

RWANDA / JUDGMENT

MUGENZI v. BPR

RCOMAA 0007/12/CS

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Supreme Court

DECIDED

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Text

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MUGENZI v. BPR [Rwanda SUPREME COURT – RCOMAA 0007/12/CS (Rugabirwa, P.J., Kayitesi R, and Mukandamage J.) April 25, 2014] Contracts Law – The validity of the contract – The fact that the bank has been dissolved it does not mean that it had no capacity to make the loan contract, in case what happened is the amalgamation of the cooperatives, which gave birth to one Banque Populaire, which made those banks to be dissolved but not liquidated – The party cannot request the damages saying that the bank had no capacity to make the contract, while there were the agents who were endowed with the capacity to sign the contract and giving the loan, it means that that contract was still valid – Law n°45/2011 of 25/11/2011 relating to the contracts , article 4 and 64. The law governing the civil procedure – The moral damages resulting from dragged into unceasing lawsuit – The advocate fees –The fact of the bank has been dragged into unceasing lawsuit in case it had the capacity to make the contract, no ground for not being damages – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 106. Facts: On 04/09/2008, Bank Populaire de Kicukiro has made the loan contract of 18,000,000 rwf with MUGENZI David for building, he gave his house and he was insured by his wife. MUGENZI David sued the BPR before the Commercial Court of Nyarugenge requesting it to

decide that the loan contract is invalid since it had no competence of signing and lend him since this bank was dissolved on 01/04/2008, and he requested 13,004,000rwf for the damages for that the bank made the loan contract while it had no capacity. The court decided the claim inadmissible since Mugenzi had no interests in that case, and ordered him to pay to the bank 300,000 rwf for the damages for being involved in the cases for no ground. MUGENZI appealed before the Commercial High Court which decided that the appeal was baseless, and ordered him to pay 200,000rwf to BPR for the damages of having been involved in the cases. He appealed again before the Supreme Court requesting it to decide that the contract they made was invalid because the bank signed it in case it had no capacity since it was dissolved and requested the diverse damages. With regard to knowing whether the BPR had no capacity to make the contract, The counsel for MUGENZI argues that the BPR had no capacity to sign the loan contract of 04/09/2008 because the bank was dissolved on 01/04/2008 and requested the Supreme Court to decide that that contract invalid. The counsel for the bank says that it had the capacity of making the loan contact with Mugenzi since it was not dissolved, it still makes the contract and gives the loans, he says that what happened is that all the cooperatives of the then Banque Populaire du Rwanda were merged to give birth to one BPR all over the country, and he says again that that contract is still valid since it was performed before the notary, and he requested that the bank shouldn't give to Mugenzi the damages he claims because he didn't pay the loan it gave to him. With regard to knowing whether the damages charged to MUGENZI David have merit, her counsel says that the Commercial High Court couldn't keep the decision of the case decided at first instance because the court of first instance has decided his claim inadmissible, it couldn't have charged him the damages for having involved the bank in the cases for no ground, and that

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it couldn't have provided it with those damages because it didn't file the counterclaim at first instance. The counsel for the bank says that the courts of first instances have charged to MUGENZI the damages for having involved it in the cases since they realized that he has committed the faults of suing it for no ground. And about BPR's cross appeal, the counsel on its behalf, says that it lodged the cross appeal requesting that Mugenzi should be ordered to pay back the main debt and its interests. The counsel for Mugenzi says that he cannot pay back the bank since it has been the cause of seizing the court since the bank wanted to take his house for auction. Held: 1. Basing on the arguments of the expert in laws relating to companies, says that the amalgamation of companies occurs when two or more companies are joined together to give birth to the new company, and that within that period, those companies are dissolved but not removed since their properties are not liquidated due to the fact that they have become the shareholders of the new created company. Thus the fact that both the properties and the liabilities of the banks have been amalgamated which made those banks to be dissolved but without being dissolved since they went on with its commercial transactions.

2. When the party has been dragged into unceasing lawsuit, the moral damages he may claim has merit. He is provided with the procedural fees together with the advocate fees since he may have spent her money for no ground. Mugenzi David's appeal has no merit; The bank's

cross appeal has merit on some point; The bank's cross appeal with regard to the principal loan is inadmissible; The court fees to the appellant. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 106, Law n° 45/2011 of 25/11/2011 relating to the contracts , article 4 and 64. No Case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

- [1] On 04/09/2008, Bank Populaire Kicukiro branch has made the loan contract of 18,000,000rwf with MUGENZI David for building. MUGENZI David has given his house, located in Niboyi Sector, Kicukiro District, Kigali City, as the mortgage and insured by his wife MUREKATETE Laurence.
- [2] MUGENZI David has filed the claim against the Banque Populaire, Remera Branch before the Commercial Court of NYARUGENGE requesting it to decide that the contract be annulled since the Banque Populaire de Kicukiro Branch had no competence of signing for it and lend him

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18,000,000rwf since it was dissolved on 01/04/2008, and requests 13,004,000rwf for the damages.

- [3] That court decided that the claim of MUGENZI David inadmissible because he has no interests in that case, it ordered him to give 300,000rwf to the Banque Populaire du Rwanda, Remera Branch as damages for having been involved in the in procedural fees for no ground.
- [4] That court has explained that Banque Populaire Kicukiro branch has not been dismissed because it still works as Kicukiro Sub-branch of Remera Branch, within Banque Populaire du Rwanda Ltd, that MUGENZI cannot argue that this Bank was dissolved since himself would have known it before they sign the contract basing on the principle that no one is supposed to ignore the law (Nul n'est censé ignorer la loi), except if he signed tending to the endue enrichment (enrichissement sans cause), that he has to honor the contract as provided for by the article 33 of the third book of the civil code.
- [5] MUGENZI David appealed before the Commercial High Court which decided his claim baseless, and ordered him to pay 200,000 rwf to the Banque Populaire du Rwanda, Remera Branch, as the damages of having been involved in the procedural fees and the advocate fees.
- [6] MUGENZI David appealed before the Supreme Court requesting it to decide void the contract of 04/09/2008 because the Banque Populaire de Kicukiro signed it while it has no competence since it was dissolved and requested it to give him the diverse damages.

- [7] When the hearing of the case started, the counsel to the Banque Populaire du Rwanda, Remera Branch raised the incident of inadmissibility of MUGENZI David's claim because it was not within the competence of the Supreme Court, and that it was made in delay.
- [8] On 14/01/2014, the Supreme Court decided that MUGENZI David's appeal is within its competence and that it was not delayed, it ordered that the hearing of the case will continue on 25/03/2014.
- [9] On that date the case was heard in public, MUGENZI David represented by Me Rwigema Vincent while the Banque Populaire du Rwanda, Remera Branch, was represented by Me Ntaganda Kabare Festo. II. ANALYSIS OF LEGAL ISSUES To know whether the Banque Populaire Kicukiro branch had no competence to sign the contract of 04/09/2008 with its value.
- [10] The counsel to MUGENZI David argues that the Bank Populaire Kicukiro branch had no competence to sign the loan contract of 04/09/2008 because it was dissolved on 01/04/2008 as it is expressed in the Official Gazette of Rwanda no 07 of 01/04/2008 comprising the minutes of the special meeting of the Banque Populaire du Rwanda Ltd of 05/01/2009, which decided that all assets and liabilities of the cooperatives of Banque Populaire du Rwanda has been amalgamated, and that they will be working within the Banque Populaire du Rwanda Ltd, and it that the one with the competence to sign the loan contracts in its name is the Director General or the one given the competence to do so among the Executive Committee, it means that from that

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time, the Manager of the Banque Populaire Kicukiro branch who signed on that mentioned contract had no competence.

- [11] He requested the Supreme Court to decide that contract is void due to the lack of the requirements of article 8 of the third book of the civil code, since it was signed by the Banque Populaire Kicukiro branch which had no competence as explained above, while the Commercial High Court did not examine that issue, instead it decided the case basing on the general principles which were not heard during the hearing relating to that MUGENZI David couldn't argue that he did not knew the bank was dissolved since no one is supposed to ignore the law except if he signed the contract tending to get undue enrichment, that this case was decided in the contravention of the article 6 of Law n° 18/2004 of 29/01/2004 relating to the civil, commercial, labour and administrative procedure which was applied at that time, prohibiting the judge to decide the case basing on the general articles of the law or the regulations.

- [12] He explained that the Supreme Court after deciding that the contract mentioned to be void, is when MUGENZI David will pay the Banque Populaire du Rwanda Ltd the money of the loan it lent him without its interests, because he is not at fault, instead it is Banque Populaire Kicukiro branch which committed it when it signed the contract and gave to him the loan while it had no competence for it, but MUGENZI signed it because they were used to have such contract (théorie de l'apparence).
- [13] He requested that the Banque Populaire du Rwanda, Remera Branch to give to MUGENZI David 13,004,000rwf of the damages he request at the first level, 1,000,000 rwf of the court procedural fees and the advocate fees in the Commercial High Court and 2,000,000 rwf of the procedural fees and the counsel fees in this court.
- [14] The counsel for the Banque Populaire du Rwanda, Remera Branch said that it had the competence of signing the loan contract with MUGENZI since it was not dissolved; instead it works as the Sub-branch of Remera Branch of Banque Populaire du Rwanda Ltd.
- [15] He explained that the cooperatives of the former Banque Populaire du Rwanda were joined, and give birth to Banque Populaire du Rwanda SA which became Banque Populaire du Rwanda Ltd one in the whole country, and it was registered in the Rwanda Development Board (RDB) as testified by "Certificate of domestic registration" of 21/01/2008, the fact that this bank has established its Sub-branches, included Kicukiro Sub-branches it was in the way of decentralising its services.
- [16] He further explained that that contract was valid since it is an authentic copy which was made before the Notary, MUGENZI David cannot consider to be invalid basing on fraud or any other ground incase no penal judgment he has provided with the court testifying that it is fraudulent basing on what is provided for by the article 13 of the law n° 15/2004 of 12/06/2004 relating to evidence and its production.
- [17] He added that the Bank Populaire du Rwanda, Remera Branch cannot give to MUGENZI David the damages he requests since he committed the fault of not paying the loan it has given to him.

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THE VIEW OF THE COURT

- [18] Regarding the validity of the contract, the article 4 of the Law n° 45/2011 of 25/11/2011 governing Contracts provides for that "The general requirements for the formation of a contract are the following: mutual assent, capacity to contract, object matter of the contract, licit cause". And the article 64 of this law, states that "Contracts made in accordance with the law, shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith.

- [19] Regarding the competence of Banque Populaire Kicukiro branch about making the loan contract of 04/09/2008, the statement of the special meeting of the Banque Populaire du Rwanda SA of 01/04/2008 published in the Official Gazette of Rwanda no 7 of 01/04/2008, demonstrating the assets and liabilities of Banques Populaires du Rwanda which were amalgamated, which resulted in their dissolution ; but they were not liquidated (dissolution sans liquidation) since they continued their commercial activities within the new bank which is Banque Populaire du Rwanda Ltd (BPR Ltd) with the share capital of 10,278,692,755rwf, they became its shareholders, and its Branches and sub-branches were 128 Remera Branche and Kicukiro Sub- branch included as it is seen in the statutes of that bank published in the Official Gazette mentioned above.
- [20] Within that statement, they decided that during the period of transition, the manager, the credits officer and the officer in charge of credits recovery they have the competence to give the loan up to 80%, but before giving the loan exceeding this average, they have to get the authorization from the technical conseiller “Conseiller Technique”, and that the loan contract will be signed by the manager together with the credit officer.
- [21] The legal expert in the law of companies called Philippe Merle in his book, wrote that the amalgamation of companies occurs when two or more companies are joined together to give birth to the new company, and that within that period, those companies are dissolved but not removed since their properties are not liquidated due to the fact that they have become the shareholders of the new created company¹.
- [22] Basing on the laws and the explanations given above, the court realizes that the Banque Populaire de Kicukiro was dissolved but not removed (dissolution sans liquidation) since it continued to work as the Sub-branche of Remera Branche of the Banque Populaire du Rwanda Ltd (BPR Ltd) which currently became the Banque Populaire du Rwanda Ltd in which it is its shareholder as demonstrated by the “Certificate of domestic registration” of 2/01/2008 which is in the file, and that the manager, the credit officer and the officer in charge of credit recovery were given the competence to continue to give the loans as it is in the statement mentioned above, thus it had the competence of making the contract of 04/09/2008 with MUGENZI David. 1 La fusion est l’opération par laquelle deux ou plusieurs sociétés se réunissent pour en former qu’une seule. Elle peut résulter soit de la création d’une société nouvelle par les sociétés existant, soit de l’absorption d’une société par une autre (...). La fusion entraîne la dissolution sans liquidation des sociétés qui disparaissent et la transmission universelle de leur patrimoine aux sociétés bénéficiaires. Elle entraîne simultanément l’acquisition, par les associés des sociétés qui disparaissent, de la qualité d’associés des sociétés bénéficiaires“, par Philippe Merle, Droit Commercial, S

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Commerciales,

10 ème Edition, Dalloz, Paris, 2005, p. 856.

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- [23] The court appreciates that the fact that the agents of the Banque Populaire de Kicukiro continued to have the competence of signing the loan contracts and give the loans as explained above, it means that the loan contract it made with MUGENZI David on 04/09/2008 which shows that it has given to him 18,000,000frw, is valid basing on the article 64 of the law no 45/2011 mentioned above and it fulfills the requirements of the article 4 of this law; thus MUGENZI David, for this facts, he cannot be given the damages he requests since they have no merit. To know whether the damages charged to MUGENZI David have merit
- [24] The counsel to MUGENZI David says that the Commercial High Court couldn't keep the judgment of the case decided at first instance because when the court that addressed it first, has decided the case inadmissible, it couldn't charge him 300,000 rwf of the damages of having involved the Banque Populaire du Rwanda, Remera Branch in the case for no ground, and that it couldn't provided it with those damages because it didn't file the counterclaim at first instance, and so, that case was decided in the contravention of the article 107 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at that time, it provides that the counterclaim cannot continue if the principal claim is dismissed.
- [25] He adds that the Commercial High Court couldn't provide the Banque Populaire du Rwanda, Remera Branch with 200,000rwf of the moral damages for being involved in the procedural fees because it doesn't have the moral suffering, and so, that case was decided in contravention with the article 147 paragraph 2 of the Law n° 18/2004 of 29/01/2004 mentioned above, which provides for that each case decided, has to demonstrate all the grounds it is based.
- [26] The counsel for the Banque Populaire du Rwanda, Remera Branch says that the courts seized before have charged to MUGENZI David the damages for having involved it in the procedural fees and the counsel fees since they realized that he has committed the fault of suing it for no ground, and that the bank to provided with these damages because it has requested them as it is express by its counterclaim filed at the first instance and by its cross-appeal as it is expressed by the copies of the decided cases in this file. THE VIEW OF THE COURT
- [27] The article 106 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that "a counterclaim is any claim filed by the defendant, seeking judgment against the plaintiff".
- [28] Within the file there is a court submission of 16/03/2010, expressing that Banque Populaire du Rwanda, Remera Branch requested that MUGENZI David who sues it for no ground, pays 1,000,000rwf to it for the damages for involving it in the procedural fees and the advocate fees.

- [29] The court realizes that MUGENZI David in his pleadings, says that Banque Populaire du Rwanda, Remera Branch couldn't be given the moral damages because it cannot have it, which is baseless since the damages it was given are related to the money it has expended for those

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cases while it was not intended, and that the counsel pleaded for him, thus nothing can prevent that the company be provided with such damages.

- [30] With regards to the damages that were provided at the first instance, the court realizes the fact that the court which was seized before has decided that the Banque Populaire Kicukiro branch had the competence of making the loan contract with MUGENZI David as explained above, that court couldn't decide the case inadmissible and baseless, instead it had to admit it. The fact that that case would be admitted, the court realizes that the court committed no fault when it decided that MUGENZI David had to pay 300,000rwf to the Banque Populaire du Rwanda, Remera Branch for the damages of having been involved in the procedural fees for no ground basing on the article 106 of the Law n° 21/2012 of 14/06/2012 mentioned above as the Commercial High Court decided it.
- [31] With regards the damages MUGENZI David was charged by the Commercial High Court, this court realizes that MUGENZI David would give to the Banque Populaire du Rwanda, Remera Branch the damages equivalent to 200,000 rwf because he dragged into unceasing lawsuit and the advocate fees, and the bank had requested them in its cross appeal as demonstrated by its court submission of the appeal which is in the file (C36 and 37), it means that the damages charged to MUGENZI David by the court seized before have merit. The cross appeal made by the Banque Populaire du Rwanda, Remera Branch
- [32] The counsel to the Banque Populaire du Rwanda, Remera Branch says that he submits the cross appeal requesting the MUGENZI David to pay 15,000,000rwf of the principal debt which is demonstrated in the loan contract of 04/09/2008 and in the "bank transaction history" which are in the file, 30,015,000rwf of the ordinary interests requested from 04/09/2008 to 24/03/2014, 3,335,000rwf of the moratory interests calculated on 4% calculated from 04/09/2008 to 24/03/2014 and 500,000rwf for that spent in the follow up of the case whose total makes 48,850,000rwf.
- [33] The counsel to MUGENZI David argue that he cannot pay to the Banque Populaire du Rwanda, Remera Branch 15,000,000rwf of the principal debt and the its interests it requests because they were not heard in the courts that were seized before, and that he cannot pay 500,000 rwf of the procedural fees because it the cause of to seize the court due to the fact that it wanted to sell his house in the auction basing on the invalid contract mentioned above. THE VIEW OF THE COURT

- [34] The article 168 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, provides for that “no new claim may be lodged at the appeal level” unless what is provided for within that article.
- [35] With regard to this case, the file shows that the principal debt and its interests the Banque Populaire du Rwanda, Remera Branch requests were not heard and decided in both the first instance and second, instead it requests them for the first time before the Supreme Court, the court understands that it is a new claim that is lodged for the first time at the appeal level, thus it can't be admitted basing on the article 168 of the former law mentioned above.

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- [36] With regards to the money for the procedural fees the bank requests, the court understands that MUGENZI David must pay to the Banque Populaire du Rwanda, Remera Branch 300,000rwf of the procedural fees since it is rightful, the court provides it in its discretionary power and it's in addition to that provided by the court seized before.
- [37] The court understands that the total amount of the money that MUGENZI David has to give to the Banque Populaire du Rwanda, Remera Branch is 300,000rwf of the damages of having been sued for no ground at the first instance + 200,000rwf of the damages of having to dragget into unceasing lawsuit for no ground and the advocate fees at the appeal level + 300,000rwf of the procedural fees at this level, and the whole amount equals to 800,000rwf.
- III. THE DECISION OF THE COURT
- [38] It decides that the appeal of MUGENZI David has no merit;
- [39] It decides that the cross appeal made by the Banque Populaire du Rwanda, Remera Branch has the merit on some grounds;
- [40] It decides that the cross appeal submitted by the Banque Populaire du Rwanda, Remera Branch, is not admitted with regards to the principal debt and its interests because they were not heard at the first level;
- [41] It orders MUGENZI David to give to the Banque Populaire du Rwanda, Remera Branch 800,000rwf as explained;
- [42] It orders MUGENZI David to pay the court fees equal to 35.100rwf, including that he has been charged in the High Court, if he doesn't pay it within eight days, it will be taken from his property through the force of the state.

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