

RWANDA / JUDGMENT

KAYIJUKA v. I&M BANK

RCOMA 0202/14/HCC

COURT

Commercial High Court

DECIDED

12 June 2014

CASE / FILE NUMBER

RCOMA 0202/14/HCC

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Text

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KAYIJUKA v. I&M BANK [Rwanda COMMERCIAL HIGH COURT –RCOMA 0202/14/HCC (Kadigwa, P.J.,) 12 June 2014] Law relating to the civil procedure – Admitting the claim – The claim for approving the decision of the general meeting of the company –The decisions of the general meeting, and are regally rendered, are valid on their own –The fact that the problems that the party claimed to prevent were not born yet and the interest has to exist on the date of filing the claim, it has to be born and existent this excludes the interests not yet existing or uncertain, the law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 2. Facts: I &M BANK filed the claim before Nyarugenge Commercial Court requesting the confirmation of the decision of the general meeting, deciding that KABUGA Felicien, MANYENZI Vincent and KAYIJUKA Tassien be removed among the shareholders of I &M BANK , the ground on which that bank has based its claim is that the shareholders mentioned above have spent a long time without attending its activities, the prosecution has seized those shares suspecting them of the crimes of Genocide committed against Tutsi in 1994, and this made it to have bad image. The court decided that the decision taken by I&M BANK was valid, and ordered that KAYIJUKA Tassien be removed from the shareholders of I&M Bank. KAYIJUKA

appealed before the Commercial High Court, which decided firstly analyzing whether the claim filed by I&M Bank requesting that Kayijuka may be removed from the shareholders should have to be admitted. The one who pleads for I&M Bank was asked why he accepted to seize the court while normally if the decision of the General Meeting of the company, is legally decided, itself is valid, he responded that the reason which made them to file the claim, is that the shares of KAYIJUKA Tassien were seized by the prosecution, and that after I&M Bank has taken the decision mentioned above KAYIJUKA Tassien has objected that decision through the letter. The one pleading for Kayijuka says that what I&M Bank has done is illegal since there is no ground which made I&M Bank to seize the court and there could not be any seize without the court order. After the analysis of the court it realizes that I&M Bank had not yet the interest of filing the claim. The one representing I&M Bank says that the interests that I&M Bank has in requesting to remove him as its shareholder, is that he wrote objecting the decision of the general meeting and that the prosecution has seized his shares. It is evident that I&M Bank had fear of that finally that decision could cause some problems; but until it filed the claim, it does not prove that these problems occurred. Held: 1. The fact that I&M BANK had fear of getting the effects of removing the shareholders from the company which could finally affect it, however until it filed the claim it does not prove that it has really got those problems, it is evident that I&M BANK had no interest yet of filing the claim. Thus its claim should not have been admitted. I&M BANK had no interests for filing a claim; The claim filed should not have been admitted from the first instance; The court fees are incurred to the plaintiff.

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Statutes and statutory instruments referred to: Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 2.

Judgment

I. BRIEF BACKGROUND OF THE CASE I & M BANK after having taken the decision mentioned above in the subject matter of the case, it filed the claim before the Commercial Court of Nyarugenge requesting to confirm that decision. The ground on which that bank has based its claim is that the shareholders mentioned above have spent a long time without attending its activities, the prosecution has seized those shares suspecting them of the crimes of Genocide committed against Tutsi in 1994, and this made it to have bad image. The court decided that the decision taken by I & M BANK has merit, and ordered that KAYIJUKA Tassien be removed from the shareholders of I&M Bank, and he was not satisfied with that decision, on 04/04/2014 he appealed against this decision before this court. This court, basing on the article 78 of N° 21/2012 of 14/06/2012 Law relating to the civil, commercial, labour and administrative procedure, on its own initiative has taken the decision of analyzing whether the claim filed by I&M Bank had to be admitted, this is the issue which has to be analyzed in this case. II. LEGAL ISSUES OF THE CASE AND IT'S ANALYSIS Could the claim filed by I&M Bank had to be admitted? Me. Herbert RUBASHA who pleaded for I&M Bank was asked why he accepted that they seize the court requesting to approve the decision of the General Meeting while normally if the decision of the

General Meeting of the company, is legally decided, itself is valid, he responded that the reason which made them to file the claim, is that the shares of KAYIJUKA Tassien were seized by the prosecution, and that after I&M Bank has taken the decision mentioned above KAYIJUKA Tassien has objected that decision through the letter. Me MUGABO Laurent has been given the time and said that there is no ground which made I&M Bank to seize the court on the decision it took, thus what I&M Bank has done is illegal. And the fact that the prosecution too has seized the shares of KAYIJUKA Tassien, this cannot be the ground since I&M Bank had to assess that there can't be any effective seizure without the court order. Me RUBASHA Herbert in his pleadings says that the interests that I&M Bank has in requesting that the decision of the General Meeting chasing KAYIJUKA Tassien as its shareholder, is that he wrote objecting and that the prosecution has seized his shares. The analysis of this issue shows that I&M Bank had fear of that finally that decision could cause some problems; but until it filed the claim, it does not prove that these problems occurred, thus it realizes that I&M Bank had no interest yet.

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The article 2 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit, the court realizes that the claim filed by I&M Bank could not have admitted since, the fact that the problems it alleges that it had to prevent, have not occurred yet, and that the interest that is mentioned in the article 2 of the law mentioned above has to be exist at the day of filing a claim, evident and existing, this excludes the interests not yet existing or uncertain¹. The fact that I&M Bank argues that it wanted to prevent the effects of the decision it took, this court realizes them not to be considered since requesting that the decision of its General Meeting to be approved through the case it cannot deprive KAYIJUKA Tassien the right of requesting the court to nullify it, if he came up to prove that it was taken illegally, be the law regulating companies or the constitution of I&M Bank. Basing on what has been said, this court realizes that the claim filed by I&M Bank, the then Banque Commerciale du Rwanda (BCR) could not have been admitted, thus the appealed judgment R.COM 0976/13/TC/NYGE decided by the Commercial Court on 07/03/2014 has to be dismissed in its entire content. III.THE DECISION OF THE COURT The Commercial High Court; It decides that I&M Bank the then Banque Commerciale du Rwanda (BCR) had no interests for filing a claim; It decides that the claim filed in this case had not to be admitted from the first instance; It orders that the appealed judgment R.COM 0976/13/TC/NYGE decided by the Commercial C It orders I&M Bank the then Banque Commerciale du Rwanda (BCR) to pay all the court fees in this case. 1

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