

RWANDA / JUDGMENT

JACQUES v. BANQUE DE KIGALI

RCOMA 0093/12/CS

COURT

Supreme Court

DECIDED

6 February 2015

CASE / FILE NUMBER

RCOMA 0093/12/CS

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Text

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JACQUES v. BANQUE DE KIGALI [Rwanda SUPREME COURT– RCOMA 0093/12/CS (Rugege, P.J., Mugenzi and Munyangeri, J.) February 6, 2015] Commercial Procedure – Security deposits furnished by foreigner who file a claim – A foreigner that was sued and later file an appeal is considered as a plaintiff at that level of appeal– He or she must furnishes a security deposits required for foreigners – Law n° 21/2012 of 14/06/2012 related to the code of civil, commercial, labour and administrative procedures, its article 87 and 88. Facts: Bank of Kigali (BK) sued Jacques SCHILLINGS in the Commercial High Court alleging him to have exceeded the amount he had on the account by using the visa card which BK had issued him. So the Bank requested the court to order the defendant to pay back the exceeding money on the credit card, interest and damages as stipulated above. SCHILLINGS raised the objection saying that the court to which the case was taken is not competent as the value of the object of litigation is under 20.000.000 frw. The court ruled that the objection is baseless and ordered SCHILLINGS to pay BK the principle debt of 15.750.350 Frw, punitive interest totalling 3.052.259 Frw , 100.000 Frw of case expense fees and 300.000 Frw as Advocate fees. SCHILLINGS appealed to Supreme Court alleging that the case filed by BK in the High Commercial Court was irreceivable as the court was incompetent to hear

the case. The commercial court was rather competent to hear the case as subject matter is under 20.000.000 frw. At the beginning of the proceedings BK raised an objection that SCHILLINGS as an appellant and foreigner must pay first a guarantee as required in article 87 of the law relating to the code of civil, commercial, labour and administrative procedures. SCHILLINGS said that he could not be considered as a foreigner as stipulated in the above mentioned article because the plaintiff is one who instituted the case at the first level whereas he is considered as appellant. Held: A foreigner that was sue and then file an appeal he or she/it is considered as plaintiff at the level of appeal, he or she/it shall furnish a security deposit requested for foreigners because the reason to be of that money is as precaution that in case the said foreigner loses the case he may not afford paying damages and court fees. Objection has merit; The appellant must pay the guarantee in public account before the judgement goes on; The court fees suspended. Statutory instruments referred to: Law n° 21/2012 of 14/06/2012 related to the code of civil, commercial, labour and administrative procedures, its article 87 and 88. No Cases referred to.

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Judgement

I. BACKGROUND OF THE CASE [1] Bank of Kigali (BK) sued Jacques SCHILLINGS in the Commercial High Court alleging him to have exceeded the amount he had on the account by using the visa card which BK had issued him basing on the agreement of 'General conditions BCC/CORPORATE'. So the Bank requested the court to order the defendant to pay back the exceeding money on the credit card, interest and damages as stipulated above. [2] During the proceedings in that court, the Advocate of SCHILLINGS raised the objection saying that the court to which the case was taken is not competent as the value of the object of litigation is under 20.000.000 frw and it would rather be taken to Nyarugenge Commercial Court. The court ruled that the objection is baseless and ordered SCHILLINGS to pay BK the principle debt of 15.750.350 Frw, punitive interest amounting 3.052.259 Frw , 100.000 Frw of case expense fees and 300.000 Frw as Advocate fees. [3] SCHILLINGS appealed to Supreme Court alleging that the case filed by BK in the High Commercial Court was irreceivable as the court was incompetent to hear the case. The commercial court was rather competent to hear the case as subject matter is under 20.000.000 frw. He went on saying that the low court did not want to allow any discussion on that objection [4] The hearing was held in public on 15/07/2014, Jacques SCHILLINGS was represented by Me. UWIMANA Juvenal while BK was represented by Me. NKUSI Eric. [5] At the beginning of the proceedings the Advocate of BK raised an objection that SCHILLINGS as an appellant and foreigner must pay first a guarantee as required in article 87 of the law relating to the code of civil, commercial, labour and administrative procedures. SCHILLINGS said he had nothing to deal with that guarantee. And this the first issue discussed before any other step. II. THE LEGAL ISSUE AND ITS ANALYSIS [6] In this case one analyses if SCHILLINGS who appealed must be ordered to pay a guarantee normally paid by the foreigners. [7] The Advocate of BK says that SCHILLINGS is concerned with article 87 mentioned above because he is a foreigner and he is the one who files the case in appealing court, and he requests that guarantee should be

15.000.000 frw. [8] The Advocate of SCHILLINGS says that he could not be considered as a plaintiff in this article because the plaintiff is one who instituted the case at the first level (plaintiff) whereas his client is considered as appellant. THE VIEW OF THE COURT

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[9] Article 87 of the law n° 21/2012 of 14/06/2012 related to the code of civil, commercial, labour and administrative procedures stipulates that, when requested by the defendant, any plaintiff foreigner must pay the guarantee fees, except in case there is the agreement the foreign countries may have ratified with Rwanda exempting them from paying the guarantee, or the people of East African Community. In its second paragraph that article stipulates that 'the defendant can also request the guarantee to first be paid at appeal level'. [10] As stipulated in that article, the reason to be of that guarantee is as a precaution that in case that foreigner loses the case, people may not miss the money to pay court fees, damages that may be charged to him. [11] The court says that the reason to be of that article may not limit to first level of the judgment, it would rather extend even to appealing level, because there the same constraint (of missing the payment in case of a foreigner who appealed and is ordered to pay court fees) may happen. [12] The court advises that the fact that the law stipulates that the said guarantee is to be paid by the plaintiff does not mean that the defendant is concerned with it only at first level. Because even one who appealed is considered as one who instituted the case to the appealing court and he is therefore the plaintiff in that case. [13] The court rules that the objection of ordering SCHILLINGS, the appellant, to pay a guarantee decided to foreigners, has merit. And based on the article 87 of the law n° 21/2012 mentioned above, the court decides that that guarantee should be 5.000.000 frw. III. DECISION OF THE COURT [14] Decides that the objection raised by BK requesting Jacques SCHILLINGS to provide a guarantee required to foreigners has a merit; [15] Orders Jacques SCHILLINGS to pay in public account the guarantee amounting to 5.000.000 frw not later than 10/10/2014 before the proceedings continue; [16] Orders that the procedures of this case to continue on 13/10/2014; [17] Orders that the court fees is postponed.

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