

THE COURT OF PEACE OF KINSHASA/GOMBE SITTING THERE
AND SITTING IN REPRESSIVE MATTERS ISSUED THE FOLLOWING
JUDGMENT:

RP31 427/CD/I O R I G I N A L FIRST SHEET

PUBLIC HEARING TWENTY-FOUR

AT ISSUE

D U TWENTY-TWO A I

TWO THOUSAND

AGAINST

1. WANG TAO, Managing Director of

Rwashi Mining SAS and

residing at the headquarters of the latter, located in Lubumbashi, Luano
Avenue, Luano District, Commune of Annexe, City of Lubumbashi,
Haut-Katanga Province

the Democratic Republic of the Congo;

2. The company Rwashi Mining SAS taken as civilly liable before

its head office on Luano Avenue,

Luano District, Annex Commune to Lubumbashi in the Democratic
Republic of Congo.

Ministry

public and

Citing Party Monsieur Pascal BEVERAGGI, President

some

Boards of Directors of Companies,

OCTALIA LIMITED SARL and NB

MINING AFRICA SA, residing in Dubai in the United Arab Emirates

HA MT chartered Accountants #C BOX 93/915;

Citing Part

CABINET

Having regard to the procedure followed against the pre-qualified cities prosecuted before the Tribunal of this Court for

Whereas in execution of the case under RU 1917 brought by a r a l c h a m b e r e p r e s i d e n t i e l l e d u t r i b u n a l d e c o m m e n c e K i n s h a s a G o m b e establishing the enforceable title

P31 427CDLI ORIGINAL

Whereas in execution of the said order by the Ministry of Judicial Officer, public and ministerial officer BADIBANGA NSOMBA MANYA and others, there have been several seizures of claims for guarantee and security of payment of the sum of 7,500,000 U S belonging to the companies N.B Mining AFRICA SA and

OCTAVIA LIMITED;

Whereas, for the recovery of this debt, there have been several precautionary seizures of the movable effects belonging to the

RUASHI MINING SAS as of November 26,28,29, 2023

Whereas, in execution of the above-mentioned decision, 8 directors of al SOCBiLe RUASHI MNINIG APS 35 5 516S 0 / 9 5 counsels and those of the companies NB MINING AFRICA SA and 0 0

LIMITED. The two parties have agreed to proceed with an amicable settlement to put an end to the dispute between them

On October 28, 2023, the two parties signed the deed of settlement;

That, in order to comply with the clauses of the said transactional act. The two parties have referred the matter to the Presidential Chamber by mutual agreement

of the Commercial Court of Lubumbashi to obtain a judgment of expedient

Whereas on 28/11/2023, the Commercial Court of Lubumbashi issued the order under RU 776, 669, 688,

703.704 by which he ordered garnishees to make the

payment of the debt of USD 5,500,000 as agreed in the settlement by the parties with an enforceable clause on minute.

RUASHI MINING SAS on appeal with defence executed whose case was enrolled under RUA 439;

Whereas on 26/12/2023, the Court of Appeal of Haut-Katanga issued its judgment declaring the request for defence to be execute without objet and therefore unfounded:

Considering that in violation of Article 133, 135, 76, 140 of the Congolese Penal Code, Book I, Mr. WANG TAO, the cited. Director General, referred the matter to the Commercial Court of Lubumbashi on March 60, 2024 and on 14/03/2024 to the Kinshasa Gombe Peace Court in the period not yet covered by the prescription of public action to seek orders for the preservation seizure of household effects belonging to NB companies

MINING AFRICA SA and OCTAVIA LIMITED, which applications resulted in the restoration of the report of the precautionary seizures

Whereas, against the execution of this order, the company

SECOND SHEET

RP31.427/CD/II

ORIGINAL

FIFTH SHEET

PLAISEA UTRIBUNAL

- To declare the present action admissible and well founded and consequently:

-To declare established in fact as in law the offences of breach of

sealing, misappropriation of seized objects, rebellion, forgery and use of forgery against the city and to condemn him to the penalties provided for in the

law by applying the material assistance

To condemn him jointly and severally with his civil

E E R(0) responsible,

the

second mentioned, to the payment of the social security

Congolese

- To put the costs of proceedings at the expense of the cities And it will be justice

Having regard to the fixing of the case at the public hearing of 20/05/2024 at 9 a.m. following the order made by the President of this Tribunal dated 12/04/2024;

By the exploit of Mr. John NGOY, Registrar of the Lubumbashi/Rwashi Peace Court, a direct summons was given to the cities WANG TAO and the Company Rwashi Mining SAS, to appear before the said Court at the public hearing of 20/05/2024 at 9 a.m.;

Having regard to the appeal of the case at this hearing at which the Citing party appeared, represented by his counsels, Maître Willy

MULENDA jointly with Gilbert ECINDO, respectively Lawyers at the Bars of Kinshasa/Gombe and Haut-Katanga while

that the second mentioned appeared represented by his Counsels Master KALENGA MUTEBA jointly with NSINGO Jacques, SHAUMBA. NTUMBA KEN, respectively Lawyers at the Bars of Haut-Katanga. Kwilu and Kinshasa/Matete, and the first mentioned did not appear or anyone on his behalf

RP31.427/CD/II ORIGINAL SIXTH FOLIO

Examining the state of the proceedings, the Court declared that the case had been brought against the Citant on a voluntary appearance and that the matter had been brought before the

two other Cités on regular exploit

At the request of the Public Prosecutor, the Court held that the first Appellant had been in default;

Having regard to the investigation of the case made at this hearing;

Yes, the party quoting Pascal BEVERRAGGI in his submissions and pleas presented through his Counsel who filed after debates their note of pleadings, the operative part of which is below

FOR THESE REASONS,

Subject to all reservations as a matter of law, the Court of First Instance of:

EFFIER

Declare the present action admissible and amply founded and accordingly;

Declare established in fact as well as in law the offences of Breach of seal, misappropriation of seized objects, rebellion, forgery and use of forgery against the City and to condemn him to the penalties provided for by law by applying material assistance;

-

Order his immediate arrest:

To condemn him jointly and severally with his civil

the second Cité to pay the sum of 10,000,000 USD for all damages payable in Congolese francs;

Charging the bulk of the costs of the proceedings to the Cities.

And it will be justice.

For the quoting part

One of his Counsels: Mr. Gilbert ECINDO NGONGA Attorney at Law

After this, the Tribunal declared the proceedings closed, took the case under advisement in order to render its judgment within the time limit of the law;

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FOR THESE REASONS,

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Charging the bulk of the costs of the proceedings to the Cities.

And it will be justice.

For the quoting part

One of his Counsels: Mr. Gilbert ECINDO NGONGA Attorney at Law

After this, the Tribunal declared the proceedings closed, took the case under advisement in order to render its judgment within the time limit of the law;

RP31.427/CD/I

ORISINAL

SEVENTH FOLIO

Having regard to the appeal of the case at the public hearing of 22/05/2024 at which none of the parties appeared nor anyone on their behalf and the Court delivered its following judgment

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JUDGEMENT

Whereas by his summons

Mr. BEVERAGGI sued and named WANG TAO before the Kinshasa/Gombe a.de Peace Tribunal for the Rebellion, D e n o n o r w use of forgeries. Acts provided for and punishable by Articles 133, 135, 76, 1440, 83 and 124 - 126 of the Penal Code, Book II;

Whereas at the public hearing of 20/05/2024 at which this case was was called and taken under advisement, the Citant appeared represented by his Counsels, Mr. Willy MULENGA and Mr. Gilbert LISHIMBO, all Lawyers at the Haut-Katanga Bar. while the cited did not appear or anyone on his behalf and the Civilly Liable al Ruashi Mining

Company appeared represented by his counsels KALENGA MUTEBA, NSINGA Jacques and SHAUMBA NTUMBA KEN, respectively Lawyers at the Bars of Haut-Katanga, Kwilu and Kinshasa/Matete;

That the procedure followed is regular, the Court declared that it was seized on the basis of a voluntary appearance in respect of the party quoting and on the basis of a regular writ in respect of the person civilly liable;

That the Court held that the Court had defaulted on the Cité:

That with regard to the facts of the present case, the Citante party maintained that in execution of the case under RV1917 rendered by the Presidential Chamber of the Kinshasa/Combe Commercial Court establishing the enforceable title, there had been several seizures of claims for guarantee and security of payment of the sum of USD 7,500,000 belonging to the companies NB Mining Africa and OCTAVIA LIMITED on the movable effects belonging to the company RWASHI Mining SAS:

Ouil continued that after the said decision, a settlement deed was signed between all the parties dated 28/10/2023 by which the company RWASHI Mining SAS had agreed to pay the sum of USD 50500,000 to the benefit of the companies

RP31.427/CD/I OR:SINAL EIGHTH FOLIO

Mining Africa SA and OCTAVIA LIMITED to enable all parties to settle disputes between them;

Considering that after the payment of the sums successively of USD 500,000 on the day of the signing of the settlement deed and

USD 1,000,000 one week after the signing of the agreement by T W A S H I M i n i n g S A S A U P R O F I T D E S O C I E T E S N B M e }

Africa SA and OCTALIA LIMITED all parties were co-to obtain a judgment of expediency from the court of com

ed Lubumbashi, which decision consisted in the Commercial Court of Lubumbashi to take note of the will of all

The parties

That against all expectations, the Cité after the pronouncement of this decision enforceable on the spot notwithstanding any appeal, the company

Rwashi Mining SAS will initiate a defence action executed under the RVA 439 before the Court of Appeal of Haut-Katanga where a decision to dismiss this action for lack of relevance and substance of this case was reserved for the company Rwashi Mining SAS;

Whereas, after the service of the above-mentioned decision on the parties by which the bailiffs, public officers

and ministeriel B A D I B A N G A S O M B A M A N I A o r d o n n a n t a u x

Seizures. al RAWBANK, TMB, STANDARD BANK, ECOBANK to pave the sum of 5,500,000 USD guaranteed by the seizures awarded to the companies NB Mining Africa SA and OCTALIA

LIMITED, Mr. WANG TAO (City) and his Counsels prohibiting third parties seized by a petition from proceeding with the payment of the sums of USD 5,500,000 to the benefit of the Companies NB Mining Africa SA and OCTALIA LIMITED:

That the latter will then refer the matter to the Commercial Court of Lubumbashi and the Court of Peace of Kinshasa/Gombe by Application for attachment Conservatoire des effets mobiliers owned by NB Mining Africa and OCTALIA LIMITED and

another direct summons will be directed against the citing party before the Kinshasa/Gombe Peace Court requesting the conviction of the citing Mr. Pascal BEVERRAGI for

Fraud and attempted fraud.

That in this way, the Citator considers the conduct of the City as described above to constitute offences of Rebellion,

Slanderous denunciation, breach of seal, misappropriation of seized property false and use of forgery and requests in addition to the penalty the

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ORIGINAL NINTH FOLIO

compensation for the damage suffered by the award of 10,000,000 USD as damages;

Whereas having the floor through his

The company Rwashi Mining SAS has asked the Court of Residence not to grant the claim of the Citante party with regard to damages on the grounds that the facts against the Cité WANG TAO have not been established:

by a settlement signed between all the parties. Aftera

It was specified that the factory was never hijacked but because it was seized the electric machines were heated to the top

That as far as the rebellion is concerned, the latter has been

had referred the matter to the judicial authorities because the citing PASCAL

BEVERRAGI had gone into this transaction, then, she said,

declared that there is a slanderous denunciation, it is when all avenues of appeal have been exhausted;

That in addition, with regard to the offence of breach of seal, the Rwashi company stated that it was the rain that had caused the papers to fall while all the machines of the factory are on site and

that there was no misappropriation;

That the Officer of the Public Prosecutor's Office has requested the Court of Sonia to declare established in fact as well as in law the offences of forgery in

writing and its use, on the other hand, of saying not established in fact as

in law, the offences of rebellion, slanderous denunciation, breach of seal and misappropriation of seized property:

That these are the facts and the claims of the parties which deserve discussion in law;

Considering that in law, with regard to the offence of rebellion, Article 133 of the Criminal Code, Book I, provides:

any attack, resistance with violence or threats against the custodians or agents of authority or public force, acting for the execution of laws, orders or orders of public authority, judgments or other enforceable acts;

That for its realization, it requires the meeting of the constituent elements, of which there are four, namely the

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violent resistance, victim, victim and guilty mind;

That with regard to violent resistance, which is the

The material of this offence is a violent opposition to a person holding public authority or entrusted with a public mission acting in the exercise of his or her duties for the execution of the law, the order of the public authority, decisions or judicial warrants:

Than in the case under review. the citant has not demonstrated

in what way did the Cité oppose the agent in this case the bailiff to prevent him from compimission except that correspondence addressed to third parties

That this element being lacking,

the Court will declare superfluous the examination of the other constituent elements of this

offence.

Accordingly, it will acquit him and dismiss him from any legal proceedings without costs;

With regard to the offence of misappropriation of seized objects, Article 83 of the Criminal Code, Book II, provides that there is misappropriation of seized objects by removing objects under the hand of the judiciary, the seizure may have been carried out by the judge, by the officer of the Public Prosecutor's Office or by the officer of the Judicial Police

The perpetrator of the hijacking can be the custodian or any other person

That for its realization, the misappropriation of seized objects requires a material element of misappropriation or destruction, a seizure carried out on the misappropriated objects and the intentional element:

That in the case under consideration, the report of the officer of the judicial police requested by the officer of the Public Prosecutor's Office who lies in the

sufficient evidence that the cobalt processing plant

is included in the list of seized property found on the spot. Therefore there is no

never embezzlement; That consequently will say that the offence of misappropriation of the seized objects put to the

charge of the City, and shall discharge him thereof for the purposes of any legal proceedings without costs;

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ORIGINAL

ELEVENTH FOLIO

Considering that with regard to the offence of breaking seals, Article 140 of the Act punishes those who have deliberately broken seals shall be

punished by penal servitude for a period of six months to two years and a fine of fifty thousand zaire

or one of these penalties only, and if it is the guardian himself or an official who has made the objection, the penal servitude may be extended to three years

and the fine to two thousand zaire;

That for its existence, this offence requires the of several elements. It is a question of the material and moral element in which the offence is not established at any time.

Alleged perpetrator:

That the material element includes, on the one hand, the existence of seals and, on the other hand, the act of destruction or removal;

That in the case under examination, this element is established all the more so since the report of the judicial police officer which lies in the file (see exhibit No. 54) attests that the processing plant formerly seized was functional at the time of the contract and the presence of the persons inside with no seized papers there.

That as regards the mental element, it is not to be demonstrated because the person named and leaving his workers to enter the factory and operate the machines when he knew well that the factory was not the same as the

was seized acted with fraudulent intent;

That from the foregoing, the Court will declare established in fact as well as in law the offence of breaking the seal charged against the City. In consequence. sentenced him to 6 months of penal servitude

With regard to the offence of slanderous denunciation, Article 76 of the Penal Code, Book II, punishes him by penal servitude for a maximum of five years and a fine of twenty-five to one thousand zaire, or by one of these penalties only; anyone who has made a written or verbal statement to a judicial authority or a public official. who has the duty to seize the said authority, a slanderous denunciation.

A person who has made slanderous imputations against his subordinate in writing or verbally

That it has been held that denunciation, the first constituent element of the offence of slanderous denunciation, consists in imputing a reprehensible act to a person and therefore liable to a sanction (CSJ, RP76/81, 19/12/1973, Quoted by odon NSUMBY

The offence of slanderous denunciation is established

the declaration is made spontaneously before the judicial authority that the malicious intent, namely the design of our

2009, Bulletin of the judgments of the Supreme Court of Justice years 200% to 2009, pp242-252):

In the case at hand, the cited WANG TAO had wrongly cited the Citing Pascal BEVERRAGGI by his direct summons under RP31.343 before the Court of Céans as having defrauded or attempted to defraud him

the defrauded person during the signing of the settlement deed, which facts have not been established after examination;

To act in this way while knowing that the fact denounced before the judicial authorities can only harm the personality of others:

also constitutes the guilty mind;

That from the above, the court will declare established in fact as well as in law the offence of slanderous denunciation charged against the City and consequently will sentence him to 12 months of penal servitude and a fine of 2,000,000 FC payable within the time limit of the law, failing which he will suffer 10 days of subsidiary penal servitude:

With regard to the offence of forgery, article 124 of the Penal Code, Book I, punishes forgery committed with fraudulent intent or with intent to cause harm, and shall be punishable by penal servitude for 6 months to 5 years and a fine or one of these

penalties only;

That in order to be established, this offence requires the combination of the constituent elements, namely: the alteration of the truth in a writing).
Prejudice and fraudulent intent;

Considering that the citing party maintains that the Cité committed forgery in its applications before the Commercial Courts of Lubumbashi and the Court of Peace of Kinshasa/Gombe;

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That it has been held that, in view of the definition and meaning which the legislator intended to give to the prevention of forgery and use of forgery, it must be said that a summons (the terms of which are false) does not apply to the

does not fall within the scope of Article 124 of the Penal Code, Book I, since it is not a title by virtue of which or would have granted itself a

Rather, a procedural act by which or formulates claims and which is submitted to the sovereign appreciation of the judge who will have the opportunity to declare them founded or unfounded.

RP1589 . August 1994 RJJ, 1994, p96 Quoted by ODON NSUN Half-Century Heritage, p.103):

In the case under consideration, it is clear that the applicant had brought an action before the competent courts to

Examine the facts of which he considered himself to be wronged, in view of the above, the Court will declare that the offences of forgery of documents and use of forgery have not been established in fact as well as in law against the Cité

Consequently, the court will acquit and dismiss him for the purposes of all legal proceedings without costs:

The two offences were committed in material competition, the Court will cumulate the penalties and sentence the Cité to 18 months of main penal servitude and a fine of 2000,000 FC payable within the time limit of the law failing which will undergo 10 days of subsidiary penal servitude.

Regarding the claim relating to the civil interests made by the Citante party against the company Rwashi Mining SAS

civilly liable, the Court will declare it admissible and well founded

MSAI will find the amount requested exorbitant due to lack of information and reduce it to a fair and equitable amount that will be 20,000USD Twenty thousand US dollars) equivalent in frank

Congolese;

Article 85 (1) of the Code of Criminal Procedure provides that immediate arrest may be ordered if there is reason to fear that the convicted person will attempt to evade the execution of the sentence and that the sentence is at least three months' penal servitude;

In the present case, the Court notes that not only was it seized of a lawful writ against the Cité WANG TAO which made

R P 3 1 . 4 2 7 / C D / I I ORIGINALAIFOURTEENTH FEULILET

but also and above all that the sentence is more than three months. Thereupon, the Tribunal will order his immediate arrest:

And will charge the costs of the present proceedings to the City at the rate of 2/3 and the remainder, i.e. 1/3, to be borne by the Citer;

FOR THESE REASONS The Tribunal:

Citing Pascal BERAGGI and the civil liability of the s o c

Rwashi Mining SAS and by default with respect to the Cité WANG TAG

Having regard to the Organic Law on the Organisation, Functioning and Jurisdiction of the courts of the judicial order =(0 Having regard to the organic law;

Having regard to Article 85 of the Code of Criminal Procedure;

Having regard to the Penal Code, Book II in Articles 133-135, 76, 140, 83, 124 and 126

The Public Prosecutor's Office heard:

Finds not established in fact as well as in law the offences of Rebellion, Embezzlement of seized property, forgery of documents and use of forged documents charged against the City WANG TAO;

Consequently, he discharges it;

Holds on the other hand, established in fact as well as in law the offence of Breaking of seals charged against the Cité WANG TAO;

As a result, he will be sentenced to 6 months of penal servitude

Holds furthermore established in fact and in law the offence of slanderous denunciation charged against the same City

Consequently, sentences him to 12 months of penal servitude and a fine of 2,000,000 FC payable within the period of time failing which he undergoes 10 days of subsidiary penal servitude;

Said that the two offences are in material combination and after cumulation sentences the above-mentioned Cité to 18 months' principal penal servitude and a fine of 2,000,000 FC

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payable within the time limit of the law failing which he will be subject to 10 days of subsidiary penal servitude

Orders his immediate arrest;

Condemns the Civilly Liable Rwashi Company

Mining SAS to be paid to the Citant the sum of 20,000 USD (Twenty thousand US dollars) equivalent in Congolese francs as a damages for all damages suffered;

Orders the Cite to bear the costs of the present proceedings at the rate of 2/3 and the remainder, i.e. 1/3, to be borne by the Citant:

Thus judged and pronounced by the Court of Peace of

Kinshasa/Gombe at its public hearing on 22/05/2024 at which
have sie ges Magistrats BIATUMBUKALIDIA, Pres
identede
Chamber, MULANDU MBEMBA and YAMFU MBOMBO, Judges with the
assistance of the Public Prosecutor's Officer NDOKODIDI MBOKO
ELIAS, a s s i s t é by MPOYI LUMBALA. Clerk of the Seat.
THE REGISTRAR OF THE JUDGES OF THE PRESIDENT OF THE
SEIGE