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**FRENCH REPUBLIC**  
**ON BEHALF OF THE FRENCH PEOPLE**

**COURT OF APPEAL OF PARIS**

**Division 4 - Chamber 8**

**JUDGMENT DATED JANUARY 10, 2019**

(No. , 7 pages)

Docket Filing Number : **No. RG 16/15796 - No. Portalis 35L7-V-B7A-BZJIQ**

Decision referred to the Court: Ruling dated July 7, 2016 - Enforcement Judge Magistrate of the Superior Court of Paris - RG No. 16/80733

**APPELLANT**

**Sas Getma International, acting in these proceedings through its legal representative domiciled in such capacity at the above registered office**  
SIRET (Business Registration) No.: 350 701 272 00048  
40 avenue George V  
75008 Paris

Represented by Cédric Fischer, Esq., of the Scp Fischer Tandeau de Marsac Sur & Associés Partnership, Attorney at the Paris Bar, toque : P0147

**RESPONDENTS**

**The Republic of Guinea-Conakry, represented by the State Judiciary Official, Mr. Mory Doumbouya**  
BP 1005  
Conakry - Republic of Guinea

**Public Procurement Regulation Authority of Guinea-Armp, represented by its Managing Director, Mr. Guillaume Curtis**  
Conakry  
Republic of Guinea

Represented by Frédéric Lalance, Esq., of the Orrick Herrington & Sutcliffe Partnerships (Europe) LLP, Attorney at the Paris Bar, toque : P0134

**INTERVENING PARTIES**

**Selafa Mja, judicial agents, represented by Frédérique Levy, Esq.**  
102 Faubourg Saint Denis  
75479 Paris Cedex 10

**Scp Brouard-Daude Partnership, judicial agent, represented by Xavier Brouard, Esq.**  
34 rue Sainte Anne  
75001 Paris

Represented by Cédric Fischer, Esq., of Scp Fischer Tandeau de Marsac Sur & Associés

Partnership, Attorney at the Paris Bar, toque: P0147

**COMPOSITION OF THE COURT:**

The case was discussed in open court on December 12, 2018, before the Court consisting of:

Mrs. Emmanuelle Lebé, President  
Mr. Gilles Malfre, Advice Counsel, entrusted with drafting the report  
Mr. Bertrand Gouarin, Advice Counsel, who have deliberated upon the matter

**Clerk of the Court** during the proceedings: Mr. Sébastien Sabathé

**RULING: - Hearing of opposing arguments**

- The ruling was made available to the Clerk of the Court, after the parties had been previously notified under the terms provided in the second paragraph of Article 450 of the Code of Civil Procedure,

- It was signed by Mrs. Emmanuelle Lebé, President, and by Mr. Sébastien Sabathé, Clerk of the Court, to whom the minutes of the ruling were delivered by the signing Magistrate.

Through a ruling of April 29, 2014 (the award), the Common Court of Justice and Arbitration of the Organization for the Harmonization in Africa of Business Law (Ccja) sentenced the Republic of Guinea-Conakry (the Republic of Guinea), following the termination of the agreement for the concession of the container terminal that was entered into on September 22, 2008 with Sas Getma International (the Getma corporation), to compensate the latter for the damages sustained as a result of this termination; said damages are itemized follows:

- A lump sum termination compensation of € 20,884,966;
- A compensation for termination on granted assets of € 3,234,995;
- The unamortized amount of the entrance ticket in the amount of € 14,201,096;
- A compensation for non-returned stock of € 210,070.

The above amounts yield interests at the European Central Bank discount rates, increased by 1%, and this, as of the request for arbitration on May 10, 2011.

It is further specified that each party shall bear its own costs and expenses (attorney fees, consultants, experts, witnesses) and half the burden of the remaining arbitration fees of CFA Francs 100,480,332, of which CFA Francs 40,480,332 are Arbitrator fees.

The Secretariat of the Ccja notified this ruling to the Attorneys of the parties by a letter dated May 26, 2014, received on May 30. By an order of June 18, 2014, the President of the Superior Court of Paris indorsed the ruling with an enforcement order. This sentence, registered for enforcement, was notified to the Republic of Guinea by a judicial document on July 18, 2014. The Republic of Guinea did not lodge an appeal; therefore the sentence, indorsed by the enforcement order, is now final on French territory.

To enforce this sentence, the Getma corporation issued four garnishment orders:

- On October 21, 2015 against Agence Française de Développement (Afd);
- On October 21, 2015 against the Bank of France;
- On October 21, 2015 against Bnp Paribas;
- On November 10, 2015 against the Veolia Afrique corporation (Veolia corporation);

In the context of the November 10, 2015 garnishment, Veolia corporation stated in a letter dated November 13, 2015, that it had two debts of a fiscal or similar nature with the Republic of Guinea: € 165,517 for a professional license, and € 110,345 for a fee due to the Public Procurement Regulation Authority of Guinea-Conakry (Armp). It specified it was not indebted to the Republic of Guinea under the Management Agreement of the Électricité de Guinée company.

In a letter dated October 22, 2015, the Bank of France stated it did not hold any sum or security for the Republic of Guinea.

In a letter dated October 27, 2015, Bnp Paribas mentioned the existence of several guarantee commitments. In a letter dated November 4, 2015, it reiterated that embassies' bank accounts enjoy immunity; said immunity was confirmed in a letter of November 23, 2015.

The garnishments against the Bank of France and Bnp Paribas were reported on October 29, 2015, and the one levied against Veolia corporation was reported on November 18, 2015.

For the purposes of releasing such garnishment orders, the Republic of Guinea and Armp summoned Getma corporation to appear before the Enforcement Judge of the Superior Court of Paris by a writ dated January 29, 2016.

On grounds of a priority preliminary ruling on the issue of constitutionality (ppric) filed by Getma corporation when it opposed the garnishment order levied at Afd, the Enforcement Judge of the Superior Court of Paris rejected the request for transmission of the ppric in a first ruling; in a subsequent ruling of October 13, 2016, registered under the same number, RG 16/81173, as the first ruling, he ordered the release of the garnishment order levied on October 21, 2015 against Afd. Furthermore, the first judge ruled on the challenge to the three other garnishments by issuing the award of July 7, 2016, RG 16/80733.

Getma corporation appealed the award of July 7, 2016, RG 16/80733 by filing a statement on July 19, 2016, and the two judgments of July 7, 2016 and October 13, 2016, RG 16/81173, with statement of October 13, 2016.

This Court upheld the ruling of July 7, 2016, RG 16/81173 by issuing the judgment of March 9, 2017.

According to his ruling of July 7, 2016 (RG 16/80733), the Enforcement Judge of the Superior Court of Paris stated that the requests for the release of garnishment orders levied on October 21, 2015 at the Bank of France and Bnp Paribas were moot, and further stated that Getma corporation's request for expert determination regarding the garnishments was inadmissible. He stated the garnishment order of November 10, 2015 at Veolia corporation produced an attribution effect for € 165,517; however, he ordered this garnishment to be released since it pertains to amounts due to Armp for royalties reported by the garnishee for the benefit of this authority. He dismissed the Republic of Guinea and the Armp from their other claims and ordered the latter to pay Getma a compensation of € 2,000 pursuant to Article 700 of the Code of Civil Procedure

By way of final conclusions notified on October 30, 2018, Selafa, represented by Mrs. Levy, Esq., and the Scp Brouard-Daudé Partnership, represented by Mr. Brouard, Esq., and parties applying to be joined to the RG 16/20427 and 16/15796 proceedings, in their official capacities as liquidation receivers of Getma corporation, request the Court to join the 16/20427 appeals proceedings (garnishment order against Afd) and 16/15796 (the three other garnishments), to set aside the ruling of July 7, 2016, RG 16/80733, except as regards the rationality of the garnishment order against Veolia in the amount of € 165,517, and the lack of unreasonableness of the garnishments levied by Getma, and to set aside the ruling of October 13, 2016.

- As for the garnishment against Afd, they petitioned for the dismissal of the claims made by the Republic of Guinea and Armp.
- As for the garnishments levied against the Bank of France, Bnp Paribas and Veolia corporation, they expect that the legitimacy of the garnishments and their attribution effect be established; they oppose the requests of the Republic of Guinea and Armp, and they ask that an expert consultant's report be ordered for the garnishments against the Bank of France and Bnp Paribas, in order to:
  - Visit any and all premises of the Bank of France and Bnp Paribas located on French soil;
  - Be provided with an itemized list of all assets held on the date of the enforcement proceedings by said financial institutions in the name of, and on behalf of the Republic of Guinea, even if they are registered in the name of any emanation thereof, particularly in the name of the Embassy of the Republic of Guinea;
  - In case of refusal, to carry out any investigation to determine the number, nature and value of the assets held by the Bank of France and Bnp Paribas in the name and on behalf of the Republic of Guinea, even if they are registered in the name of any emanation thereof, and particularly in the name of the Embassy of the Republic of Guinea, on the date of the execution measures;
    - To find and rule that bank secrecy may not be opposed to the process server.

Furthermore, they request the Republic of Guinea and Armp to be sentenced to pay to them the amount of € 30,000 pursuant to Article 700 of the Code of Civil Procedure.

By final conclusions of September 28, 2018, the Republic of Guinea and the Armp oppose the requests for joinder and stay of judgment, seek the reversal of the ruling in that it states that the garnishment order of November 10 2015 at Veolia corporation produced an attribution effect in the amount of € 165,517, and in that it rejected the claim from the Republic of Guinea and Armp for damages due to abusive process. They ask the Court to release the garnishment orders levied against the Bank of France, Bnp Paribas and Veolia corporation, and to sentence Selafa Mja, represented by Mrs. Levy, Esq., and Mr. Brouard, Esq., acting in their official capacities, to pay the sum of € 20,000 to the Republic of Guinea and € 15,000 to Armp, pursuant to article L. 121-2 of the Code of Civil Enforcement Proceedings, in addition to paying € 30,000 to each, by way of legal fees.

#### **ON THIS MATTER**

##### About the proceedings:

There is no reason to join this appeal, regarding the validity of the ordered garnishments levied against the Bank of France, Bnp Paribas and Veolia corporation, to the appeal regarding the garnishment levied against Afd, since the evidence in support of each such appeals is different.

It is advisable to admit the two liquidation receivers of the Getma corporation in voluntary joinder.

There will be no ruling on the stay of proceedings, which is no longer sought by the Appellants.

Regarding the garnishment levied against the Bank of France and Bnp Paribas :

In support of their request for expert determination, the Appellants state that surprisingly, the Banque de France indicated that it did not hold any sum or security on behalf of the Republic of Guinea, even though it is likely that Guinea or its emanations has one or more accounts at the Bank of France. As for Bnp Paribas, they stated that this third party has confirmed that an account exists; however, they mentioned that it could not be garnished as it is protected by immunity, and such an immunity is being challenged.

Yet, the creditor did not deem it fit to include the two garnished third parties in the case, and sought their liability for the obligations that are incumbent upon them under Article R. 211-5 of the Code of Civil Enforcement Proceedings, which it claims were not respected. Therefore, the request for expert determination can only be rejected, as it applies only to this provision.

Moreover, it is unnecessary to note the attribution effect of these two garnishments, as requested by the Appellants.

The Republic of Guinea asks that these two garnishments be released; it recalls, quite rightly, that the debtor as an interest in making such a request, even if the garnishment order has been unsuccessful, as in the present case. Even so, the Respondent does not dispute the evidence of the amounts claimed in these proceedings and does not ask that they be released, in respect of the abusive garnishment it claims in its writ. Therefore, it is unnecessary to release said garnishments.

The ruling will be confirmed on these counts.

About the garnishment levied against Veolia corporation:

- About the waiver to immunity of execution:

Whereas pursuant to Article 31 of the Container Terminal Concession Agreement entered into on 22 September 2008, the Republic of Guinea waived its immunity from execution, the latter deems such waiver should also be special. It is based on the ruling of the First Civil Chamber of the Court of Cassation of January 10, 2018, which adopted an application of the new provisions of law No. 2016-1691 of December 9, 2016 introducing Articles L. 111-1-2 and L. 111-1-3 in the Code of Civil Enforcement Proceedings, even for prior garnishments, thus enshrining the previous case law that disputes the isolated doctrine stemming from the ruling of May 13, 2015.

Yet, the ruling of January 10, 2018 deemed that a State's waiver to its immunity from enforcement must be express and specific in that enforcement processes concern the sovereignty of States and their diplomatic representatives; furthermore, such ruling expressly refers to "*the property, including bank accounts, used or intended to be used for the exercise of the functions that the State's diplomatic corps or consular posts are entrusted with*", as mentioned in Article L. 111-1-2 3, a) as well as the provisions in Article L. 111-1-3, which an demand express and specific waiver in regards to said property. In addition, the Court of Cassation reiterated that it

intended to refer back to its case law prior to its ruling of May 13, 2015, that is, to an express and specific waiver on the property intended for the State's diplomatic Missions, a solution that was incorporated into Article 111-1-3, but only to an express waiver regarding garnishments namely on fiscal and social security debts.

Yet, in this case it could not be deemed that the sums seized from Veolia, relating to a professional license and to a fee payable to Armp, are used or intended to be used for diplomatic missions or consular posts of the Republic of Guinea. As a result, the debtor has validly waived his immunity from enforcement in respect of his claims.

Therefore the release of the garnishment is dismissed; on these grounds, the ruling is confirmed on this issue.

- About the territoriality of enforcement proceedings:

In the appeal, the Republic of Guinea argues that the debts stated by Veolia corporation on behalf of its branch in Conakry cannot be garnished, since they are located on the territory of the Republic of Guinea and are owed, due and payable under Guinean law.

Whenever a garnishment order involves a claim for money, the location of said claim is unified with the domiciled of the garnished third party who happens to be the holder, in this case France, since the registered offices of Veolia corporation, the receiver of the writ of attachment dated November 10, 2015, are in Paris.

The Asset Consolidation Principle should lead to conclude that these debts are located at the registered offices of this garnished third party company. The inherently governmental nature of the claimed debt has no impact on the application of this rule, as their international protection is provided by state immunity. Thus, this plea cannot be accepted.

- About Armp as an emanation of the Republic of Guinea:

It is up to the Getma corporation to prove that Armp lacks any structural, organic and decision-making independence with regard to the Guinean State, and that since there are no assets different from those of that State, both sets of assets are joined.

Owing to the above relevant reasons adopted by the Court, the Chief Judge reckoned that Armp was not an emanation of the defaulting State. It is added that the fact that the President of the Republic is the supervisory authority is irrelevant, as such authority in itself does not entail a lack of autonomy of the State-controlled structure, that six out of the nine members of the Regulatory Board that administers Armp are not directly appointed by the government and that even if the Managing Director is appointed by the President of the Republic, the latter is only liable to the Regulatory Board. On the other hand, it is by reversing the burden of proof that the Appellants point out that Armp does not justify its financial independence. Indeed, it is up to them to prove that such authority merges with the State of Guinea, in such way that Getma corporation would be entitled to execute its title against this authority. Moreover, it is no consequence that this authority has a regulatory as well as a supervisory power, since it has been instituted precisely to regulate public procurements.

Therefore, the ruling will be confirmed in that it has ordered the release of the garnishments of the fees due to Armp, as these amounts are not debts of the Guinean State.

About the damages for improper garnishment:

The first Judge will also be confirmed on this matter: the Getma corporation proves to have a writ of enforcement on grounds of which it could enforce the challenged garnishments; it is reiterated that the garnishment against Veolia corporation has been partially authorized.

About the remaining claims:

In respect of the fees incurred not included in the costs, the Appellants will be ordered to pay the sum of € 5,000.

**ON THOSE GROUNDS,**

Ruled that there are no grounds for a junction with the appeal recorded under G 16/20427; admits in their voluntary joinder Selafa Mja, represent by Ms. Frédérique Levy, Esq., and the Scp Brouard-Daudé Partnership, represented by Mr. Xavier Brouard, Esq., in their official capacities as liquidation trustees or Sas Getma International;

Confirms the ruling;

Rejects any other claim;

Sentences Selafa Mja, represented by Ms. Frédérique Levy, Esq., and Scp Brouard-Daudé Partnership, represented by Mr. Xavier Brouard, Esq., in their professional capacity as liquidation trustees of Sas Getma International, to pay the amount of € 5,000 to the Republic of Guinea-Conakry, pursuant to Article 700 of the Code of Civil Procedure;

Sentences Selafa Mja, represented by Ms. Frédérique Levy, Esq., and Scp Brouard-Daudé Partnership, represented by Mr. Xavier Brouard, Esq., in their professional capacity as liquidation trustees of Sas Getma International, to pay the costs of the appeal, which may be recovered pursuant to Article 699 of the Code of Civil Procedure.

THE CLERK OF THE COURT

THE PRESIDENT