

RWANDA / JUDGMENT

ECOBANK RWANDA S.A v. KAJUGA

RCOMA 0017/11/SC

COURT

Supreme Court

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Text

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ECOBANK RWANDA S.A v. KAJUGA [Rwanda SUPREME COURT – RCOMA 0017/11/SC (Mutashya, P.J., Kanyange and Hitiyaremye, J.) January 14, 2014] Commercial procedure – The calculation of the interests on the loan – The prescription – The borrower of the debt would have paid immediately – The interests on the loan are considered to have been prescribed after the expiration of the period of five years provided for by the law without being claimed to be paid – The prescription may not be calculated from the last date on which the contract would have been terminated, but it is calculated from the time when the borrower has to pay immediately – The interests on the loan are paid within the period not exceeding five years – The interests on the loan are considered to have been prescribed after five years without being asked to be paid, Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 6 item 3. Commercial procedure – Claiming the damages –The party may not claim to be provided with the damages in case he/she did not reveal to the court the ground on which he/she claims them. Facts: Kajuga has been given different loans by ECOBANK RWANDA SA guaranteed by Sonarwa. The first loan amounted to 7,685,000 Frw, the second amounted to 119,000,000 Frw. When he remained with paying 46,905,545 Frw, both parties agreed that it will be paid within the

period of 60 months, and the interests be calculated on 18% per year. Kajuga did not respect the agreement of paying those loans, and made ECOBANK RWANDA SA sue him before the Commercial High Court. The court condemned him to pay to ECOBANK RWANDA Ltd to the money amounting to 44,393,765 Frw of the loan he owes to it and the damages amounting to 2,000,000 Frw, but with regard to the interests, the court decided that the ECOBANK RWANDA SA may not be provided with them since the period of five years provided for by the law of requesting the payment of interests on the loan has expired. ECOBANK RWANDA SA appealed before the Supreme Court arguing that the Commercial High Court willingly ignored the law, denied to provide the interests basing on the fact that five years have expired while it is not true. Kajuga too said that no interests have to be provided since they were not agreed up on, and that the time for requesting for them to be paid has expired, and he requests the damages for being involved in the court proceeding for no ground. ECOBANK RWANDA SA argues that the court of first instance denied to provide the interests and decided that the period of five years has expired without being paid, it requests that these five years may not be considered since there has been no prescription yet, he says again that the article 657 of the CCB III would not be based on since it is not related to commercial contracts rather it is related to civil contracts. ECOBANK RWANDA Ltd says that the interests have to go on being calculated until Kajuga will pay the whole loan. Kajuga on his side says that the mentioned debt results from the money that ECOBANK RWANDA SA has been putting on his account, that they made no contract, thus ECOBANK RWANDA SA has to claim no interests thereon. He goes on saying that the interests may not be paid since the period of five years provided for by the law has expired without requesting that money, thus he claims to be paid the damages for being involved in the court proceedings for no ground.

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Held: 1. Basing on what have been said by the legal writers, the prescription of five years starts to run from the time when the interests would have been to be paid even if the one who has to pay that debt which bears them, has not finished to pay it yet, thus the interests that ECOBANK RWANDA SA claims have prescribed because there was around six years when it has not requested to be paid, and that it did not tell him the amount of money he owed to it.

2. Kajuga cannot be paid the damages he argues that they result from the fact that ECOBANK RWANDA SA appealed ignoring that the judgment was legally decided in case he did not revealed to the court the ground on which the appeal would not have been made. Appeal has no merit. Cross appeal has merit on some grounds. Court fees to the appellant. Statutes and statutory instrument referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 6, paragraph 3. No cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Kajuga Wycliff made different loan contracts with BCDI which has become ECOBANK RWANDA SA, to get those loans he was guaranteed by SONARWA. The first loan which was called «Crédit Escompte sur facture» amounted to 7,685,000 Frw another amounting to 119,000,000 Frw which could help Kayijuka to sell the oil in CIMERWA. [2] On 28/08/2001 all debts he owed to ECOBANK RWANDA S.A amounted to 52,085,805 Frw, which have been combined up on the agreement of both parties, they agreed that Kayijuka deducts around 5,180,805 Frw on that debt within the period of four months, the remaining 46,905,545 Frw both side agreed again that it would be paid within the period of 60 months and the interests would be calculated on 18% per year. ECOBANK RWANDA S.A says that that he did not respect that contract which made it lodge a claim before the Commercial High Court. [3] The Commercial High Court has decided the judgment RCOM 0124/09/HCC on 23/02/2011, and condemned Kajuga to pay to ECOBANK RWANDA S.A the money amounting to 44,393,765 for the debt he owes to it and paying the damages amounting to 2,000,000 Frw provided within the discretion of the court and pays thereon the proportional rate amounting to 80,000 Frw, and paying the court fees amounting to 19,050. [4] In taking this decision, the court has based on the fact that the debt that ECOBANK RWANDA S.A requests from Kajuga, he admits it, and the fact that it is proven by the evidences revealed. With regard to the interests, the court realised that ECOBANK RWANDA S.A may not be provided with them since the period of five years provided for by the law for requesting to

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pay the interests on the loan has expired, and even within the contracts both parties have been signing, the calculation of the interests until the whole debt gets finished appears nowhere. [5] With regard to SONARWA, the court realised that it is sued for nothing in this case since it was made to intervene not aiming at being charged for anything. And it has realised that ECOBANK RWANDA SA has been involved in the court proceedings for no ground. [6] ECOBANK RWANDA SA was not satisfied with the decision of the case and appealed before the Supreme Court arguing that the Commercial High Court has ignored the law and denied to provide the interests basing on the fact that five years have expired while they have not expired yet. [7] KAJUGA Wycliff, in his defence court submissions says that no interests have to be paid since they were not agreed up, and that the time for requesting them to be paid have prescribed, and he also lodged a cross appeal up on that of ECOBANK RWANDA SA, saying that ECOBANK RWANDA SA, has appealed ignoring that the judgment it appeals against is legally decided aiming at going on involving him in the court proceedings for no ground, thus he claims the procedural damages. [8] The hearing of the case was held on 24/12/2013 ECOBANK RWANDA SA attended and Me Rusanganwa Jean Bosco, pleaded on its behalf, Me Nzirabatinyi Fidèle pleaded for KAJUGA Jean Wycliff, while SONARWA was represented by Me NSENGIYUMVA Jean Marie Vianney, when the hearing started all the parties agreed up that it was not necessary for SONARWA to take part in this case since it was removed therein. II. ANALYSIS OF THE LEGAL ISSUE OF THE CASE Knowing whether the interests that Ecobank Rwanda SA claim has to get them and whether the damages that KAJUGA Wycliff claims deserves them. [9] Me Rusanganwa Jean Bosco who pleads for ECOBANK RWANDA

SA says that the court of first instance denied to provide the interests arguing that five years have expired when they were not requested for being paid ignoring that on 30/5/2002 there are different letters which were written by ECOBANK RWANDA SA including that of 5/4/2004 ignored by the judge of the first instance, thus, those five years that the court mentions may not be considered since basing on that last letter there has been no prescription. [10] The counsel of ECOBANK RWANDA SA says again that the article 657 of the third book of the civil code would not be based on since it is related to the civil matters, it is not related to the contracts of commercial matters, and if that prescription would have existed, it could run from the last date the debt would have been terminated as demonstrated in the promise for payment which was signed by Kajuga Wycliff. [11] The counsel of ECOBANK goes on saying that the interests have to continue being calculated until Kajuga Wycliff pays, since the debt is still there as proven by the contract. He concludes saying that he realises that the court has willingly ignored the article 2, 3, 14 and 15 of the law n° 15/2004 of 12/06/2004 relating to the evidence and its production and the article 33 of

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CCB III, and denied providing the interests basing on the fact that five years expired without requesting them to be paid. [12] Nzirabatinyi Fidèle the counsel for Kajuga Wycliff, he argues that the mentioned debt results from the money that Ecobank has been putting on Kajuga's bank account that they made no contract, and he has requested for being facilitated to reconstitute it. The fact that there has been no contract, Ecobank has to claim no interests thereon since they were not agreed up, the debt they admit is the principal debt which is demonstrated in the letter of 28/8/2001 which notified to them what have been agreed up on. He concludes saying that even the judge has realized that both side have agreed up on the principal debt. [13] Nzirabatinyi the counsel adds thereon that in case the court realises it otherwise, that the interests may not be requested to be paid since the period of five years provided for by the law has expired and no request for paying this debt existed, and that the last letter notifying them of the interests he has received it in 2002, and they received another one in 2008, that that of 2004 mentioned by ECOBANK, they did not receive it, that the one who signed that he receive it, is not his employee. And even these letters may not be considered as the notices to pay since they were summons. He goes on saying that other letters mentioned by the one representing ECOBANK did not talk about the interests and be decided or otherwise be claimed. [14] In the cross appeal up on that of ECOBANK, Me Nzirabatinyi Fidèle who pleads for KAJUGA Jean Wycliff says that ECOBANK has appealed ignoring that the judgment it appeals against is legally decided and that this is to involve him in the court proceedings for no ground, thus he claims to be paid the damages amounting to five million thousand (5,000,000 Frw) and one million thousand (1,000,000 Frw) for the procedural fees. THE APPRECIATION OF THE COURT [15] The documents which are in the file prove that on 28/8/2001 BCDI SA which become ECOBANK RWANDA SA wrote to Kajuga Wycliff the letter n° DAF/JUR/BB/213/08-2001 notifying him the content of the terms of agreement. In that letter BCDI notified him that basing on the agreements they have made, he owed to it the debt amounting to 52,085,805 Frw, that he has to pay thereon 5,180,260 Frw within the period of four months. That's to mean 1,295,065 Frw per month, and he will pay the remaining 46,905,545 Frw

within the period of sixty months (60 months) on the interests of 18% per month, and he will start paying on 30/1/2002 and finish on 30/12/2006. That's to mean that he will be paying 1,191,080 Frw each month. Kajuga received that letter and signed it, saying that he approves its content. [16] Those documents demonstrate that on 30/5/2002 BCDI (ECOBANK) wrote to Kajuga Jean Wycliff a letter n° AF/MN/mn/02/05-02 giving him the last notice notifying that on that date he has to pay to the bank 44,393,765 Frw of the principal debt, and if he does not resolve his problem, there will be the referral to the procedure of forcing him to pay. On 5/8/2002 BCDI (ECOBANK RWANDA SA) wrote to Kajuga Jean Wycliff the letter n° SR/MA/ma/09/08-02 reminding him the debt he owed to it, at that time it was 43,335,514 Frw of the principal debt and 5,955,465 Frw for the arrears. On 5/11/2002 it wrote to Kajuga Wycliff another letter n° SR/MP/DG/05/11-2002 notifying him that there were 90 days passed without paying the money, within that letter he was not told about its amount.

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[17] On 4/8/2008 ECOBANK RWANDA SA which replaced BCDI wrote again to Kajuga Jean Wycliff the letter n° JUR/ME/lm/286/08-2008 denouncing your engagements (dénonciation de vos engagements) with regard to the contracts they have made and notified him that he has to do his best and pays 171,041,140 Frw within the period of seven days (7 days), and that the interests will continue to be calculated until the debt gets paid. [18] With regard to the interests on the loan, the article 657 of the third book of the civil code (CCB III) provides for that the interests of the money lent, in general and all other money are paid each year or within another period which is less than a year prescribes after five years (5) years¹. [19] Even if the one representing ECOBANK RWANDA SA says that the article 657 of the law mentioned above would not be based on with regard to the contract of commercial matters and he did not prove what restrict it to be used or prove another law which may be followed in case this law provides for the interests of all the money lent without specifying the type of the contract, more importantly that the banks are the first to lend money. [20] The court realises that the letter of 5/4/2004 the one representing ECOBANK RWANDA SA says that it was written to Kajuga Jean Wycliff which was the one to be based on calculating the prescription, may not be considered, since it is claimed to have been written to denies it, and says that the one who received it is not known among his workers, ECOBANK RWANDA SA reveals no other evidence to the court that it has really got where it has to get as required by the article 3 of the law n° 15/2004 relating to the evidence and its production which states that each party has to prove the veracity of what he /she claims. [21] The court realises, with regard to the period from which they count the period of prescription on the interests of the lent money, in general and other money paid each year or another period or another period less than a year, the Rwandan law is silent on the five years start period to be counted, however this cannot prevent the court from deciding the case as provided for in the article 6 paragraph 3 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure². [22] The court, with regard to this issue the cases decided by the foreign court as those of France where the court of appeal has decided that the period of

prescription runs from the date when the creditor is eligible to be paid «le point de départ du délai à l'expiration duquel une action ne peut plus être exercée se situe à la date d'exigibilité de l'obligation qui lui a donné naissance»³. The verdict of this court has been followed with the amendment of the civil code in this country with regard to the prescription of five years, where in its article 2224 provides for that the period of prescription starts to run on the date when the creditor would claim of his/her rights⁴. 1 Article 657: the money which paid after a certain period relating to the alimony, rent, the lease on land the interests of the lent money, in general and other money are paid each or within another period not less than a year, prescribe after five years. 2 Judges cannot refuse to decide a case on any pretext, even if the law is silent on the matter, obscure or insufficient. 3 Cass. 3e Chambre Civile, 14 June 2006, Arrêt N°05-14.181 published in bulletin N°151.P125

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[23] With regard to the prescription of five years the legal writers also say that the prescription of five years starts to run from when the interests have to be paid even if the one to pay that debt which generates them has not finished paying them yet⁵. [24] Basing on have been mentioned above , the Supreme Court realises what have been said by the one representing ECOBANK RWANDA SA arguing that the prescription would start from the last date when the loan contract would be terminated, that's to mean that 31/12/2006, is baseless, the period to counting the prescription is from the date on which Kajuga Wycliff has to pay the bank, this time is one month after the date on which they have signed the loan contract which is 28/8/2001, since from that time the bank was eligible to be paid immediately. This is proven by the letters the bank has been writing to Kajuga Jean Wycliff reminding him to pay while the last date of contract has not took place yet, the last among those letters was written on 5/11/2002 which has to be based on in counting in counting the prescription. This is also the idea which is in the general rule n° 02/2011 of the National Bank in categorization of the debt and providing for the incidences. The article 4 of those rules states that the debt put in place and the procedure of paying was provided before is considered that it is not properly paid if the principal debt or the interests it has to be paid and it is not paid within the period of 90 days, and this has to be followed by the penalties. [25] The court realises therefore that the interests that ECOBANK RWANDA SA which was then called BCDI claims have prescribed, because since 5/8/2002 it is when it wrote to Kajuga Jean Wycliff the letter n° SR/MA/ma/09/08-02 reminding him the debt he owed, at that time it was 43,335,514 Frw of the principal debt and 5,955,465 Frw for the arrears. Until 5/8/2008 it lodged the claim before the Commercial High Court, it was 6 years past it has not requested them to be paid, though there is another letter of 5/11/2002, but it did not tell him about the amount of money he owed to it. Thus therefore, Kajuga Jean Wycliff has to pay to ECOBANK RWANDA SA 43,335,514 Frw for the principal debt, 5,955,465 for the arrears, 2,000,000 Frw for the damages decided by the Commercial High Court, which all make 43,335,514 Frw + 5,955,465 Frw + 2,000,000 Frw = 51,290,979 Frw. [26] With regard to the damages of five million

(5,000,000 Frw) that the one pleading for Kajuga Jean Wycliff claims within the cross appeal up on that of ECOBANK RWANDA SA the result from the fact that Ecobank appealed ignoring that the judgment was legally decided, the court realises that he may not be provided with those damages since ECOBANK RWANDA SA has appealed against this judgment in which it has lost basing on the right it is endowed with the law, and the one pleading for Kajuga did not revealed to the court the ground that no appeal would not have been made. [27] With regard to the procedural fees, the court realises that KAJUGA Jean Wycliff has to be paid five hundred thousand (500,000 Frw) calculated together with the lawyer's fees provided within the discretionary power since one million (1,000,000 Frw he claims it too much. 4 Article 2224 of the law of June 2008 relating to the amendment of the prescription in civil matter, provides for that the starting period is "the day when the holder of rights has not known or would have known the facts permitting him her to claim. 5 Mais la prescription de cinq ans court à partir du jour où ces intérêts sont exigibles, quoique le capital qui les produit ne soit pas encore liquidé, s'il dépend des créanciers de faire procéder à cette liquidation. Encyclopédie Dalloz ; Répertoire de Droit Civil 2e édition, mise à jour 1991. &502.

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[28] By using the way of compensation of debts provided for by the article 181 of the third book of the civil code (CCBIII)6, the court realises that KAJUGA Wycliff has to pay to ECOBANK RWANDA SA 51,290,979 Frw as it has been explained in the paragraph 22, ECOBANK RWANDA has to pay to Kajuga Jean Wycliff five hundred thousand (500 000 Frw) for the procedural fees before the Supreme Court, this means that Kajuga Wycliff has to pay to ECOBANK RWANDA SA 51,290,979 Frw – 500.000 Frw = 50,790,979 Frw. III. DECISION OF THE COURT [29] Decides that the appeal of ECOBANK RWANDA SA is merit; [30] Decides that Kajuga Jean Wycliff's cross appeal up on that of ECOBANK RWANDA SA has merit on some grounds; [31] Orders that KAJUGA Jean Wycliff has to pay to ECOBANK RWANDA SA 50,790,979 Frw; [32] Decides that the judgment RCOM 0124/09/HCC rendered on 23/2/2011 changes with regard to the money that KAJUGA Jean Wycliff has to pay to ECOBANK RWANDA SA; [33] Orders that ECOBANK RWANDA SA topay the court fees amounting to 35,150 Frw within eight days; in case it fails it will be taken from its property through the powers of the state. 6 Article 181: the compensation of debts occurs without judgment because only the laws so provides it, even if the debtors do not know it, both debts elapse on both sides from the time of their existence, until their value.

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