

RWANDA / JUDGMENT

BRD v. NDEZAHAYO ET AL

RCOMAA 0076/12/CS

COURT

Supreme Court

DECIDED

1 April 2016

CASE / FILE NUMBER

RCOMAA 0076/12/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-01
- Case/document no.: RCOMAA 0076/12/CS
- Collection: Supreme Court

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BRD v. NDEZAHAYO ET AL [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0076/12/CS (Mugenzi, P.J., Kanyange na Nyirinkwaya J.) 1 Mata 2016] Contract law – Loan contract – Interests – Complex interests – The interest must generate other interests based on the contract that parties concluded – Law of 30/07/188 governing contract or obligations, article 52. Damages – Both parties cannot be awarded damages in this case because both of them lost the case in part. Facts: The case manates from contract loan contract concluded between BRD and Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine. Those individuals have committed themselves to secure the loan contract of 5 500 000 Frw that BRD had concluded with Rwanda rw'Ubu Association Amizero. BRD sued those guarantors before the Commercial Court demanding the payment of the debt that they secured equivalent to 10.273.768 Frw comprised of 5.500.000 Frw, interests of 2.272.914 Frw fee for late payment 2.500.667 Frw. He requested the Court also to hold that interests must accrue till the judgment is closed. They requested further counsel and procedural fees. The Commercial Court held that they must pay that money, 821 901 Frw for moral damages equivalent to 8% of the whole debt. The defendant appealed to the Commercial High Court claiming that the previous Court said nothing in regard

to securities pledged by Business Plan Competition Guarantee Fund BPC/GF and on the decisions of courts taken in the case similar to this. The Court decided the case and it held that BRD first had to get the payment from the securities pledged by Business Plan Competition Guarantee Fund BPC/GF after the debt was ranked to fifth level and, therefore, its failure to do that caused the loss to the guarantors of Rwanda rw'Ubu Association since the undertaken to pay the debt without first seek the payment from the assets of Association and hence it must demand the payment of the debt after deducting the securities pledged by BPF/BF and the fee for late payment accrues till the judgment is rendered. BRD appealed to the Supreme Court stating that the Commercial High Court had wrongly analysed article 8 of Memorandum of Understanding that was signed between BRD and PSF because it ordered BRD to demand the defendants to pay instead of condemning them to pay and failed to specify the amount of money that must be paid and that it kept silence in regard to lawyer's and procedural fees. Counsel for defendants claimed that the mode of computation of interests used by BRD is contrary to the law. He explained that the interest claimed by BRD is excessive taking into account the contract entered into by both parties. Held: 1. Interests generated by the principal capital may also generate interests based on the judgment or on particular contract; essential is that they must be due, either from the claim or contract, for at least the complete year. Therefore, the fact that parties to the contract had agreed

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on the interests, fee for late payment and that fee for late payment had immediately to be added to the money which is late to be paid implies that all the money which was late to be paid must generate interests on the rate of 15% and fee for late payment on the rate of 4% that is 19%. Hence, interests must generate other interests based on the agreements of the parties.

2. No damages must be awarded to either part because each one lost the case in part. Appeal has merit in part; Guarantors are condemned to pay the debt; They are further ordered to pay the court fees. Statutes and statutory instrument referred to Law of 30/07/1888 governing contracts or obligations, article 52.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On May 11, 2007 BRD concluded with Rwanda rw'Ubu Association the loan contract of 5.500.000 Frw which was supposed to be used in the project of "café internet" in Huye District. In the context of securing the loan Rwanda rw'Ubu Association pledged the following securities : suretyship contract granted by 'Business Plan Competition Guarantee Fund (BPC/GF)' of Private Sector Federation (PSF) equivalent to 10, 000 USD, goodwill pledge and the sureties comprised of Board of Directors of the Association. On May 15 further it concluded other suretyship contract with Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine who undertook to pay the loan at any time Rwanda rw'Ubu Association would fail to pay. [2] On December 12, 2011 BRD sued Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine before

the Commercial Court requesting it to condemn them to jointly pay the loan that they secured equivalent to 10.273.768 Frw which must be computed till October 20,2010. The debt include the principle debt of 5.500.000 Frw, interests and fee for late payment equivalent to 2.500.667 Frw and that the interests must accrue till the debate are closed and pay procedural and advocate fees equivalent to 8% of the whole debt. [3] The Commercial Court of Nyarugenge ruled on the case on March 9, 2012 and condemned the respondent to pay the loan equivalent to 10.273.768 Frw including the principal debt, interest and fee for late payment and 821.901 Frw for moral damages equivalent to 8% of the whole debt, the totality being 11.095.669 Frw. [4] Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine launched appeal to the Commercial High Court stating that the previous judge kept silence with regard to the suretyship contract granted by BPC/GF as well as on the similar decided case to the appealed judgment.

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[5] The Commercial High Court decided the case on September 21, 2012 and ruled that based on article 8(e) of the Memorandum of Understanding (MoU) entered into in 2010 which was modifying that of August 2, 2007 whereby BRD could pay itself starting on the pledge of BPC/GF after the debt could be placed on graded 5, and the fact of not doing that caused the loss to the guarantors of Rwanda rw'Ubu Association since they had undertaken to pay without first seeking the payment from the assets of the Association and hence it must demand the payment of the debt being computed from January 1, 2010 till the case would be decided by the Court. [6] BRD appealed to the Supreme Court based on the following grounds : the fact that the Commercial High Court had wrongly interpreted article 8 (e) of the Memorandum of Understanding which was signed between BRD and PSF and decides that the the respondent must not pay the money paid by the BPC/GF, the fact that it ordered BRD to demand the payment from the defendant instead of condemning them to pay and that it have not given clarification on the quantum of the money to be paid to BRD and its failure to decide on the procedural and advocate fees equivalent to 8% of the debt. [7] The case was heard in an open court on various dates. On April 10, 2015 the Court issued an order with regard to the objection of lack of status that was raised by the defendant and the Court held that his claim was in the jurisdiction of the Supreme Court. [8] On November 6, 2015, the Court also issued an order on the issue of whether Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine must pay the whole debt that they secured without subtracting the money that was paid by BPC/GF as alleged by BRD or whether it must be deducted as stated by the defendant that no power was conferred to BRD to demand the payment on its behalf and the money that was granted to them was so delivered as a support which had not be claimed back, and based on the contract between BRD and PSF the Court condemned them to pay the whole loan without deducting the money that was paid by "Business Plan Competition Guarantee Fund (BPC/GF)" BPC/GF. [9] On that date, the Court held that BRD had get the payment from starting from the security granted by BPC/GF no later than December 31, 2009, and the interests for the remaining

unpaid debt starts being computed starting from January 1, 2010 till December 12, 2012, hence prior to taking the decision on quantum of the debt that the defendant must pay, BRD must provide papers detaing the computation of the debt according to the modalities aforementioned. [10] The hearing in public was re-opened on February 23, 2016. BRD was represented by Barezi Marie Aimée, the counsel, Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine represented by Buzayire Angèle, the counsel. The Court assessed both the quantum of debt that the defendant must pay and damages requested parties. II. ANALYSIS OF LEGAL ISSUES

- i. The quantum of the debt that Ngezahayo Rutamu Vincent Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine must pay. [11] Counsel for BRD states that the summary of the loan statement that the Bank submitted to the Court on February 10, 2016 demonstrates clearly that after deducting the money that was

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secured by 'Business Plan Competition Guarantee Fund on December 31, 2009 as held by the Court, interests of 1.360.453 Frw and the fee for late payment of 539.647 Frw remained unpaid and the totality was 1.900.100 Frw. This money also gerated interests in the period of 36 from January 1, 2010 till December 31, 2012 and the totality accrued to 1.986.166 Frw, that is, the interests that the defendant have to pay are 3 .346.619 Frw (1.360.453 Frw +1.986.166 Frw). [12] Counsel for Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhoza Francine states that the modalities of the computation of interests of BRD is unlawful since it resorted to capitalization of 1.900.000 Frw whereby it added the interets and added them to fee for late payment equivalent to 539.647 Frw and it computed interests on the reate of 15% of the totality of 1.900.100 Frw and fee for late payment of 4% in the period of 36 to total ziba 1.986.166 Frw. He stressed that thse interests are too much based on the loan contract which provides that unpaid loan must generate interests for late payment on the rate of 4%. [13] He continued arguing that based on on the contract that the defendants concluded with BRD, the calculations would be done in the following manner : the interests of 1.900.100 Frw which remained after Business Plan Competition Guarantee Fund which after the computation of the fee for late payment on the rate of 4% every year in the period of 36 months and it is 228.012 Frw (76.004 Frw:12 x 36 months) which must be added to 1.360.453 Frw which is interest which is not yet paid the totality being 1.558.468 Frw and whether deemed necessary the Court would appoint expert for the computation of interests. [14] Counsel for BRD states that to his view it is not necessary to appoint an expert since the manner under which the Bank computed the mis in accordance with the decision of the Court and that it would be illogical how the defendan would fail with their obligations and then order them to pay fee for late payment ofn4%. He concluded that if this becomes the case every one would be deliberately failing to pay the due debt so that he/ she could pay fee for late payment. [15] Counsel for the defendants pleaded that 1.900.100 Frw demanded by BRD as the interests is excessive because fee for late payment to which interests is also demanded is not a prejudice to BRD in a ny case an expert would be appointed because he does not accept the computation. THE VIEW OF THE COURT [16] Article 52 of the

Civil Code Book III governing Contracts or obligations which was into effect at the time of the conclusion of the contract between BRD and Rwanda rw'Ubu Association provides that interests generated by the principal capital may in their turn generate interests based on the judgment based on special particular contract, what matters is only that whether in the judgment or contract they must be at least interest for the complete year. [17] The contract that BRD concluded with Rwanda rw'Ubu Association provides in article 5 "the Bank shall be paid the interests on the rate of 15% every year for the credit it granted but it is not yet paid,... and that fee for late payment shall be 4% of the the whole of unpaid amount of money which would be automatically added to to unpaid money while due. This implies that the

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whole amount to be paid must be computed on the rate of 14% and the fee for the late payment of 4% which is 19%. [18] With regard to the interests requested in this case, it is clear that on December 31, 2009 the interests which remained unpaid after deducting the money paid by Business Plan Competition Guarantee Fund is 1.360.453 Frw for interests and 539.647 Frw for fee for late payment the totality being 1.900.100 Frw. The Court in its view notes that this is also the debt that the Bank is owed that must generate interests of 15%, the fee for late payment of 4% based on the special agreements of parties and on article 52 of the Civil Code Book III. [19] Based on the above holdings and the decision of the Court in the preliminary hearing that the interests which remained unpaid after deducting the money paid by Business Plan Competition Guarantee Fund BPC/GF must generate interests till December 31, 2012, the Court finds that the defendant must pay interests of 3.346.619 Frw as figured out by BRD in 'summary of loan statement. That money must be added to 5.600.100 Frw which was paid by Business Plan Competition Guarantee Fund BPC/GF which they must refund through BRD and the totality is 8.946.719 Frw. With regard to the damages demanded by both parties [20] Counsel for BRD requests the Court to condemn the defendants to pay 1.000.000 Frw to the Supreme Court level and 500 000 Frw for procedural and advocate fees and 8% for the whole amount demanded moral damages as it is identified in the contract concluded between the Bank and the defendants. Counsel for the defendants responded that no damages that must be granted to BRD since they had been requesting it to get the payment from the money of Business Plan Competition Guarantee Fund BPC/GF and they have not do it and the debt accrued to due its faults while it does not demonstrate the prejudice it suffered and the fact that the concluded contract provides for the interests of 8% must not be considered because it infringe the law. [21] Counsel for the defendants also filed a cross appeal requesting the Court to condemn BRD to pay 1.000.000 Frw for procedural and advocate fees while counsel for BRD responded that advocate fees is paid by the loser of the case and that there is no fault committed by the Bank in such way that it would be condemned to pay the damages to the defendants. THE VIEW OF THE COURT [22] The Court finds that the damages demanded by both parties have no merit since everyone lost the case in part. III. THE DECISION OF THE COURT [23] Decides that appeal filed by BRD have merit in part; [24] Condemns Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste and Umuhiza Francine to jointly pay BRD the debt of 8.946.719 Frw including the money paid by

Business Plan Competition Guarantee Fund BPC/GF equivalent 5.600.100 Frw, interests and fee for late payment equivalent to 3.346.619 Frw;

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[25] Condemns them to jointly pay the court fees equivalent to one hundred thousand.

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Prepared on 12 October 2026 · Esheria