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Concepts and legal effects of sequestration in Congolese law

Magistrat NZEWE GBOGUDA Roger[1*] et Maitre TSHIBANGU MUSAFIRI Guelord[2]

[1]Premier président de la cour d'appel du Maniema*
[2]Assistant1 à la faculté de droit de l'Université de Kindu/UNIKI

***Corresponding Author:** Name & mail Id (11pt) Magistrat NZEWE GBOGUDA Roger, Magistrat NZEWE GBOGUDA Roger@gmail.com*

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ABSTRACT

When two or several persons are protesting the ownership or the possession of a good or when a good is object of a seiture,it can be necessary even indispensable for the god conservation of litigiou's good be confided for keeping to a someone who has got the load to reburn it,after the contesting hold up,at the one who will judged worthy to get it. So the conservative measure presented is nommed sequester The sequester can be fitted between litigants parties in which case must be differentiadted of deposit contract and of this one has got on hers hand's.But it can also to result from a fairness decision,it must be distiguistted the sealings.It result than the sequester may be etther conventional,so be judiciary.But in all cases,it disposes to keep a litigious good for the interest of litigants parties.

Keyword:notions, judiciary effects, sequestration, droit, congolais

1. Introduction

Indeed, when two or more people dispute the ownership or even the possession of a property, the various procedures initiated to put an end to the disputes and determine the true owner or possessor can take a more or less long period of time.

In the event of seizure of movable effects from a defaulting debtor, the judicial mechanisms put in place to carry out the seizure and make the attaching creditor pay may drag on.

And even when the garnishee debtor offers items belonging to him for release, the realization of the things offered for the payment of the creditor party can also take time.

And in these different cases, it may be necessary, even urgent, for the courts seised, without prejudging the merits of the actions pending before them, to be able to take, at the request of the parties, precautionary measures, such as the affixing of seals or the sequestration of the disputed property. (A. RUBBENS, 2005, p.136).S

It is in order to ensure the proper preservation of the disputed property both during the dispute and during the trial in order to have it handed over to the person who will be deemed worthy of obtaining it that the Congolese legislator has instituted the sequestration mechanism, the two stages of which we will try, not only to define the concepts, but also to determine the legal effects, the whole of which must be closed by a small conclusion.

NOTIONS OF SEQUESTRATION

Under the terms of article 518 of the Congolese Civil Code, Book 3, the sequestration is either conventional or judicial.

DEFINITIONS AND CHARACTERISTICS OF CONVENTIONAL SEQUESTRATION

Definitions of conventional receivership

Article 519 of the Congolese Civil Code, Book 3, defines sequestration as a deposit made by one or more persons of a contentious thing in the hands of a third party, who undertakes to return it, after the dispute has been completed, to the person who is deemed to be entitled to obtain it.

It therefore appears that the sequestration is a kind of deposit that consists of entrusting a disputed (or seized) object to the custody of a third party until the dispute is settled, with the agreed third party being responsible for keeping it, keeping it and returning it to the person who is deemed worthy of obtaining it (Cornu Gérard, 2011, p. 946)

The characteristic of the escrow contract is, according to case law, to reserve what is the subject of it to the party who will be deemed to have obtained it after a final decision on the dispute that gave rise to the sequestration (KATUALA KABASHALA, 1995, p. 256).

As can be seen, the term "sequestration" is used in this part of our article to refer to the contract so called by the law.

However, it is important to note that the receivership is a polysemic concept that can also refer to the agreed third party to whom the custody, conservation or even administration of the sequestered property is entrusted.

It is in this sense that the decision which ruled that it is not necessary, for the appointment of a receiver, that he be a party to the proceedings on the merits. (KATUALA KABASHALA, op.cit. p.258)

It follows that the receiver can refer to both a contract and a person. But in this part of our article, the concept will be studied as a contract.

Characteristics of conventional escrow

In order to better understand the conventional receivership, it is important to compare it with other contracts that resemble it in order to determine its characteristic elements. These are, on the one hand, the deposit contract and, on the other, the third-party contract.

Reconciliation between Receiver and Custody

Even if the law considers the receiver to be a kind of deposit, it should nevertheless be noted that the two contracts differ in their names, their objects, their motivations and their objectives.

Their names

Deposit and sequestration are certainly organised under the same title of the Civil Code, Book 3 (Title VII), but each of them has its own name and is subject to its own legal regime.

The deposit is governed by Articles 482 to 517 of the above-mentioned Code, while the sequestration is subject to Articles 518 to 522 of the same Code, certain provisions of the deposit being applicable to the sequestration by virtue of Article 521.

Their objects

The deposit may only relate to movable things, whereas the sequestration may relate to immovable property as well as to movable property.

Their motivations

The escrow contract assumes that the object of the contract is subject to dispute, or that it has fallen under seizure, or that it has been offered as security by a debtor who has been seized: it must therefore be a disputed asset.

Case law goes in the same direction when it rules that a sequestration measure is justified only if there is a serious dispute (Civil Code, Book 3).

It is therefore the existence of the dispute as to the object of the sequestration that justifies the conclusion of the said contract.

However, in order to conclude a deposit contract, the contracting parties do not need to prove the existence of any dispute over the ownership of the deposited object, but the depositor must demonstrate that he is the legitimate owner of the deposited object.

Their objectives

Case law informs us, with regard to the deposit, that it is a contract that mainly aims to entrust the custody or conservation of the thing delivered, which must then be returned in kind to the agreed beneficiary (KATUALA KABA KASHALA, 1995, p. 245) while the same source says that the receiver has the purpose of reserving what is the subject of it to the party who will be deemed worthy of obtaining it, by virtue of a final decision on the dispute that provoked it (French Civil Code, 2011, p.231).

Thus, even if both contracts must result in the restitution of the property which is the subject of them, the beneficiary of the return of the deposit is determined by the parties in their contract, while the person who is to receive the sequestered thing is unknown at the time of the conclusion of the contract, his designation having to result from the decision rendered on the merits of the dispute.

It is clear from the above-mentioned analyses that conventional sequestration differs from filing as much in its name, its object, its objective as in the reason for its conclusion.

Reconciliation between the receiver and the escrow.

In a possessory pledge, the contracting parties may agree to hand over the object of the pledge not to the pledgee, but rather to an agreed third party.

It is the agreement ancillary to the pledge contract by virtue of which the third-party holder is designated that the doctrine calls escrow

It should be recalled that under Congolese law, the pledge contract was first regulated by the provisions of articles 598 to 612 forming Title XI of the Congolese Civil Code, Book 3; these provisions were repealed by Law No. 73-021 of 20 July 1973 on the general regime of property, land and real estate and the regime of securities as amended and supplemented by Law No. 80-008 of 18 July 1980 (Article 398) and replaced by Articles 320 to 334 of the same Law.

But after the accession of our country to the Organization for the Harmonization of Business Law in Africa, OHADA in acronym, the provisions of the new law on pledges were once again repealed by the Uniform Act of December 15, 2010 on the organization of securities (Article 227) which replaced them with its Articles 92 to 124, forming Chapter IV on the pledge of tangible movables.

In its Article 97, paragraph 1, the aforementioned Uniform Act prescribes that the pledge contract is enforceable against third parties, either by registration in the Trade and Movable Credit Register, or by the delivery of the pledged asset in the hands of the pledgee creditor or a third party agreed between the parties.

An analysis of this legal provision shows that escrow, which is here established as one of the conditions for the enforceability of the pledge against third parties, constitutes a contract by which the parties, engaged in a contract of pledge with dispossession, entrust the pledged property to an agreed third party. The escrow contract and the escrow contract are distinguished both by their characteristics and by the nature of their objects.

Their characters

The receiver is a principal contract in that its constitution in no way requires the existence of another contract to which it must serve as a support. But the escrow is more than accessory, since it supports the contract of pledge, which itself is an ancillary contract par excellence. The escrow is, in fact, an accessory to the accessory, while the receiver is a principal contract.

The nature of their objects

The property subject to the sequestration must be litigious, whereas the property of the escrow is simply pledged by its legitimate owner.

Since the sequestration is thus differentiated from the deposit and the escrow, what can we say about its legal nature?

Legal nature of the conventional receiver

The conventional receiver is a named, real and synallagmatic contract.

The receiver: a contract named

Concluded between one or more persons and an agreed third party who undertakes to keep a disputed object with a view to returning it, after the dispute is over, to the person who will be deemed to be entitled to obtain it, the receiver is an appointed contract, in the sense that its name as well as the rules of its form are set by law (HILARION ALAIN BITSAMANA 2015, p.98).

It follows that the validity of the conventional sequestration is subject to the general conditions of the contracts and to those set by its own regime.

The general terms and conditions of the escrow

The escrow contract is subject to Articles 8 to 32 of the Congolese Civil Code, Book 3, which prescribe the essential conditions for the validity of the agreements.

To do this, he must comply with the four classic conditions related to the consent of the parties, their capacity to contract, the certainty of the object of the contract and the lawfulness of its cause.

Of the proper regime of the receiver

As an appointed contract, the receiver is, moreover, subject to the provisions of Articles 518 to 522 of the same aforementioned code, which indicate its name and establish the rules inherent in both its formation and its effects.

The receiver: a real contract

Like the deposit, of which it constitutes a particular kind, the sequestration is perfect only by the real or feigned tradition of the thing sequestered.

The receiver: a synallagmatic contract

The receivership is a synallagmatic or bilateral contract, in the sense that the parties to the contract are mutually obligatory to each other.

The concept of conventional sequestration having thus been established, we will, in the following lines, try to understand that of judicial sequestration.

DEFINITIONS AND CHARACTERISTICS OF JUDICIAL RECEIVERSHIP

Definitions of judicial receivership

Article 523 of the Congolese Civil Code, Book 3, prescribes that the Court may order the sequestration:

1° Movable property seized from a debtor;

2° of an immovable or movable thing the ownership or possession of which is disputed between two or more persons;

(3) things that a debtor offers for his release.

Reading this legal provision, we realize that the legislator has not defined judicial sequestration; rather, it has merely mentioned a few types of sequestration that can be ordered by the judge.

This lacuna is fortunately filled by case law which, interpreting the same provisions, has specified that judicial sequestration is a precautionary measure taken when, due to a dispute or an opposition of interests, the object whose possession is in dispute must be kept until the dispute is resolved (KATUALA KABA KASHALA, 2010, p 114).

The sequestration thus defined is a precautionary measure ordered by the judge in certain circumstances provided for by law.

But as we have said above, the same term is also used to designate the third person to whom the sequestered thing is entrusted.

It is in this sense that it has been held that a judicial receiver has, on an occasional basis, the status of an officer of the court (KATUALA KABA KASHALA, op.cit., p.258).

However, the concept of judicial sequestration is, in principle, used in the sense of a precautionary measure decided by the judge under the conditions laid down by law.

Characteristics of judicial sequestration

Since judicial sequestration is defined as a precautionary measure with its own purpose, it will be necessary, in order to determine its characteristics, to compare it with the seals, another precautionary measure that is close to it in order to better understand it.

Indeed, with regard to interim measures, Professor Antoine Rubens teaches that, without prejudging the merits of the actions, the court may be led to take, at the request of the parties, precautionary measures, such as the affixing of seals or the sequestration of a disputed property (A. Rubens, 2005, p. 136).

It follows that judicial sequestration and sealing have points of convergence and points of divergence.

Points of convergence

According to the teachings of Professor Rubens, sealing and sequestration have in common that they are both precautionary measures on the one hand, and that they both have a contentious object as their object.

1° Sequestration and sealing are precautionary measures.

Judicial sequestration and sealing are precautionary measures since they are intended to safeguard an asset or a group of assets either in the interest of the owner, or in the interest of the creditors, or for various purposes (Hilarion et al., op.cit., p243).

2° The two measures relate to disputed things.

Judicial sequestration and seals are only implemented to avoid, in the interest of the owner or creditors for example, the imminent loss of the assets considered to be in dispute (extinction of a right, deterioration of a building).

Points of divergence

The two precautionary measures are distinguished both by the quality of their authors and by their modus operandi.

Competent authorities to order the sequestration

The constitution of the judicial receivership remains the prerogative of the judge, who is sometimes seized on a request to which he responds by means of an order, sometimes on a summons in which case he issues a provisional judgment; he cannot therefore order the sequestration on his own initiativeCompetent authorities to place the seals The placing of seals can be issued by both the administrative and judicial authorities.

Administrative seals

It should be noted that seals may be affixed by administrative authorities.

This is the case, for example, of the seals placed by the heads of the financial authorities on certain assets of recalcitrant taxpayers to induce them to pay taxes, duties and duties due to the State, the Province or the Decentralized Territorial Entities.

Administrative seals are generally affixed at the initiative of the administrative authorities concerned.

Judicial seals

At the judicial level, sealing measures can be taken by both the prosecutors and the courts.

1.Sealing by the Officers of the Judicial Police and the Public Prosecutor's Office.

During preliminary investigations or during pre-judicial investigations, the officers of the judicial police and those of the Public Prosecutor's Office may seize objects to which the confiscation provided for by law may relate and any others which may be used as evidence or exculpatory (Articles 3, 11 and 24 of the Code of Criminal Procedure).

When objects seized during home visits and searches cannot be inventoried on the spot, the judicial police officer shall place them under seal (Article 55 of Ordinance No. 78-289 of 3 July 1978 relating to the exercise of the powers of judicial police officer and agent attached to the ordinary courts).

Comparative law and legal writers agree on this point in suggesting that objects seized during the preliminary investigation or during the pre-judicial investigation should be immediately inventoried and placed under seal (JC SOYER, 1990).

The reasons for this suggestion speak for themselves, especially when it comes to the flagrante delicto procedure.

2.Sealing by the judges.

In civil and commercial proceedings, the law offers the judge a wide range of opportunities to order the sealing of certain assets, including the following:

- Article 179 of the Family Code, which allows the judge to impose on the administrator of the property of the person declared absent such protective measures as he or she deems useful for the protection of the absentee's movable or immovable assets;

- Article 568 of the same Code, which provides for the possibility for the divorce judge to order, even of his own motion, all provisional, protective or urgent measures that he or she deems necessary to safeguard the interests of the children or of each of the spouses.

The measures thus recommended may include the sealing of the assets concerned to ensure the protection of the interests at stake.

-Article 59 of the Uniform Act of 10 September 2015 on the organisation of collective procedures for the discharge of liabilities provides in its first paragraph that in the decision to open the receivership or liquidation of assets, or by a subsequent decision, the competent court may prescribe the affixing of seals to the safes, wallets, books, documents, furniture, effects, stores and counters of the debtor and, in the case of a legal person with members who are indefinitely liable, to the assets of each of these members, the affixing of seals may also be prescribed to the assets of the directors of the legal persons.

-In its third paragraph, the same article adds that even before the above-mentioned decision, but only in the case of the debtor's disappearance or misappropriation of all or part of his assets, the president of the competent court may appoint, from among the members of the court, either of his own motion or at the request of one or more creditors, a judge who shall have the seals affixed.

Unlike a judicial receiver, which can only be validly constituted by a judge, ruling at the request of the parties, the sealing may be ordered, either ex officio or at the request of the parties concerned.

2° Modus operandi of the measures under analysis.

The analysis of two precautionary measures, under examination, reveals that while the judicial sequestration and the seals affixed by order of the judge are intended indiscriminately to protect the objects that are the subject of them from loss and alteration, the sequestration operates by handing over the disputed object to a third-party custodian, whereas the seals are interposed between the disputed object and the protagonists to prevent them from having access to it.

Different categories of judicial sequestration

From a reading of Article 253 of the Civil Code, Book 3 mentioned above, it appears that judicial sequestration may be ordered to safeguard the interests of the parties in several cases, including that of movable property seized from a debtor, that of immovable property or movable property whose ownership or possession is disputed between two or more persons and that of things that a debtor offers for his release.

Of the sequestration of property seized from a debtor

In order to understand this first category of judicial sequestration, it is necessary to list some of the cases provided for by law and to indicate the competent court in this matter.

Some cases of sequestration of seized property The situation under the Code of Civil Procedure

Under our Code of Civil Procedure, Article 143 provided that in cases where a seizure, whether precautionary or enforceable, relates to movable or cash in the hands of a third party, the suing creditor, as well as the debtor and the garnishee may appeal, as stated in Article 140, to order the payment of cash or cash due to the registry or the delivery of the movable property into the hands of an approved or appointed receiver.

The situation under the Uniform Act of 10 April 1998

Even under the new regime resulting from the Uniform Act, the idea of sequestering certain seized assets has not been abandoned, but rather has been maintained through several provisions of the above-mentioned Uniform Act, with the aim of safeguarding the seized property.

It is in this context that the following provisions should be mentioned, by way of illustration:

1. With regard to the precautionary attachment of debts, Article 78 provides that, in the absence of an amicable agreement, any interested party may request, by application, that the sums seized be deposited in the hands of a receiver appointed by the court of the domicile or place where the debtor resides;

2 .With regard to the seizure and sale of tangible movable property belonging to the debtor, Article 103, after establishing the principle that the debtor retains the use of the seized property, nevertheless provides that the competent court may order, on application, at any time, even before the commencement of the seizure operations and after hearing the parties or the parties duly summoned, the delivery of one or more objects to a receiver designated by the court;

3. Concerning the attachment and attribution of debts relating to sums of money belonging to the debtor, but seized in the hands of a third party, Article 166 provides that in the event of a dispute, any party may request the competent court, on request, to appoint a receiver, to whom the garnishee shall pay the sums seized;

4 .As regards the provisions relating to seizure and claim, which allow any person who appears to be justified in requesting the delivery or return of tangible movable property to render it unavailable by hearing its delivery, article 233 provides that at any time, the president of the competent court may, on request, the parties heard or duly summoned, authorise the handing over of the property to a receiver appointed by him.

Special situations

Even under OHADA law, certain seizures, including counterfeit seizures and aircraft seizures, remain subject to specific legal texts.

Counterfeit seizure

It is a procedure intended, for the party who believes he has been wronged by the act of infringement, to obtain proof of alleged acts of infringement, in which case the seizure is qualified as descriptive, or to suspend them provisionally pending the proceedings on the merits, in which case the seizure is said to be real, in matters of literary, artistic and industrial property (Gérard Cornu, op.cit. p. 929).

Seizure of aircraft

It allows for the temporary immobilization, with the authorisation of the judge of the place of landing, of aircraft of foreign nationality, unless a bond is released (Gérard Cornu, Ibidem).

COURT HAVING JURISDICTION TO HEAR THE SEIZURE OF THE SEIZED PROPERTY

Seizure of Seized Property

As the application for the seizure of seized property is an integral part of the dispute related to a forced execution measure or a precautionary seizure, it falls in principle within the jurisdiction of the president of the court ruling in urgent matters or the judge delegated by him.

The competent judge is seized, in this matter, by way of an application, but he should rule by means of an order issued in accordance with the provisions of Article 49 of the Uniform Act referred to above.

Receivership of disputed property

Unlike the sequestration of seized property, which is mainly subject to the rules of OHADA law, the sequestration of disputed property remains dominated by the rules of our domestic law, which sets out the applicable texts, the conditions of implementation and the competent court to decide on them.

Applicable legal texts

The fundamental text of the sequestration of disputed property remains, without doubt, Article 523, 2° of the Congolese Civil Code, Book 3, which provides that the courts may order the sequestration of an immovable or movable object the ownership or possession of which is disputed between two or more persons.

Conditions of implementation

The conditions for the implementation of the sequestration of the disputed assets relate in particular to the criteria of the assets concerned and to the nature of the decision of the judge ruling on the matter.

Criteria for assets that may be placed under sequestration For reasons of dispute All movable or immovable property may be placed under sequestration by decision of the judge when their ownership or possession is subject to dispute.

The case law confirms the position thus established when it rules that a sequestration measure is justified only if there is a serious dispute (KATUALA KABA KASHALA, Op.cit., p.257).

The same source, on the other hand, rejected the request for the seizure of a vehicle on the ground that the ownership of the vehicle, established by virtue of a pink card, was not disputed (RCA, 1987).

In the light of the above analysis, we can say that in order to order the sequestration of a disputed property, the judge must have regard not to the movable or immovable nature of the property in question, but rather to the serious nature of the dispute raised on the ownership or possession of the property concerned.

Nature of the decision ordering the receivership of an object in dispute

By teaching, as mentioned above, that the Court may take, without prejudice to the merits of the actions, provisional precautionary measures such as sequestration, Professor A. RUBBENS allows us to understand that the receivership judge is mainly seized of the action to contest ownership or possession.

It is therefore in the course of the proceedings thus instituted that the interested party may request, either in the summons instituting proceedings or in an interlocutory summons, the sequestration of the disputed property.

In addition, a request made for this purpose by way of an application was declared inadmissible (RJCB, 1951, p. 33).

It follows that the application for sequestration of a disputed property must be submitted by means of a summons, the court seised being required to respond to it by means of an interlocutory judgment of a provisional nature.

The court with jurisdiction in matters of sequestration of a disputed property

Since the application for sequestration of a disputed property is an incidental application in relation to the application relating, on the merits, to the action for contestation of ownership or possession of the property concerned, it will be brought before the judge hearing the main action, according to the general principle of law according to which the judge of the action is the judge of the exception.

Of the Receivership of Things Offered as Security by the Debtor

Article 39 of the Uniform Act on Simplified Procedures and Means of Enforcement provides not only that the debtor may not force the creditor to receive in part the payment of a debt, even if it is divisible, but also that, taking into account the debtor's situation and in consideration of the creditor's needs, the competent court may, except in the case of maintenance debts and foreign exchange debts, postpone or stagger the payment of the sums due within the limit of one year.

The same provision adds, on the one hand, that it (the competent court) may also decide that payments shall be set off first against the capital and, on the other hand, that it may also make such measures subject to the performance by the debtor of acts suitable for facilitating or guaranteeing the payment of the debt.

Examining a case before it, the Court of Appeal of BOUAKE decided, with regard to the competent court, that the president of the court seised is, pursuant to Articles 39 and 49 of the AUVE, competent to hear an

application for pardon and, as regards the referral, that it takes place not by petition, but by way of summons (CA Bouake, 2001).

Taking into account the power granted by the last paragraph in fine of the article of Article 39 under analysis, the judge of the CFI of Cotonou decided that the judge hearing the application for interim relief is competent not only to grant a reasonable grace period in view of the difficult situation of the debtor resulting from the failure to sell his goods, but also to order the deposit of the deposit that he offers to pay (OHADA Blue Code, 2018, p. 753). The range of precautionary measures envisaged goes beyond the simple deposit to embrace other measures, the judge seised being able to assess the effectiveness of the measure to be taken in each case.

Here are briefly presented the concepts of sequestration as organized in Congolese positive law.

But what are the legal effects with regard to the parties?

This is the question we will try to answer in the second part of our study.

Legal effects of the sequestration

Following the two types of sequestration provided for by the provisions of Article 518 of the Congolese Civil Code, Book 3, we will begin by presenting the legal effects of conventional sequestration before examining those of judicial sequestration.

Legal effects of conventional sequestration

Article 519 of the Civil Code already cited considers conventional sequestration as a deposit made by one or more persons of a contentious thing in the hands of a third party, who undertakes to return it, after the dispute has been completed, to the person who will be deemed to be entitled to obtain it, and Article 521 adds that when it is free of charge, conventional sequestration is subject to the rules of deposit proper, except for the differences provided for in Article 522 of the same Civil Code.

In order to clearly highlight the rights and obligations that arise from the conventional sequestration, we will begin by listing the different contracting parties.

Parties to the escrow contract

As in any contract that requires the concurrence of several wills to be concluded, the conventional receiver needs two categories of contracting parties to be formed.

These are, on the one hand, the parties who agree to entrust the property to be sequestered and to pay the costs and, on the other hand, the receiver who undertakes to keep the property received, as a good father of the family, and to return it that will be deemed worthy of obtaining it.

Those who agree to place the property they are disputing under receivership may be referred to as the receiver grantors, while the custodian of the receiver property will be referred to as the constituted receiver.

Obligations of the parties

Obligations of receiver grantors

The receivers are the two or more persons who dispute ownership or possession of the disputed property and who agree to entrust it to a receiver.

They are, as is the case for ordinary depositors, bound by all the obligations prescribed by the provisions of Articles 482, 510 and 511 of the Congolese Civil Code, Book 3.

Obligation under section 482

Pursuant to the aforementioned Article 482, according to which the deposit in general is the act by which one receives the thing from another, on the condition that it be kept and returned in kind, we can hold that the very first obligation of the grantors without the performance of which there can be no deposit or sequestration is the delivery of the thing, which is the object of the deposit or sequestration, given that these are real contracts in both cases.

Section 510 Obligations

This section provides that the person who made the deposit is required to reimburse the depositary for the expenses he has incurred in the preservation of the deposited thing, and to indemnify him for any losses that the deposit may have caused him.

Applied to the receivership contract, this provision allows the grantors, even if the contract is concluded free of charge, to be required to reimburse the receiver not only for the expenses incurred by the receiver in the preservation of the sequestered property, but also to indemnify the receiver for any losses that the receiver may have caused him.

Section 511 obligations

In order to make more effective the two obligations of reimbursement and compensation prescribed by the above-mentioned Article 510, this article recognises that the depositary and, by extension, the receiver have a right of retention on the thing sequestered until full payment of what is due to him by reason of the sequestration.

This guarantee also applies to the recovery of the costs of the deposit, in the event that the depositary or receiver has stipulated a salary for the custody of the deposit.

Obligation imposed by Article 522

The depositary in charge of the sequestration may not be discharged, before the dispute is concluded, except with the consent of all the parties concerned, or for a cause deemed legitimate.

The sequestration grantors are therefore required to suffer as a result of the sequestration until the outcome of the dispute that gave rise to it, unless the parties agree otherwise or for a cause deemed legitimate.

Obligations of the receiver constituted Far from going into detail about the obligations incumbent on the depositary of the property, this paragraph will limit itself to identifying the main obligations of the receiver.

Custody and storage obligations

Under the terms of Article 493, the depositary must take the same care in the custody of the deposited thing as he does in the custody of the things that belong to him.

Article 494 of the same code adds, inter alia, that the provision of the preceding article must be applied more rigorously if he (the depositary) has stipulated a salary for the custody of the deposit.

It follows that the receiver, as well as the ordinary depositary, are bound by two main obligations: that of keeping the deposited object and that of preserving it, both of which are obligations of means.

Obligation to return

In principle, this obligation relates to the property deposited, but it can also concern the fruits received.

Indeed, after having prescribed in Article 503 that the depositary must return the deposited object only to the person who entrusted it to him, or to the person in whose name the deposit was made, or to the person who was indicated to receive it, the Civil Code analyses in its Article 502 that if the deposited object has produced fruits that have been received by the depositary, he is obliged to return them. Taking into account the specific purpose of the sequestration, the depositary of the sequestered object must, in principle, wait for the designation of the legitimate owner, after the resolution of the dispute, to return it to him.

The legal effects of judicial sequestration

The first paragraph of Article 524 of the Congolese Civil Code, Book 3, states that the establishment of a judicial guard gives rise to reciprocal obligations between the person seizing the case and the guardian.

Obligations of the garnishee

The seizing party, in the constitution of the judicial sequestration, is the person or persons who take the initiative by seizing by requesting, from the judge, the sequestration of the disputed property. The seizing party is bound by two obligations, one of which is principal and the other ancillary: The main obligation of the seizing party is to pay the custodian the salary provided for by law, while the accessory is that in the event that the thing sequestered produces fruits that the sequestration may have received, he will be obliged to return them.

Of the appointment and obligations of the custodian Of the appointment of the custodian

The custodian is the person appointed by the judge and responsible for the preservation of the property placed under sequestration. While the initiative for the sequestration measure is reserved for the interested parties, the choice of the person in charge of the sequestration is left either to the parties who can agree to it, or to the judge who may decide on it of his own motion.

The custodian thus appointed is subject to all the obligations entailed by the conventional receiver as well as to those provided for in Article 525 of the Congolese Civil Code, Book 3.

Obligations of the custodian Obligation to preserve

In paragraph 2, Article 525 of the above-mentioned Civil Code stipulates that the custodian must provide the care of a good father for the preservation of the seized belongings, and this, unlike the ordinary depositary from whom only the same care is required as he takes in the custody of things that belong to him (Article 493 of the Civil Code already cited).

Obligation to return

The same article 525 states in its 3rd paragraph that the custodian must represent the seized goods, either to the discharge of the seizing party for the sale, or to the party against whom the executions have been made, in the event of the lifting of the seizure.

The custodian is required, according to this provision, to return the sequestered property in two cases:

1.The first case is when the seizing party agrees to sell the seized property to be paid, we are here in the category of sequestration of seized property;

2.The second case still concerns the above-mentioned category, but in the event that the seizure has not prospered, the judge having ordered its release;

3.The last and most important is the one provided for in article 519 of the Congolese Civil Code, which concerns the case of the sequestration of disputed property, which can only be returned to the person who is deemed worthy of it, by a final decision.

The concepts of sequestration having been dissected in this way and its legal effects fixed, what can we conclude from this?

CONCLUSION

In this article, in addition to the similarity between the sequestration and its related concepts, we have demonstrated the difference that characterizes them in terms of their legal concepts and effects, before removing the equivocity that has taken up residence between the prosecutors and those of the court on the competent authority likely to order the sequestration.

From the foregoing, it is clear that it is established by law, doctrine and case law that the sequestration is the exclusive jurisdiction of the judge, but the sealing is a concurrent competence between the public prosecutor's office, the judge and, to a certain extent, the administration.

In a nutshell, we have arrived at the result that, on the one hand, the sequestration, both in its contractual aspect and in its judicial aspect, constitutes an important precautionary measure made available to litigants who dispute property or who maintain opposing interests in relation to property, for the purpose of provisionally entrusting the disputed property to a third party designated, either by the parties or by the court, for the purpose of preserving it in the interests of the parties and public order until the final outcome of the dispute and of returning it to the person who is deemed worthy of obtaining it.

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