

RWANDA / JUDGMENT

RUBAYIZA v. MICROFINANCE INKINGI**R.COMA 0025/15/HCC****COURT**

Commercial High Court

DECIDED

15 May 2015

CASE / FILE NUMBER

R.COMA 0025/15/HCC

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Text**Page 1**

RUBAYIZA v. MICROFINANCE INKINGI [Rwanda COMMERCIAL HIGH COURT – R.COMA 0025/15/HCC (Nsengiyumva, P.J.) 15 May 2015] Contract law – Requests of the interests rate by the surety – They cannot be downsized as the debtor accepts the debt as he did not appeal against the rate and that the surety accepted to secure the loan well knowing the interests rate of the loan. – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 167, Law N° 45/2011 of 25/11/2011 governing contracts, article 64 and 113 and Law N° 10/2009 of 14/05/2009 on mortgages, article 4 and Law of 30/07/1888 governing contract or obligations, article 556. Damages – Procedural fees – The fact of his default as a guarantor while they were given prior notice indicates that the awarded damages have merit – Law of 30/07/1888 governing contract or obligations, article 560. Damages – Moral damages and advocate fees – Damages must not be awarded if they not motivated. However, appeal filed by the other party leads to the award of advocate fees when it is not unfounded – Law of 30/07/1888 governing contract or obligations, article 258. Mortgage contract – Action in connection to the securities – This action cannot be examined in case it is not established that the mortgage is not registered in the mortgage registered in accordance with the law – Law N° 10/2009 of 14/05/2009 on mortgages,

article 4. Facts: In the judgment R.Com 0181/14/TC/Nyge between MICROFINANCE INKINGI Ltd and Rubayiza Médard, Nyarugenge Commercial High Court ordered him and his surety to pay 20.433.124 Frw for the debt and 250.000 Frw for procedural fees and 5.300 Frw for advocate fees. He appealed to the Commercial High Court requesting the downsizing of the interest rate to 18% per year as the contract contained lesion due to his weakness limited means or knowledge and there was agreement of the excessive interest and Rubayiza Médard and Mukamfizi, his guarantors were expecting their house to be renovated due to the weakness caused by the problem they were having as well as limited knowledge in regard to the loan contracts and they accepted to be his guarantors while their houses were not renovated. He submitted further that MICROFINANCE INKINGI Ltd was awarded damages while it is it which played an active role in his default. The representative of MICROFINANCE INKINGI Ltd submits that the interest's rate must not be downsized because it is not Ruayiza Medar to whom the loan was offered but rather the creditor new their mode of computation since he is a bank employee. He requested moral damages as well as advocate fees. Those who intervened also requested the downsizing of the interests rate given they have rights over the mortgaged property. MICROFINANCE INKINGI Ltd responded that this appeal has no merit.

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Held: 1. The interests cannot be downsized because the debtor accepted it as evidenced by the fact that he did not file an appeal against it while the appellant know, his guarantor, who requests the downsizing signed on the contract well knowing the interests therein.

2. They cannot requests the downsizing of the interests as long as they are not debtors to the loan contract hence they lack interests in the proceeding.
3. Moral damages that MICROFINANCE INKINGI Ltd is demanded to pay must not be awarded because they are not motivated. However, it must be awarded advocate fees because appeal forced it to hire an advocate.
4. Appeal requesting the execution of the mortgage only on the potion of Rubayiza Médard and Mukamfizi Anastasie cannot be examined since there is no evidence demonstrating that this mortgage was registered in mortgage registry in accordance with the law so as to be valid apart from the provisions of the contract which declares there is a constitution of the mortgage. In addition, the mortgage is not the subject matter of the case. Appeal has no merit. Cross appeal filed by MICROFINANCE INKINGI Ltd has merit in part. Cross appeal is not examined. Appealed judgment not changed apart from advocate fees which accrues. Appellant ordered to pay advocate fees to the respondent Statutes and statutory instruments referred to: Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 167. Law N° 45/2011 of 25/11/2011 governing contracts, article 64. Law N° 10/2009 of 14/05/2009 on mortgages, article 4. Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 3. Law of 30/07/1888 governing contract or obligations, article 258, 560 and 556. No cases referred to

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Rubayiza Médard appealed against the judgment R.Com 0181/14/TC/Nyge rendered by Nyarugenge Commercial Court whereby MICROFINANCE INKINGI Ltd sued him alongside Rwigema Baudouin and Mukamfizi Anastasie for debt and interests. Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane voluntarily intervened in the case. The Court ordered Rwigema Baudouin, Rubayiza Médard and Mukamfizi Anastasie to

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pay 20.433.124 Frw to MICROFINANCE INKINGI Ltd for the debt and Frw 250.000 for procedural fees and 5.300 Frw for court fees. On May 6, 2015 there was a public hearing Rubayiza Médard pleading on his own, MICROFINANCE INKINGI Ltd represented by Counsel Ruzindana Ignace, Rwigema Baudouin, Mukamfizi Anastasie, Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane represented by Kayitana Dominique Savio, the counsel. Rubayiza Médard explains that his appeal aims at requesting the Court to downsize the interests which had been computed on the interests rate of 18% per year since the contract contains clauses lesion, limited means or restricted knowledge and there the loan was granted on excessive interests rate. In addition, both Rubayiza Médard and Mukamfizi Anastasie, his guarantors, were expecting to the renovation of their house due to their weakness caused by the problems they had and the limited knowledge in regard to loan contract and hence accepted to be his guarantors but the house was never renovated. Rubayiza Médard further declared that he appealed for MICROFINANCE INKINGI Ltd was awarded damages while it is it which played an active role for his default since it failed to notify to his guarantors that its employees Rwigema Baudouin defaulted for them to pay and it led to excessive accrual of the interests. Ruzindana Ignace, the counsel, replied that the interest would not be downsized because it is not him to whom the loan was given because it was given to Rwigema Baudouin who was in the management of MICROFINANCE INKINGI Ltd and who knew the modalities of the interests computation and that Rubayiza Médard accepted to be his guarantors while well knowing the interests rate as it was embodied in the contract as he signed it. Counsel Ruzindana Ignace states that it is Rubayiza Médard and Mukamfizi Anastasie, as guarantors, who were under obligation of knowing whether the loan is being regularly paid and paying in case of Rwigema Baudouin defaults. Counsel Ruzindana Ignace states that MICROFINANCE INKINGI Ltd requests at appeal moral damages and advocate fees. Counsel. Kayitana Dominique Savio states that Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane request in their cross appeal the downsize of the interests since they have right over the mortgaged property as it is a family property over which they have rights as rightful heirs. He added that at the time of the execution of the mortgage, MICROFINANCE INKINGI Ltd would take into consideration the portion of Rubayiza Médard and MUKAMFIZI Anastasie and Mukamfizi Anastasie only. Counsel Ruzindana Ignace states that their appeal has no merit as the issue is not about mortgage, rather the loan. [2] The Court must in this case analyse the following legal issues: -. Whether interests may be downsized to 18% per year -. Whether damages were not

justified -. Whether damages at appeal level for advocate and moral damages must be awarded -. Whether in the course of the execution of security, MICROFANCANCE INKINGI Ltd would pursue only the portion of Rubayiza Médard and Mukamfizi Anastasie over which they have rights as rightful heirs. II. ANALYSIS OF LEGAL ISSUES

1. Regarding downsizing interests to 18% per year

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[3] Article 64 of Law N° 45/2011 of 25/11/2011 governing contracts provides 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. Article 113 of the same Law provides that contracts shall have effect on contracting parties. Article 560 of the Civil Code governing contracts or obligation provides that provides that the surety is obliged to the creditor to pay only in default of the debtor. Article 167 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that the respondent may also file a cross appeal. [4] Rubayiza Médard states that he appealed for the court to downsize the interest's rate to 18% per year since there is lesion in the contract that Rwigema Baudouin signed due to his weak position, limited knowledge or means and there was fixed excessive rate interests. In addition, Rubayiza Médard and Mukamfizi Anastasie, his guarantors were expecting the renovation of their houses due to the weak position due to the problems they had as well as limited knowledge in connection to the loan contracts. However, their houses were not renovated. [5] Counsel Ruzindana Ignace states that the interests must not be downsized because it is not Rubayiza Médard who was given the loan but rather Rwigeman Baudouin who was a member of the management of microfinance inking Ltd and who knew the modalities of the computation of the interests and Rubayiza Médard knows the rate of interests in the contract because he signed it. [6] Counsel Kayitana Dominique Savio states that Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane file the cross appeal requesting the downsizing the interests because they have rights over the mortgaged property as it is the family house over which they have rights as heirs and it is not allowed to be mortgaged. [7] The Court finds that the interests computed must not be downsized because Rwigema Baudouin to whom the loan was given has not launched an appeal, that means that he accepted the ruling while RUBAYIZA Médard is his guarantor who also signed the loan contract which he knew the interests therein because the surety gets bound to pay based on the principal debt that was given to the debtor. [8] The Court finds that appeal filed by Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane about downsizing interests on loan given to Rwigema Baudouin must not be examined as they have no interests of filing a claim as they did not sign the loan contract. Regarding the fact of not awarding damages [9] Article 556 of the Civil Code Book III provides that The indefinite guarantee of a principal obligation extends to all the accessories of the debt, even at the expense of the first application, and to all those subsequent to the information given to the surety. [10] Rubayiza Médard states that

MICROFINANCE INKINGI Ltd was awarded damages while it is it which played an active role in its default since it did not make early notification of the default of the their employee Rwigema to the sureties for them to pay and it led to the accrual of the interests.

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- [11] Counsel Ruzindana Ignace argues that Rubayiza Médard and Mukamfizi Anastasie, as sureties, they're the ones with responsibilities of knowing whether the debt is being regularly paid and hence pay in case of default of Rwigema Baudouin. [12] The Court finds that the procedural damages equivalent to 250 000 Frw as imposed are fair because Rwigema Baudouin defaulted and that Rubayiza Médard and Mukamfizi Anastasie, as his guarantors, do not pay while they were served a notice in the year 2013 and it led to the court proceedings. Regarding award of moral damages and advocate fees [13] Article 258 of the first book of the civil code governing contract or obligations provides that that "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." [14] Ruzindana Ignace states that MICROFINANCE INKINGI Ltd requests at appeal level an order against Rubayiza Médard in order to pay moral damages equivalent to 1.000.000 Frw as well as advocate fees of 700.000.Frw. [15] The Court finds that the moral damages requested by MICROFINANCE INKINGI Ltd must not be awarded as they were not motivated. The Court however finds that Rubayiza Médard must pay advocate fees at appeal equivalent to 500.000 Frw since his appeal led the other party to filing an appeal while the service offered must be paid. However, it is awarded in the discretion of the court since the amount requested is excessive.
4. Regarding whether to pursue the mortgage on the portion over which RUBAYIZA Médard and MUKAMFIZI Anastasie have right as heirs. [16] A mortgage is considered to be valid when recorded in the mortgage register in the office of the Registrar General. Article 3 of Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that every party must prove the facts it alleges. [17] Counsel Kayitana Dominique Savio states that Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane as children of Mukamfizi Anastasie as well as Rubayiza Gerard and their grandchild file a cross appeal requesting that in the case of execution of the mortgaged house at the time of the loan offer, MICROFINANCE INKINGI Ltd would pay attention to the portion of Rubayiza Médard and Mukamfizi Anastasie during succession since they constituted it as a mortgage without their agreement while as co- owners. [18] Counsel Ruzindana Ignace states that their cross appeal has no merit as the subject matter is not mortgage, rather the debt. [19] The Court finds that it is not under obligation of examination of cross appeal filed by Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane in connection to the constitution of the mortgage since there is no evidence of its registration in the mortgage register for it to be valid apart from only stating in the contract that there is a constitution of the mortgage of the house located at Ntyarusange. In addition, it is not

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the object of litigation in this case. This 5herefore cannot constitute reason to confirm the existence of the mortgage so as to have the base of examination about whether it was constituted in accordance with the law. III. THE DECISION OF THE COURT [20] Decides to to receive appeal filed by Rubayiza Médard but decides that it has no merit. [21] Accepts to receive cross appeal filed by MICROFINANCE INKINGI Ltd and decides that it has merit in part. [22] Decides that cross appeal filed by Bamurange Gerardine, Muberarugo Delphine, Ingabire Germaine, Ishimwe Alice and Rubayiza M.Diane is not examined. [23] Holds that the agreed interests are not downsized, that procedural fees as ordered were fair, that MICROFINANCE INKINGI Ltd is not awarded moral damages but Rubayiza Médard must pay advocate fees at appeal level equivalent to 500.000 Frw. [24] Holds that the ruling of the judgment R.Com 0181/14/TC/Nyge is not changed apart from advocate fees which accrue at appeal. [25] Orders Rubayiza Médard to pay 500.000 Frw to MICROFINANCE INKINGI Ltd for advocate fees. [26] Orders 75.000 Frw deposited by Rubayiza Médard as the court fees to go the public treasury.

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