

RWANDA / JUDGMENT

Fina bank v. Ntaganda

RCOMA 0045/09/CS

COURT

Supreme Court

DECIDED

3 September 2010

CASE / FILE NUMBER

RCOMA 0045/09/CS

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

Fina bank v. Ntaganda

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2010-09-03
- Case/document no.: RCOMA 0045/09/CS
- Collection: Supreme Court

Text

Page 1

Fina bank v. Ntaganda [Rwanda SUPREME COURT – 2010SC – RCOMA 0045/09/CS (Mugenzi, P.J., Kanyange and Munyangeri N, J.) September 03, 2010] Commercial laws – Loan contract – the rate interest to be referred to is 9% but when bank has not notified the debtor, if it shall ignore it and request to be referred to a rate that increase interest – Request for extension of the period payment – the compensation between both parties. Commercial laws – whether the defendant had interest to choose the carrier which led him in losing or in not delivering the fertilisation which was supposed to be provided to the government in emergency – Whether the unprofessional behaviour of a bank can become an obstacle for the debtor– Failing to pay loan due to unprofessional behaviour of the bank, if it can explain that the bank should replace the debtor on its obligations towards others– Whether compensation may be allocated due to the loss suffered and loss of interest expected. Commercial laws – Payment of loan – Whether the court shall confirm that the bank should be paid by withholding money from the debtor's account– In deciding, whether the basis of the court's decision is based on claims supported by arguments– Whether the applicant in its duties is obliged to provide explanations in relation to its claim, for court's decision Commercial laws – damages– Moral damages for losing confidence in business –

Whether the appellate court has jurisdiction to reduce excessive damages based on its own discretion– Whether procedural fees are consistent, when the petitioner has followed up the case within a period of eight years– Not need of Penalty forcing the execution when the debtor does not lack means – The Competence of the judge to appreciate what is adequate – law n° 18/2004 of 20th/06/2004 relating to the civil, commercial, labour and administrative procedure as amended and completed till now, Article 201. Facts:The appellate as bank entered into a loan contract of 222.817.400 Rwf with the defendant, for delivering fertilizer that he had won and 22.817.400 Rwf of that loan considered as garantie to that tender market. After the defendant was granted the loan, the appellate requested him to provide 20% as provision,he went to request it to COGEBANQUE as overdraft (découvert) which was granted. They were both by the non performance of the contract, and applied in commercial High Court ,the appellate request the paiement of the debt amounting to 176.703.558 Rwf with interests, theand defendant requested the appellate to pay him 303.100.135 Rwf of loss from non performance of the loan contract. Court decided that the defendant should be paid 14.470.240 Rwf lost due the unprofessional behaviour of the appellant. be paid 53.492.448 Rwf arising from loss due to the appellant who sold his fertilizer without his consent, and paid 79 054 025 Rwf from to the loss incurred due to the appellant who failed to pay for him his garantie to COGEBANQUE,1550434Rwf as interests COGEBANQUE asked as fine to the defendant, 31 159 115 Rwf of loss incurred which led him not to pay taxation fees, 15 000 000 Rwf of moral damages and 2 000 000 Rwf of counsel's fees, total amounting to 207 777 673 Rwf.

Page 2

Court ordered the appellant be paid 38 218 608 Rwf related to the Credit disbursement (le Crédit de décaissement) and 93 315 478 Rwf from non paid loan, all amounting to 131 534 086 Rwf, thus the difference to be paid by the appellant to the defendant is 76 243 587 Rwf. The appellant against this ruling due to four grounds (i) the fact that the court ignored proofs that were provided .(ii),the fact it has ignore the contract of 20/12/2001 made with the defendant (iii), the fact that it decided without motive that the bank used unprofessional behaviour not adequate to the bank as professional ,that is why the bank was charged of 207.777.673 Rwf (iv) the fact that it refused without motive calculate interest to the loan given to the defendant. Defendant also cross appealed saying that (i) the court did not grant him what he requested and no motivation was given,(ii)The court unfairly calculated the remaining debt which shall be paid to the appellate party Held: 1. When the appellant as Bank does not refused that the rate interest which should be followed in that loan is 9 %, but fail to inform the debtor, Bank cannot request the use of a contract that grant higher rate of interest to it, since as an experienced professional it is obliged to inform the one that request loan the interest he had in the refinancing BNR (refinancement) (100%) because amount which should be used did not belong to the appellate party as Bank.

2. The fact that the defendant has asked the extension of payment period, it was caused by his disappointment from the expectation to Bank, thus it cannot be hidden behind its fault to argues that default to pay was caused by the defendant while he was under its challenges, he had no interests in choosing the transporter that led him in loss or to delaying of delivering of fertilizer to the government in emergency.
3. The fact that the previous court had decided that the amount arising from the fertilizer that was sold be reimbursed by the appellant with all its interests, it is unfair since that amount is supposed to reduce the defendant's debt, that is why it shall be deducted from the defendant's debt instead of asking the bank to pay.
4. The unfair behaviour of the appellant, was an obstacle to the defendant, which led to non payment of a loan, it does not explains that it should replace him on his duty toward others. But damages should be allocated to him for loss due and expected interests.
5. though, the defendant deserve moral damages losing credibility in business, from traumatism and disturbance, but when the appellate court finds that excessive damages have been allocated by the previous court, it shall reduce them on its own discretion and appreciation..
6. In ruling the court refers to claims which have explanations, if the appellant fail to provide explanation on its claim, the court cannot decide.
7. Arguing that procedurals fees have no merits it cannot be accepted when the petitioner had follow up the case during eight years meaning that expenses have incurred. In that situation damages shall be appreciated by the court discretion.
8. There is no reason of ordering a penalty forcing execution to a bank which does not lack the means of payment and there is no reason of thinking that the bank will use bad faith.

Page 3

9. The defendant should pay the appellant 200.000.000Rwf and the appellant should pay 62.558.535 Rwf to the defendant Both appeals are allowed in part; The appealed case is changed on some points; Court fees charged to both parties. Statutory instruments referred to: Law n° 18/2004 of 20/06/ relating to the civil, commercial, labour and administrative procedure as amended and completed, article 201. No Cases referred to:

Judgment

I. BACKGROUND OF THE CASE [1] This case came from the loan contract of 222.817.400 Rwf FINA BANK given to NTAGANDA Jean Baptiste after winning the tender of delivering industrial fertilisation, that amount is constitutes by debt of 200.000.000 Rwf and 22.817.400 Rwf paid to state as a guaranty to that tender. [2] That loan was allowed to Ntaganda, but FINA BANK ask him to pay himself 40.000.000 Rwf (provision of 20 %), and request them to COGEBANQUE as a découvert which was given. [3] Both NTAGANDA and FINA BANQUE were unhappy by non

performance of their contract as agreed, That is why both filed their case to the commercial High Court, Bank requested to be paid the debt of 176.703.558 Rwf of loan and its interests, while NTAGANDA requested the Bank to pay him 303.100.135 Rwf as loss arising from the non performance of loan contract. [4] Judgement was pronounced on 20th/05/2009, deciding that FINA BANK should pay Ntaganda amount of 14.470.240 Rwf lost because its misconduct not allowed to Bank (lack of professionalism), 53.492.448 Rwf from loss NTAGANDA caused from Bank which sold his fertilisation without his consent, 79 054 025 Rwf from loss NTAGANDA was caused because Bank has not pay his guaranty which was taken on COGEBANQUE, 1 550 434 Rwf of interests COGEBANQUE requests to NTAGANDA, 31 159 115 Rwf as loss Bank caused to NTAGANDA led him on failing to pay tax, 15 000 000 Rwf of damages and 2 000 000 Rwf of attorney fees, total amounting to 207 777 673 Rwf. [5] Court has ordered that NTAGANDA should pay to FINA BANK 38 218 608 Rwf related to Credit disbursement (Crédit de décaissement) and 93 315 478 Rwf of debt non paid, total amounting to 131 534 086 Rwf, therefore the balance that FINA BANK should pay to NTAGANDA is 76 243 587 Rwf.

Page 4

[6] FINA BANK has appealed that case, explaining that is motivated by four following reasons because court has not considerate his proofs, because of non consideration of the contract of 20th/12/2001 contracting with NTAGANDA, because it decided without reason that bank has misconduct not allowed to Bank as a professional wich caused the decision to pay of indemnity of 207.777.673 Rwf, and because court without reason refuse to allow the interest to the loan given to NTAGANDA. [7] NTAGANDA also filed a cross appeal on FINA BANK appeal saying that there are what were not given by court under he was requested without any motivation, wrong calculation of the balance debt remain to FINA BANK. [8] Case was heard in public audience on 20th/04/2010 and on 27th/08/2010, FINA BANK represented by counsel RUSANGANWA Jean Bosco, NTAGANDA Jean Baptiste assisted by counsel NKURUNZIZA François Xavier and counsel ABAYO MUTABAZI Claude. II.THE LEGAL ISSUE TO BE EXAMINED IN THE CASE AND ITS ANALYSIS A.The grounds of FINA BANK's Appeal are framed as follow:

- a. the court failed to considered the contract of 20/12/2002 where they agreed with NTAGANDA that the interests rate shall be calculated on 10%. [7] FINA BANK said that Commercial High Court has not considerate mutual agreement of 20th/12/2002 related to the system of loan payment and witch ended litigation, because it reduced the rate interest from 18% to 10% . FINA BANK said that there is no motivation the court should refuse him the interests on the loan given to NTAGANDA court choose to allow him indemnity based to facts before that mutual consent contract. [8] counsel NKURUNZIZA François Xavier attorney of NTAGANDA respond that court has show that misconduct not allowed to Bank as a professional caused the non allowance of interests , and explaining that because FINA BANK has used the guaranty of 20% of non related purpose, mixing debt by Signature and Debt of disbursement (décaissement) existing, remove the interests from NTAGANDA before 18th/12/2001 which date Letter of Credit was paid; and because court shown that fertilizer NTAGANDA was

export arrived in country before that credence be paid and that remove the interests to be paid to . [9] On that ground of appeal, Court found that when bank didn't refuse that rate interest to be refers to on that loan was 9 %, then that it has not notified NTAGANDA, cannot change for said that it should be considered the contract which constitute high rate of interest, especially that Bank as an experience professional has duty to notify NTAGANDA interest he has in refinancement BNR (100%) because the amount which should be used was not belong to FINA BANK as seen by the first judge, appeal of FINA BANK on this point has no merit

- b. That all the default in deliverance of loan and on the having fertiliser was caused and requested by NTAGANDA.

Page 5

[10] FINA BANK said that NTAGANDA wrote a letter requesting the extension period of documentary credit, his letter requesting the remove of debt "L/C" on toni 1.180 of fertiliser, document (message swift) show that FINA BANK opened "L/C" on time agreed, different correspondence show the cause of extension of debt payment "L/C" and requested by NTAGANDA himself, that all those explaining that all the procedure on requesting the extension of "L/C" came from NTAGANDA, not came from Bank. [11] NTAGANDA said that request of extension period of L/C, to change the carrier of fertiliser was caused by more fault from FINA BANK by not having the loan in delay and delivering in delay the industrial fertiliser to Rwandan state. [12] On that fault from FINA BANK , NTAGANDA said that there is a fact of refusing to give him the letter of guaranty requested by state for giving him the advance 66.845.220 frw (30%) of all tender of fertiliser won, that it failed to submit in delay his file to BNR for allowing him to command the fertiliser in emergence manner , because the fertiliser should arrive in Rwanda during 45 only, to refuse the carrier he was agreed with, that it failed to pay supplier of NTAGANDA without any reason because NTAGANDA has already paid 20% requested, he search a carrier, even if he was already found the guarantor of the carrier. [13] Court finds in this issue is ,even though the file show That NTAGANDA himself has requested the extension of the period of payment,since he did not have another alternative,he requested to be extend the period while he was waiting to be done the bank never do it,Thus,FINA BANK cannot be hiding behind his faults and say that NTAGANDA was responsible for the delay, instead NTAGANDA have been challenged by the Bank as established by the previous court,NTAGANDA did not have any interests in choosing a transporter that will make him lose or delay the fertilizer that he was supposed to provided to the gouvernement in emergency.

- c. Concerning the money related to fertilizer that was sold with their interests. [14] On this issue, FINA BANK says it is not comprehensive on how the court asked him to pay money related to fertilized that was sold with their interests while that money have been withheld in order to repay the loan that was granted to NTAGANDA. [15] NTAGANDA alleged that the money resulting to fertilizer that was sold by FINA BANK (103.000.000. Rwf) with the money that was paid by the government (78.000.000 Rwf) accessed the remaining debts that he was

entitled to FINA BANK, so it would be rather FINA BANK that should remain owing him money. [16] The court finds the fact that the previous court had decided to order FINA BANK to reimburse the money related to fertilizer which was sold, with related interests, fail to consider the fact that the money was supposed to reduce NTAGANDA's debt, that is why that money has to be deducted from NTAGANDA's debt granted by the BANK instead OF ASKING it to reimburse.

- d. The Fact that FINA Bank has been ordered to pay on behalf of NTAGANDA COGEBANQUE debt related to RRA's Tax.

Page 6

- [17] FINA BANK says that it cannot pay for NTAGANDA debt, instead, If The court finds what it should pay, this should be related to only damages. [18] Concerning the reimbursement of tax that NTAGANDA is claiming, FINA BANK says that NTAGANDA should not be requested to pay that tax if it never generated interests, but in case he generated interests, he should pay tax. [19] Concerning COGEBANK's Debt, NTAGANDA says that FINA BANK Had made errors in paying itself on a debt which is not in relation to their agreement, and this has made him unable to pay COGEBANQUE which beside requesting payment with higher interests, therefore FINA BANK should pay that debt with interests. [20] Concerning Tax, NTAGANDA alleges even though he did not benefit, this was due to the BANK that mismanaged the Loan granted, However it had already finished to show the margin of profit exceeding 22.000.000 Rwf, to the extent that RRA was supposed to make him pay tax despite everything, thus it is FINA BANK that should pay that tax due to its errors. [21] The Court finds that really FINA BANK have been a challenge for NTAGANDA making him unable to pay COGEBANQUE and Tax, but it should not replace NTAGANDA on its obligations towards others, but to the loss that has arisen due to that Bank with for expected interest that he lost, (loss of chance) Damages should be allocated. [22] Based on what have been explained, it is obvious that FINA BANK has used unprofessional behaviour as bank, which caused loss and expected interest to NTAGANDA in different ways, such as paying higher fees for the transport of fertilizer, not paying COGEBANK Tax, all in due time, not be able to generate interest which it was supposed to get in the trading of fertilizer, Thus, he should get damages, allocated according to the discretion of the court, amounting to 10.000.000 Rwf. [23] The Court finds also that FINA BANK should refund NTAGANDA 11.985.248 Rwf. arising from exorbitant interests charged to the loan, as decided by the commercial High Court.
- e. Concerning damages that have been allocated to NTAGANDA. [24] FINA BANK says they are also excessive, due to the fact that the courts have allocated others several damages to NTAGANDA while he did not lose anything after their settlement agreement of 20/12/2002. [25] NTAGANDA says that FINA BANK should be charged moral damages for having challenged him which resulting to unnecessary loss. [26] The court finds even though NTAGANDA is entitled to moral damages resulting to the trust that he lost in the business, for having been disturbed and traumatised, should be given in the discretion of the court

1.000.000 Rwf since it find that 15.000.000 Rwf allocated by the first instance as excessive. B. NTAGANDA's cross appeal to FINA BANK's appeal.

Page 7

1. The fact that the Court did not say anything on his claim concerning the money paid by the government on his account related to farm inputs sold by auction by Fina Bank, and 30 .639.478 Rwf made as loan ,all have been withheld by FINA BANK, including 48.165.350 Rwf for firewood paid by the government. [27] Ntaganda says that the money spoken above no care has been taken for it in order to be deducted from what he is requested to pay FINA BANK. [28] FINA BANK says that the money paid to NTAGANDA by the government was for farm inputs that come to pay for the Loan that NTAGANDA owed to FINA BANK, Now for 30 .639.478 Rwf and 48.165.350 which is said to have disappeared, this is the first time, this is mentionned on this appeal in the supreme court. [29] On this issue, the court finds that FINA BANK really accepts that the money paid by the government amounting to 77.986.000 Rwf has been withheld from NTAGANDA's account by FINA BANK in order to decrease the loan that he owes to the bank, the same for farm inputs sold as amounting to 56.000.000 Rwf as exhibited by NTAGANDA in its submission in the Commercial High Court, Thus,that amount of 133.986.000 Rwf in Total was also supposed to be deducted from what NTAGANDA is requested to repay. [30] But The court finds that all the money withheld for paying NTAGANDA's Loan to FINA BANK, shall not be considered as a loan that FINA BANK owe to NTAGANDA in order to seek payment and interest. [31] Concerning what NTAGANDA is claiming that FINA BANK owe him 14.439.937 Rwf, he said it was hijacked by FINA BANK based on a supposed loan of 30.639.478 Rwf, also with 48.165.350 Rwf disappeared in FINA BANK, The Court finds FINA BANK did not provided enough explanation, despite saying that they did not previously plead this ground, while the in the minute of judgement in the previous court, also in the judgment of the case it is obvious that they have debated on it.

2. Concerning procedural fees that NTAGANDA is requesting [32] Ntaganda claim that he appealed because the previous Court decided that he should not requesting damages for procedural fees because there are not specific, However he has shown that the case has comes now to eight years and making him lost several things causing him moral damage, and also money expended on this file is clear, because NTAGANDA , he spend a lot time on the case, that is why he deserve to be paid for that. [33] FINA BANK stated that, even though these damages have no merit since they have been allocated regardless of the truth, and are on exorbitant level. [34] The Court finds that the response given NTAGANDA that procedural fees that he is requesting are not explicit and he is explained that he has been following the case for a period of eight years ago, is not enough,it is clear that there are things that he lost. The court shall allocate on its own discretion 1.000.000 Rwf, because what he is requesting are excessive, what it is allocated to him is added to 2.000.000 Rwf that was given to him as counsel fee at the first instance.

Page 8

[35] On the issue of penalty forcing execution of 4.000.000 Rwf for each month that NTAGANDA is claiming from FINA BANK in case of late payment , The Court finds not compulsory to order that money related to penalty forcing execution due to, article 201 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure as modified and completed , which allow the Judge to appreciate,concerning FINA BANK,it is clear that it is a bank that does not lack the means of payment,and there is no reason of thinking that it may be uncooperative and use bad faith. [36] To sum up, the court finds FINA BANK and NTAGANDA shall pay each other in this way: Money that shall reduce NTAGANDA's debt:

- 40.000.000 Rwf from COGEBANQUE
- 77.986.000 Rwf paid by DRB II
- 56.000.000 Rwf of farm inputs sold by auction
- 14.439.937 Rwf disappeared in FINA BANK in NTAGANDA's account
- 48.165.350 Rwf which was paid by the state on NTAGANDA's account
- 11.985.248 Rwf arising from the higher rate charged by FINA BANK
- 10.000.000 Rwf damages of what NTAGANDA had lost and interests.
- 1.000.000 Rwf moral damage
- 1.000.000 Rwf procedural fee
- 2.000.000 Rwf counsel fees Total: 262.558.353 frw because NTAGANDA was also supposed to pay FINA BANK 200.000.000 frw, Thus, FINA BANK will have also to pay NTAGANDA 62.558.535 Rwf III. DECISION OF THE COURT [37] Acceptes to receive the appeal that has been lodged by FINA BANK because it was legally made; [38] Accepte to receive NTAGANDA Jean Baptise's Cross Appeal because, it was validly made; [39] Confirms that these appeals have merit in part; [40] Orders FINA BANK to pay NTAGANDA Jean Baptiste after performing the approximation of debts, 62.558.535 Rwf in thirty days, failing to do so, it shall be removed from NTAGANDA Jean Baptise's assets by the power of the state and also pay 4% for it amounting to 2.502.341 Rwf within 15 days, failing to do so also it shall be deducted from NTAGANDA Jean Baptise's assets by the power of the state; [41] Decides that The case Ruled by the Commercial High Court changed in relation to damages;

Page 9

[42] Orders FINA BANK and NTAGANDA To pay each of them ½ of court fees amounting to 127.300 Rwf, failing to do so within eight days, it shall be deducted from its assets by the power of the state.

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/7577/7852>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/fina-bank-v-ntaganda-jean-baptiste-loancontract-supreme-court-2010>

Prepared on 12 October 2026 · Esheria