

RWANDA / JUDGMENT

RWANDA REVENUE AUTHORITY v. TOTAL RWANDA SARL/ENGEN RWANDA Ltd

RCOMA 0027/12/CS

COURT

Supreme Court

DECIDED

13 January 2012

CASE / FILE NUMBER

RCOMA 0027/12/CS

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RWANDA REVENUE AUTHORITY v. TOTAL RWANDA SARL/ENGEN RWANDA Ltd

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2012-01-13
- Case/document no.: RCOMA 0027/12/CS
- Collection: Supreme Court

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RWANDA REVENUE AUTHORITY v. TOTAL RWANDA SARL/ENGEN RWANDA Ltd [RWANDA SUPREME COURT – RCOMA 0027/12/CS (Mugenzi, P.J., Kanyange and Nyirinkwaya, J.) 13/01/2012]

Laws governing commercial court– Selling a company – Tax on shares and property that a company has sold- When a company is sold it does not mean that even all its properties are sold because a company has its own properties which are apart from that of shareholders’- Changing a name of a company and handing over shares are not commercial activities unless it is done by a company which normally sells shares as its business. Thus, those companies don’t pay taxes- law no 21/2012 of 14/06/2012 governing and conducting cases of civil laws, business and public service work article 9. Facts:TOTAL OUTRE MER SA had 25.749 whereas MOMAR NGUER had 1 share in Ste TOTAL RWANDA SARL. So they decided to sell these shares in TOTAL RWANDWA SRL and signed an agreement between TOTAL OUTRE MER SA, ENGEN INTERNATIONAL and ENGEN PETROLEUM. So, all shares of TOTAL RWANDA were sold to ENGEN INTERNATIONAL at

6.867.000 USD and the name changed from TOTAL to ENGEN. After making a thorough assessment, RRA informed TOTAL RWANDA SARL that it owed it a tax debt which was equivalent to 1.923.619.013 Rwf. So, TOTAL RWANDA took the case to High commercial Court asking for the tax omission. The court examined if there had been shares sale or property for TOTAL so that it would pay profit making and added value tax. Later, the court decided that TOTAL did not owe any tax to RRA because on property had been sold as RRA failed to prove any sale of property. Then, RRA also realized that a company is free from shareholder. Now that TOTAL has changed to ENGEN should not be blamed because RRA has given ENGEN RWANDA its tin number and it knew that it had changed a name from TOTAL to ENGEN RWANDA. Dissatisfied by this, RRA advanced the case to Supreme Court saying that TOTAL sold properties not shares according to how TOTAL explains. RRA said that the court would have confirmed that TOTAL sold all its properties and shares because a company has right to both its shares and properties. It also argued that what showed that the properties were sold is that CIT (corporate Income Tax declaration) of 2009 of ENGEN showed that TOTAL's properties were in financial state of the former company thus TOTAL/ENGEN RWANDA had to pay taxes it was taxed because it made some profit on shares it sold. RRA said that what happened is the sale of the whole company and the whole of its properties regardless of shareholders shares composing TOTAL and a company must be composed of at least 2 shareholders and this shows clearly properties that TOTAL sold. The TOTAL RWANDA SARL/ENGEN RWANDA Ltd lawyers said that nothing new RRA brought in its appeal because the contract made it clear that what was sold are shares and even

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law that governs companies states how shares are sold (article 75) Therefore, TOTAL OUTRE MER sold some shares it possessed in TOTAL RWANDA SARL which is different from selling the whole property company like vehicles, plots, accounts and so and so forth. Also MOMAR who had one share accepted the sale but the company remained with its properties which included plots, vehicles bien realizable, stock of oil and so and so forth. They are therefore wondering what TOTAL RWANDA SARL sold which can result into being being taxed while the one who did sale is TOTAL OUTRE MER. TOTAL/ENGEN expressed its concern on the matter and said that what was sold was shares because the company remained the same. This is different from selling the company property which include different items. It is wondering what it sold which can result into being taxed because the company which sold its property was TOTAL OUTRE MER, its share holder. TOTAL continued and said that its properties are registered to ENGEN and that the company name has changed and the name as intellectual property did not change. A friend of the court also expressed its concern making it clear that what was carried out between TOTAL and ENGEN was not commercial activities. Rather, it was handing over of shares between the two companies. This is because the activity was not carried out by a company which sells shares as its own business. Therefore, handing over of shares is not taxed. He continued saying that shares are not property of the company but property of share holders and these are the right people who can sell them. As far as properties are concerned, they belong to the company and when sold, it is the company that must pay taxes and taxes on shares must be paid by every share holder. On

this note, RRA said that the court friend would have assessed that question of finding out if there had been a sale of shares or properties because the company appears to have been sold and the lingering question is to know if all properties were sold. Held: There is no way RRA can say that all properties of the company were sold because the properties did not belong to share holders to the extent that he had right to sell them. They rather belong to the company and the company had legitimacy which is far different from that of any share holders'. Now that RRA does not show evidence that what happened is sale of properties of TOTAL RWANDA SARL, what should be based on is the agreement that shows that what happened is sale that made by TOTAL OUTRE MER, and this goes hand in hand with what the friend court view where he said that after his assessment he figured out that what happened was shares handing over. Appeal is no merit. court fees to the defendant. Statutes and Statutory instrument referred to: Law no 21/2012 of 14/06/2012 governing imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9. No cases referred to.

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Judgment

I. BRIEF BACKGROUND OF THE CASE [1] TOTAL RWANDA S.A.R.L was a company which was operated from the country and it was composed by 2 companies and these were TOTAL OUTRE MER S.A (de droit de Français) which had almost all shares because another share holder had one share which later sold it to MOMAR NGUER. On 30/07/2008 TOTAL OUTRE MER S. A, ENGEN INTERNATIONAL HOLDINGS (MAURITIUS) Ltd and ENGEN PETROLEUM LIMITED had a contract of buying some shares from TOTAL RWANDA S.A.R.L. Later on 27/10/2008, general meeting of share holders agreed on selling MOMAR NGUER share which belonged to TOTAL RWANDA S.A.R.L to TOTAL OUTRE MER SA. Also they agreed on selling of all shares TOTAL OUTRE MER had in TOTAL RWANDA S.A.R.L to ENGEN INTERNATIONAL HOLDING (MAURITIUS) Ltd at 6.867.000 USD. [2]

[2] ENGEN INTERNATIONAL HOLDINGS Ltd had bought all shares from TOTAL RWANDA S.A.R.L and gave one share Adams Soro to its general director. Later on 13/02/2009 the general assembly of all share holders decided to change the name to ENGEN RWANDA Ltd and it then registered to RDB (Rwanda Development Board)

[3] RRA (Rwanda Revenue Authority) later informed TOTAL RWANDA S.A.R.L that it owed taxes which was equivalent to 2.150.513.368 Rwf, and after the appeal, it was narrowed to 1.923.619.368 Rwf. TOTAL RWANDA S.A.R.L/ENGEN RWANDA Ltd went to High Commercial Court for omission of the tax. The court examined it, along with finding out if TOTAL RWANDA S.A.R.L properties or shares were sold which would be considered while taxing it value added tax and profit making tax.

[4] The court decided that the claim of TOTAL RWANDA S.A.R. L which later changed ENGEN RWANDA Ltd and said that the claim was illogical hence it was not supposed to pay any tax as it did not sell any property. This is because TOTAL OUTREMER S.A sold its shares that it

had in TOTAL RWANDA S.A.R.L to ENGEN INTERNATIONAL HOLDINGS Ltd. Now the accuser and the accused along with the court agreed on the fact that the company used its power it derived from being “actionnaire majoritaire” and changed it into ENGEN RWANDA Ltd. Therefore, what TOTAL OUTRE MERE SA did should not be based on while taxing TOTAL RWANDA S.A.R.L because RRA does not show if it sold any property. Though what it says can be considered, TOTAL RWANDA S.A.R.L should not be taxed because the contract is between the parties which signed it.

- [5] The court also explained that the fact that TOTAL RWANDA S.A.R.L informed that it was in “etas financier” of ENGEN RWANDA Ltd, RRA should not consider it saying that it sold its properties would be an estimation. Also, the fact that RRA said that after TOTAL OUTRE MER SA took over all shares of TOTAL RWANDA S.A.R.L, the latter had no power because no law governing a company of a single person. This cannot be considered by RRA while taxing as after all TOTAL OUTRE MER S.A is the one to be blamed for the act RRA based on while taxing. Even if the reason is considered, TOTAL RWANDA S.A.R.L should not be sued because it lost

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power based on law governing companies. The court said therefore that the company should have legitimacy which different from that of its members’.

- [6] The court also observed that selling of shares and changing the name of the company was considered and RRA gave TIN to ENGEN RWANDA Ltd knowing fully that it was TOTAL RWANDA SARL. RRA even did not show if this was done in a way of circumnavigating taxes.
- [7] RRA appealed to Supreme Court, stating that the previous judge ignored some evidence that show the sale of TOTAL RWANDA SARL property rather than its shares.
- [8] The court convened in public at different days whereby RRA was represented by lawyer KABIBI Speciose and lawyer GASANA Roul, whereas TOTAL RWANDA SARL/ENGEN was represented by lawyer NSENGIYUMVA Abel, Lawyer KAMANZI Desire and lawyer KABERA Jean Clause. Both parties agreeded on that there was no problem concerning tax based on awards (TPR), that the only the problem was to find out if there had been sale of properties or shares.
- (9) In this case analysis, the court decided to consult an expert lawyer who can help in the case in as far as laws is concerned. So, they decided on HABIMANA Pie a lecturer at Butare university as a friend the the court (amicuscuriae), he expressed his view on the case in a letter he sent to the court. The court requested both the defendant and the accuser to comment on the ideas that the letter contained and in the presence of the amicuscuriae on 24/11/2015. II. LEGAL ISSUE OF THE CASE To know if the high commercial court made a mistake on deciding if there had been no sale property to total rwanda sarl

- [10] RRA lawyers said that the court ignored evidence that shows that there had been selling of properties because shares are not kept in documents only. Rather it consists of all properties and debt of the company. Though the contract signed states that what happened was sale of shares according to article 2 chapter 1 where it states that what was sold was shares and other items related to it. This means that some properties were sold and these properties came from TOTAL RWANDA SARL to ENGEN RWANDA CASE RCOMA 002712/CS PAGE 4 SARL. Even when the properties were being handed over, it was requested that it would be registered to ENGEN RWANDA and even the debts were included (assets and liabilities) from TOTAL RWANDA SARL.
- [11] The lawyers also said when court confirmed that all shares were sold, it would also have gone ahead and said that even all properties because right one has on his shares equals to right he has on his properties. Again the fact that it is said that TOTAL OUTRE MER is the one which sold the shares, cannot change anything because the company was "actionnaire majoritaire" belonged to TOTAL RWANDA SARL. Another reason which cements that what happened is selling properties CIT (Corporate Income Tax) declaration for 2009 of ENGEN RWANDA Ltd showed that properties of TOTAL RWANDA SARL was in "etat financiers" of the former company and this also was confirmed by article 4 chapter 11 of law n0 16/2005 of 18/08/2005

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governing tax elaborates the origin of the profit. Therefore, TOTAL RWANDA/ ENGEN must pay the amount it was taxed because it made it clear stating that "any activity yielding profit"

- [12] It is also said that the previous judge decided that when TOTAL OUTRE MER had taken over all shares, TOTAL RWANDA SARL could not pay taxes because it would not be considered as a company according to article 1 which was governing companies at that time. But one should have in mind that it is only companies that pay taxes, but also all institution working like them or even cooperative whatever nature or category so long as they do business which yield profit according to article 38.6 of law 16/2005 of 18/08/2005 which governs tax. It was also mentioned that though TOTAL RWANDA SARL did not exist in as far as law is concerned, the judge observed that it acted as a company.
- [13] The RRA lawyers confirmed that though TOTAL RWANDA SARL was composed of 2 share holders, when selling TOTAL OUTRE MER, it did not set shares apart and this means that what happened was selling the whole of the company and its properties. Additionally, they say that law which was governing contracts when the sale was being carried out, it was stating that the company was supposed to be comprised of at least 2 share holders. But when TOTAL OUTRE MER was being sold, was one share holder and this means that what happened was done by TOTAL RWANDA SARL because they had been belonged together. They also said that in law of other countries, there is notion of corporate veil which retrieve taxes when a company tries to circumnavigate it.

- [14] They went on assessing the contract mentioned above which shows that when selling shares, also all properties of the company were sold because in article 6.4.1 says that that who bought knows the state of the properties and that the buyer will bear anything strange that may he notice after buying. In as far as article 5.1 (a) TOTAL RWANDA SARL was denied right to sell, lease or give out fixed properties. This shows that what was sold was not shares but properties and that means the whole company.
- [15] Besides, they gave out an example of a case conducted in America by Supreme Court (Frank Lyon] which confirmed that right of the company for selling its properties is characterized by the property owner. Therefore, TOTAL RWANDA SARL would not have accepted to be deprived of right to its propertis by ENGEN INTERNATIONAL but it has accepted because it had been sold and this is shown in article 5.1. (b),(c),(d), (e), (f) of the contract.
- [16] Furthermore, they explain that the reason ENGEN RWANDA Ltd is involved in the case is because TOTAL RWANDA SARL has vanished into a thin air. But though is not seen in document its properties are tangible and it was supposed to inform RRA that it had changed state. With this, RRA would have assessed according to article 10 of law no 25/2005 aforementioned. Also, now that in as far as law is concerned TOTAL RWANDA does exist since they are some debt that is due to pay, its properties should be confiscated according to law governing Value Added Tax (VAT). This law states that it should pay taxes for properties it sold.
- [17] The lawyers of TOTAL RWANDA/ENGEN RWANDA Ltd stresses that nothing new RRA brought in the appeal because the contract makes it clear that what was sold was shares and law govering companies states how shares are sold article 75, then TOTAL OUTRE MER sold it

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power it had in TOTAL RWANDA SARL is different from selling properties of a company which include vehicles, plots, accounts and so and so forth. More so, who had one share accepted the sale and that means that the company was not sold because the shares don't belong to it. It remained with different items like plots, vehicules, bien realisables and stock of oil. Now one can wonder what TOTAL RWANDA SARL sold which result into being taxed that way given that the company which sold is TOTAL OUTRE MER.

- [18] They say that if TOTAL RWANDA SARL had sold it properties, RRA would have taxed it tax which would be beyond 6 bellion Rwandan Francs. So it would be only two million. The lawyers again say that shares sale was carried out in other companies and RRA did not taxed them. With this therefore, it should not mistake share selling with that of properties because this belong to the company as it was confirmed by Supreme Court in England when conducting *Macaura v Nothern Assurance Company*. More to that, we can refer to a case conducted by *urukiko rusesa imanza* in France for the case of *Beauvallet v Naturana Company*. According to article 8 of law which was governing contract when buying and

selling were being carried out, it was stating that a company must have its own property.

- [19] Besides, they say that the reason why ENGEN RWANDA Ltd requested the property to be registered to it, is because the company's name had changed as it was discussed and agreed upon in article 4 of the agreement and this is intellectual property which belonged to TOTAL and it was not sold. They again insist TOTAL RWANDA SARL and ENGEN RWANDA Ltd had never existed as 2 different companies. Rather, etats financier of ENGEN belonged to TOTAL RWANDA which later changed to ENGEN.
- [20] In as far as article 6.4.1 of the contract RRA built its claim on they say that though the company is different from its share holders and has its properties. When stakeholders are to invest in the company that means that it does business and they gain profit (avoir dividendes.) Therefore, ENGEN INTERNATIONAL was supposed to find out the state of the company though it was not going to buy its properties. They agin say that the fact that there was what TOTAL RWANDA SARL was restricted from doing without permission of ENGEN INTERNATIONAL, was to avoid any change before the hand over of shares was carried out. They therefore found out that thecase of Frank Lyon v States because he two cases are very different.
- [21] In as far as principle of taxing is concerned, RRA say there was profit derived from the share selling which was not declared. When TOTAL RWANDA brought it to light that the shares it sold did not belong to it; that it belonged to TOTAL OUTRE MER and would not have been taxed given that it was a foreign company. So RRA changed tune and said it was taxing tax on sold property and that means that RRA was trying its best to gain tax of any kind.
- [22] They also found out that notion corporate veil should not be build on because it is law that mandates tax as it set in aricle 81 of constitution law and one cannot even base on article 4 of law no 16/2005 of 18/08/2005 aforesaid which states that whatever sold on Rwanda's soil. Therefore, RRA would not have requested notion of corporate veil.
- [23] In as far as nature of TOTAL RWANDA SARL is concerned, when the sale contract was being crafted on 30/07/2008. Its lawyers say that though the agreement was signed on that date,

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there were other creteria which was supposed to be in place so that buyng and selling would be complete as it is stated in article 4 of this contract which include the fact that all share holders of TOTAL RWANDA SARL would have consulted. This was crafted in a meeting of share holders that convened on 27/10/2008 where the buying and selling was agreed upon but it was finally agreed on in a meeting of 13/02/2009 and on 30/08/2008 TOTAL RWANDA was shared between 2 share holders: TOTAL OUTREME MER SA which had shares which was equivalent to 25.749 and MOMAR NGUER which had one share.

- [24] The amicuscuriae of the court gave out some ideas on two problems of the case. Based on article 4 and 37 of law no 16/2005 of 18/08/2005 which governs tax states that if the activity that was carried out was commercial, it yielded profit from Rwandan soil, so profit making tax should be given. However, an activity is regarded as a business when it is carried out by a person or a company who normally does it professionally. As far as TOTAL RWANDA SARL is concerned, he found out that activities which happened were handing over of shares in the company which later became ENGEN RWANDA Ltd. This should not be called business therefore because it was not done by a company that normally sells shares as its business. Even changing a name cannot be called a commercial activity because it cannot yield any profit to the company which does it. Also this should not omit any tax debt that TOTAL RWANDA SARL that would be having as business company.
- [25] On regards on Value Added Tax, the amicuscuriae of the court explains that considering when the activity was carried out, he finds out that article 2 of law no 06/2001 of 20/01/2001 that mandates Value Added Tax (this was mended in 2010) this taxes things and labour which carried out in Rwanda. Also materials and labour imported from out of the country. As far as article 3 of this law is concerned, it explains deeply to give or doing an activity but it summarizes that giving or doing some activity must be taxes Value Added Tax (VAT) whenever those items or labour given yielded profits. He even said that based on article 86 of law no 06/2001 OF 20/01/2011 aforesaid. So handing over shares is free from being taxed.
- [26] Explaining that shares are not property of the company but property of share holders and that these are people who can sell them, the amicuscuriae added that properties belong to the company and when sold, the company must pay taxes required whereas tax on the shares must be paid by share holders.
- [27] From the explanation of the amicuscuriae of the court, RRA says that what he says cannot be considered because nothing new it injects in the case. It again said that the fact that what happened is called shares handing over is absolutely wrong. What has to be considered should be finding out if the company made a business profit as it is stated in article 16 of law of law no 16/2005 which governs tax. This article must be considered with that of 5 and 37.
- [28] RRA observed that saying that what happened is shares handing over is contradictory to TOTAL RWANDA lawyers who said that evidence are there showing that what were sold were properties. They again said that what the court's amicuscuriae was supposed to explain was to find out if what was sold was shares or properties. Given that the company had been sold, one may wonder if you can sell the company properties and leave the company itself behind. So, the tax must be calculated as if the compay belonged to an individual. As far as VAT is concerned, it is caltulated basing on article 3 of law no 06/2001 that mandates it. However, the above

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mentioned article should be combined with 4.1 and that of 85.16 of the same law. Another important aspect of this case is that the fact that the the properties have been sold by a company which does not do it professionally, it does not mean that no tax would be paid so long as they made money.

- [29] RRA went on saying that article 86.7 , amicuscuriae instist on saying that the shares hand over should be free from paying VAT is not necessary because an article governing tax passed when tha agreement had been signed. Because it passed on 30/06/2010 and besides, VAT was not taxed for sale of shares but that of properties.
- [30] TOTAL RWANDA/ ENGEN RWANDA.s lawyer says that they agree with the court amicuscuriae where he said that there had been no property sale but that of shares and he described it as handing over. This means that if you do business, you pay tax for profit you make, not for your property. They went on and say that article 46 of law no 16/2005 concerning VAT mainly uses two words: property and shares. Now that the two words which are included in one article do not have the same meaning to the extent that one can mistake one for another. More to that, RRA should show an agreement showing the selling of TOTAL RWANDA SARL's property. VIEW OF THE COURT
- [31] What should be examined in this case and this is the one which was assessed in Commercial High Court is finding out if the selling of TOTAL RWANDA SARL's properties was supposed to be taxed is it was calculated because both sides agreed upon an amount of the tax as it was shown in the case decision that was appealed.
- [32] The contracted that crafted on 30/07/2008 indicates that it was concerned share sale but RRA says that it conceals properties sale of TOTAL RWANDA SARL. That contract shows that the seller was TOTAL OUTRE MER S.A one of two share holders that composed TOTALRWANDA SARL and the buyer was ENGEN INTERNATIONA (Mauritius) Ltd.
- [33] Article 8 of law no 06/1988 of 12/02/1988 that was governing business companies when the contract was being crafted, stated that a company had to own its own property. Article 122 of the same law stated that shares would be given to whoever whenever the company laws stated so. As far as laws governing TOTAL RWANDA SARL was concerned, state especially in article 11 that shares can be given out but this should be start from share holder of the company or company itself.
- [34] In as far finding out difference from share and property sale, document of those who analysed it shows that property sale must be between the company and the seller whereas shares sale must be between share owner and the buyer. They also show that any repercussion that might be resulted from the sale. More so, the company does not change but what happens is that it is gets new possessors. But when properties are bought, therefore, this creates a very negative impact on the existence of the company because a new company is born, just the one which receives the properties.

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- [35] While assessing the side of the buyer, buying shares means buying business in the company. Obviously these shares come from the seller and go to the buyer. Another important aspect of this buying and selling, is that the buyer does not choose shares he buys because in short he buys some part of business in the company.
- [36] Regarding this case, now that the contract presented was signed between TOTAL OUTRE MER (which was once TOTAL RWANDA SARL's share holder) and ENGEN INTERNATIONAL (Mauritius) Ltd, there is no way that saying that company's properties were sold. This is because they did not belong to the share holder thus it had no right of selling it, since the company was included in another one. More to that a company has legitimacy which is far different from its members. As the case that was appealed showed, according to the case *Salomon v Salomon and co Ltd* was a classic example in as far as this principle is concerned, and it can be applied whenever it is manifested that what happens was not lawful or conceal another crooked act and this what RRA insist on where it calls it "piercing the corporate veil." This notion was applied in many cases of different countries aiming at finding out who should be blamed for a certain or odd act between a company and the share holder; just between the real company and the one which affiliated to it.
- [37] Additionally, now that what happened is the sale of TOTAL RWANDA SARL's that means that even its properties were bought because these are among the shares. However, this does not mean that the whole company was sold specifically. Even experts who assessed it made it clear that selling a company shares goes in hand with its properties, debts and responsibilities. But the buyer bought properties, he chooses what to buy.
- [38] In the contract signed on 30/07/2008 article 2.1 states that the buyer will automatically own shares and profit derives from it, all power to the shares, debts and other responsibilities from the bought (subject to the provisions of this agreement, the vendor shall sell and the purchaser shall purchase the sale shares free from encumbrances and together with all benefits, rights, liabilities and obligations), This means that what happened was sale of TOTAL OUTRE MER's shares. But its properties remained in TOTAL RWANDA SARL which changed its name to ENGEN INTERNATIONAL Ltd, as it was agreed upon in the agreement that the name TOTAL will cease to be used. ENGEN RWANDA Ltd confirmed that even RDB was consulted in this activity. However, there documents that shows that that company continued doing business activities that were carried out by TOTAL RWANDA SARL (memorandum and articles of association were signed between two share holders who were in ENGEN RWANDA Ltd former TOTAL RWANDA S.A.R.L.).
- [39] Such explanations also were applied in case conducted by urukiko rusesa imanza in France where they discussed on the question of finding out if selling all shares of a company carried out with share holders should be considered as selling the whole properties of the company. Also this brings a question of knowing if that property sold was started by while establishing a new company that bought the property. That court decided that there no selling of the

property because the former company continued operating with full legitimacy. Again, the share holders do not have power of selling properties of the company sosiyete (Attendu qu'en statuant ainsi, alors que la société BAUVALLET n'ayant jamais cessé d'exister en tant que personne morale et

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les cédants des actions n'ayant pas qualité pour disposer de l'actif social, l'opération invoquée comme réelle par l'administration des impôts ne pouvait être retenue (...)1.

- [40] The idea of finding out if selling all shares of a company means selling all properties of a company, was also confirmed in a case conducted in France with urukiko rusesa imanza (Attendu que la Cour d'appel a retenu à bon droit qu'une cession de parts d'une société à responsabilité limitée, même si elle porte sur la totalité de ces parts, ne peut pas être assimilée à la cession du fonds de commerce constituant l'actif de la société). 2
- [41] The court again observed that the fact that RRA said that TOTAL RWANDA SARL should be taxed taxes discussed in this case because when the contract was signed it would not be told apart from TOTAL OUTRE MER (as it was one company) because this company was a sole share holder of the company was illogical, because apart from saying it, this is baseless in as far as laws is concerned because a company has legitimacy which is far different from that of its member's. Though the claim of RRA can be considered, the solution would have been termination of the company as it was stated in article 45 of law no 06/1988 of 12/02/1988 that mandated business companies when selling of the shares when buyind and selling were carried out. That means the the company was no more. Those who analysed this case when the when the properties of the campany fell on the hands on the shareholder, it meant that the campany was ceased to exist. In that context, TOTAL OUTRE MER was supposed to be sued because it has omwned the company because it was manifested, the company must have its legitimacy which is far different from its members'. Therefore, wrong doings of TOTAL OUTRE MER should not be paid by TOTAL RWANDA SRL.
- [42] The court observed therefore that nothing odd happened that show that the aim was selling properties because even what RRA says that the court ignored concequences rooted from shares sale yet it failed to provide concrete explanation on how it wants to tax TOTAL RWANDA SARL and ENGEN RWANDA Ltd. Also RRA refute the fact that ENGEN RWANDA SARL was formally called TOTAL RWANDA Ltd.
- [43] Based on aforementioned explanations and article 9 of law no 21/2012 of 14/06/2012 governing civil law cases, commercial and public services, it mandates that the accuser must prove evidence of his claim otherwise the court decision goes against him. The court observed that the fact that RRA has no proof cementing that what happened is selling of properties of TOTAL RWANDA SARL, what is considered here is how the contract states it and that is shares sale which was conducted by TOTAL OUTRE MER. This conclusion again is similar to that of the court amicuscuriae where he conluded that after a thorough thought,

he stressed that what happened in this case was handing over of shares. Thus, conclusion of case RCOM 0175/11/HCC that was appealed remains unchanged. III.DECISION OF THE COURT 1 Cour de Cassation, chambre commerciale, N° de pourvoi : 81-13728 81-16259 du 07 mars 1984 2 Cour de cassation, chambre commerciale, N° de pourvoi: 88-15784 du 6 juin 1990.

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[44] The court ruled that RRA appealing is no merit;

[45] It concluded that nothing changed on the conclusion of case RCOM 0175/11/CS conducted by Commercial high Court conducted on 13/01/2012;

[46] It has ordered RRA to pay court fees which is equivalent to 100.000 Rwf.

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Prepared on 14 October 2026 · Esheria