed a third party opposition, Mugisha and Ngarambe intervened in the case, SOPEM sarl was forced to intervene. That Court reversed the rulings of the judgment opposed.

Munyanganzo and Niyonzima appealed to the High Court arguing that the court should not have admitted the claim of Rushomintwali, because he had no legal standing to file a third party opposition against the case in which SOPEM was party, because he is one of the shareholders of that company. The High Court held that Rushomintwali lacked the legal standing and interest to file a third party opposition against that judgment because he was a shareholder of SOPEM and that company was summoned.

Rushomintwali appealed to the Supreme Court arguing that the previous court held that SOPEM was a party in the case RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA which is not the case, because SOPEM was questioned purposely for the Court to get the necessary information.

**Held:** A company which was summoned for the purpose of giving information to the court cannot be considered as a party to that case to the extent that its shareholders cannot file a third party opposition against the rendered judgment

**Appeal has merit;  
The hearing of the case will resume.**

**Statutes and cases referred to:**

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 28, 171,176 and 330.

**No cases referred to.**

## **Judgment**

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

[1] Munyango Patrick and Niyonima Théogène lodged a unilateral petition to the Intermediate Court of Ngoma, requesting that SOPEM be compelled to honour the employment contract and to pay damages for unfair dismissal, and in the judgment RSOC0002/14/TGI/NGOMA rendered on 22/04/2014 and rectified by the judgment RSOC0007/014/TGI/NGOMA, Niyonzima was awarded 37,400,000Frw in damages while 20,400,000Frw was awarded to Munyango.

[2] Rushomintwali Sylestre lodged a third party opposition (RSOC0011/14/TGI/NGOMA), Mugisha Juliet and Ngarambe Emmanuel intervened while SOPEM Sarl was forced to intervene in the case, the judgment rendered on 17/10/2014 by the Intermediate court set aside the rulings of the opposed judgment (RSOC0002/14/TGI/NGOMA & 0007/014/TGI/NGOMA) and ordered SOPEM to pay Niyonzima and Munyanganzo damages of 3,650,000Frw and 2,400,000Frw respectively

[3] Munyangazo and Niyonzima appealed to the High Court chamber of Rwamagana (RSOCA0009/14/HC/RWG) among the grounds of their appeal was the inadmissibility of Rushomintwari's claim because he did not have the legal standing to lodge a third party opposition against a case in which SOPEM was a party, because he is among its shareholders.

[4] On 26/11/2014, the High Court held that Rushomintwali had no legal standing to oppose judgment RSOC0002/14/TGI/NGOMA & 0007/14/TGI/NGOMA because he was a share holder of SOPEM and it was summoned and represented by Counsel Rwakayija John, the Court found that the third party opposition was illegally lodged, therefore it overturned the judgment RSOC0011/014/TGI/NGOMA and sustained the judgment RSOC0002/14/TGI/NGOMA - RSOC0007/14/TGI/NGOMA and ordered Rushomintwali, SOPEM, MUGISHA and NGARAMBE to jointly give the appellants 150,000Frw they deposited while appealing and 1,000,000Frw for damages.

[5] Rushomintwali appealed to the Supreme Court arguing that the High Court erred in holding that he had no legal standing to lodge a third party opposition against the Judgment RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA because he shares the same interests with SOPEM and again it holds that SOPEM was represented in that case and that he lodged a third party opposition against a case in which he was represented by SOPEM which was not a party to that case.

[6] On 27/01/2017, after deliberating on the raised objections which were overruled by the court, the case was heard on merit, Rushomintwali represented by Counsel Murutasibe Joseph and Gashagaza Philibert, Mugisha Juliet represented by Gashagaza Philibert, Munyanganzo represented by Counsel Mihigo Bienvenue while SOPEM was represented by Murenzi Chrysologue.

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

**Whether SOPEM was a party to the case RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA so that Rushomintwari could not lodge a third party opposition against it.**

[7] The issue to be examined in this appeal and which was the subject matter in the appealed case, is whether SOPEM was a party to the case RSOC0002/14/TGI/NGOMA for Rushomintwali not to have the legal standing to lodge a third party opposition against it because he was represented in that case by SOPEM, other issues which are not related to the appealed case are not to be examined at this stage.

[8] Counsel Murutasibe representing Rushomintwali argues that the High Court held that SOPEM was a party to the case RSOC0002/14/TGI/NGOMA & RSOC0007/14/TGI/NGOMA which is not true, because SOPEM was summoned in that case for information purpose and it was not summoned by the Judge rather by the Court registrar, he further added that the interpretative judgment (RSOC0007/14/TGI/NGOMA) held that SOPEM was not represented.

[9] He further argues that the High Court held that Rushomintwali and SOPEM's interest are the same which is also not true because if it was the case, then he would not have sued SOPEM in the case RCOM0153/12/HCC, not having the same interest is emphasized by the certificate of trade and Memorandum of association of SOPEM.

[10] Counsel Gashagaza Philbert also argues that pursuant to article 224 of the company law, they find that Rushomintwali have the legal standing to lodge a third party opposition against the above mentioned case.

[11] He further adds that the grounds for third party opposition filed by Mugisha Juliet who he also represents are not different from those of Rushomintwali, he explains that Counsel Rwakayija John who represented SOPEM in the case of exparte application, he stated that he found it not necessary to plead that case. The Court should also examine whether the claim would have been found with merit, because he finds that the claim should have been filed through the ordinary procedure due to its nature.

[12] Counsel Gashirabake representing Munyanganzo states that since SOPEM was a party to the aforementioned case, it implies that Rushomintwali as shareholder was represented, he finds that pursuant to article 176 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that a person who is allowed to make a third party opposition is the one who was neither a party to a case nor represented at the trial and again Rushomintwali should not be a party to the case pursuant to article 2 of that Law because he has no interest in the case. For the issue that the interpretative judgment was aiming to explain that SOPEM was not represented, this is misleading because that judgment held that SOPEM never intervene in the case

[13] He continues to argue that SOPEM was summoned and appeared in the case RSOC0002/14/TGI/NGOMA and was a party, pursuant to article 327 of the Law N°21/2012 of 14/06/2012 mentioned above, Counsel Rwakayija John who represented it in the hearing of that case admits that Niyonzima and Munyanganzo be paid without any other hindrance.

[14] Counsel Gashema Félicien representing Niyonzima argues that SOPEM knew about the case when it was summoned that means that it could appeal or oppose it, and when the company is aware of the case that means that awareness applies to its shareholders as well, the shareholder whose interests are at stake cannot apply for the third party opposition against the decision taken

against the company. He finds Rushomintwali, Mugisha and Ngarambe were also represented by SOPEM to the extent that they couldn't make a third party opposition against it.

[15] Counsel Mihigo Bienvenue representing Ngarambe, also admits that SOPEM was not a party because Counsel Rwakayija who appeared in the hearing, stated that he was there to provide the information "*à titre d'information*", therefore he finds that the ordinary procedure should have been applied instead of *exparte* application

[16] Counsel Murenzi Chrysologue representing SOPEM, argues that it had never been a party in the mentioned case; if Counsel Rwakayija John appeared in the hearing of the case he is the one to explain it but what he knows is that SOPEM was in the hearing of the case to provide the information ("*à titre d'information*"). He further states that there was no urgency so that *exparte* application be field because article 3 of the repossession agreement, stipulates that the interests of the SOPEM employees have to be taken into account, he wonders why Munyanganzo and Niyonzima chose that procedure. Regarding whether Rushomintwali had the legal standing to file a third party opposition, he finds that he had that legal standing because he is a shareholder of SOPEM

## **THE VIEW OF THE COURT.**

[17] The case file contains the judgment rendered on the *exparte* application which demonstrates that there was no defendant (*d'office*) instead the judge decided that SOPEM had to appear and give explanations, it was represented by Rwakayija John. It is also demonstrated in the Judgment RSOC0007/14/TGI/NGOMA rectifying the aforementioned judgment, whereby Munyanganzo and Niyonzima were requesting the court to decide that SOPEM intervened in the case RSOC0002/14/TGI/NGOMA, the Judge explained that SOPEM did not intervene, that Counsel Rwakayija was questioned as a person with information but not as a party.

[18] The fact that the Judge found it necessary to get information from SOPEM, the Court finds that it should not be considered as being summoned as a party to the case which is provided by article 28 and other following articles of the Law 21/2012 of 14/06/2012 mentioned in the previous paragraphs relating to the summoning of the parties, especially that even the applicants were requesting to hold that SOPEM intervened, it implies that they wanted also the court to explain how it came to be involved in the case and the Judge found that it did neither intervene nor being sued, therefore the rulings of the High Court that SOPEM was summoned and represented in the case lack merit because of the motivations given above

[19] The Court therefore finds that since, SOPEM was not a party in the case RSOC0002/14/TGI/NGOMA, Rushomintwali could lodge a third party opposition in accordance to the provisions of article 176 of the above mentioned law and has the interest since the money awarded to Munyanganzo and Niyonzima in that judgment had to be deducted from the dividends to be shared by the shareholders while Rushomintwali is one of them, because even in their petition they requested to be paid before the sharing of dividends among shareholders . Regarding the third party opposition against the decision of the Judge specifically in this case they are provided by article 330 of that Law.

[20] The Court finds that since the decision of the High Court is reversed with regard to the third party opposition of Rushomintwali, the hearing should resume with regard to other grounds of appeal which were submitted by Munyanganzo and Niyonzima in that court, but they should be examined in accordance with article 171 of the Law N°21/2012 of 14/06/2012 mentioned above and other damages requested by the parties on this level will be examined

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

[21] Decides that the appeal of Rushomintwali Sylvestre has merit;

[22] Decides that the rulings of the judgment RSOCA0009/14/HC/RWG rendered on 26/11/2014 is reversed;

[23] Declares that the hearing will continue on 22/06/2017 for other grounds of appeal submitted by Munyanganzo and Niyonzima before the High Court and examine at the same time the damages requested at this instance;

[24] Orders that the court fees are suspended.