

RWANDA / JUDGMENT

NTAKIRUTINKA ET AL v. GT BANK ET AL**RCOMA 0080/12/CS****COURT**

Supreme Court

DECIDED

20 June 2014

CASE / FILE NUMBER

RCOMA 0080/12/CS

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

NTAKIRUTINKA ET AL v. GT BANK ET AL

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-06-20
- Case/document no.: RCOMA 0080/12/CS
- Collection: Supreme Court

Text**Page 1**

NTAKIRUTINKA ET AL v. GT BANK ET AL [Rwanda SUPREME COURT – RCOMA 0080/12/CS (Nyirinkwaya, P.J., Hitiyaremye and Mukamulisa, J.) June, 20th 2014] Business law – Contract Laon – Pay by the order for payment in the one mentioned thereon is not the owner of the account on which it is paid – The bank as the professional has the obligation of controlling it – If it does not do it, it has to reconstitute the money which has been paid to the one who did not deserve to be paid, and this one too has to pay to the bank. Civil law – The guaranty – Unregistered guaranty within the reserved registers because they did not exist – The bank commits no fault for making the registration of the guaranty it was granted – it cannot even be held responsible for the fact of not having made the follow up on that guaranty since it is not under its control – Law of 30/07/1888 relating to the contracts or contractual obligations, article 598 and that of 602. Liability – The role of the bank within the loss check caused the debt not being properly paid – The role of the debtor – In case the debtor has also played a role in the non-payment, the role of the bank may not be the basis for exonerating him from the interests on the loan - If the debtor has also played a role in the loss, it is not paid all as he claims it – Law of 30/07/1888, instituting the civil code, the third book, article 258. Civil law – The moral damages – The one against whom the

faults have been committed and caused to her the loss is granted with the damages – Even if he may have played a role for not claiming for his/her interests for the preventing the loss from increasing – They provided within the discretionary power of the court, and each one pays the damages according to the role he/she has played in the loss. Facts: On 23/11/1997 and on 27/07/1998 BACAR that became GT BANK has given to Ntakirutinka the loan of 13,611,763 Frw and that 11,623,510 Frw for buying two cars which he could have finished paying within 24 months. The problem has resulted from that Ntakirutinka made with Nsengiyumva for ordering from abroad two cars with the mark of Nissan Benne for using in commerce. Ntakirutinka was provided with two different invoices both made in the name of JDNS Trading, one was signed by Uzabumwana who called himself the Director of JDNS and another one was signed by Mwiseneza in the name of Nsengiyumva. Ntakirutinka made an order for payment of 19,000, 000 Frw in BACAR on the account of JDNS signed by Uzabumwana but afterwards it has been realized that it was the Uzabumwana's personal account. That's to mean, instead of paying Nsengiyumva to who he owed the debt, Ntakirutinka has paid to Uzabumwana, and this made Nsengiyumva to go on requesting Ntakirutinka to pay to him, at the extant that he was given the certificates for seizing two cars for Ntakirutinka. FINA BANK also filed the case against Ntakirutinka and Mukarugambwa before the Commercial High Court requesting the court to order them to pay 23,129,885 Frw for the principal debt it has granted with him to buy two cars, its interests, diverse damages and the procedural fees. Ntakirutinka and Mukarugambwa filed also the case before the Commercial High Court against FINA BANK and Uzabumwana requesting that no interests may be granted to the bank since its faults made Ntakirutinka not pay the loan properly, and claimed that FINA 1

Page 2

BANK and Uzabumwana be ordered together to pay the money which the Supreme Court has condemned him to pay to Nsengiyumva. In 1999 Ntakirutinka filed the case before the court against Nsengiyumva requesting to order him to honor the contract they have made; Nsengiyumva filed a case also requesting that Ntakirutinka be condemned to pay 28,000,000 Frw and different interests. Both claims were joined within the same case within the High Court which decided that both claims have basis on some grounds. With regard to the payment, Ntakirutinka argued that the court refused to decide that GT BANK has committed a fault of paying the order for payment on false account; the one pleading for the GT BANK also said that it committed no fault, that instead Ntakirutinka was given the invoices of two different persons, and he chose Uzabumwana's and paid it without first requesting for explanations. Regarding the guaranty, Ntakirutinka argued that the bank did not make the follow up of its guaranty which caused the car that helped him to pay to be seized. The legal counsel pleading for the bank said that the mortgage had no value since it was not under the bank's control and it was not registered in the register reserved for that. Regarding the interests, Ntakirutinka claimed them arguing that he would have generated them from the works that his two cars performed. GT BANK argued that Ntakirutinka had to sue the one who laid him instead of suing the bank. Held: 1. Since the bank has failed to fulfill its obligations and committed a fault of paying of the payment order,

depositing that money on false account, and resulted in that Ntakirutinka being ordered to pay for the second time, the bank has to be held liable for that fault and restitute that money amounting to 19,000,000 Frw to Ntakirutinka while Uzabumwana has to restitute to him 3,200,000 Frw he handed him which he was unjustly enriched. And also GT BANK and Uzabumwana have to pay together 1,200,000 Frw for the procedural and lawyer's fees.

2. Even though the bank committed no fault for not made the follow up of its guaranty, it may not be granted what it claimed in its cross appeal for its role which made the cars from which Ntakirutinka profited be seized. This is one of the grounds which made the debt for not being paid properly. Thus, Ntakirutinka and Mukarugambwa have to be discharged of the interests that, they are condemned to pay of 23,129,885 Frw of the principal debt and its interests from 26/10/2000.
3. In the request for payment and receiving the money, Uzabumwana really knew that it was not his; he also has played an important role in the loss that Ntakirutinka has suffered. And the bank in depositing the money on the account of the one who was not the one to be paid, it has played a role in that loss. If Ntakirutinka had resolved the problem he had with Nsengimana before and made the recovery of the money in hurry without waiting for losing the case, the loss wouldn't have been at high increase to the extent that the cars were sold in the auction. They have all play a role in that loss.
4. With regards to the damages, though the faults committed are not the same, haven't the same effects, and Ntakirutinka has played the role of not protecting his interests to prevent the increase of the loss, so those damages have to be provided within the court's discretionary power since the amount he claims is too high. The appeal has basis on some grounds The cross appeal has no basis 2

Page 3

Statutes and statutory instruments referred to: Law of 30/07/1888, relating to the contracts or obligations, third book, article 258, 598 and 602. No Cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE

- [1] On 23/11/1997 and 27/07/1998 BACAR (replaced by FINA BANK and this replaced GT BANK) offered to Ntakirutinka a loan 13.611.763 rwf and 11.623.510 rwf supposed to be paid within 24 months, from 25/07/2000. That loan contract stated that was having a caution of Mukarugambwa Florida and a mortgage to 2 Steyr vehicles of Ntakirutinka.
- [2] On 26/10/2006, FINA BANK submitted a case in the Commercial Court asking the court to order Ntakirutinka and Mukarugambwa and court ordered them to pay 23.129.885rwf of the whole loan and interests, interest of 18% each year, different damages, court and procedurals fees.

- [3] Ntakirutinka and Mukarugambwa appealed in the Commercial High Court asking FINA BANK and Uzabumwana to cancel interest relating to that loan because they failed to pay because of the bank's fault.
- [4] Ntakirutinka was asking that FINA BANK and Uzabumwana have to be ordered to pay the money that the Supreme Court ordered him to pay to Mr. Nsengiyumva Jean de Dieu in the judgment RCAA 0051/08/CS, including 498.600.000 rwf of interest for seizure operated on his 2 vehicles, 10.000.000 rwf of civil damages and 30.000.000 rwf for court and procedurals fees, then Uzabumwana individually has to pay 3.200.000 rwf gave to her personally knowing that he's paying J.D.N.s trading.
- [5] The judgment RCAA 0051/08/CS above said relating to the contract that Ntakirutinka Charles signed with Nsengiyumva Jean de Dieu named J.D.Ns Trading to order for him Nissan vehicle Benne TK 20 GD, the problem came to happen when Ntakirutinka offered 2 invoices certified to the name of J.D.NS Trading, the first is of 27/03/1996 signed by Mwiseneza Paul in the name of Nsengiyumva Jean de Dieu; the second of 28/03/1996 signed by Uzabumwana named director general of JDNS Trading (Directeur Général wa J.D.NS Trading), then Ntakirutinka on 29/03/1996 gave a pay slip (ordre de paiement) to BACAR to pay 19.000.000 rwf to the account number 070-200-5570-80/307 said in the invoice of Uzabumwana that it is for J.D.Ns Trading, but it came to be known as for Uzabumwana individually.
- [6] That money 19.000.000 rwf is the amount that Nsengiyumva continued to ask Ntakirutinka to pay as it appear in the letter addressed to him on 11/04/1996, and papers were issued to him allowing to operate seizure of 2 vehicles related to Ntakirutinka, the first paper was relating to the Steyr RR 7991B vehicle which was given as mortgage in BACAR taken on 14/08/2000, the second paper was relating to Nissan RR 6595 A vehicle taken on 14/09/2001. 3

Page 4

- [7] In year 1999 Ntakirutinka submitted a case to the court asking Nsengiyumva to be ordered to execute contract that they both had signed, Nsengiyumva on his side asked Ntakirutinka to be ordered to pay 28.000.000 rwf including related interests.
- [8] That judgment n°RCAA 0051/08/CS came to reach the Supreme Court level on 16/07/2010, where Ntakirutinka ordered to pay to Nsengiyumva an amount of 28.000.000 wf as the total price of vehicle, interest of 12.405.555 rwf equal to 1/3 of all interest to be paid regarding Uzabumwana and Nsengiyumva, 1.800.000 rwf of court and procedural fees, the total is 42.205.555 rwf. FINA BANK had requested to take part into the Supreme Court but the request was declared not accepted.
- [9] While the case between Ntakirutinka and Nsengiyumva was not yet closed, FINA BANK also presented its case abovementioned into the second paragraph, Ntakirutinka and Mukarugambwa after the case with Nsengiyumva they brought a case above said.

- [10] The two cases of both FINA BANK and Ntakirutinka were combined into the Commercial High Court, and rendered a judgement N°RCOM 0180/08/HCC -N°RCOM 0265/10/HCC on 01/03/2012 where it confirmed that the two cases are legally and partially based, that Ntakirutinka and Mukarugambwa have to pay 23.129.885 rwf of the loan and related interest up to when FINA BANK presented its case in the court.
- [11] Facts that the court based its decision: The court found the fact that FINA BANK did not shown show to Ntakirutinka the real account number of J.D.Ns Trading, Fina Bank could not be responsible since that is the case between Ntakirutinka and J.D.Ns trading, the case of FINA BANK to enter in the case the Supreme Court decided definitively; Regarding the mortgage of FINA BANK that seized, the court found that although it was not registered the bank did anything to cover its rights to the mortgage so Ntakirutinka has to pay 23.129.889 rwf only, but not interest to be paid; Regarding the “force majeure” that have been raised by Ntakirutinka saying that there was changes in international transport, but the court decided that this has no reason since any evidence was provided.
- [12] Ntakirutinka and Mukarugambwa appealed in the Supreme Court on 30/03/2012, the substantial hearing was held on 15/04/2014, Me Protais Mutembe assisting Ntakirutinka and representing Mukarugambwa, GT BANK replaced FINA BANK/ BACAR represented by Me Bimenyimana Eric, Uzabumwana absent but legally summoned. 4

Page 5

II. LEGAL ISSUES OF THE CASE AND ITS ANALYSIS 1° To know if GT BANK and Uzabumwana have to pay the money that the judge in his judgment RCAA 0051/08/CS had ordered Ntakirutinka to pay, Uzabumwana alone was ordered to pay 3.200.000 rwf

- [13] Regarding GT BANK replaced FINA BANK which also replaced BACAR, Ntakirutinka and Me Mutembe says that the Commercial High Court did refused to confirm that FINA BANK did a mistake when paying the “ordre de paiement” to the account other than JDNs Trading account Ntakirutinka wanted to pay basing on the trial held in the Supreme Court between Nsengiyumva and Ntakirutinka, however in that case the court was not asked to decide on the fault of FINA BANK.
- [14] they says that the court has definitely decided and court has no reason to decide again to the fault of FINA BANK in the appealing level, and is relating to the fact of being responsible or not in making mistake to pay the “order for payment” to the account other than the one of JDNs Trading since that issue was not raised in the case between Ntakirutinka and Nsengiyumva.
- [15] They says that one of the duties of the bank is to verify if the operation is going to be done to the proper account, and in case of client mistake the bank has responsibility to inform the client (devoir d’information), in order to avoid the risk of being punished by the article 258 of civil codes of Rwanda if that act affect interests of the client.

- [16] As they said FINA BANK admitted indirectly that it did a mistake when accepted the “order for payment” without informing him that the account N° 070-200-5570-80/307 was not related to the JDNs Trading, but is for Uzabumwana because when he came in the case in Supreme Court between Ntakirutinka and Nsengiyumva, he provided a copy of “order for payment” modified, where the deposit person should be JDNs Trading but mentioned Uzabumwana.
- [17] As they said it was not the first time for BACAR to discover errors to the account N° 070-200-5570-80/307 because they used to refuse uzamubamwana to do any credit operation where they asked him to signed first the acknowledge “reconnaissance”.
- [18] Regarding to Uzabumwana, Ntakirutinka said that the court confirmed that FINA BANK accuses Uzabumwana which is not true because is accused with only Mukarugambwa, that mistake caused the court to not decide on the money that he took illegally.
- [19] He said that the Commercial High Court did not consider his right since its not consided his facts of defense, either to confirm that he has to pay anything, or to decided if he is responsible give back the money that he took illegally .
- [20] Me Bimenyimana counsel for GT BANK says that the bank did not accuse Uzabumwana, and if Uzabumwana accused by Ntakirutinka received the money then after Ntakirutinka asked to pay that money, it could be right if the court can order him to pay. 5

Page 6

- [21] He says that the bank has committed any fault to Ntakirutinka, but Ntakirutinka received invoices of two people holding two importants things that making them to be differents such as account number and money to be paid, he chooses the one for Uzabumwana without having explanations relating to those two people, bank could not change anything to that “order for payment” than to implement it.
- [22] As he says Ntakirutinka cannot defend himself saying that GT BANK’s fault has been the reason to have paid Uzabumwana since even after the “order for payment” he paid him in the hand an amount of 3.200.000 rwf as it appear to the receipt of 09/12/1996.
- [23] Regarding the copie of “order for payment” given by FINA BANK when it asked to come in the case RCAA 0051/08/CS showing that the one to be paid is Uzabumwana and the reason that copy is not the looking as the original copy shown by Ntakirutinka in the case hearing, saying that they don’t know how that copy was found in the bank. THE VIEWS OF THE COURT
- [24] The Supreme Court in the case N°RCAA 0051/08/CS explained in the paragraph 26 that the subject of the case in that case between Ntakirutinka and Nsengiyumva which was heard in the previous hearings is relating to the payment of vehicle that Ntakirutinka ordered, where one party was saying that he paid the total price which toher party denied saying that money was paid to the person different to whom to pay, so the request of coming into the case by FINA BANK rejected asking the court to decide either its it has legally implemented

responsibility to deposit the money to the account that the client recorded which the request could not be received in appealing level as first.

- [25] The court found that the explanations above mentioned shows that the issue examined is totally different of the one to know if the FINA BANK did a mistake to pay the “order for payment” given by Ntakirutinka, there is no reason for High Court to decide on that issue.
- [26] The Court found that the “order for payment” of 19.000.000 rwf to be referred to is the one given by Ntakirutinka showing that the beneficiary (bénéficiaire) of the money is JDNs Trading since it holds a bank’s stamp, an original copy was shown during the case hearing, but the issued by the bank shows that the beneficiary is Uzabumwana which cannot be taken as a truth since the bank wasn’t able to issue the original copy and related explanations.
- [27] As it shown “order for payment” given by Ntakirutinka, stamped by the BACAR on 29/03/1996, asked that bank to pay JDNs Trading 19.000.000 rwf to the account N° 070-200-5570-80/307 in BACAR, but the account came to be different of the one of JDNs Trading, is for Uzabumwana individually.
- [28] The court found that BACAR paid 19.000.000 rwf following the payroll (order for payment) contained different important things such as account number and the name of beneficiary, however the bank has to verify before operating any payment the payroll (order of payment) in case of client mistake the bank has responsibility to ask for correction to the client. 6

Page 7

- [29] The court found that the fact that Ntakirutinka did a fault of paying 19.000.000 rwf following the contents of invoice of Uzabumwana instead of paying following on the invoice given by Nsengiyumva as confirmed in the judgment RCAA 0051/08/CS, does not remove the responsibility of BACAR to have paid different person other than the beneficiary of the account.
- [30] The court found that the fact that after 8 months Ntakirutinka did a fault of paying Uzabumwana other money equal to 3.200.000 rwf knowing that Nsengiyumva is asking him to pay 28.000.000 rwf of total price of vehicle imported, does not remove the responsibility of BACAR relating to the payment of 19.000.000 rwf since it doesn’t appear anywhere that the person that Ntakirutinka was supposed to pay is Uzabumwana individually, but not J.D.Ns Trading as he wrote to the payroll (ordre de paiement).
- [31] The court found that the fact that Ntakirutinka is asking GT BANK to return back the 19.000.000 rwf ordered in the judgment RCAA 0051/08/CS has merit since the bank has failed to implement its attributions when deposited the money to the account n° 070-200-5570-80/307 which is not for J.D.Ns Trading, it has been a reason for Ntakirutinka to be ordered to pay.

- [32] Regarding Uzabumwana, the court found that the Commercial High Court did not consider expressing something to the pretensions of Ntakirutinka that Uzabumwana has to return back the money ordered in the judgment RCAA 0051/08/CS including 3.200.000 rwf paid in his hands, it has to be examined to this level.
- [33] Regarding 19.000.000 rwf deposited by the Bank to the account other than it could be deposited and ordered to give back to Ntakirutinka and regarding 3.200.000 rwf paid in hands, the court found that Uzabumwana has to give back the manye in order to avoid interest without any reason (enrichissement sans cause).
- [34] Regarding the money equal to 12.405.555 rwf of interests that Ntakirutinka had ordered to pay in the judgment RCAA 0051/08/CS, the court found no reason to give back that money to Ntakirutinka since the court confirmed well that he committed some faults.
- [35] Regarding the Court fees and procedural fees equal to 1.800.000 rwf ordered in the judgment RCAA 0051/08/CS, the court found that GT BANK and Uzabumwana have to pay 2/3 of that money (in solidum), equal to 1.200.000 rwf, the remaining amount has to be paid by Ntakirutinka because there is an amount of 5.800.000 rwf of total price of vehicle to be paid by him (28.000.000 rwf – 19.000.000 rwf deposited to the account number of Uzabumwana - 3.200.000 rwf given to Uzabumwana into the hands, remains 5.800.000 rwf). 2° To know the value of the Bank loan that Ntakirutinka and Mukarugambwa have to pay.
- [36] Ntakirutinka and Me Mutembe says that BACAR (in partnership with Uzabumwana) paid 19.000.000 rwf to the account of JDNs Trading, which cause Nsengiyimva to continue asking the payment of total price of vehicle imported up to when vehicles were seized.
- [37] As they say the bank did not consider pursuing its mortgage on the vehicle Steyr RR 7991B regarding their rights, and came to be an obstacle for not paying the loan. 7

Page 8

- [38] They say that the court after confirming that FINA BANK committed a fault against Ntakirutinka to have not shown its interests on the mortgage, confirmed that FINA BANK no any interest has to be accounted up to when the case was submitted in year 2006, as he considered FINA BANK should assist him in coming out from the big loss that occasioned by the seizure of his vehicle on 14/08/2000.
- [39] GT BANK says that has no responsibility for that act committed by Ntakirutinka in paying money between Uzabumwana and Nsengiyumva, if he could have paid following the invoice his vehicle should not be seized.

- [40] The bank says that the court did not consider that mortgage was not registered in the (registre d'inscription des gages) since those were not presented into the court, the mortgage had no value to others (opposabilité aux tiers), but was «créancier chirographaire» without any priority, so in the appealing court the bank asked the court to order Ntakirutinka and Mukarugambwa to pay 53.912.171 rwf of loan accounted up to 31/01/2011.
- THE VIEWS OF THE COURT
- [41] Regarding the account where the amount of 19.000.000 has been paid, the court found as above explained, the bank has committed a fault of depositing that money to the account other than the one for J.D.Ns Trading.
- [42] The court found that the fault has been a cause of Ntakirutinka vehicles seizure which vehicles were providing income to him, so bank has to be responsible for that act and pay back that money.
- [43] Regarding to what Ntakirutinka and Mukarugambwa are asking relating to exemption of the bank's interests because the above explained fault, the court found that it is better to verify other possible reasons not relating to the bank constituting Ntakirutinka's unpayment of loan.
- [44] The court found that when those vehicles seized on 14/08/2000 and on 14/09/2001 because of the debt equivalent to 28.000.000 rwf that Nsengiyumva was asking him to pay, Ntakirutinka was yet able to pay the whole bank's loan, which was supposed to be paid by 25/07/2000, which means that the seizure is not the only reason to have made Ntakirutinka incapable to pay the bank's loan.
- [45] In his case file in the High Court, Me Mutembe the deadline came to expire when Ntakirutinka had already paid 50% of the loan and following changes in international transportation where Comesa country members decided that any vehicle circulating to his territory will not exceed 30 tons, and this was a big reason to have not gained the expected income for Ntakirutinka.
- [46] As Me Mutembe said the above explained reason had a big impact to the business activities for his client (force majeure), where they asked the court to confirm interest relating to the loan, but the High court confirmed well that the above explained reason could not affect the implementation of loan contract. 8

Page 9

- [47] The court found that even if at this level Ntakirutinka did not consider raising that issue he knows very well that there are many reasons other than this not relating to the vehicle seizure to have not paid the loan

- [48] The court found that the money equal to 19.000.000 rwf above said deposited to the account with mistake was not only reason to justify Ntakirutinka's vehicle seizure since Nsengiyuma was asking him to pay 28.000.000 rwf for total price of vehicles imported, which means that there is other 9.000.000 rwf to be paid, but from that amount Ntakirutinka paid hand to hand with 3.200.000 rwf Uzabumwana, the remaining amount was 5.800.000 rwf and the bank had no responsibility for this.
- [49] The court found that what Ntakirutinka and Mukarugambwa are asking in the appealing level to be exempted all interests relating to the loan because vehicle seizure are not legally based since there are other above explained reasons to have rendered Ntakirutinka incapable to pay, so he has to be responsible for that act.
- [50] Regarding the fault of the bank to have not followed its mortgage, article 598 of the civil code of law book III says that: "a mortgage on the mobile thing gives a right to whom to be paid (créancier) of being paid before others", article 602 of the above law says that this right is possible in case of when he received that thing given in the mortgage or if kept by another person ("le créancier ne peut exercer les droits que le gage lui confère contre le débiteur et contre les tiers, que si l'objet du gage a été mis et est resté en sa possession ou en la possession d'un tiers convenu entre les parties").
- [51] The court found that while GT BANK says that mortgage as stated in the loan contract wasn't recorded in the proper books since they were not present in the court, Ntakirutinka and Me Mutembe weren't able to provide any evidence to deny this, the court has to confirm that the bank has committed any fault for not having registered mortgage.
- [52] The court found that the bank committed any fault for not having followed vehicles seized by Nsengiyuma since those vehicle were not in the hands of the banks, and were not registered anywhere to allow the bank to follow its rights as stated into the mortgage contract.
- [53] The court found that even if the bank has not committed any fault on the issue of following its mortgage, its request in the cross appeal that Ntakirutinka and Mukarugambwa have to be ordered to pay the loan equivalent to 53.912.171 rwf accounted until the 31/01/2011 it cannot be awarded its requests because of its role as highlight above as a cause of seizure of lorries which generated interests for Ntakirutinka, the reason why its loan was not regularly paid.
- [54] Following the explanations given on the responsibility of FINA BANK and Ntakirutinka in on the issue of vehicles seizure providing income to Ntakirutinka, the court found as confirmed by the High Court but upon different reasons, Ntakirutinka and Mukarugambwa have to benefit the removal of interests followed FINA BANK case submission on 16/10/2006, ordered to pay 23.129.885 rwf of the total loan and related interests accounted up to 26/10/2006. 9

Page 10

3° To know if FINA BANK and Uzabumwana have to pay interests that Ntakirutinka didn't get following to two vehicle seized, civil damages, court fees and procedural fees.

[55] Ntakirutinka says that interest asked are related to the income he could get from the two vehicles seized on 19/08/2000 and 14/09/2001 up to when they were sold on 16/01/2008.

[56] As he said one vehicle passed over 2.678 days without operating, another 2.308 days without any operation done, which means that they could make over 498.000.000 rwf accounted to the price of 100.000 rwf per day.

[57] He's asking also civil damages of 10.000.000 rwf because of the loss they had and 30.000.000 rwf of court and procedural fees form the year 1999 up to when the judgment was rendered because he was assisted by three (3) lawyers' analysed different documents and long time.

[58] GT BANK says that Ntakirutinka has to pursue Uzabumwana who gave wrong information instead of pursuing the bank. THE VIEWS OF THE COURT

[59] Regarding the loss occasioned by the seizure of his vehicles, the court found that Uzabumwana in asking to be paid the money knowing well that the money is not relating to him, this had affected the business of Ntakirutinka and occasioned a big loss.

[60] The court found that the fact that bank deposited the money to the account other than the one for beneficiary and has to take responsibility to assist Ntakirutinka to come out of that loss following the article 258 of the civil code of laws stating that "any act of person affecting another the person who committed that act has to be responsible to repair damaged things".

[61] In stating that loss, the court found no reason to base on the price of 100.000 rwf each day that Ntakirutinka said since there is no evidence provided, but the court has to base this of the contract presented between him and Astaldi Rwanda on 21/08/1996 showing that they should pay 70.000 rwf per day excluding the driver salary, and repairing fees (frais de réparation), and taxes relating to those vehicles seized, court decides that one vehicle was bringing 50.000 rwf which means 2 were bring an amount of 100.000 rwf each day.

[62] The court found in fixing that loss, it has to be shown that Ntakirutinka did not do anything after being informed by Nsengiyumva that he has paid to the account other than the one for J.D.Ns Trading in order to bring back the money that was paid to the account of Uzabumwana, either to ask the FINA BANK to pay back that money, or to pursue Uzabumwana, which could reduce the loss he had.

[63] Following on the above said, the court found that the loss that Ntakirutinka is asking has to be accounted at 365 because if he could arrange the issue between and Nsengiyumva he could not meet such big loss until when the vehicles were sold, the total amount to be paid: 36.500.000 rwf (50.000 rwf x 2 vehicles x 365 days), because of responsibility of each one and

Page 11

Uzabumwana individually will pay 4/5 of total amount, which means 29.200.000 rwf, and GT BANK to pay 1/5 of total amount (7.300.000rwf).

- [64] Regarding the civil damages that Ntakirutinka asked, the court found that all faults that Uzabumwana and GT BANK committed are equivalent to 3.000.000 rwf to be paid by Uzabumwana and GT bank in the following terms: Uzabumwana 4/5 equal to 2.400.000 rwf and GT BANK 1/5 equal to 600.000 rwf fixed in the judge appreciation.
- [65] Regarding the court and procedural fees asked by Ntakirutinka and Mukarugambwa, the court found that have to be 1.500.000 rwf for both jurisdiction levels, Uzabumwana to pay 1.000.000 rwf and GT BANK 500.000 rwf. III. THE DECISION OF THE COURT
- [66] Confirms that the appeal of Ntakirutinka and Mukarugambwa has merit in part.
- [67] Confirms that the appeal of GT BANK has no merit.
- [68] Orders Ntakirutinka and Mukarugambwa to pay GT BANK the loan of 23.129.885 rwf as ordered in the Commercial High Court.
- [69] Orders GT BANK to give back to Ntakirutinka an amount of 19.000.000 rwf deposited to the account of Uzabumwana instead of being the account of JDN trading.
- [70] Orders Uzabumwana to give GT BANK an amount of 19.000.000 rwf deposited in his account.
- [71] Orders Uzabumwana to pay to Ntakirutinka an amount of 3.200.000 rwf received hand to hand illegally.
- [72] Orders GT BANK and Uzabumwana to pay jointly (in solidum) 2/3 of court and procedural fees that Ntakirutinka ordered to pay in the judgment RCAA 0051/08/CS, equivalent to 1.200.000 rwf
- [73] Orders GT BANK and Uzabumwana to pay to Ntakirutinka an amount of 36.500.000 rwf of the interests loosed because of his vehicles seized, GT BANK will pay 7.300.000 rwf, and Uzabumwana will pay 29.200.000 rwf.
- [74] Orders GT BANK and Uzabumwana to pay to Ntakirutinka an amount of 3.000.000 rwf of civil damages, Uzabumwana will pay 2.400.000 rwf, and GT BANK will pay 600.000 rwf.
- [75] Orders GT BANK and Uzabumwana to pay to Ntakirutinka and Mukarugambwa 1.500.000 rwf of court and procedural fees for both levels, Uzabumwana will pay 1.000.000 rwf, and GT BANK will pay 500.000 rwf.
- [76] Orders GT BANK and Uzabumwana to pay court fees equivalent to 42.550 rwf. 11

Page 12

12

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/7640/7921>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ntakirutinka-v-gt-bank-formerly-fina-bank-formerly-bacar-bankliability-supreme-court-2014>

Prepared on 13 October 2026 · Esheria