

RWANDA / JUDGMENT

# NFCS LTD v NEXTGEN DEVELOPERS LTD ET.AL

RLR V.3-2025

## COURT

Court of Appeal

## DECIDED

28 February 2020

## CASE / FILE NUMBER

RCOMAA 00114/2022/CA

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

## NFCS LTD v NEXTGEN DEVELOPERS LTD ET.AL

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2020-02-28
- Case/document no.: RCOMAA 00114/2022/CA
- Collection: Court of Appeal

### Text

#### Page 1

NFCS LTD v NEXTGEN DEVELOPERS LTD ET.AL [Rwanda COURT OF APPEAL – RCOMAA 00114/2022/CA (Rukundakuvuga, P.J., Kamere and Rugabirwa, J.) 29 September 2023] Law governing commercial cases – Definition of a cheque – A cheque is issued to pay a payee – When no other explanation is attached to it, it must always be understood that it is intended to pay the debt owed by a drawer to a payee. Commercial procedure – Voluntary intervention in the case - Demonstrating a legitimate interest – The interest of the party who voluntarily intervenes in the case is shown by their ability to apply for third party opposition in case they were unable to intervene voluntarily in it. Commercial procedure – Claiming procedural fees - A party is permitted to request that the Court order another party to pay them the procedural fees, the allocation of which is undoubtedly based on the fact that they win the case in which they claim them on other issues of the initial claim. Facts: NFCS Ltd. entered into a contract with NEXTGEN DEVELOPERS Ltd. for preparing two sites for the construction of affordable houses. This contract was renewed and both parties agreed that once NFCS Ltd. had completed 60% of the work, it will

be paid 50% of the bid value, but this did not happen. When NFCS Ltd. had

## Page 2

completed that part of the work that both parties agreed upon, it received no payment, yet NEXTGEN DEVELOPERS Ltd. terminated the contract unlawfully, which made NFCS Ltd. sue NEXTGEN DEVELOPERS Ltd. before the Commercial Court requesting that it be ordered to pay the debt, its interests and various damages, and the case be provisionally executed to the extent of the amount voluntarily that NEXTGEN DEVELOPERS Ltd. accepts. That court held that the case has merit in some respects, that the defendant must pay 109,859,976 FRW equivalent to all the work done and its benefits, that the amount of 132,300,000 the defendant requests as counterclaim to repair the damage are not granted and that there will be no provisional execution. The defendant was not satisfied with the judgment and appealed against it before the Commercial High Court. Evariste Gasirikare intervened voluntarily in the case and stated that he had signed a partnership agreement with NFCS Ltd.; who was supposed to provide all the money that will be spent to prepare the sites and build a wall, while NFCS Ltd. would monitor the execution of those works and agreed that they will be signatories on the account opened in Equity Bank Rwanda Plc to which the payment would be channeled; and once the payment is available, all the money spent until the work is finished would be deducted first, and the remaining profit will be shared by both parties, he intervened voluntarily in the case alleging that that agreement was not complied with but he had learnt that there is a case between NFCS Ltd. and NEXTGEN DEVELOPERS Ltd., so the voluntary

## Page 3

intervention in the case is intended to make sure that force NFCS Ltd. to comply with the agreement they made in case it renders a judgment on the debt in dispute. The Court held that the appeal lacks merit; that the incidental appeal requesting to continue calculating interests has merit, that the judgment of the Commercial Court remains unchanged, except for the interest and the damages in addition to those determined at the first instance, and the payment of the debt and the distribution of the profits accrued from the bid between Gasirikare Evariste and NFCS Ltd. NFCS Ltd. was not satisfied with the judgment, it appealed before the Court of Appeal where all the parties appeared before the court, each party presented its arguments. The debate focused on how NFCS Ltd. and Gasirikare Evariste should share the money that the Commercial High Court ordered NEXTGEN DEVELOPERS Ltd. to pay based on the tender contract with NFCS Ltd. for preparing the sites. After all these arguments, the Court of Appeal considered various issues. Concerning the issue of determining whether 30,000,000 Frw appearing on the cheque dated 30/10/2019 NFCS Ltd. issued to Gasirikare Evariste should be added to the debt of 48,000,000 Frws or if it should be included in that debt; the appellant alleges that the cheque was considered by the Commercial High Court as another debt regardless of the document made to Gasirikare Evariste in order to renew the debt agreement because they delayed his payment and they agreed that the debt owed to him is 48 000 000 Frw, and he stated that the Court had ignored the law and the evidence he adduced.

## Page 4

The defendant alleges that he was given the cheque after he had given another cash in three installments on the same day, and that the purpose of the cheque was to show that he had accepted that he received the money as another debt that should be added to the debt of 48,000,000 Frw he had recently accepted. In respect of the issue of determining whether the 8,500,000 Frw appearing on the check dated 06/06/2019 should be included in the debt that NFCS Ltd. owes to Gasirikare, the appellant alleges that he gave it to the defendant before the execution of the tender, the Court did not have to count it in the amount that he must pay because it was not part of agreement of the parties to the contract. He also alleges that apart from the fact that the defendant was still keeping the cheque, the amount shown on it has already been paid in another way to deposit it into the account. The defendant admits that the debt originates from another contract they entered into which is not related to the tender, but he alleges that while he knew that there was a case, there was nothing would prevent him from intervening in it to claim the payment of the debt. Regarding the issue of the procedural fees, the advocate fee, the defendant alleges that the claimant dragged it into court which made him hire an advocate, so it requests the Court to order the claimant to pay it those fees. On the other hand, the claimant alleges that the amount requested is unfounded. Held: 1. A cheque is issued to pay a payee; when no other explanation is attached to it, it must always be understood

## Page 5

that it is intended to pay the debt owed by a drawer to a payee

2. The interests of the intervening party is shown by their ability to apply for third party opposition in case they were unable to intervene in it voluntarily. It means that the intervening party cannot bring an unrelated issue to the litigation between the parties.
3. A party is permitted to request that the Court orders the other party to pay them the procedural fees, the allocation of which is undoubtedly based on the fact that they win the case in which they claim them on other issues of the initial claim. The appeal has merit. Court fees are equivalent to the case-related expenses. Statutes referred to: Law N° 32/2009 of 18/11/2009 governing negotiable instruments, article 110. Law N° 22/2018 of 29/04/2018 Law relating to the civil, commercial, labour and administrative procedure, article 114. Law N° 22/2018 of 29/04/2018 Law relating to the civil, commercial, labour and administrative procedure, article 111. No cases were referred to.

## Page 6

### Judgment

#### BACKGROUND OF THE CASE

On 28/6/2019, NFCS Ltd entered into a contract with NEXTGEN DEVELOPERS Ltd. to prepare two sites registered under UPI: 1/02/06/1772 and UPI: 1/03/01/06/1763 for the construction of affordable houses at a cost of FRW 220,516,372, which was to be completed within one month (1 month) from the date of the contract signing by both parties. The contract was renewed on 19/08/2019, and the execution period was extended from one month to three months, and it was renewed again on 09/09/2019. The two parties also agreed that once NFCS Ltd. had completed 60% of the work, it would be paid 50% of the bid value, but this did not happen because NFCS Ltd., after completing the agreed part of the work agreed upon, submitted to NEXTGEN DEVELOPERS Ltd an invoice amounting to 110,258,186 FRW requesting payment but refuses to pay under unjustified reasons, but terminates the contract in an unlawful manner.

According to NFCS Ltd., after the termination of the contract, it requested payment for all the work done equal to 156,641,898 FRW but NEXTGEN DEVELOPERS Ltd. still refused to pay. That led NFCS Ltd. to file a case before the Commercial Court requesting that NEXTGEN DEVELOPERS Ltd. be ordered to pay the debt, its interests and various damages, and that the case be temporarily executed for the amount NEXTGEN DEVELOPERS Ltd. accepts.

## Page 7

NEXTGEN DEVELOPERS Ltd contends that the money requested for by NFCS Ltd should not be granted because the work done is not equal to the money claimed, but is worth 52,833,165 FRW and that the work was not done professionally, but that NFCS Ltd damaged it. They request instead that NFCS Ltd should provide money to repair the damaged part and various damages. In that case, the court appointed Shumbusho Jean Pierre as an expert who will collaborate with Nsengimana Joseph on behalf of NFCS Ltd and Mbanza Philbert on behalf of NEXTGEN DEVELOPERS Ltd to find out the work done by NFCS Ltd and its value.

In the judgment RCOM 1005/2020/TC rendered on 21/07/2021, the Commercial Court held that NFCS Ltd.'s claim is partially well founded, that NEXTGEN DEVELOPERS Ltd should pay it 109,859,976 FRW equivalent to all the work it carried out, its interests amounting to 14,098,767 FRW, 500,000 Frw of the advocate fee, 100,000 Frw for the procedural fees and 20,000 Frw for court fees. The court also held that the amount of 132,300,000 FRW that NEXTGEN DEVELOPERS Ltd is requesting by way of counterclaim to repair the damages is not granted and that there will be no provisional execution.

NEXTGEN DEVELOPERS Ltd appealed against the judgment before the Commercial High Court. Among the grounds of appeal is that the court relied on the report that was made and it had been shown serious flaws of not having shown the value of the work done based on its quality and the fact that the court ordered it to pay NFCS

## Page 8

Ltdthe work of "Fill from cutting Debris" and that of "Removing the excavated soil form the construction area and deposit those to the specified area out of construction platform", yet it never carried it out, and the fact that there is an advance amount of 5,000,000 FRW paid to NFCS Ltdbefore the start of work but which was not deducted from the debt it was ordered to pay. It also stated that the court ordered it to pay the costs of the work done including VAT and that it did not value its claim regarding the payment of 132,300,000 FRW to correct the damage caused by NFCS Ltd. He also stated that the interests and damages granted at the first instance were not appropriate.

NFCS Ltdrebutted NEXTGEN DEVELOPERS Ltd.'s grounds of appeal alleging in general that there are irrelevant.

Gasirikare Evariste voluntarily intervened in this case at the appellate level. He alleges that on 28/06/2019, NFCS Ltdwas granted a tender by NEXTGEN Developers Ltdbut they do not have the money to execute it. He explains that on 29/07/2019 he signed with NFCS Ltda partnership agreement.

According to the agreement, Gasirikare Evariste had to provide all the money that would be spent to prepare the sites and build the wall, and NFCS Ltdwould monitor the execution of these works. They also agreed that both of them will sign on account no 4002200200179 in Equity Bank Rwanda Plc to receive the payment; that once the payment is available, the cost of the work done until it is finished will first be deducted from the payment, and the remaining profit will be shared by both parties.

## Page 9

Gasirikare Evariste alleges that NFCS Ltddid not comply with the agreement because it did not allow him to be a signatory on that account and that he had given all the necessary money for the work to be done properly. He waited for NFCS Ltdto comply with the agreement, but in vain and later learnt that NFCS Ltdis a party to the case against NEXTGEN Developers Ltd which made him voluntarily intervene in the case so that in case the court makes a decision on the debt, the court will also take the opportunity to force NFCS Ltdto comply with the agreement they made.

Gasirikare Evariste requests that 86,500,000 FRW invested in the work done on behalf of NEXTGEN Developers Ltdbe deducted from the money allocated to NFCS Ltd., plus interests and various damages, and it also confirms that the remaining money for the claimant is shared by both parties as agreed in the partnership agreement of 29/07/2019. He also requests a provisional execution order for the debt acknowledged by NFCS Ltd.

On 11/11/2022, the Commercial High Court rendered the

## judgment

RCOMA00592/2021/HCC, making the following various rulings: a That the appeal of NEXTGEN DEVELOPERS Ltd is groundless; b That the incidental appeal filed by NFCS Ltd requesting to continue the calculation of interests is well founded;

## Page 10

c That NFCS Ltd should be granted by NEXTGEN DEVELOPERS Ltd the interests equal to 11,882,382 Frw; d That NEXTGEN DEVELOPERS Ltd should compensate NFCS Ltd for the losses incurred in the case at the appellate level amounting to 500,000 Frw for the advocate fee and 100,000 Frw for the procedural fees, totaling 600,000 Frw; e e) That NFCS Ltd owes 86,500,000 Frw to Gasirikare Evariste; f That as decided by the court, the initial debt that NEXTGEN DEVELOPERS Ltd owes NFCS Ltd amounting to 109,859,976 Frw and that it must first pay to Gasirikare Evariste, on behalf of NFCS Ltd the debt equal to 86,500,000 Frw mentioned above, the rest will be divided as profits as agreed, each of them will receive 11,679,988 Frw; g That the provisional execution requested in this case is irrelevant. h That the judgment RCOM 1005/2020/TC decided by the Commercial Court on 21/07/2021 remains unchanged, apart from the interests and damages already mentioned above in addition to those determined at the first instance, with the payment of the debt and the distribution of profits from the tender between Gasirikare Evariste and NFCS Ltd mentioned above; i That 40,000 Frw deposited by NEXTGEN DEVELOPERS Ltd for court fees while filing the appeal is equal to all that has been done in the case.

## Page 11

NFCS Ltd was not satisfied with the judgment, and appealed against it before the Court of Appeal. The appeal case was registered under RCOMAA 00114/2022/CA, the hearing of the case scheduled for 11/05/2023. On this date, the hearing was adjourned until 06/06/2023 because one of the judges withdrew from the case. On that day, NFCS Ltd represented by Counsel Mberabagabo Balinda Richard, NEXTGEN DEVELOPERS Ltd represented by Counsel Bunani Bonaventure, and Gasirikare Evariste represented by Counsel Gasominari Jean Baptiste appeared before the court. The court disclosed the letter by Nishime Rosine, Chief Executive Officer of NFCS Ltd that she had already put in the case file at 07:08 A.M, informing it that Mberabagabo Balinda Richard was not given the power of attorney to follow up the case and requested that the case be postponed to enable her to fire another lawyer.

After hearing what the parties have to say about the contents of that letter, the Court deliberated and adjourned the case hearing until 3/06/2023, in a provisional ruling and held that as of 06/06/2023 Counsel Mberabagabo Balinda Richard was deprived of the authority to represent NFCS Ltd in this case and instructs NFCS Ltd to hire another lawyer to represent it or assist it in the remaining proceedings. The hearing was postponed to 23/06/2023, but the hearing was not held that day because the lawyer who was supposed to represent NFCS Ltd did not get enough time to prepare and the hearing was postponed to 06/09/2023.

## Page 12

In the hearing of 06/09/2023, after reading the report of the case to the parties, the Court heard the explanations of the parties on the issue raised at its initiative to determine whether in this case the Court should consider the incidental appeal of NEXTGEN DEVELOPERS Ltd which appears to be filed against NFCS Ltd was suing NEXTGEN DEVELOPERS Ltd in the initial appealed case, but it only shows that NFCS Ltd. is not satisfied with what was accusing Garisikare Evariste of only contemplating the way to distribute the money NEXTGEN DEVELOPERS Ltd. was ordered by the Commercial High Court to pay that decided the appealed judgment. The pronouncement of the Court's judgment on the matter took place on 15/09/2023, the Court held that the incidental appeal filed by NEXTGEN DEVELOPERS Ltd. is not admitted as the appellant does not claim anything from the applicant<sup>1</sup>, that the case hearing will continue on 18/09/2023 from 09:00 A.M.

On that day, all the parties appeared before the court, each side presented its arguments focused on the remaining points of the case regarding how NFCS Ltd and Gasirikare Evariste should share the money whose payment by NEXTGEN DEVELOPERS Ltd was ordered by the Commercial High Court based on the tender contract with NFCS Ltd for preparing the construction sites.

NFCS Ltd argued that the financial participation of Gasirikare Evariste in the work of NEXTGEN DEVELOPERS Ltd. is 48,000,000 Frw as agreed in the

<sup>1</sup> See the provisional ruling dated 15/09/2023.

## Page 13

document dated 25/10/2019, while Gasirikare Evariste emphasized what was held in the appealed case that his participation is 86,500,000 Frw comprising 48,000,000 Frw both parties agree upon, adding 8,500,000 Frw appearing on the check dated 06/06/2019 NFCS Ltd and 30,000,000 Frw appearing on the cheque dated 30/10/2019 NFCS Ltd gave to Gasirikare Evariste. NFCS Ltd alleges that the cheque of 8,500,000 Frw should not be debated in the case regarding claiming the price of the tender issued by NEXTGEN DEVELOPERS Ltd., whereas the cheque of 30,000,000 Frw is not a new debt that was added to the 48,000,000 Frw but was intended to pay part of the debt of 48,000,000 Frw that was already agreed upon, which would be payable when NEXTGEN DEVELOPERS Ltd would issue payment to the account of NFCS Ltd when the cheque was issued. Gasirikare Evariste also requests that NFCS Ltd be ordered to pay him 18% of the economic damages from all the money that should be paid, for dragging him into the court ; both sides also claim damages for the procedural fees.

Based on these arguments, the court examines the following issues : - Determining whether 30,000,000 Frw appearing on the check dated 30/10/2019 that NFCS Ltd. issued to Gasirikare Evariste was to be added to the debt of 48,000,000 Frws or whether it was part of that debt; - Determining whether 8,500,000 Frw appearing on the check dated 06/06/2019 should have been considered as a part of the debt that NFCS Ltd. must

---

**Page 14**

pay to Gasirikare Evariste as a result of the tender execution of the NEXTGEN DEVELOPERS Ltd. - Determining whether the interest awarded by the Commercial High Court to NFCS Ltd should have been awarded to Gasirikare Evariste alone; - Determining whether the High Court should have ordered NFCS Ltd to pay 18% of the costs awarded as economic damages to GASIRIKARE Evariste for dragging him into court; - The issue of procedural and advocate fees requested by the parties. II. ANALYSIS OF THE LEGAL

**ISSUES**

A. Determining whether 30,000,000 Frw appearing on the check dated 30/10/2019 that NFCS Ltd issued to Gasirikare Evariste was to be added to the debt of 48,000,000 FRW or if it was part of that debt

The representative of NFCS Ltd alleges that the cheque dated 30/10/2019 for 30,000,000 Frw NFCS Ltd. issued to Gasirikare Evariste was considered as another debt by NFCS Ltd. to Gasirikare Evariste and the document dated 25/10/2019 was ignored. Nishimwe Rosine, manager of NFCS Ltd had recently worked for Gasirikare Evariste in order to renew the loan agreement she owed him because she had been late in paying it. She alleges that in that document, the manager of NFCS Ltd.

**Page 15**

agreed with Gasirikare that 48,000,000 Frw was the amount NFCS Ltd. had already received from Gasirikare until that day, which was the only amount owed to him; that above the 48,000,000 Frw that NFCS Ltd. accepts, the High Court should not have added 30,000,000 Frw ignoring the law and the evidence it submitted to NFCS Ltd explaining that even though it was written on 30/10/2019 it was made on 25/10/2019 with the aim of being paid by reducing the debt 48,000,000 Frw which had already been agreed upon and by which date (NFCS Ltd.) expected to receive payment from NEXTGEN DEVELOPERS Ltd..

Gasirikare Evariste and his lawyer allege that the Court held that NFCS Ltd. should pay Gasirikare Evariste this amount based on the evidence he submitted including a cheque for 30,000,000 Frw NFCS Ltd. issued to Gasirikare Evariste after adding another 30,000,000 Frw to continue the work after completing 60% of the work. Gasirikare Evariste explained that the cheque was issued to him by NFCS Ltd. on 30/10/2019 after he had received another amount in cash in three installments on the same day, and that the purpose of the cheque was to show that NFCS Ltd acknowledged reception of the money as another debt that should have been added to the 48,000,000 Frw of the debt he had recently accepted on 25/10/2019.

The representative of NEXTGEN DEVELOPERS Ltd. declined to comment on this issue because what NFCS Ltd. agreed on with Gasirikare Evariste does not concern it.

**Page 16****DETERMINATION OF THE COURT**

The debated issue is based on determining and understanding what was the purpose of NFCS Ltd. when it issued a 30,000,000 Frw cheque dated 30/10/2019.

Article 110 of Law n°32/2009 of 18/11/2009 governing negotiable instruments which was in force when the check in dispute was drawn, which was also revised by Article 3, subparagraph 7 of Law n° 060/2021 dated 14/10/2021 governing negotiable instruments, which provides: " a clear and unconditional order in writing that is addressed by its signatory to a financial institution and requires to pay on demand a specific amount of money to the drawer or to a specified person or to the bearer[..]".

As understood, based on the definition of a cheque referred to in these articles, a cheque is not meant for anything other than payment to the payee. In other words, when no other explanation is attached to it, it must always be understood that the check is intended to pay a debt owed by the drawer to the payee. That debt can be any reason why the drawer pays the payee.

Regarding the meaning and purpose of the check of 30,000,000 Frw dated 30/10/2019, this Court finds that based on the fact that the definition of a cheque is undoubtedly the one shown above, in the absence of any other explanation, the cheque issued by NFCS was intended to pay Gasirikare.

**Page 17**

The case file shows that on 29/07/2019, one month after the signing of the agreement to build the sites mentioned above, NFCS Ltd. signed with Gasirikare Evariste the so-called "partnership agreement", where in its introduction it shows that the purpose of the partnership is to execute the tender (to prepare the construction sites) mentioned above that NFCS Ltd.. was granted by NEXTGEN DEVELOPERS Ltd.2. Article 2 of this agreement shows how both parties have agreed on the obligations each party will be held accountable for in the following words: "Gasirikare Evariste as a partner of NFCS Ltd. agreed to bring money for the execution of the tender of ppreparing the sites and building the supporting wall awarded by NEXTGEN DEVELOPERS Ltd. until it is completed, NFCS Ltd. will monitor the works until they are completed, and Gasirikare Evariste will also monitor how the money will be spent". Article 3 stipulates what each party will receive as a reward for its obligations as mentioned above.

The case file also shows the document dated 25/10/2019 written by Nishimwe Rosine, the manager of NFCS Ltd., and accepted by Gasirikare Evariste. The document clearly shows that up to that date, no other

2 In its the preamble, the agreement stipulates: “Between NFCS Ltd.... and GASIRIKARE Evariste... they entered into a partnership agreement for the tender execution consisting of site preparation and building the retaining wall located in KARAMA Village, Nyabikenke Cell, Bumbogo Sector, Gasabo District was awarded by NFCS Ltd. by NEXTGEN DEVELOPERS Ltd., the contract is as follows: ...”.

## Page 18

money had been given to NFCS Ltd. by Gasirikare Evariste in relation to the above-mentioned tender in which they would work together to share equally the profits<sup>3</sup>. As agreed upon by both parties, whenever Gasirikare Evariste gave any money to NFCS Ltd. in this regard, NFCS Ltd. would make a document acknowledging that it had received it, so there are many documents. That is what made them on 25/10/2019 write a single document meant to merge them into one and replace the many others that preceded it<sup>4</sup>.

In this context, this Court finds that the cheque of 30,000,000 Frw that NFCS Ltd. issued to Gasirikare Evariste one day (on 25/10/2019) or five days (on 30/10/2019) after they agreed that the debt had reached 48,000,000 Frw, could only be considered to be meant to pay that debt agreed upon since there was no other explanation attached to it. Regarding the fact that the cheque was made on the date 30/10/2019 which it is written on it or on the date 25/10/2019 both parties agreed on the remaining debt amounting to 48,000,000 Frw, this Court finds that debating this issue does not change anything about what it was intended for as explained above.

3 This document states it as follows: “I, Rosine, after receiving a sum of forty-eight million (48,000,000 Frw) from GASIRIKARE Evariste for the tender execution we agreed to accomplish by way of partnership in Bumbogo.”. 4 The document dated 25/10/2019 states it

as follows: “What I wrote earlier is worthless about the money he has been giving me for the execution of Bumbogo tendert”.

## Page 19

The court finds that the claim by Gasirikare Evariste that the cheque is a guarantee or evidence of another debt that he had already given to NFCS Ltd. three times a day and was given in cash is not considered true, because there is no other evidence that shows undoubtedly the reasons for it, since the way he alleges having issued it is different from usual practice, where in their normal interactions, whenever there was money like this that Gasirikare Evariste would have given NFCS Ltd., there would also be a special receipt that was also written by NFCS Ltd..

For these reasons, this Court finds that this 30,000,000 Frw should be counted instead as part of the debt of 48,000,000 FRW that NFCS Ltd. owes to Gasirikare Evariste because that cheque, even though it was issued, was not cashed out instead of being an addition to it as the High Court had found it, and therefore it should be corrected, the 30,000,000 Frw will be subtracted from the amount it had allocated to him. B. Determining whether the 8,500,000 Frw appearing on the cheque dated 06/06/2019 should have been counted as part of the debt that NFCS Ltd. must pay to

Gasirikare Evariste from the execution of the tender of NEXTGEN DEVELOPERS Ltd.

The representative of NFCS Ltd. claims that the cheque of 8,500,000 Frw dated 06/06/2019, the manager of NFCS Ltd. had issued it to Gasirikare Evariste before the execution of the tender of NEXTGEN DEVELOPERS Ltd. She also alleges that the Court should not have included it in the amount to be paid to Gasirikare Evariste

## Page 20

because it was not part of the agreement. She also alleges that apart from the fact that Gasirikare Evariste had been keeping that cheque, the whole money shown on it had already been paid in another way by putting it in the account. of Gasirikare Evariste because there is no explanation as to why he had kept it all that time knowing for sure that he was not paid.

Gasirikare Evariste also admits that the debt originates from another contract they entered into which is not related to this tender of NEXTGEN DEVELOPERS Ltd., but he alleges that while he knew that there was a lawsuit between NFCS Ltd. and NEXTGEN DEVELOPERS Ltd., nothing would preclude him from intervening in it to claim all the debt owed to him. DETERMINATION OF THE COURT

The debated issue is based on determining whether the reason for voluntary intervention in the case can be any even though it is not based on the issue in the case. In other words, the issue is determining whether based on the partnership and profit sharing agreement between the Gasirikare Evariste and NFCS, it is possible that the cheque of 8,500,000 Frw is part of what should be distributed from the tender of NEXTGEN DEVELOPERS Ltd.

Article 114, paragraph 2, of Law n° 22/2018 of 29/04/2018 Law relating to the civil, commercial, labour and administrative procedure provides that that in order

## Page 21

for his claim to be admitted, an intervening party must demonstrate a legitimate, direct and personal interest. A legitimate interest is one that a non-intervening party applying for a third-party opposition. Indeed, if they are unable to intervene in the case while they are interested in it, they can protect those interests by applying for a third party opposition. Therefore, when the subject matter was in dispute in that case, they shall not be allowed to apply for third party opposition because they are not interest in it. In other words, the interests of an intervening party are reflected in the fact that they are able to apply for third party opposition when they were unable to intervene in it. This means that an intervening party cannot bring an unrelated issue to the litigation between the other parties.

The court finds that it is clear in the partnership agreement dated 28/07/2019 that the obligations and rewards of NFCS Ltd. and Gasirikare Evariste mentioned in the agreement are only related to the tender NFCS Ltd. received from NEXTGEN DEVELOPERS Ltd. in the agreement dated 28/06/2019. This means that the cheque of 8,500,000 Frw dated 06/06/2019 even Gasirikare

Evariste himself, is not related to the tender thus should not be counted as a being part of the debt approved by the Commercial High Court, while the content of this cheque has nothing to do with the market of NEXTGEN DEVELOPERS Ltd.

For these reasons, this Court finds that the issue related to the cheque of 8,500,000 Frw dated 06/06/2019 should not have been considered in this case, so the

## Page 22

Commercial High Court erred in granting the mentioned amount to Gasirikare Evariste. C. Determining whether the interests awarded by the Commercial High Court to NFCS Ltd. should have been granted to Gasirikare Evariste alone

Gasirikare Evariste and his advocate allege that the Commercial High Court ordered that NFCS Ltd. is the one to receive the interests from the work done by NEXTGEN DEVELOPERS Ltd., which was not paid, ignoring that all these interests come from the 86,500,000 Frw invested by Gasirikare Evariste. Gasirikare Evariste claims that he was the one who should have received these interests, because he is the one who invested all the money as stipulated in the agreement, and he was the one who suffered the loss because the non-payment by NEXTGEN DEVELOPERS Ltd. seriously affected him, because he provided all the money to do the work and what NFCS Ltd. did was only to monitor the work as stipulated in their partnership agreement.

Gasirikare Evariste and his advocate also criticize the way these interests were calculated. They allege that the Court decided that NEXTGEN DEVELOPERS Ltd. should pay 109,859,976 Frw of the value of the work done, the interests determined by the Commercial Court at first instance equals 14,092,761 Frw, and at the level of appeal the Commercial High Court approved another amount of 11,882,382 Frw, and the interests that the Commercial High Court granted to each party after equal

## Page 23

distribution of 11,679,988 Frw, the total interests amounts to 25,981,149 Frw.

In regard to the fact that the interests had to be calculated and everyone's contribution, they found that the money to be paid granted by the Court amounts to 109,859,976 Frw, Gasirikare Evariste invested 86,500,000 Frw; it is clear that the investment is 8.4 times greater than NFCS Ltd.'s investment, so the interests granted by the court, Gasirikare Evariste must be shared with NFCS Ltd. and should be calculated according to what each of them invested. That is, on the side of NFCS Ltd. it must be:  $25,981,149 : 8.4 = 3,092,994$  Frw and on the side of Gasirikare Evariste, it must be:  $25,981,149 - 3,092,994 = 22,888,155$  Frw.

[39] The representative of NEXTGEN DEVELOPERS Ltd. declined to comment on this matter.

### DETERMINATION OF THE COURT

The debated issue is based on determining how the interests NEXTGEN DEVELOPERS Ltd. was ordered to pay should be divided between Gasirikare Evariste and NFCS Ltd.

Article 2 of the partnership agreement dated 29/07/2019 between the two parties stipulates that the Gasirikare Evariste as a partner of NFCS Ltd. agreed to bring money to execute the tender and build retaining wall provided by NEXTGEN DEVELOPERS Ltd. until

## Page 24

completion, NFCS Ltd. would monitor the work until completion, and also he would monitor how the money will be spent; and the article 3 of the agreement provides that NFCS Ltd. and its partner Gasirikare Evariste will share the interests from the tender at 50%, exclusive of all expenses and government taxes, each of them will take 50%, the whole tender has a value of 220,516,372 FRW.

These two articles of this agreement, read together, mean that for all the money derived from the NEXTGEN DEVELOPERS tender, the money invested by Gasirikare will be deducted, and the money spent on the tender will be subtracted, and the rest will be divided equally between the two parties.

The case file shows that at first instance the Commercial Court decided that the amount NEXTGEN DEVELOPERS Ltd. should pay to NFCS Ltd. is 109,859,976 Frw of the value of the tender work done until termination, and 14,098,767 Frw of interests on arrears. The case reached the appeal level and after Gasirikare Evariste's voluntary intervention, the Commercial High Court confirmed the amount mentioned above, but added another amount of 11,882,382 Frw to the damages/interests on arrears mentioned above which was calculated at the time when the judgment of the Commercial Court had been appealed against. This means that the money is related to the labor market and is covered by the distribution dispute between NFCS Ltd. Gasirikare Evariste that the courts had already charged NEXTGEN DEVELOPERS Ltd. is  $109,859,976\text{Frw} + 14,098,767\text{Frw} + 11,882,382\text{Frw} = 135,841,125\text{ Frw}$ .

## Page 25

Regarding the distribution of these funds, the Court finds, as already explained in paragraph 42 of this case, from the total amount of 135,841,125 Frw that had to be paid by NEXTGEN DEVELOPERS Ltd., 48,000,000 Frw of the capital must be first limited to Gasirikare Evariste, the remaining 87,841,127 Frw the profit shall be distributed equally between NFCS Ltd. and Gasirikare Evariste. That is, everyone should be allocated  $87,841,127\text{ Frw} \times 50\% = 43,920,563\text{ Frw}$ . In other words, for a total of 135,841,125 Frw to be paid by NEXTGEN DEVELOPERS Ltd., the share of NFCS Ltd. is only for profits, which is equal to 43,920,563 Frw; and the participation of Gasirikare Evariste is equal to 48,000,000 Frw it is confirmed that it is his investment<sup>4</sup>, plus 43,920,563 Frw of his share of the profits after sharing with NFCS Ltd. equally, totaling 91,920,563 Frw.

Based on the foregoing explanations, this Court finds that what was approved by the Court in allocating to NFCS Ltd. only the interests derived from the late payment of NEXTGEN DEVELOPERS Ltd. is unfounded because it is against the equitable distribution of all profits derived from the tender agreed upon by both parties, so the incidental appeal of Gasirikare Evariste is relevant on this point that all these profits should not be allocated to NFCS Ltd. alone but again it is irrelevant for him who wants to monopolize them.

4 See paragraph 29 of this judgment.

## Page 26

D. Determining whether the High Court should have ordered NFCS Ltd. to pay GASIRIKARE Evariste 18% of the economic damages of all the money to be paid, because he was dragged into court

In the incidental appeal, Gasirikari Evariste and his advocate request that the Court of Appeal order NFCS Ltd. to pay Gasirikare Evariste the economic damages amounting to 18% of the total amount to be paid equal to  $98,179,988\text{Frw} + 22,888,155\text{Frw} = 121,068,143 \times 18\% = 21,792,265 \text{ Frw}$ , for continuing to involve him in private lawsuits, instead of paying him.

The representative of NFCS Ltd. rebuts the claim of the economic damages by Gasirikare Evariste alleging that the Court may examine them and grant them if it deems them appropriate.

[48] The representative of NEXTGEN DEVELOPERS Ltd. says that NEXTGEN DEVELOPERS Ltd. has nothing to say on this point. DETERMINATION OF THE COURT

Article 150, subparagraph 5o of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that the appellant must present his criticism of the appealed case. As for its article 154, paragraph 4 adds that no new complaint can be filed at the appeal level.

## Page 27

As per the judgment appealed against, the damages requested by Gasirikare Evariste for engaging him in unnecessary lawsuits instead of paying him, are not at issue. On the contrary, apparently, it is the first time at this level of second appeal that Gasirikare Evariste claims them; therefore, this point regarding these damages should not be admitted for consideration in the merits because it was submitted illegally. Regarding the procedural fees and the advocate fee requested by the parties

Gasirikare Evariste and his advocate request the Court of Appeal to order NFCS Ltd. to pay him 1,300,000 Frw including the advocate fee and procedural fees, because instead of paying him, NFCS Ltd. filed an appeal to drag him into court, which made him hire an advocate to assist him.

The representative of NFCS Ltd. alleges that the money requested by Gasirikare Evariste is irrelevant.

The representative of NEXTGEN DEVELOPERS Ltd. claims that NEXTGEN DEVELOPERS Ltd. does not have any claim from any party and no one made any claim in this regard. DETERMINATION OF THE COURT

Article 111 of Law n° 22/2018 of 29/04/2018 Law relating to the civil, commercial, labour and

## Page 28

administrative procedure provides that the claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted.

The court finds that even though the party is allowed to rely on the above-mentioned article of the law and is allowed to request the court to the other party to pay him the money for what they lost in the case, the allocation of it is not doubtful that it must be based first and foremost on the fact that they win the case and request it on other points of the principal claim.

In this case, the appeal filed by NFCS Ltd. against Gasirikare Evariste, the Court found that it should be declared well founded as explained above, while Gasirikare Evariste's incidental appeal is only well founded on the fact that NFCS Ltd. should not monopolize the interests on arrears that NEXTGEN DEVELOPERS Ltd. was ordered to pay, but it should not be declared well founded for the claim that Gasirikare Evariste was the one who should monopolize it.

Based on the foregoing explanations, the Court finds that the costs of the procedural fees and the advocate fee requested by Gasirikare Evariste should not be granted, that each party at this stage should bear its legal costs.

The court finds that it should be recalled that in relation to the procedural fees, at the first instance the Commercial Court ordered NEXTGEN DEVELOPERS Ltd. to pay NFCS Ltd. 500,000 Frw for the advocate fee,

## Page 29

100,000 Frw for the procedural fees and 20,000 Frw for the court fees, and at the level of the first appeal the Commercial High Court ordered NEXTGEN DEVELOPERS Ltd. to pay NFCS Ltd. another 600,000 Frw consisting of 500,000 Frw for the advocate fee and 100,000 Frw for the procedural fees. This means that the total procedural fees at all levels NEXTGEN DEVELOPERS Ltd. was ordered to pay NFCS Ltd. amount to 1,220,000 Frw consisting of 1,000,000 Frw for the advocate fee, 200,000 Frw for the procedural fees and 20,000 Frw for court fees. DECISION OF THE COURT

Holds that the appeal of NFCS Ltd. has merit in all respects and the appeal of Gasirikare Evariste has some merit;

Holds that as confirmed by the Commercial High Court in the case appealed against, NEXTGEN DEVELOPERS Ltd. must pay 135,841,125 Frw as explained above;

Holds that of the amount mentioned in the previous paragraph, 43,920,563 Frw is the amount NEXTGEN DEVELOPERS Ltd. must pay NFCS Ltd. and 91,920,563 Frw to be paid to Gasirikare Evariste as described above;

Orders NEXTGEN DEVELOPERS Ltd. to pay NFCS Ltd. 43,920,563 Frw;

## Page 30

Orders NEXTGEN DEVELOPERS Ltd. to pay Gasirikare Evariste 91,920,563 Frw;

Recalls NEXTGEN DEVELOPERS Ltd. to pay NFCS Ltd. 1,220,000 Frw for the procedural fees, the advocate fee and the court fees at the previous instances ordered by the Court in the case appealed against ; Rules that the court fees deposited by NFCS Ltd. at this level are equivalent to the cost of the proceedings

---

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.amategeko.gov.rw/view/doc/9908/10410>

CASE PAGE              <https://chat.esheria.ai/case-law/rwanda/ChequesandNegotiableInstruments-court-of-appeal-2020--6a3ea5223b1caa912981848f>

Prepared on 10 October 2026 · Esheria