

RWANDA / JUDGMENT

RWANDA DEVELOPMENT BOARD (RDB) v. GENERAL TECHNICAL CONSTRUCTION LIMITED (GTC Ltd)

R COM A 0296/13/HCC

COURT

Commercial High Court

DECIDED

20 September 2013

CASE / FILE NUMBER

R COM A 0296/13/HCC

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RWANDA DEVELOPMENT BOARD (RDB) v. GENERAL TECHNICAL CONSTRUCTION LIMITED (GTC Ltd)

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Text

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RWANDA DEVELOPMENT BOARD (RDB) v. GENERAL TECHNICAL CONSTRUCTION LIMITED (GTC Ltd) [Rwanda COMMERCIAL HIGH COURT – R COM A 0296/13/HCC (Niwemugeni, P.J.,) September 20, 2013] Insolvency Law – Procedure for Insolvency proceeding – Insolvency proceeding is only initiated only by filing a case to the court – Individuals entitled to initiate insolvency proceeding – Individuals entitled to initiate insolvency proceeding are creditors, debtors, the Board of Directors or one of them or Registrar General– Law N°12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency, article 16. Facts: In the name of its Chief Executive, RDB filed a case to the Commercial Court of Nyarugenge requesting it to decide that GTC Ltd went insolvent. The court ruled the claim of RDB inadmissible since article 16, paragraph 1 of Law N°12/2009 OF 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency which provides that insolvency

proceedings are commenced on application only. The application may be filed by the following persons: 1° creditors; 2° debtors; 3° members of the Board of Directors or one of them; 4° Registrar General. The court found that the Chief Executive of RDB is not entitled to file claims related to insolvency of companies. RDB appealed to Commercial High Court lamenting that the judge of first instance ruled inadmissible the claim filed in the name of its Chief Executive while he/she is entitled to by virtue of articles 23, 24 and 30 of Organic law n°53/2008. It, RDB, pleaded that those articles as they are three in number indicate that the Chief Executive Officer of RDB as the one in charge of control of all activities of RDB including Rwanda Commercial Registration Services Agency (RCRSA) is entitled to right of representing it in courts. Held: It was decided that the commencement of insolvency proceeding is only initiated by creditors, debtors, the Board of Directors or one of them or Registrar General. The Chief Executive Officer of RDB is not listed in among those three stated above who are entitled to initiate the commencement of insolvency proceedings. Furthermore, though the Chief Executive of RDB is entitled to its representation in courts, it is not the case with respect to the settling of issues related to insolvency; the law provides that those claims are filed by the Registrar General so long as the specific derogates from the general (*le particulier déroge au général*). Appeal lacks merit; Court fees to the appellant. Statutes and statutory instruments referred to: Law N°12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency, article 16. No cases were referred to.

Judgment

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I .BRIEF ACKGROUND OF THE CASE [1] RDB filed a claim against GTC Ltd in the case. R.COM 0379/010/TC/NYGE requesting the court to decide that the company went insolvent. [2] RDB filed that claim stating that it is its Chief Executive Officer who is entitled to file all claims the same as all the claims related to insolvency of the companies since the Service offered by the Registrar General had been transferred into RDB and transformed into one of its unities. Therefore, the Registrar General is no longer entitled to filing claims related to insolvency of companies. [3] The Commercial Court of Nyarugenge ruled inadmissible the claim of RDB because article 16 paragraph 1 of the law n°12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency provides that insolvency proceedings are commenced on application only. The application may be filed by the following persons: 1° creditors; 2° debtor; 3° members of the Board of Directors or one of them; 4° Registrar General. [4] Not satisfied of the ruling of the case, RDB appealed to this court on October 7, 2010 II. THE HEARING OF THE CASE [5] During the hearing of the case on May 26, 2011 RDB appeared represented by Sebazungu Alphonse while GTCLtd was pleading without a counsel. III. ANALYSIS OF LEGAL ISSUES The issue at hand is to know who, between the Chief Executive of RDB and the Registrar General, is entitled to file a claim related to insolvency of companies. [6] The counsel for RDB pleads that the judge of first instance ruled insdmissible the claim filed by RDB while Organic law n°53/2008 of 02/09/2008 governing RDB in its article 30 established the property and the staff for Rwanda

Commercial Registration Services Agency (RCRSA) and other institutions. He kept on arguing that article 24 of the same law provides for the Director in Charge of Private Sector who is also the one in charge of preparing all activities related to registration of commercial activities. Therefore, it implies that he is the one who is in charge of services RCRSA. He concluded that article 23 of the law establishing RDB confers the rights to its Chief Executive Officer to represent it in courts. [7] However, the courts finds without merit the ground of appeal of RDB since Organic Law governing RDB was enacted in 2008 which was subsequently followed by a specific law n°12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency while in that law specific persons who are entitled to file claims related to insolvency of companies and among those persons, the Chief Executive of RDB is not included. However, the Registrar General who is referred to as among those holding that right is included as indicated by article 16 of that Law which stipulates “insolvency proceedings shall be commenced on application only. The application may be filed by the following persons: 1° creditors; 2° debtor; 3° members of the Board of Directors or one of them; 4° Registrar General.”

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[8] The court findsa further that the fact that the Chief Executive of RDB has been entitled to represent it in the court does not mean that any other civil servant of RDB cannot be conferred the right to do so in some issues in case it is provided for by the law as it is the case in the Law n°12/2009 ryo kuwa 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency following principle that the Specific derogates from the general principle “le particulier déroge au général” IV. THE DECISION OF THE COMMERCIAL HIGH COURT [9] Admits ro receive the appeal filed by the Govenment of Rwanda but has no merit. [10] Upheld the ruling of the judgment R.COM 0379/010/TC/NYGE as decided by Commercial High Court of Nyarugenge on September 17, 2010. [11] Orders the Government of Rwanda/ RDB to pay the court fees amounting 11, 000, 00Frw. [12] Holds that it was not rendered on July 8, 2011 because the judge had backlogged work occasioned by the death of her child.

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