

RWANDA / JUDGMENT

I&M Bank Ltd v. KALINDA ET AL

RCOMA 0050/13/CS

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Supreme Court

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Text

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I&M Bank Ltd v. KALINDA ET AL [Rwanda SUPREME COURT – RCOMA 0050/13/CS (Kayitesi Z., P.J., Gakwaya and Munyangeri J.) 6 May 2016] Contract law – Payment of interests – I&M Ltd cannot be awarded damages at appeal at any time it cannot be proved that there were committed errors in the appealed judgment apart from requesting the Court to apply the provisions of the law. Evidence law – Giving evidence of his/her allegations – He cannot allege that he/ she paid the surplus of the debt in case he agree on the expertise which quantify the debt. Damages – Monetary damages – They cannot allege that I&M Ltd had unlawfully terminated the contract so to have it as a base of demanding because they did not give evidence in support, it is rather them who defaulted to pay – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9, Law N° 15/2004 of 12/06/2004 relating to evidence and its production, articles 3 and 110 and Law of 30/07/1888 governing contracts or obligations, article 258. Damages – Destruction of good will – The representative of Ets KALINDA SEKWEKWE cannot be awarded these damages in case they neither prove that I&M Ltd had destructed its good will nor it committed faults against them. Facts: Based on the business name of his father, late Kalinda Sekwekwe, and on the power of attorney entrusted in him by his brothers, Kalinda

Donatien acquired different loans from I&M Bank Ltd. That Bank later sued the debtor before the Commercial High Court claiming that he breached the contract due to his default of the payment of the loans and their interests as entered into by both parties. The Court in its decision condemned Kalinda Donatien and his brother to pay the debt, expertise fees and ruled that they would not pay further interests till the debt would be wholly paid. I&M Bank Ltd appealed to the Supreme Court claiming that the Commercial High Court denied confirming interest on the loan of 123.672.435 Frw which after adding its interest had to accrue to 136.965.265 Frw. Mucyo Donatien, counsel for respondents replied that the Commercial High Court committed no error when it denied to award interests to I&M Bank Ltd since it had clearly explained that they had not to be awarded as long as the equipment that have been given by I&M Bank Ltd were no longer there which implies that the respondents were no longer running any commercial activities to the extent that interest could continue accruing. Kalinda Sekwekwe and his brothers In the names of his brothers, Kalinda Donatien filed a cross appeal claiming that the Commercial High Court confirmed that they had to pay 123.672.435 Frw to I&M Bank Ltd while the figures that the latter presented indicates that they have paid the surplus. They claimed moral damages concerning the fact that the Bank had unlawfully terminated the contract and continued retaining the loan since 2009 till 2015, to pay to them

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moral damages for destruction of the good will and to lonely pay the expertise fee and to pay procedural and advocate I&M Bank Ltd replied that there was no unlawful termination of the contract because Kalinda Donatien had already informed the Bank that that they encountered challenges which prevent him from paying to the extent that he requested the Bank to sell the trucks so that he could pay the arrears. It insisted that it played no role in default of the payment on due time by Ets KALINDA SEKWEKWE. He added that no moral damages must be paid due to destruction of good will since it is Kalinda Donatien who failed to fulfil his obligations of paying the arrears that they had for the Bank. Held: 1. Appeal must identify the challenged errors committed by the previous instance from the appealed judgment either in law or in fact and it must explain the cause and suggest the mode of rectification. Therefore, the fact that the Commercial High Court had based on article 92 of Law N 45/2011 of 25/11/2011 governing contract, equity and on the fact that I&M Bank Ltd had in ° its possession many collaterals pledged by the respondents and hence decides that no interests must be computed from July 21, 2011 while I&M Bank Ltd did demonstrate that there may be errors committed in that decision apart from claiming that the Court had to respect the provisions of article 64 of Law N 45/2011 of 25/11/2011 referred to herein and articles 478 and 480 of the ° Civil Code Book III but without indicating that the points which it challenge from the appealed judgment demonstrates that its appeal has no merit.

2. The ground of appeal concerning the extension of the time for the payment by the Court cannot be examined since that very time had elapsed.

3. Each party has the burden of proving the facts it alleges and a judicial admission refers to statements the accused or his or her representative makes before the court. Therefore, the fact that the respondents in the appealed judgment had conceded that no the expert committed no errors in his computation and that they do not demonstrate the surplus of the money they paid to that demanded by I&M Ltd justifies that its appeal has no merit.
4. Respondents cannot be awarded the damages they seek due to the fact that I&M Ltd had unlawfully terminated the contract in case those who has acquired the loan had defaulted in paying because the expertise that the they accept figured out that at the date on which the termination of the contract there was the debt that those who acquired the loan had to have paid to I&M Ltd and that they failed to prove that the contract was unlawfully terminated.
5. Ets KALINDA SEKWEKWE's representatives must not be awarded moral damages at any time they can neither prove that I&M Ltd had destroyed its good will nor they prove that they are possible fault that the Bank Committed against them. Further, they cannot be awarded procedural and advocate fees because they lost the case in part. Appeal has no merit; Cross appeal has no merit; Appealed judgment upheld; Parties jointly condemned to pay the court fees Statutes and statutory instruments referred to:

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Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 9. Law N° 15/2004 of 12/06/2004 relating to evidence and its production, articles 3 and 110. Law of 30/07/1888 governing contracts or obligations, article 258. No cases was referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Using the business name of his parent, « Ets KALINDA SEKWEKWE» and based on the power of attorney allocated to him by late Kalinda Sekwekwe's descendants, Kalinda Donatien requested different loan from I&M Bank Ltd. Those loans, including 200.000.000 Frw for "crédit d'équipement véhicules-leasing," 20.000.000 Frw for "crédit de caisse," and 55.600.000 Frw for "crédit amortissable à moyen terme" were granted. [2] I&M Bank Ltd later filed a complaint against Kalinda Donatien before the Commercial High Court stating that he breached the contract due to his default to such extent that till July 20, 2011 the principal debt and its interests had accrued to 136.965.265 Frw. [3] On March 28, 2013 the Court issued the judgment RCOM 0214/11/HCC. It condemned Kalinda Donatien and his brothers to pay to I&M Bank Ltd 123.672.435 Frw equivalent to the Principal debt and its interests that they owed it till July 20, 2011 and 1.750.000 Frw for expert fee. It ordered further that the defendants would pay no further interests till the intirety of that debt would be done. [4] Not satisfied with the decision, I&M Bank Ltd appealed to the Supreme Court lamenting that the Commercial High Court denied to order interests on the debt of 123.672.435 Frw without valid reasons and it gave further time for Kalinda Donatien and his brothers to pay that amount till the year of 2016. [5] In the name of his brothers, Kalinda filed a cross appeal stating that the Commercial High Court

found that they must pay I&M Bank 123.672. 435 Frw while the figures that they had presented demonstrated that they had even paid the surplus to the due amount. He requested further that I&M Bank Ltd be condemned to pay moral damages equivalent to 150.000.000 Frw due to unlawful termination of the contract and that it continued withholding the loan since 2009 till 2015, moral damages equivalent to 500.000.000 Frw for destruction of the goodwill, to pay the expert fee since it is the root cause of the litigation. He requested further that I&M bank pay them 5.000.000 Frw for procedural and advocate fees. [6] The hearing in an open court took place on December 1, 2015. Rusanganwa Jean Bosco, the counsel was pleading on behalf of I&M Bank Ltd while Kalinda Donatien was assisted by Mucyo Donatien, the counsel.

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[7] In the interlocutory judgment of January 22, 2016, the Supreme Court held that prior to the adjudication of the case on merit, it was deemed necessary to re-open the hearing for the parties to have debate on additional submissions and as well to evidence submitted by the defendants. It decided further that the hearing would be re-opened on March 8, 2016. [8] The hearing in an open court continued on March 8, 2016. Rusanganwa Jean Bosco was pleading on behalf of I&M Bank Ltd while Kalinda Donatien was assisted by Mucyo Donatien. II. ANALYSIS OF LEGAL ISSUES

a. On appeal filed by I&M Bank Ltd

1. Whether the defendant must pay I&M Bank Ltd interests on 123.672.435 Frw till the final judgment [9] Rusanganwa Jean-Bosco states that the Commercial High Court denied to award I&M Bank Ltd without valid reasons and without taking into account the provisions of article 64 of Law N 45/2011 of 25/11/2011 governing contract, of articles 478 and 480 of the Civil Code Book III since it ignored the provisions of the contract concluded between I&M Bank Ltd and Kalinda Donatien. He explained that the expert report in connection to this case demonstrates that on July 20, 2011, the whole debt (the principal debt and its interests) 123.672.435 Frw. He concluded that the agreement between both parties must be respected so as the payment can be done. He requested in consequence the computation of the interests from 2011 till the date of the final judgment. [10] Counsel Mucyo Donatien states that the Commercial High Court committed no error with regard to the denial of not awarding I&M Bank Ltd the damages. He explained that the Court had held that there was no reason as to why those interests might have been awarded while the equipments that have been given by I&M Bank (trucks) were no longer there which means that the respondents were no longer engaged in commercial activities to the extent that interests could continue accruing. [11] With regard to the report of the expert, counsel Mucyo Donatien replied that while his report is assessed, it becomes clear that he had only limited himself to the figures that were stored in the computer but without giving explanations to the cause of the default of respondents. He concluded that the Commercial High Court had clearly explained that their default was caused by the fact that the respondents were no longer engaged in the commercial activities because of the issues that emerged from the transport sector triggered

by the civil war that erupted both in Kenya and Congo the place of commercial activities, the reason why they have requested to sell the trucks that they had acquired. THE VIEW OF THE COURT [12] The Supreme Court finds that as identified in paragraph 12 of the appealed judgement, based on article 92 of Law N 45/2011 of 25/11/2011 governing contract, on equity and on the ° fact that had acquired many securities pledged by the respondents especially mortgages. The Court held that interests must not accrue from July 21, 2011.

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- [13] The Supreme Court finds that appeal must highlights the errors committed by the previous court in the appealed judgment either in law or in the facts. It must also suggest the cause and the mechanism of rectification. [14] In this case, the Supreme Court finds that apart from lamenting that the Commercial High Court was bound to respect the provisions of article 64 of Law N 45/2011 of ° 25/11/2011 governing contract as well as articles 478 and 480 of the civil code book III, I&M Bank Ltd does not demonstrate does not highlights the points it challenges neither in the holdings of the Court in paragraph 12 of the appealed judgment nor in its decision. Hence, the fact that I&M Bank Ltd does not highlight what it challenge in the decision rendered by the Commercial High Court, the ground of its appeal must not be considered.
2. Whether the Court committed a fault while granting further time to the respondents for the payment of the debt. [15] Counsel Rusanganwa Jean-Bosco stated that the Commercial High Court extended the time for the respondents to pay the debt that they have for I&M Bank Ltd without any cause till
2016. He explained that I&M Bank Ltd filed a claim requesting that the respondents be condemned to quickly pay the debt that they have for it since they had breached the contract. Hence, he concluded, the extension of time would cause the loss to I&M Bank Ltd especially that the money that was loaned to them belongs to other clients and that it must be used for the generation of interests. [16] Counsel Rusanganwa Jean-Bosco states further that the debtor had deposited different mortgages committing himself to to the fact of sale of the pledged securities in case of default, the context in which he admitted to sell the house located in Gisozi so that he could pay 100.000.000 Frw to extinguish any other obligation and hence, to his view, the Court had disregarded his admission of the the debt by the debtor as it is highlighted in the correspondence that of I&M Bank Ltd dated April 5, 2011 which was a response to that of Kalinda Donatien as dated June 2011. [17] Counsel Mucyo Donatien stated that the Commercial High Court had taken such a decision based on both the force majeure that was encountered by the respondents during their commercial activities and on the will they manifested so that they could clear the debt they had for I&M Bank Ltd. He explained further that apart from the fact that the respondents had sold the trucks that they had acquired from the appellants and it came even when they sold their personal properties so that they could pay the debt. Counsel Mucyo Donatien concluded that the Commercial High Court based on all those holdings and decided that

the respondents must be given further time of three years for the payment to be done though they do not agree with the Court there was another portion of the debt which was remained unpaid. THE VIEW OF THE COURT [18] As it is clear in paragraphs 20, 21, 22 and 24 of the appealed judgment the Supreme Court notes that the Commercial High Court decided that to extend the time for the payment to three years, that is till March 31, 2016 so that the debt of 123.672.435 Frw that they have for

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I&M Bank Ltd could be paid based both on equity and the fact that they manifested no bad faith in paying the debt they had for the bank. [19] The Court finds that the time of assessment of this ground of appeal filed by I&M Bank Ltd, the time of three years that was granted to the respondents so that they could have cleared the debt had elapsed on March 31, 2016. Therefore, there is no reason as to why the ground of appeal launched by I&M Bank Ltd. [20] Based on the holdings in the previous paragraph, the Supreme Court finds that the respondents must pay to I&M Bank Ltd 123.672.435 Frw that was confirmed by the Commercial High Court.

- b. With regard to cross appeal filed by the respondents
 - 1. Whether the respondents must not pay 123.672.435 Frw to I&M Bank Ltd because they paid the surplus. [21] In his submissions, counsel Mucyo Donatien states that the Commercial High Court to pay 123.672.435 Frw to I&M Bank Ltd but regardless of the fact that the figures that they presented demonstrated that, instead, they had paid the surplus. [22] Counsel Rusanganwa Jean-Bosco states that the respondents had recognized the debt of 123.672.435 Frw that had remained since they had admitted to pay 102.000.000 Frw. THE VIEW OF THE COURT [23] Article 3(1) of Law N 15/2004 of 12/6/2004 relating to evidence and its production ° provides that each party has the burden of proving the facts it alleges. [24] Article 110 of Law N 15/2004 of 12/6/2004 relating to evidence and its production ° provides that A judicial admission refers to statements the accused or his or her representative makes before the court. [25] The Supreme Court finds that as found in both paragraph 9 of the appealed judgment and in the minute of the hearing conducted on February 2, 2013, the respondents admitted that the expert committed no error in during the computation of the debt. Apart from that the Court finds that they do not prove that I&M Bank Ltd demands the payment of the surplus. [26] Based on both the provisions of the Law referred to above and explanations detailed in the previous paragraph, the Supreme Court finds that this ground of appeal filed by the respondents has no merit.
 - 2. Whether the respondents must be awarded the damages they seek
 - a. Whether I&M BANK Ltd had unlawfully terminated the contract in a such a way that the respondents must be awarded damages amounting to 160.000.000 Frw. [27] Counsel Mucyo Donatien states that Kalinda Donatien and his brothers requests the Court to condemn I&M Bank Ltd to pay to them damages amounting to 160.000.000 Frw since it

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terminated the contract unlawfully and kept on withholding the the loan from the year 2009 till 2015 which stopped their activities. He argued that there was no reason as to why I&M Bank Ltd could terminate the contract because Kalinda Donatien regularly was paying the debt. [28] With regard to the “crédit-leasing I” Counsel Mucyo Donatien explained that in the first month of the year 2009, just after the sale of the two trucks in connection with “crédit-leasing 1” 93.240.000 Frw, ‘Etablissements’ KALINDA Sekwekwe had terminated paying the whole debt in connection to that “crédit-leasing I”, that is arrears' and fee for late payment, , “IPF” and “VAT” equivalent to 53.179.796 Frw and I&M Bank Ltd kept 40.060.204 Frw and it use dit without the knowledge of ‘Etablissements’ KALINDA SEKWEKWE instead of using it in decreasing its debt. He continued arguing that aya 40.060.204 Frw was equivalent to the payment of 5 months of the debt. He added that on July 20, 2009 “Etablissements” KALINDA SEKWEKWE had paid 2.994.098 Frw and later 5.200.000 Frw on July 24, 2009 and the otality was 8.194.098 Frw, that is, the payment for one month. He concluded that it is not only one month thta would lead I&M Bank Ltd to terminating the contract since the termination of the contract that happened on July 20, 2009 while I&M Bank Ltd could have used 40.060.204 Frw in satisfying the debt that w Etablissements KALINDA SEKWEKWE had. He added that at this time “crédit-leasing I” was then to be secured. This is why they claim that termination was unlawful. [29] Concerning “Crédit-leasing II”, Counsel Mucyo Donatien states that it had to start being paid since January, 2009 and the payment by “Etablissements” KALINDA SEKWEKWE had to be done monthly. He stressed thx of at as it is identified on the annex of the submissions of the respondents, “Etablissements” KALINDA SEKWEKWE paid 6.600.000 Frw on April 25, 2009, 1.597.984 Frw on May 25, 2009, 2.084.000 Frw on June 6, 2009, 3.000.000 Frw on March 7, 2009 the totality being 13.281.984 Frw. This means that that amount is equivalent to payment of 4 months. Hence, to his view, I&M Bank Ltd could not terminate the contract while only two months for the whole payment to be donew were remaining. [30] With regard to “crédit amortissable” equivalent to 55.600.000 Frw as well as “crédit de consolidation” equivalent to 73.927.209 Frw, counsel Mucyo Donatien replied that as highlighted on annex III of the submissions of the respondents, there was the payment of 66.000.000 Frw prior to the termination of the contract while the respondents were supposed to monthly pay 2.779.852 Frw for “crédit amortissable” and 2.706.634 Frw every month for “crédit de consolidation” and hence, it would not be two months which were not paid that had to leading to the termination of the contract. [31] Counsel Mucyo Donatien states that both annex VII of the submissions of the respondents and the the report of expert detail how the payments to I &M Bank Ltd have been done after the termination of the contract and they paid 241.744.695 Frw. To his understanding, it would be unconceivable how I &M Bank Ltd demands the payment of 136.000.000 Frw for the year 2011 and now demands 200.000.000 Frw while the respondents were no longer running any commercial activity because the trucks had been already sold by the Bank because they registered under its names. [32] Counsel Mucyo Donatien continues arguing that I &M Bank Ltd confused the loan granted to the respondents with since it was “crédit leasing” while this kind of loan, the client is

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handed a good and pay the rent every day but at any time the acquired object stops functioning, the payment of the rent also stops. He concluded that I&M Bank Ltd had the bad faith since it denied restructuring the loan granted to Kalinda Donatien and it continued computing the rents for the trucks as the situation was at the time of the conclusion of the contract. He added that the expert demonstrated that had I&M Bank Ltd accepted the restructuring of the loan, they had to pay only 5.000.000 Frw. [33] Kalinda Donatien contended that the bad faith of I&M Bank Ltd is demonstrated by the fact that it requested a security while with regard to "crédit-leasing" no security is required and that they had sold the two trucks in connection to "crédit leasing II" that they had bought on the price of 136.095.459 Frw and they lost 55.644.390 Frw that they have invested in their purchase. [34] Counsel Rusanganwa Jean-Bosco states that with regard to unlawful termination of the contract that is referred to by Kalinda Donatien, as it is clear on paragraph 15 till 17 of the appealed judgment, the Commercial High Court demonstrated that the termination of the contract which was done by the Bank was not unlawful. He explained that since August 2008 Kalinda Donatien informed the Bank that he was facing hindrances that were preventing from paying till he requested the Bank to sell the trucks so that he could pay the arrears. He concluded that I&M Bank Ltd played no role in either 'Etabissements' Kalinda Sekwekwe's default of payment on due time nor it did so in the sale of the trucks. [35] Counsel Rusanganwa Jean-Bosco argues that after the termination of the contract that was entered into on June 30, 2000 and after the notice to Kalinda Donatien that they had the debt for the Bank equivalent to 289.954.274 Frw, he himself requested the Bank to sell the trucks and seeks clients on its own and even opt for what had to be sold. Hence, it is him who no role of the Bank is present and Kalinda had demonstrated that he was facing problems and even highlighted how he thinks they would be solved. [36] Counsel Rusanganwa Jean-Bosco declared that Kalinda had never wrote to the Bank at all contesting either prior or after the termination of the contract. He continued arguing that as identified in the expert report on identification code 37, the respondents had concluded different loan contracts but they tended to consider "crédit leasing" only while there some arrears remaining and some fees that they had to pay on every loan. [37] With regard to the restructuring, Rusanganwa Jean Bosco states that the restructuring is the new contract that I&M Bank Ltd could not enter into while Kalinda Donatien had conceded that the activities of 'Etablissement' KALINDA SEKWEKWE was no longer properly running. He continued pleading that Donatien requested such restriction prior to the sale of the trucks and this implies that it was facing problems. THE VIEW OF THE COURT [38] Article 258 of Civil Code Book III provides "any act of man, which causes damage to another obliges the person by whose fault it happened to repair it". [39] Article 3 (1) of Law N 15/2004 of 12/6/2004 relating to evidence and its production^o provides, "every party must prove the claim of what it alleges"

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[40] Article 9 of Law N 21/2012 of 14/6/2012 relating to civil, commercial, labour and^o administrative procedure provide, "Every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case. [41] The Supreme Court finds that as it is clear on

paragraph 13 of the appealed judgment, the Commercial High Court found that I&M Bank Ltd has never unlawfully terminated the contract it entered into with the respondents; rather, it terminated it due to their default to pay different loan that they had acquired from I&M Bank Ltd. It finds further that on paragraph 16 of the same judgment, the Court had decided that the termination was lawful since it was done after the respondent had been already given notice of execution of their obligations while on paragraph 17 of that very judgment, the Court explained that the other grounds presented by the respondents that there was unlawful termination of the contract have no merit because there is no reason as to why the creditor could terminate the contract he/ she entered into with the debtor in case the former finds that the latter is failing with his/her obligations of paying the debt as agreed upon. [42] The Supreme Court finds that as identified in the expert audit report on page 36, on July 30, 2009, the date of the termination of the contract, the respondents owed I&M Bank Ltd 64.312.321 Frw for découvert en compte 31.181.087 Frw (for main and not yet due consolidated debt), 20.350.724 Frw for arrears for principal consolidated credit, 8.864.206 Frw unpaid consolidated interests, 85.520.720 Frw 1, 69.083.695 Frw for not yet due and unpaid leasing 2 the totality being 279.312.663 Frw. [43] The Supreme Court notes that the allegations of the respondents that they had finished paying the whole debt about crédit leasing 1 for the year 2009 and that I&M Bank Ltd retained 40.060.204 Frw after the sale of the trucks and used that amount of money without the knowledge of Etablissements KALINDA SEKWEKWE instead of using in decreasing the debt, must not be considered in case they acknowledge the report of an expert and in case of their failure to provide evidence in support. [44] With regard to the allegations of the respondents about crédit leasing 2 that till July 3, 2009 they continued paying the debt while I&M Bank Ltd could not terminate the contract while only two months were remaining for the payment of the debt to end, the Supreme Court notes that in case they acknowledge the report of the expert, their allegations would then not be considered in case it is clear that they had still arrears and that they admitted that two months were still remaining for their debt to be paid. Apart from that, it finds that, as seen in the report of the expert, the termination of the contract was not only done for crédit leasing but also for other loans that they had acquired since the Bank found that they had encountered challenges in paying all of those loans as provided for by the contract entered into by both parties. [45] With regard to crédit amortissable equivalent to 55.600.000 Frw and credit consolidation equivalent to 73.927.209 Frw, the Supreme Court notes that the fact that the respondents accept that at the time of the termination of the contract by I&M Bank Ltd they were two months far from exhausting the payment of the debt receding crédit amortissable and credit consolidation and that they accept the report of expert, the allegations of the respondents must not be considered.

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[46] With regard to the allegations of the respondents that it is not comprehensible how I & M Bank Ltd was seeking the payment of 136.000.000 Frw for the year 2011 and now seeks the payment of 200.000.000 Frw while the respondents were not running any commercial

activity and while the trucks have been already sold by the Bank given that they were registeredx and its names and that they had already paid 241.744.695 Frw after the termination of the contract, the Supreme Court finds that it must not be considered because all of these are not indication that on July 30, 2009, there was unlawful termination of the contract. [47] In regard to the contentions of the respondents that I&M Bank Ltd acted in bad faith as it rejected their requests of loan restriction but rather opted to continue computing the rents for the trucks taking into account the circumstances under which they were at the time of the conclusion of the contract, the Supreme Court finds that, though they do not prove that there was unlawful termination of the contract, it would not be worthless in case they accepted before the Commercial High Court the results of the expert report. [48] With regard to the assertions of the respondents that the bad faith of I&M Bank Ltd is identified through its requests of securities while with regard to credit-leasing no the security is not applicable and that it sold the two trucks in connection to credit leasing II, the Supreme Court notes that though it was not established that there was unlawful termination of the contract, it would not be considered because in case before the Commercial High Court they have accepted the results of the report of expert. It notes further that as seen on page 7 and 10 in that report of expert, there there is no requirements of securities that was imposed in connection to credit-bail ou credit leasing 1 of 207.327.014 Frw and in connection to credit-bail ou credit leasing 2 of 76.090.863 Frw. [49] Based on the above holdings, the Supreme Court finds that there was no unlawful termination of the contract. Hence, this ground of appeal has no merit. In consequence, they must not be awarded the damages 160.000.000 Frw which they are requesting. B. Whether respondents must be awarded moral damages amounting to 500.000.000 Frw. [50] Counsel Mucyo Donatien states that the respondents demand the moral damages of 500.000.000 Frw from I&M Bank Ltd due to the destruction of the good will, to lonely pay expertise fees since it is which is the cause root of the litigation. They requested in return 5.000.000 Frw for procedural and advocate fees. [51] Counsel Rusanganwa Jean-Bosco replied that the requests of the respondents have no merit since it is Kalinda Donatien who have not conveniently paid the arrears that they have for I&M Bank Ltd which it had admitted to do. He concluded requesting the Court to condemn them to pay 1.000.000 Frw to I&M Bank Ltd for procedural and advocate fees. THE VIEW OF THE COURT [52] Article 258 of Civil Code Book III provides that any act of man, which causes damage to another obliges the person by whose fault it happened to repair it.

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[53] Article 3 (1) of Law N 15/2004 of 12/6/2004 relating to evidence and its production ° provides, "every party must prove the claim of what it alleges" [54] The Supreme Court finds that the respondents do not give evidence that I&M Bank Ltd destroyed the good will. It further finds that as long as it was found that I&M Bank Ltd did not cause any harm while terminating the contract they had entered into, then they would not be awarded moral damages. Hence, this ground of appeal filed by the respondents has no merit. [55] With regard to the advocate and procedural fees in total of 1.000.000 Frw claimed by I&M Bank Ltd,

they cannot be awarded because it lost the case in part. III. THE DECISION OF THE COURT [56] Decides that appeal filed by I&M Bank Ltd has no merit; [57] Cross appeal filed by respondents has no merit; [58] Upholds the ruling of the judgment RCOM 0214/11/HCC issued by the Commercial High Court on March 14, 2013. [59] Condemn both I&M Bank Ltd and the respondents to jointly pay the court fees equivalent to 100.000 Frw.

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