

RWANDA / JUDGMENT

# FINA BANK v. KAYIRANGWA

RCOMA 0067/12/SC

## COURT

Supreme Court

## DECIDED

11 April 2014

## CASE / FILE NUMBER

RCOMA 0067/12/SC

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## FINA BANK v. KAYIRANGWA

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### Text

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FINA BANK v. KAYIRANGWA [Rwanda SUPREME COURT – RCOMA 0067/12/SC (Havugiyaremye, P.J., Mukandamage and Kayitesi, J.) April 11, 2014] Commercial procedure – Application for opposition of the judgment – If there is no evidence proving that the defendant was notified that the case was decided, he/she may apply for its opposition – The fact that the file contains the documents demonstrating that the case was decided, and get notified through unknown address, it means that the party to the case knew it since he submitted to the court submissions lodging an application for opposition of the judgment. Law n° 18/2004 of 20/06/2004 relating to the civil procedure, article 158; Facts: FINA BANK sued Kayirangwa and Nkurunziza before the Commercial High Court requesting them to pay the debt and its interests amounting to 25.893.000 Rwf resulting from the loan he was given. The court ordered them to pay to FINA BANK 35,525,150 Rwf and 500,000 Rwf for the procedural and advocate's fees. Kayirangwa also seized that court applying the opposition of the judgment, and her children intervened in that case, but these applications were declared inadmissible since she failed to prove the exact date she was notified of the decision of the judgment for the court to know whether she lodged her claim within the period provided for by the law. Kayirangwa appealed before the Supreme Court

arguing that the court knowingly ignored the law, and it requested her to reveal the evidence about when she got informed of the decision of the judgment while she was not notified of it by the ones whom the law provides for. The counsel of Kayirangwa says that explains that Kayirangwa was tried in her absence, she was not notified of it, and that FINA BANK did not request for its execution. The one counsel of the ones who intervened in the case, says also that the period of fifteen days provided for by the law for making an application for the opposition of the judgment has to run from the time she bought the copy of the judgment in the court since she was not notified of it. The counsel of FINA BANK says Kayirangwa's claim has not to be admitted as the Court has decided it since the act of executing the judgment was published in news paper but she did it when the legal period of fifteen days were expired. With regard to the cross appeal made by FINA BANK, the counsel on its behalf says that the court has to decide Kayirangwa's appeal, claiming that what FINA Bank Ltd requests has not to be considered since to make an appeal is the right of the party to the case. Held: 1. Basing on the date proving the time the application for opposition was made, it is evident that that application was lately made, the period of 15 days provided for by the law were expired, thus it has not to be admitted and get analyzed. Appeal has no merit. Cross appeal has merit. Court fees to the appellant.

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Statutes and statutory instruments referred to: Law n° 18/2004 of 20/06/2004 relating to the civil procedure, article 158 No Cases referred to:

## Judgment

I. BRIEF BACKGROUND OF THE CASE [1] FINA BANK which became Guaranty Trust Bank Ltd, lodged a claim in Commercial High Court requesting the payment from NKURUNZIZA Daniel and KAYIRANGWA Colette his surety, of the debt and its interests amounting to 25,893,000 Rwf, resulting from the loan it has given to him, the case was decided in default of the defendants but they were legally summoned with unknown address, and the court ordered them to pay to FINA BANK 35,525,150 Rwf they owed to it when the case was tried, and 500,000 Rwf for the procedural and advocate's fees. [2] KAYIRANGWA Colette made an application for the opposition of the judgment, and her children above mentioned intervened, the Commercial High Court decided her claim, together with those of those of who intervened which related to it, inadmissible since she failed to prove the exact date she was notified of the judgment RCOM 0178/10/HCC to know whether she lodged it within fifteen days provided for by the law. [3] The court refused to consider the date on which KAYIRANGWA bought the copy of the judgment as the date on which he got the knowledge of that judgment; it states that it may be in contradiction with the article of 158 of the no 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure. [4] KAYIRANGWA appealed before the Supreme Court arguing that it knowingly ignored the law, it requested her to provide the evidence about when she got informed of the decision of the judgment while she was not notified of it by the ones whom the law provides for, and that it did not prove the ground on which it based in deciding that considering that she get notified of the judgment on the day of she bought the copy of the judgment would contravene

with the article 158 of the Law no 18/2004 of 20/06/2004 above mentioned. [5] The trial of the judgment was held in public on 11/03/2014, KAYIRANGWA Colette was represented by Me NKEZA SEMPUNDU Clément, her children who intervened were represented by Me NTIHEMUKA Clément while Guaranty Trust Bank Ltd was represented by Me NDAGIJIMANA Emmanuel

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### II. ANALYSIS OF THE LEGAL ISSUES

- a. Knowing whether KAYIRANGWA Colette's application for the opposition of the judgment RCOM 0178/010/HCC was lodged in the legal period. [6] Me NKEZA who pleads on behalf of KAYIRANGWA says that the article 158 of the Law no 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force when she made the opposition of the judgment, which provides for the time limit in which the defendant whose case was decided in his/her absence may oppose it, which starts to run from the day he/she was personally notified of its decision, if he/she was not notified, the time starts to run from the date on which he/she knew about the first act of the execution of judgment. [7] He explains that KAYIRANGWA was tried in her absence, she was not notified of it, and that FINA BANK did not request for its execution, so the fact that the court decided that she failed to provide an evidence of whether she made her application for the opposition of the judgment within fifteen days from the time she was notified of the judgment which is knowingly ignoring that she was not notified of the judgment, thus she cannot prove what has not happened. [8] Me NKEZA says again that it is not understandable why the court did not consider the date on which KAYIRANGWA bought the copy of the judgment since it is when she came to the knowledge of its decision; thus the fact that the court said that nothing proves that she personally bought it, it is not understandable in case that copy is written under her names, and that the necessary is to get knowledge of the decision of the judgment. He realizes again that the fact that before that time KAYIRANGWA had no knowledge about the decision of the judgment has not to be asked of it when the law does not requires it to her. [9] He says again that the fact that KAYIRANGWA was summoned with unknown address and that FINA BANK says that it notified her the judgment through unknown address, it did it knowingly since she did not change her residence, she came to the knowledge of the judgment in which she was sued, when she looked for the title deeds of the house, and get informed by the administration that she has the problem with the bank that she may go to the bank and tells her that there has been the judgment and there after goes to buy the copy of its decision. [10] Me NTIHEMUKA who pleads for the ones who intervened, he too says that fifteen days provided for by the law for making an application for the opposition of the judgment has to run from the time KAYIRANGWA personally got notice of the judgment decided in her absence, that's to mean the date on which she bought the copy of the judgment in court since she was not notified of it. [11] Me NDAGIJIMANA who pleads for Guaranty Trust Bank Ltd says that KAYIRANGWA was summoned to appear in the judgment whose decision she made an application for the opposition through the public notice as it was provided for by the article 34 of the Law no 18/2004 of 20/06/2004

relating to the civil, commercial, labour and administrative procedure and the case was decided on 31/10/2010, the court bailiff started to provisionally execute it since it provided for the provisional execution, he notified it to KAYIRANGWA through the public writ of the verdict which was published in the newspaper Imvaho Nshya n° 2122 of 15-17/08/2011.

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- [12] He says that that act of executing the judgment which has been published in Imvaho is that from which KAYIRANGWA based on to make the opposition of the judgment, he has fifteen days from 18/08/2011 for her to make an application for the opposition the judgment, the evidence proving that she got knowledge of that judgment on that date is that on 04/09/2011 she wrote to FINA BANK notifying it that she went to make an application for the opposition of that judgment, and she really did it on 02/10/2011, but she did it when the period of fifteen days was expired, thus her claim has not to be admitted as the Commercial High Court has decided it. [13] Me NDAGIJIMANA says again that KAYIRANGWA cannot say that there has been an orthographic error in the letter she wrote to FINA BANK on 04/09/2011, instead of writing the date of “04/10/2011” she wrote “04/09/2011” since in that letter she said that she went to make an application opposing that judgment and she lodged the application for opposition on 02/10/2011. [14] The article 158 of the Law no 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force when KAYIRANGWA made the opposition of the judgment RCOM 0178/010/HCC, which provides for that “the defendant who did not appear in the judgment and lose it may make an application for opposition within fifteen
- (15) days from when a defendant in person gets notice of the judgment. If the notice of judgment was not served on the defendant in person, the application for opposition may be made within fifteen (15) days from the date the judgment came to the knowledge of that person who was notified. If it cannot be established that he/she was notified of the judgment in person, he/she may make an application for opposition within fifteen (15) days from the date on which he/she knew about the first act of the execution of judgment. In no case shall an application for opposition be received if the judgment has been executed. [15] The documents which are in the case file demonstrate that KAYIRANGWA defaulted when the judgment RCOM 0178/10/HCC was decided and she lost it, but she was legally summoned with unknown address, that she was notified of that judgment through unknown address by FINA BANK as it is on the “writ of the verdict by an unknown domicile” of 02/08/2011 made by the Professional Court Bailiff, and it was published in Imvaho Nshya no 2122 of 15 – 17 August 2011. [16] The court realizes, after that the notification of the judgment through unknown address was published, KAYIRANGWA got the knowledge of it because on 04/09/2011 Me NKEZA Clement who pleads on her behalf prepared the court submissions for opposing that judgment and notified them to FINA BANK saying that whom he represented was going to lodge a claim, which was lodged on 02/10/2011. [17] Basing on both dates, the court realizes the application for opposition of the judgment made by KAYIRANGIRWA was made lately, fifteen days provided for by the law were expired thus it has not to be admitted

and analyzed, therefore her appeal is baseless.

- b. The cross appeal made with Guaranty Trust Bank Ltd [18] Me NDAGIJIMANA who pleads for Guaranty Trust Bank Ltd says that the court has to decide that the appeal made by KAYIRANGWA is baseless, and pay to it 500,000 Rwf for the advocate's fees at the appeal level.

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[19] Me NKEZA who pleads on behalf of KAYIRANGWA says that what Guaranty Trust Bank Ltd requests has not to be considered since to make an appeal is the right of the party to the case, that is why she may be punished for it, but in case the court find KAYIRANGWA's appeal to have merit, she may be awarded 500,000 Rwf. [20] With regard to the counsel's fees that Guaranty Trust Bank Ltd requests to KAYIRANGWA, the court realizes that it deserves it, but since it does not demonstrate how it calculated them; the court provides with it 400,000 Rwf in its discretionary power. III. THE DECISION OF THE COURT [21] Decides that the appeal made by KAYIRANGWA Colette has no merit; [22] Decides that the cross appeal made by Guaranty Trust Bank Ltd has merit; [23] Orders KAYIRANGWA Colette to pay to Guaranty Trust Bank Ltd 400,000 Rwf for the advocate's fees. [24] Orders KAYIRANGWA Colette to pay 20,800 Rwf for the court fees within eight days; if she fails, they will be taken from her properties.

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