

RWANDA / JUDGMENT

BANKI Y'ABATURAGE Y'U RWANDA Ltd v. KOPERATIVE ABADAHEMUKA N'ABANDI

R.COM.A 0057/12/CS

COURT
Supreme Court

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BANKI Y'ABATURAGE Y'U RWANDA Ltd v. KOPERATIVE ABADAHEMUKA N'ABANDI

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BANQUE DU RWANDA DU RWANDA Ltd v. KOPERATIVE ABADAHEMUKA ET AL. [Rwanda SUPREME COURT- R.COM.A 0057/12/CS (Hatangimbabazi, P.J., Mukamulisa and Gatete, J.) 1 April 2016] Contract law – Loan contract – Payment of the loan and its interests – It cannot deny paying the loan and its interests pretending that the Bank has frozen its account while it was done upon the order of the Prosecution and while that loan and its interests are based on the contract entered into by both parties – Law of 30/07/1888 governing contracts or obligation, article 33 Contract law – Suretyship contract – Those who signed on the loan contract cannot be condemned to pay as suretyship in case they have signed in the quality of representatives – Law of 30/07/1888 governing contracts or obligation, articles 552 and 560 Damages – Damages for bank accounts freezing and self-payment – He cannot be awarded such damages in case he cannot prove the loss he suffered from that freezing or such a self-payment since those interests were agreed upon in the contract and it did not demonstrate the action it took so that those accounts could be unfrozen after the rounds of their freezing were removed – Law of 30/07/1888

governing contracts or obligation, article 258. Damages – Damages for seizure – Those damages cannot be awarded in case they not supported by evidence – Law of 30/07/1888 governing contracts or obligation, article 258. Facts: The case started at the Commercial High Court whereby Banque Populaire du Rwanda has sued Koperative Abadahemuka and its sureties for having defaulted to pay the loan it had given. In its counterclaim, Cooperative also lamented that the Bank had seized its assets and it led to the loss. The Court held that BPR loses the case and condemned it to pay 371.100.000 Frw equivalent to the interests it might have gained has not the Bank frozen its accounts. It ordered it further to 10.500.000 Frw equivalent to the rent from its house that it seized, 1 000 000 Frw for moral damages, 500 000 Frw for procedural fees and 100 000Frw for moral damages for each surety and to each 100. 000 Frw for procedural fees. Banque Populaire du Rwanda appealed to the Supreme Court stating that the Court based on the statements made by Koperative Abadahemuka that BPR seized the assets of that Cooperative while it was not qualified to do that disregarding that the account was frozen based on the instructions given by the Prosecutor. With regard to the houses which were seized by BPR, he responded that there is no evidence in support. They requested the Court to overturn the appealed

judgment.

To these grounds of appeal, Koperative Abadahemuka responded that statements of BPR denying the freeze of the account and seizure have no merit beacuse the Prosecutor had ordered the seizure of the accounts of the Cooperative's authorities for investigation to be conducted but had not ordered the freeze of all money available on trhe accounts ofCooperative. The respondent filed cross appeal.

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Held: 1. BPR cannot pretend its frozen account and deny to pay the loan it accepts since the freeze was ordered by the Prosecutor General in addition to its absence of intention of unfreezing them and that even such a freeze cannot waive its obligation to pay the loan it acquired and its related interests since it is based on the contract which binds them and it is supported by evidence that the other party failed to rebut.

2. They cannot be ordered to pay for Cooperative as its sureties since there is no evidence of that obligation; rather they signed on the contract as its representatives. The Bank, as Professional had to draft the contract in understandable manner and even the obligations embodied there in had to be set without any confusion.
3. BPR cannot be condemned to pay damages regarding frozen accounts of Koperative Abadahemuka as we all those of its members and humped its activities and the default of payment the same as damages relating to the fact that BPR had paid itself by withdrawing the money on its accounts that have been already frozen and led it to the loss or other negative effects since Cooperative does not deny the loan it acquired and the interests have been computed based on the agreements of both parties and that the interests have to

accrue because Cooperative took no action since the grounds of its freeze were identified so as to conclude that it is the Bank which went beyond the instructions issued by the Prosecution.

4. It cannot be granted damages it requests based on the fact that BPR had seized its houses of Cooperative and led to its default of payment since it was found that such money was deposited on its account. Appeal has merit; Cross appeal has no merit; Plaintiffs sued together with Koperative as its sureties are not concerned by the case; Condemns Cooperative to pay the loan and its interests; Condemns Cooperative to pay ½ of the court fees. Statutes and statutory instruments referred to: Law of 30/07/1888 governing contracts or obligation, article 33, 258, 552 and 560. No case was referred

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] This case started at the Commercial High Court whereby BPR sued Koperative Abadahemuka together with its guarantors for having defaulted to pay the loan that had been granted to that cooperative as highlighted in the subject matter. BPR requested the debt payment. Koperative Abadahemuka also filed counterclaim claiming its assets seized by the Bank including 11.000. 000 Frw. It claimed further that such a seizure caused it the loss.

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- [2] In deciding the case, the Court held that BPR loses the case. It condemned it to pay to Cooperative Abadahemuka 371.100.000 Frw equivalent to the profit that the Cooperative might have gained had not the bank have frozen its accounts. The Court further ordered BPR to pay to Koperative Abadahemuka 10.500.000 Frw equivalent to the rents from the houses that were also seized by the Bank. The Court also condemned it to pay 1 000 000 Frw for moral damages, 500 000 Frw for procedural fees. It ordered BPR further to pay 100 000 Frw for moral damages for each guarantor and 100 000 Frw for procedural fee to each one. [3] Not satisfied of the ruling, BPR appealed to the Supreme Court whereby it gave its submissions that highlight its grounds of appeal. Respondents also gave their defence submissions and also filed a cross appeal. [4] The Case on merit was heard on May 19, 2015 and on July 14, 2015 BPR being represented by Basominger Alberto and Mhayimana Isaïe, counsels, while Koperative Abadahemuka and its guarantors were represented by Rukarishya Philémon and Nubumwe J. Bosco representing Koperative Abadahemuka. After hearing the grounds of appeal filed by BPR and the response of the respondents, the hearing was closed and pronouncement was scheduled on September 18, 2015. [5] During deliberation, the Court found the delegation of BPR staff of paramount so that he/ she could provide information in regard to the bank statement that was submitted to the Court, elaborate on the modalities of the computation of the debt that BPR demands Koperative Abadahemuka to pay till January 18, 2011, the day of the last warning as well as the modalities of this computation till BPR opted to sue to the Commercial High Court. The Court found it further important to

summon Umuhoza Marie Claire in this case so that she could give information in connection to the houses that Koperative Abadahemuka says it had given to her for lease. [6] The hearing of the case was conducted in an open court on November 10, 2015. On that date, it was postponed on December 22, 2015 and it was re-opened January 26, 2016 all parties present with the same counsels as the previous ones. The staff from BPR called Nsanzimfura had also appeared to give clarification to the Court as stated above. Umuhoza Marie Claire had also appeared to give explanations to the Court. II. ANALYSIS OF LEGAL ISSUES -. Whether Koperative Abadahemuka must pay to BPR the debt and its interest or whether it must not pay it since it is BPR which hindered the payment. [7] Basominger and Me Mhayimana, counsels for BPR, state that the Commercial High Court had issued a wrong ruling when it grounded on the statements of Koperative Abadahemuka that there was a seizure of the all assets of that Cooperative by BPR while it is not qualified to do that. They added that the Court disregarded the fact that the bank accounts were frozen based on the instructions issued by the Prosecutor General in his letters dated May 20, 2008 to BPR.

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- [8] They argued further that they do challenge the decision of the Court which is based on the statements made by Koperative Abadahemuka that BPR had seized the houses of that cooperative while there is no single evidence in support. They added further that there is no lease contract that indicates that BPR is a lessee. They stated further that on the first instance, BPR had demonstrated how it had been getting the payment from the money on the accounts of but later stopped that practice. They ended requesting the Court to assess whether the Bank could disregard the instructions issued by the Government to freeze the accounts of Koperative Abadahemuka. [9] Counsels for BPR continued stating that the Court grounded on the letter drafted by Umuhoza M. Claire dated December 13, 2010 and then decided that houses of Koperative Abadahemuka were seized by BPR while the latter has never received that letter either before or after the hearing so that it could take decision thereon. [10] They requested the Court to quash the judgment based on article 92 of Law relating to civil, commercial, labour and administrative procedure since it is based on evidence that was not notified to parties because the letter referred to above was drafted by Umuhoza M. Claire came to the knowledge of BPR while the case was before the Supreme Court on June 19, 2014. They stressed further that this letter has nothing to do with BPR since the rent for the house of Koperative Abadahemuka was deposited to the bank account of that Cooperative by the tenants and could neither be deposited on the account of BPR nor be established that it was done upon the request by the latter. [11] Rukarishya, counsel, responded that the statements of BPR denying the freezing of the money of Koperative Abadahemuka must not be considered because since the Prosecutor General requested that Bank to freeze the bank accounts of the authorities of Cooperative so that investigations could be conducted against them but, he did not request to freeze the money on all bank accounts of the cooperative. He argued that those authorities faced trials but acquitted. [12] Counsel Nubumwe adduced that the letter that BPR refused to recognize and which served

the Court as evidence was submitted in the Commercial High Court during the hearing even though they do not have evidence in support because no acknowledgment of correspondences exists during the hearing but rather it was in the case file. He added that it was subject to debate before the Court though BPR was requested to have its say but rather it preferred keeping silence. He stressed that on November 28, 2011 the former counsel for BPR received the submissions whereby on their annexes there were 7 documents including that very correspondence. Hence, he concluded, BPR cannot pretend that it did not recognize that correspondence. [13] Ngabonziza states that BPR was only allowed to withdraw money from one account of Koperative Abadahemuka and this was only authorised when due. He deplored however that this was not the case when the bank froze all the accounts including those of Members of Koperative Abadahemuka while they have been later acquitted. [14] Umuhoza M. Claire was heard by the court only as informer after the side of BPR had claimed that she had certain relationship with Koperative Abadahemuka since her husband was the tenant for the houses of that Cooperative. She said that she entered into the lease contract of

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houses with that Koperative Abadahemuka and the payment was agreed on monthly basis. She said however that two men including the one called Antoine who told her that he was a staff in BPR and told her that since then she had to deposit the rent on the account of Koperative Abadahemuka opened in that Bank because that Cooperative had debt for BPR. She states further that at that time they asked her to submit an challenge that she might have and hence, it is in that context that she could write to BPR at any time of challenge in connection with the leased houses. [15] He insisted that after that time Ngabonziza of Koperative Abadahemuka came to demand the payment but when she told him about the discussions she entertained with BPR, he immediately left. She said further that he seized leasing these houses in 2012 since BPR had told her that there was no contract between them and when she appealed to the Cooperative, she got responded that she had breached the contract. [16] Nsanzimana Wellars, the staff at BPR states that the bank statement which is in the case file indicates that on January 13, 2011 there was a capital of 31.366.509 Frw which was not yet due and other capital of 17.979.083 Frw which was due and 927.672 Frw for fee for late payment, the totality being 50.773.764 Frw. He states further that the whole loan as granted to Koperative Abadahemuka was supposed to be paid on April 5, 2012 but due to the fact that the totality of the loan that was agreed upon between the bank and Koperative Abadahemuka was not yet granted, the deadline of the whole payment was extended to as to start running after the whole loan was granted. [17] The representatives of Koperative Abadahemuka states that they agree on the modalities of the computation of the debt indicating that they owe the bank 31.366.506 Frw for the principle debt. They added however that they defaulted due to their accounts and those of the Cooperative which were frozen and it caused the Cooperative to struggle due to the acts of BPR. [18] With regard to the computation of the loan, counsel Rukarishya requested the Court to decide the case based on the precedent of Muganga Nduwayo versus BPR whereby the Court heard that the capitalization could not be decided on since it was

not agreed upon in the contract. He requested the Court also not to consider the fee for late payment since it is BPR which is the cause of the default of Koperative Abadahemuka. THE VIEW OF THE COURT [19] Article 33 of civil code book III which was into effect at the time the termination of the sale contract was requested provides that contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith. [20] The casefile demonstrates that on February 26, 2008 BPR concluded with Koperataive Abadahemuka the loan contract n° 0194/2008 equivalent to 60.000.000 Frw with the monthly payment of 1.404.033 Frw and as admitted by both parties and as identified on the bank statement, that Cooperative got the loan in three installments, that is 25.000.000 Frw + 10.000.000 + 25.000.000 Frw.

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[21] The case file indicates fuethr that on May 20, 2008, that National Prosecution Authority wrote to BPR two correspondences one requesting the bank to freeze the account of the members of Cooperative while the second was requesting the bank account of Koperative Abadahemuka to be frozen. [22] The Court finds both parties acknowledge the contract because Koperative Abadahemuka does neither deny the loan alleged by BPR not it denies the capital but rather allege that it defaulted due to the faults of BPR which froze its accounts as well as those of its members which caused its activities which could otherwise generate the money for the payment to pay to stop. It added further that BPR abused the power and even freeze the account oCooperative while the Prosecution had ordered only the accounts of the members. He concluded those members had been acquitted. [23] The Court finds that this ground raised by Cooperative cannot be considered because whil, as highlighted above, apart from the fact that the act of freeizing the accounts of Koperative Abadahemuka was based on the order of the Prosecutor General as recalled above while Koperative both Abadahemuka and its members do failed to demonstrate the action taken requesting the organ which had ordered to freeze those accounts in order to remove its decision. [24] Moreover, after the holdings above, the Court notes that to freeze the accounts does not rilieve the Koperative with its responsibilities to pay the loan it acquired and which it acknowledge as well as its interets as they are based on the concluded contract which became the law between parties as set out by article 33 of Civil Code Book III as referred to above. [25] With regard to the quantum of the debt, the contract recalled above demonstrates that the interests were set on 14% while the penalty fee was fixed at the rate of 4%. In the explanations provided to the Court for by the staff of the Bank called Nsanzimana Wellars, which have not rebutted by the other party, he stated that the debt was computed under the same modalities as the loan granted till January 13, 2013 and it remained as such till now apart from the fee for late payment which must accrue. This debt as detailed in the object of the claim and as explained by the bank staff is composed of the capital equivalent to 31.366.509 Frw, fee for late payment equivalent to 17.979.489 Frw, interests of 927.672 Frw and the totality is 50.273.670 Frw, the sum that the Bank is claiming. [26] Threfore, as long as BPR has figured out the quantum of the debt for which it is demanding the payment while it

is clear that it was computed based on the contract entered into by both parties, the Court finds that it is the amount that BPR must be paid because it provides evidence in support. -. Whether the plaintiffs sued together with Koperative Abadahemuka must sued together with the latter. [27] Counsel Basominger challenge the decision of the Commercial High Court which decided that the plaintiffs sued together with Koperative Abadahemuka must not be jointly condemned to pay while the Cooperative is present and in case they have never signed as sureties while it is clear in article 2 of the contract that the securities pledged by Cooperative include Members of the Committee as sureties who signed also on the contract and it is not

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understandable how the judge decided that they are not sureties to that loan granted to Koperative Abadahemuka. [28] Rukarishya and Me Nubumwe, counsels state that the statements that representatives of Koperative Abadahemuka have signed on the contract as sureties is not true since the contract indicates that they signed as representatives of Cooperative by virtue of their duties assigned to them as Board of Directors of Cooperative and it is them who must on its behalf as provided for by article 29 item F of statute of Cooperative. They articulated further that if they had signed as sureties, they had to fill in other forms demonstrating that they are actually sureties. They stressed further that the manner under which the contract is drafted is because it is BPR which drafted it. They added moreover that the statements of the bank that contradict the provisions of article 10 of the contract that it had itself signed. THE VIEW OF THE COURT [29] Article 552 of the Civil Code Book III provides that any guarantor of an obligation to the creditor submits to fulfill this obligation, if the debtor does not satisfy it himself/herself. [30] Article 560 of that Book provides that the guarantor has only obligations towards the creditor if the debtor had defaulted and the satisfaction of an obligation must be previously discussed in debtors' property, unless the guarantor has waived the benefit of discussion, or unless it is either severally obligated with the debtor; in which case the effect of its commitment to rule by the principles that have been established for secured debts. [31] Article 2 of the loan contract n° 0194/2008 dated February 26, 2008 that both parties signed provides that to secure the debt, the debtor gives to the Bank the securities comprised of house located at Nyabugogo, sureties as Committee of the Cooperative as well as its properties be movable or immovable. Article 10 of that contract provides that the surety undertakes to secure the debt immediately after signing the contract. [32] The case file demonstrates that the contract signed by the debtor, Koperative Abadahemuka represented by Ngabonziza Jean de Dieu, Rwabukamba Célestin, Uwanyirakuru Jacqueline and Mujawamungu Bernadette as those endowed with the capacity allow Cooperative apply for loan and on the other hand two staff for the bank signed. These are Credit Officer and Manager in BPR Muhima Branche. [33] The Court finds that there is no evidence that the plaintiffs sued together with Koperative Abadahemuka signed on the contract as sureties, Rather, the instrumentum of the contract referred to above demonstrates that they signed as representatives of Cooperative in such a way that they would not be personally condemned to pay the debt as sureties as held by the Commercial High Court. It is the Bank which had drafted the contract (as professional) which

had to make sure it is understandably prepared and that the obligations of every party be set without any confusion. Whether Koperative Abadahemuka can be awarded the damages it requests for its frozen accounts and seized houses.

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[34] Both Basomingera Mhayimana, counsels, state that BPR filed a claim requesting the termination as the principal claim but later surprised of the the Court which had never assessed its claim but rather focused the counter claim filed by Koperative Abadahemuka and even considered it as the main claim. They added further that the counter claim had not to be admitted as the case the main claim was not admitted as well. [35] They argued moreover that the damages awarded to Koperative Abadahemuka have no basis because, the fact that the Bank had been paying itself using the amount of money available on the account, is in the interest of Cooperative since it reduced the fee for late payment that otherwise it would pay. They pleaded that the acts of BPR are in compliance with the contract since it was provided for by article 8 and it was automated which means that the Bank committed no fault. [36] Basomingera added that in commercial disputes written evidence must prove evidence while it has not been produced for at least Cooperative to provide the photocopy of its transactions. He added that BPR cannot be responsible of the rent for the houses of Cooperative since the Cooperative demonstrated that there is long that its houses are not used since 2009 and that the amount of money totaling 2.320.000 Frw that was identified on bank statement has been regularly deposited on the account of Cooperative while they claim over ten million. [37] With regard to the amount of money amounting 11.000.000 that Cooperative states that it has been frozen and which must count for interests, BPR responded the bank statement demonstrated that that money was saved on accounts of different zones which the bank had started using to pay the instalments of the loan whose payment was due but later that self-payment stopped. He added further that the fact for the bank to pay itself is in the interests of Cooperative because it has decreased the debt. [38] He recalled that Koperative Abadahemuka was monitored by the state organs and that it was the sole Cooperative which has the interests of requesting the measures taken against it since it concerns its property. [39] Counsel Rukarishya argued that BPR caused to Cooperative the loss since it stopped its commerce while freezing its account and it caused the Cooperative not to put that money into circulation and it was done without agreement of seizure. He states further that the Bank goes beyond because in article 8 of the contract provides that BPR was authorized to pay itself every month by withdrawing on the account the agreed payment but goes beyond and even seized all the money of Cooperative including the money which was available on both the accounts of the zones and sub-zones. He stressed further that damages granted on the first instance was for loss of chance. [40] In the cross appeal, counsel Rukarishya argued that in his analysis, the judge of the Commercial High Court explained on page 2 paragraph 3 of the judgment that 11.000.000 Frw was frozen that was supposed to be used in buying 110 tones of Irish potatoes (100 Frw per kg) and he considered 1 337 and multiplied it with the value of the sales which is equivalent to

680.350.000 Frw which must be paid to Cooperative Abadahemuka. He added further that, in deciding the case as highlighted on page 4, he underlined 60 tones instead of 110 which totals

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371.100.000 Frw instead of 680.350.000 Frw. He requested the Supreme Court to handle injustice that Koperative Abadahemuka suffers. [41] Moreover, he adduces that on page 2 paragraph 4, the judge clearly explained about the monthly rent from the house equivalent to 600.000 Frw since every house was leased at 300.000 Frw but later contradicted himself stating that every house was only leased 150 000Frw x 2 x 35 months) which amounts to 21.000.000 Frw he qualified as loss while it was rent for the houses. [42] Counsel Nubumwe added that there is expertize that was done and whose result was submitted to the Court demonstrating that, since it was conducted, there was elapsed 2.490 days and to his wish, those days would be the basis for the Court and also on the statements of the meetings that were held by the members of Cooperative since it shows the progress of the profit that Cooperative used to gain. He stated that the profit was 5 Frw per kilo and the totality that Cooperative requests is 1.369.500.000 Frw. He stressed also that Cooperative requests the rent for the houses as highlighted by his co-counsel. [43] Ngabonziza states that the boojs of accounting of Cooperative figure out that their sales were over 400 tones of irish potatoes and that even BPR knows very well that they gained much profit. He stressed also his wish that their sale would be considered as 110 tones instead of 60 that were decided by the Coomercial High Court. [44] Counsels for BPR in general recalled that the Bank committed no fault that which may cause BPR to be condemned to pay damages and that there is no evidence that the money that Kperative Abadahemuka was given at the first instance or that which is requesting now is the real amount of his sale. To their view, their(cross appeal of Koperative Abadahemuka) cross- appeal has no merit. THE VIEW OF THE COURT [45] Article 258 of the Civil Code Book III provides that anya ct of man that causes damages to another obliges the person by whose fault happens to repair. [46] The Court views that, after all explanations provided with regard to the accounts of Koperative Adahemuka which were frozen as well as those of its members, BPR must not be condemned to pay no damages due to the fact that it its BPR which hamped the activities of Koperative Abadahemuka and led to being default. Again, though the case file indicates that there is the bank statement which indicates that after the decision of freezing the account of Cooperative, there is amount of money that BPR withdrew from the account of Koperative Abadahemukato satisfy the debt which was due that the latter had to pay as detailed by the staff of BPR, that self-payment caused no prejudice to Koperative Abadahemuka since it reduced the quantum of the debt that owed the Bank. [47] Based on the aforementioned holdings therefore, the Court finds has no basis to hold that Kperative Abadahemuka suffered the loss or other negative effects due to the fact that the Bank paid itself while that Bank accept the debt that it acquired and while the interests thereon have been computed based on the agreements of both parties. This debt had to accrue to the default of payment especially that Koperative Abadahemuka failed to indicated any step it made so that

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their accounts could be unfrozen after the reasons behind that were lifted as to consider that it is the Bank which which went beyond the instructions issued by the Prosecution. [48] The Court further finds that there is no evidence proving with no doubt that BPR has seized houses of Koperative Abadahemuka and also leads to failing with its obligation of paying BPR because the documents in the case file including the bank statement indicating that the tenants of the houses of Cooperative normally used to make their payment through the bank account of Cooperative open in BPR. These holdings are again stressed by the letter in the case file as well which BPR responded to Umuhoza M.Claire whereby it was notifying her that the issues she says she encountered concerning the house she says she was into the lease contract with Koperative Abadahemuka are not concerning BPR/ Muhima Branch since it, BPR, was not party to that contract. It advised her rather to approach his contractor. III. THE DECISION OF THE COURT [49] Decides that appeal launched by BPR has merit in part; [50] Decides that cross appeal filed by Koperative Abadahemuka has no merit; [51] Orders Koperative Abadahemuka to pay to BPR the loan and its credit that it owes it, the totality being 50.273.670 Frw as aforementioned; [52] Decides that the plaintiffs sued together with Koperative Abadahemuka as its sureties are not concerned with this case; [53] Orders Koperative Abadahemuka to pay ½ of the Court fees equivalent to 50.000 Frw.

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