

RWANDA / JUDGMENT

STEDCON RWANDA v. ACCESS BANK

RCOMA 0002/12/CS

COURT

Supreme Court

DECIDED

24 October 2014

CASE / FILE NUMBER

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STEDCON RWANDA v. ACCESS BANK

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Text

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STEDCON RWANDA v. ACCESS BANK [Rwanda SUPREME COURT – RCOMA 0002/12/CS (Mutashya, P.J., Nyirinkwaya and Gakwaya, J.) 24 October 2014] Negotiable instruments law – To be paid by cheque – Not requesting the bank holder an order for cheque payment – The bank that paid the cheque signed by authorised persons, can not held responsible in its payment in case cheque drawer did not demonstrate that the cheque had a defect nor they demonstrate that they were not the owners of the cheque. Negotiable instruments law – Payment of the cheque – Deposit the money on account of someone who must be paid – Not to confuse the cheque payment and fraud which was opposed payment by one of signatories – It cannot be considered as fraud in cheque payment in case of its issuance no duress or fraud were used – Law n°32/2009 of 18/11/2009 governing negotiable instruments, article 34. Facts: STEDCON RWANDA LTD filed a case against ACCESS BANK LTD to the Commercial High Court stating that the bank fraudulently withdrawn its money because it paid the cheque which was given to DAHABSHILL MTS ltd before authorisation of its managing director while it notified to it. STEDCON RWANDA ltd stated that the acts of ACCESS BANK RWANDA ltd has had a big impact of its function which made it not to pay the taxes on payment done by PLESSAY RWANDA. The Commercial High Court decided that

the claim of STEDCON RWANDA ltd lacks merit because signature which figured on cheque, are ones signed at the opening of bank account especially that one signature on it, is of the managing director of STEDCON RWANDA ltd. Therefore, it was not necessary to get its approval before the payment since the banks have not that obligation which mean that if they don't, they may be taken as they miss the point especially that it is hard to implement those regulations relating to communication in case some one called states that he/she has not been called and in case the person called is called but he/she is not available. This may have an impact on functioning of the banks. STEDCON RWANDA ltd appealed to the Supreme Court stating that the Commercial High Court decided that ACCESS BANK RWANDA LTD did not commit any fault in paying the cheque to DAHABSHIL MTS ltd in case both parties agreed that before making a transaction of a cheque of above 1,500,000 Rwf, it must get an authorisation of bank account holder. It also stated that the Commercial High Court decided that it was not necessary to ask because the cheque was carrying the required signatures while the bank that received the letter of managing director STEDCON RWANDA ltd, did not ask how it could be done. It stated that it is easy to execute the contract of asking before the payment because the telephone number that calls and that has been called, appear. It kept stating that the court did not provide grounds in law and in fact in rendering the judgment. ACCESS BANK RWANDA ltd stated that it applied the law since it paid the cheque signed with competent persons. Therefore, no fraudulent withdrawal happened because the money was withdrawn on drawer's cheque.

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It also stated that the bank account of STEDCON RWANDA ltd was opened by two persons. Therefore, one person could not give its own instructions without approval of board of directors. In addition, STEDCON RWANDA ltd did not undergone any loss because it did not contest that the cheque paid was not for it. Held: 1. The drawer of the cheque that was signed by authorised persons and did not notify that it was fraudulently given, he/she cannot state that the bank that paid it, has fraud the money it paid and be declared valid in case himself/ herself admit that the paid money was deposited on the account of someone who should be paid. Therefore, the appeal of STEDCON RWANDA LTD lacks merit.

2. In payment of the cheque, if the bank was not notified that one of signatories on bank account had not any power on it, it cannot be held responsible for executing an order given by one of them. Appeal lacks merit. Across appeal has merit in part. Court fees to the appellant. Statutes and statutory instruments referred to: Law n°32/2009 of 18/11/2009 governing negotiable instruments, article 34. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] STEDCON RWANDA Ltd filed a case against ACCESS BANK RWANDA Ltd to the Commercial High Court stating that the bank fraudulently withdraw its money because on 24 February 2010, the day it was paid by PLESSAY RWANDA 69,176,349 Rwf, it paid to DAHABSHILL MTS Ltd the cheque of 65,193,791 Rwf before it got an authorization of

managing director of STEDCON RWANDA Ltd while on 9 February 2010 it received the letter . In that letter it was mentioned that before withdrawing the money on account n° 100 210 0101219701 he/she must give an authorization. That act of withdrawing the money had an impact on the function STEDCON RWANDA Ltd and it prevent from it to pay taxes from payment made by PLESSAY RWANDA. [2] On 13 December 2011, the Commercial High Court heard the case RCOM 0153/11/HCC and decided that the claim of STEDCON Ltd lacks merit because of following reasons:

- Signatures on the cheque are ones signed at the time of opening bank account on 18 August 2009.

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- One signature on the cheque is for Edward Ngeera Kibute, director of STEDCON RWANDA Ltd. Therefore, it is understandable how the bank should have asked him if it must pay.
- If other banks call the account holder before paying, they do not have an obligation, in case they fail they may be sued for overcoming professional duties.
- It is not easy to execute those instructions in case someone called states that he/she was not called or if the person called is called but he/she is not available and may lead to non payment which may have an impact on bank function. [3] The Commercial High Court also ordered STEDCON RWANDA Ltd to pay 1,000,000 Rwf of damages to ACCESS BANK RWANDA Ltd determined in discretion of the court because it unnecessary filed a claim against it, 5,00,000 Rwf of procedural fees, 5,00,000Rwf and the total is 2,000,000 Rwf. [4] On 12 January, STEDCON RWANDA Ltd appealed to the Supreme Court where the case was held in public 16 September 2014, and was represented by Rubasha Herbert, the counsel while ACCESS BANK RWANDA Ltd was represented by Nkurunziza F-Xavier and Rukangira Emmanuel, the counsels. II. ANALYSIS OF LEGAL ISSUES

- a) Whether ACCESS BANK RWANDA Ltd committed any fault in paying the cheque of 65,193,791 Rwf to DAHABSHILL. [5] The counsel for STEDCON RWANDA Ltd states that the Commercial High Court decided that ACCESS BANK RWANDA Ltd did not commit any fault in paying the cheque of 65,193,791 Rwf to DAHABSHILL MTS by disregarding that at the opening bank account, it was signed a policy of the bank that provided that in case of paying a cheque of above 1,500,000 Rwf, it must be get an authorisation of the bank account holder. Therefore, the bank did not contravene that policy because it did not ask the director of STEDCON RWANDA Ltd even if he requested it in his letter. [6] He also states that the court decided that it was not necessary to ask because the cheque bore all necessary signatures. He kept stating that the court disregarded that when the director STEDCON RWANDA Ltd was requesting to be asked before making an operation of its account, he was not meaning the case all signature are not signed. Then, he finds that the bank more neglected in paying that money in litigation before paying as it should do it. [7] He added that it is easy to execute that policy as decided by the court, except that in ACCESS BANK RWANDA Ltd

policy, it must be written, then it can even be easy for inspecting telephone especially that calling and called numbers appear, except that the bank did not state that it tried its best and failed. [8] He also added that the court did not provide grounds in law and in facts in rendering the judgment as provided by article 147 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure.

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[9] The counsels for ACCESS BANK RWANDA Ltd state that the bank applied the law because it paid the cheque that was signed by competent persons. Therefore, no fraud withdrawal was made because the money was taken from its account and was deposited to the bearer cheque account. [10] They also state that the account of STEDCON RWANDA Ltd was opened by two persons and they did not provide how the cheque should be approved. Therefore, one person should not give his own instruction without even showing the approval of the board that confers him to give his own instructions. [11] They added that STEDCON RWANDA Ltd did not undergo any loss because it accepts that the paid cheque was its cheque and it was signed by competent persons. VIEW OF THE COURT [12] The Policy of ACCESS BANK RWANDA Ltd of getting written confirmation before payment of a cheque, it is mentioned in contract of 18 August 2009 signed by STEDCON RWANDA Ltd at the opening of an account in that bank. It is explained that that policy is intended to avoid fraudulent practices. In addition, the client determines if he wants that means of confirmation, or if he may write a letter confirming the cheque or if he/she will confirm it on reverse side. [13] Another point mentioned in contract, is that Julius Chacha Mabanga and Edward Ngeera, they both have the power to sign on account and they kept silent on matter of confirming the cheque. The court finds that one of them cannot give his own instruction regarding the means of confirmation while there is another person who possesses the right on it. [14] The court finds that in case ACCESS BANK RWANDA Ltd has not been notified that Julius Chacha Mabanga had not any right of STEDCON RWANDA Ltd account, it did not commit any fault of non-executing the instruction given by Edward Ngeera himself that he will approve each operation of withdrawing the money by means of cash, cheque or transfer. [15] Concerning the cheque of 65,193,791 Rwf paid to DAHABSHILL MTS, the court finds that in STEDCON RWANDA Ltd pleadings does not deny that the cheque was not for it or if signatures on it were not for signatories provided in the contract it made with the bank. [16] The court finds that the argument for STEDCON RWANDA Ltd of stating that the bank fraudulently withdrew the money, lacks merit because itself admits that the money was deposited on DAHABSHILL MTS account basing on its cheque that bears signatures of authorized persons. Then, it does not prove that the cheque was fraudulently given or by using duress or by breach of trust, obtained and accepted thereof based on unlawful means as provided in article 34 of the Law n° 32/2009 of 18/11/2009 governing negotiable instruments. In addition, the cheque given to DAHABSHILL MTS was not paid before the date mentioned on it as prohibited in article 111 paragraph 3 of that law because it was paid 24 February 2010 which is the date written on it.

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- b) Concerning the cross appeal of ACCESS BANK RWANDA Ltd. [17] The counsels for ACCESS BANK RWANDA Ltd state that STEDCON RWANDA Ltd continues to file for unnecessary litigation. Therefore, they request to court in cross appeal to increase damages given at the first instance and be calculated at 5,000,000 Rwf, 2,000,000 Rwf of procedural fees and 1,000,000 Rwf of advocate fee. [18] The counsel for STEDCON RWANDA Ltd states that it cannot be charged of damages because its claim has merit. VIEW OF THE COURT [19] The court finds obvious that STEDCON RWANDA Ltd appealed without any reason as explained above. Therefore, it must pay to ACCESS BANK RWANDA Ltd 1,000,000 Rwf of procedural and advocate fee at appeal level that are added to 2,000,000 Rwf determined by the Commercial High Court, and the total is 3,000,000 Rwf. [20] Concerning other damages requested in appeal by counsels for ACCESS BANK RWANDA Ltd, the court finds that they do not provide their basis. Therefore, it must remain those stated in paragraph 19 of this judgment. III. DECISION OF THE COURT [21] Decides that appeal of STEDCON RWANDA Ltd lacks merit. [22] Decides that the cross appeal of ACCESS BANK RWANDA Ltd has merit in part. [23] Decides that the case heard by the Commercial High Court remains unchanged. [24] Orders STEDCON RWANDA Ltd to pay 2,000,000 Rwf of damages to ACCESS BANK RWANDA Ltd as decided by the Commercial High Court by adding 1,000,000 Rwf of procedural and advocate fees on appeal level, and the total is 3,000,000 Rwf. [25] Orders STEDCON RWANDA Ltd to pay court fee.
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