

RWANDA / JUDGMENT

B.P.R. V. KALISA ET AL**2014SC****COURT**

Supreme Court

DECIDED

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Text**Page 1**

B.P.R. V. KALISA ET AL [Rwanda SUPREME COURT – 2014SC – (Mutashya , P.J., Rugabirwa and Gakwaya, J.) November 28, 2014] Contracts or obligation law –Contract– Contracts made in accordance with laws are binding on the parties – Termination of the contract – Contract can be terminated at the consent of the parties or for reasons based on law – Performance of the contract – Contract shall be performed in good faith – Law of 30/07/1888 relating to contracts or obligations, article 33. Commercial Procedure–Interests– Cannot be awarded if they are not well explained and without basis. Contracts or obligations law– Damages – Damages of procedural and advocate fees –They granted to a party who won the case and not to a party that lost it– Damages for being dragged into case–Not granted to a party that had filed the case for defending its personal interests– Law of 30/07/1888 relating to contracts or obligations, article258. Commercial Procedure– Provisional execution of a judgement –The court does not confirm provisional execution of a judgment if defendant disagrees on the debt and when the contract does not provide for such provisional execution –Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 212. Commercial Procedure– Grace Period for debt payment–It is granted when the requesting party Submitted explanations

and evidence thereto leading to postponement of debt payment– law of 30/07/1888 governing contracts or contractual obligations, article 142(2). Contracts or obligations law–Guarantor for a loan–Both the Creditor and the Guarantor have to pay in solidum when the Creditor fails to pay the loan. Facts: With the Surety of his wife KANTENGWA, KALISA MICHEL, obtained a loan from BPR amounting to 79.440.560 Rwfrs payable in ten years. Interests were calculated at 20% and late payment interests were calculated at 4%. Kalisa failed to pay; the bank ultimately submitted a claim to the Commercial High Court for breach of Contract, thereby praying court to award a sum of 148.617.721Frw including damages. KALISA affirmed the allegations but requested for more time to pay the debt even though dissatisfied at how interests were doubled or over calculated. Court confirmed that the defendants pay a total of 68.008.715 Rwfrs as well as advocates and case expense fees of 500, 0000 RFW. The Bank appealed against this Ruling in the Supreme Court claiming that KALISA and his wife accepted 148.617.712 Rwfrs, but the Court ordered them only to pay the Contractual debt, Court confirmed that the bank had calculated the ordinaries interest twice which is not the true, instead periods that are computed were separated, from date KALISA got the loan up to the day that it was obvious that he has stopped to reimburse ,and B.P.R.Ltd decided to ask him to pay (radiation) and the time computed from the day of“radiation” up the the day that all payment will be made. Thus the bank finds that article 64 of law N0 45/2011 of 25/11/2011 governing contracts was not respected since consenting to the contract price automatically means consenting to interests thereto.

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KALISA explained that the Court did not order to pay only principal debt, because at the paragraph seven of the appealed case, they were ordered to pay both remaining contract price as debts and interests thereof. He confirms that payment obligations were usually fulfilled until he failed to do so and informed it to the Bank in writing. And Thus before the hearing he had deposited 8 million Rwfrs, but the bank had ignored that and instead and over computed the ordinary interests twice .Now for interest “removed” KALISA find it as a new claim which should not be received and in heard in appeal since it is not related to the original complaint. Concerning the Breach of the Contract, KALISA allege it was caused by default of payment by his creditors and had notified the Bank. Both parties requested Damages for procedural fees, KALISA and his wife concluded requesting the extension of grace period in order pay where the Bank requested for provisional execution of

judgment.

Held: 1. Contracts made in accordance with the law are binding to the parties; they can be terminated by consent of both parties or for reasons based on the law. They shall be performed in good faith.

2. For interests to be determined or granted, their origin has to be clearly determined and its basis and reason established therefore, Interest called “removed” cannot be granted when their origin and basis are unknown.

3. Fees for the follow up of the case and advocate fees are granted to the winning party once requested, but he or she is not entitled to get damages as procedural fees because filling a claim and making appeal for its own interests are its rights.
4. There is no provisional execution of judgment when defendant does not consent to the whole debt and when the loan contract doesn't provide for it as provided by article 212 of law N0 21/2012 of 16/7/2012 relating to the code of civil, commercial, labor and administrative procedure.
5. A request for extension of grace period for payment of a debt is granted when a party provides evidence indicating the nature of his work, failure to do so, the request is not granted.
6. Court confirmed that KALISA and KANTENGWA in pay in solidum 102.765.895 Rfrws to the Bank, minus the 8 million paid. Appeal has merit in part; The appealed case does not change; Defendants ordered to pay to the Appellant ,the Principal debt, Ordinary interests, default interests,Procedural fees and advocate fees at the first and appellant levels; Costs to the defendants. Statutes and statutory instruments referred to: Law of 30/07/1888 relating to contracts or obligations, article 33,142(2), 258; Loan Contract between KALISA Michel and B.P.R.of 24/08/2011,article 2; Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 212.

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No Cases referred to:

Judgment

I. BACKGROUND OF THE CASE [1] On 24/8/2011, KALISA MICHEL secured a loan in BPR (kimironko) to the tune of 79.440.560 Rwfrs payable in 10 years, paying 1.535.234 Rwfrs annually and an interest of 20% with punitive interests of 4%. KANTENGWA ODETTE, KALISA's wife was the guarantor. [2] KALISA MICHEL defaulted in paying the debt and was sue by BPR in the Commercial High Court for breach of contract and therefore requested the payment of 148.617.721 Rwfrs as shown in the subject matter. KALISA MICHEL accepted the debt and requested the extension of the period of payment in order to pay the remaining amount, however, he claimed not understanding the way he is being requested to pay the ordinary interest twice. [3] That Court confirmed that KALISA MICHEL and KANTENGWA ODETTE have to give 68.008.715 Rwfrs to BPR Ltd, as reimbursement of the debt with immediate effect and 500,000 Rwfrs as procedural fees and advocate fees. [4] Unhappy with Court Decision, the BPR lodged in the Supreme Court on the pretext that the commercial High Court did not consider article 64 of law N0 45/2011 of 25/11/2011 governing Contracts. [5] KALISA MICHEL and KANTENGWA ODETTE filed a cross appeal against BPR Ltd requesting the court to order BPR to pay damages for bringing them to court without reason, procedural fees and advocates fees. [6] The Case was heard in public on 28/10/2014 BPR Ltd was represented by Counsel NTAGANDA KABERA Festo

and Counsel KAREGA Blaise Pascal assisting KALISA MICHEL as well as representing KANTENGWA Odette. II. ISSUES TO BE EXAMINED IN THE CASE AND ITS

ANALYSIS

- a. To know the amount of money that KALISA Michel and KANTENGWA Odette owe to BPR Ltd basing on their contract. [7] Counsel NTAGANDA KABERA Festo says that in the substantive hearings that took place on 12/12/2012 at the Commercial High Court, KALISA Michel and KANTENGWA Odette recognized 148.617.712 Rwfrs, but Court in taking decision, requested them to pay only the principal debt. He continues arguing that confirming that BPR had over computed ordinary interest twice is not true because computing them as such, was to divide periods that are calculated from date KALISA got the loan up to the day that it was obvious that he has stopped to reimburse, and B.P.R.Ltd decided ask him to pay (radiation) and the time computed from the day of "radiation" up to the day that all payment will be made.

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- [8] Counsel NTAGANDA KABERA Festo, argues that the loan that BPR gave to KALISA Michel on 24/08/2011 was the "Rescheduling" because he had failed to reimburse, thus grant an other for helping him to run his business and reimburse. He continues arguing that the debt had taken a long time without being paid as evidenced by the "bank statement" of its "account". [9] Counsel NTAGANDA KABERA Festo, argues that in case KALISA Michel recognise the principal debt. He has also to recognise the ordinary interests and default interests which is being requested to pay based on article 64 of law N0 45/2011 of 25/11/2011 governing contracts since contracts made in accordance with the law are binding to the parties [10] Counsel NTAGANDA KABERA Festo concludes by requesting that the loan be computed based on principal debt amounting to 60.003.476 Rwfrs, and ordinary interests amounting to 69.404.020 Rwfrs and default interests of 13.880.804 Rwfrs, that KALISA Michel and KANTENGWA Odette be ordered to pay 500.000 Rwfrs to BPR Ltd as procedural fees and advocate fees and 10.000.000 Rwfrs (as additional claim) for being dragged into Court without cause, all amounting to 149.752.030 Rwfrs. and requested that interests be increased up to the pronouncement of the case and then requested the Court to order a provisional execution of

judgment.

- [11] KALISA Michel says that in the First Instance, the subject matter was payment of the principal debt amounting to 60.000.476 Rwfrs, ordinary interests of 17.843.507 Rwfrs, Ordinary interests of 62.003.592 Rwfrs, default interests of 8.267.147 Rwfrs, 500.000 Rwfrs as procedural fees and advocate fees all in total amounting to 148.617.721 Rwfrs. He agrees that in front of the Court, they recognised the debt but refuted the computed interests because, since their concluded loan contract he always paid, until he failed to do so, but informed the B.P.R Ltd about it in writing, and also notice that he had paid 8 million on

10/9/2012 before pleading in the Commercial High Court. he concluded saying as decided by Commercial High Court that ordinaries interests were computed twice. Hence, as BPR introduced a new terminology which is not in main claim called "after radiation" in appeal, in order to hide the finding of the Court, which is considered as modifying a claim at the appeal level while such action is prohibited by article 168 of law N0 21/2012 of 16/07/2012 relating to code of civil, commercial, labor and administrative cases [12] Counsel KAREGA Blaise Pascal says that the Commercial High Court ordered payment of the Principal debt, is not true, thereof as evidence in the appealed judgment in clause 7. that KALISA Michel and KANTENGWA Odette were ordered to pay Principal debt and its interests. He continues by saying the fact that BPR Ltd indicates in its submissions in appeal the principal debt and ordinary debt "after radiation" yet in the first degree such pleas were not a contentious issue and requests court to disqualify that part of the plea. [13] On the additional claims, KAREGA Blaise Pascal says that such claim should not be received in court. [14] Counsel KAREGA Blaise Pascal says KALISA Michel breached the contract due to the default of payment by the National Public prosecution and that information was communicated to BPR Ltd and thus violating article 45 of civil code book three thereby requesting the Court to

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reasonably extend period of payment and thus allow KALISA Michel and KANTENGWA Odette to pay their debt, based on article 142 of civil code book three. [15] Counsel KAREGA Blaise concluded by requesting court to order BPR Ltd to pay to KALISA Michel and KANTENGWA Odette 1.000.000 Rwfrs as procedural fees and advocate fees. THE VIEW OF THE COURT [16] Article 33 of the civil code book three used at the time KALISA Michel and B.P.R. Ltd concluded a loan contract provides that "contracts made in accordance with the law are binding between parties. They can be terminated by consent or reasons based on the law. they shall be performed in good faith". [17] Article 2 of the loan contract entered into between KALISA Michel and BPR Ltd on 24/8/2011 provides that "the Current rate interest is fixed at 20% per year, meaning 1,66% per month. moratorium rates is 4% per year, meaning 0,33% per month[.....]". [18] The Supreme Court finds that in paragraph 7 of the appealed case, the Commercial High Court confirmed that Kalisa Michel and Kantengwa Odette had to pay BPR Ltd a contractual debt of 60.003.476 Rwfrs and its interests of 20% per year from 29/12/2011 up to 10/1/2013 amounting to 6.697.332 Rwfrs and the default interests of 4% per year from 29/12/2011 to 10/1/2013 amounting to 1.308.007 Rwfrs, all in total amounting to 68.008.075 Rwfrs. [19] The Supreme Court finds that the Commercial High Court did not provide the basis for computation of interests; however, it is evident that Court did not order KALISA Michel and KANTENGWA Odette to only pay the contractual price. [20] Court finds that BPR Ltd is requesting KALISA Michel and KANTENGWA Odette be ordered to pay 139.752.030 Rwfrs up to 2/8/2014 which includes 60.003.476 Rwfrs of the contractual debt, 9,844.534 Rwfrs of interests called "removed" "radié", 69.404.020 Rwfrs for ordinaries interests, 13.880.804 Rwfrs for default interests and 500,000 frw of "debt recovery", however, BPR does not explain where interests called «radie » accrue and reasons thereof thus these interests shall not be awarded. [21] The Supreme Court finds that BPR Ltd suspended its dealings with KALISA

Michel on 29/12/2011 and both parties agree that the contentious debt is 60.003.476 Rwfrs, hence all the interests as stipulated in the contract of 24/8/2011 must be computed from 29/12/2011 up to the pronouncement of judgment that is 28/11/2014. [22] The Supreme Court finds, as evidenced in “the Bank statement” of “his account”, KALISA Michel paid 8 million Rwfrs on 10/9/2012 before pleadings in the Commercial High court. [23] Concerning ordinary interests of 20% per year on the contractual debt, The Supreme Court finds basing on article 2 of the loan contract, those interests are 34.802.016 Frw meaning $60.003.476 \text{ Rwfrs} \times 476 \text{ Rwfrs} \times 20 \times 1.044 \text{ days} \div 100 \times 360 \text{ days}$

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[24] Concerning the default interests of 4% per year on the contractual debt, the supreme court finds that basing on article 2 of the loan contract, the interest are equal to 6.960.403 Rwfrs meaning $60.003.476 \text{ Rwfrs} \times 4 \times 1.044 \text{ days} \div 100 \times 360 \text{ days}$ [25] Concerning 500.000 Rwfrs of procedural fees and advocate fees that requested by B.P.R.Ltd, the Supreme Court finds that basing on article 258 of the civil code book three, the fees should be granted to it as it won the case. That means that it shall be awarded 1.000.000 Rwfrs, including 500.000 Rwfrs from the second degree. [26] Concerning 10,000,000 Rfw as damages for being dragged into Court for no reason that are being requested BPR Ltd in its additional claim, the Supreme Court finds that it was a right for BPR Ltd to drag defendant to court for breach of contract and at the same time it was still BPR's right to appeal the case thereby such fees are not awarded. [27] Regarding provisional execution of judgment requested by BPR Ltd, the Supreme Court finds that even though the loan contract/mortgage contract was concluded at the public notary, Kalisa Michel does not consent to that amount and that the contract signed at the notary only declares that B.P.R Ltd loaned 79.440.560 Frw with an annual interest of 20% and a 4% punitive annual interest thus requirements of article 212 of law n0 21/2012 of 16/7/2012 relating to the code of civil, commercial, labor and administrative procedure are not exhausted, it provides « provisional execution order shall be issued by the court on its own motion, even without a security if the matter of litigation is the debt acknowledged by the debtor in the case. » [28] Regarding extension of payment requested by Kalisa Michel, basing on article 142 paragraph 2 of civil code book three, the supreme court finds that Kalisa does not give convincing reasons regarding the nature of his work as well as evidences thereof which could make it extend such days. the article states that « however, courts shall basing on the debtors situation, diligence and analysis give reasonable payment extension and suspend submission of all court complaints and situation returns as it was before the case » [29] Basing on explanations and provisions as mentioned above, the Supreme Court finds KALISA Michel and KANTENGWA Odette have to pay BPR Ltd in solidum 102.765.895 Rwfrs after deducting 8.000.000 Rwfrs paid on 10/9/2012, total balance to be paid being 94.765.895 Rwfrs. III. THE DECISION OF THE COURT. [30] Confirms that the appeal of B.P.R.Ltd has merit in part; [31] Confirms that Case RCOM 0214/12/HCC is overtuned on matters regarding monies KALISA Michel and KANTENGWA Odette have to paid to BPR Ltd; [32] Orders KALISA Michel and KANTENGWA Odette pay B.P.R Ltd 60.003.476 Rwfrs of the

contractual debt, 34.802.016 Rwfrs of ordinaries interests, 6,960.403 Frw of defaults interests and 1.000.000 frw for procedural fees and advocate fee on the first instance and at the instance of appeal,after deducting 8.000.000 Rwfrs paid 10/9/2012 all amounting to 94.765.895 Rwfrs;

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[33] KALISA Michel and KANTENGWA Odette pay court fees.

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