

RWANDA / JUDGMENT

STEDCON RWANDA v. ACCESS BANK

2014SC

COURT

Supreme Court

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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 – 2014SC – (Mutashya , P.J., Nyirinkwaya and Gakwaya , J.) October 24, 2014] Law governing negotiable instruments– Signatories’ instructions on cheque – they are valid if given by all signatories of the cheques–Law n° 32/2009 of 18/11/2009 governing negotiable instruments, article 34,111. Law governing negotiable instruments– Payment of a cheque – When the cheque was issue without fad faith, fraud or treat, duress or breach of trust, the bank shall pay it–Law n° 32/2009 of 18/11/2009 governing negotiable instruments, article 34,111. Contracts and contractual obligation–Damages– Procedural fees and advocate fee –Are only awarded with reasonable proof. Facts: STEDCON RWANDA Lt wrote a letter to ACCESS BANK RWANDA Ltd, ordering them to pay a cheque upon their express authorisation. Ultimately, ACCESS BANK paid the STEDCON Cheque worth 65.193.791 Frw superseding the request from STEDCON RWANDA Ltd that was previously communicated. STEDCON filed a claim in the Commercial High Court saying that ACCESS BANK committed an act of embezzlement of its funds because it paid a cheque against STEDCON’s Authorisation. Court dismissed STEDCON’s claim and affirmed that it is without legal basis because of the following: (i) Signatories and signatures on cheques are the same from the time of

opening the account,(ii)One of the signatures on the cheque was of Edward Ngeera Kibute,the managing Director of STEDCON. Court reasoned that it is not logical how the bank could request authorisation to pay money to the bearer when the managing director's signature is affixed on the cheque.(iii)There is no professional misconduct committed in paying a bearer of cheque without seeking authorisation or calling the bank account owner,(iv)It is difficult to implement the regulations of calling owner of an account for authorisation to pay the bearer of a cheque or payee. For instance calling an owner of an account who may not be available on the phone or calling the owner of an account and refuses to appear at the bank premises. The court argued that those regulations undermine the functioning of the Banks.the Court ordered STEDCON to pay ACCESS BANK Damages, Procedural fees and advocate fee. STEDCON appealed in the Supreme Court on the basis that; The Commercial High Court dismissed their case on the pretext that there was no legal obligation breached from payment of the cheque to the payee yet actually the bank breached the contract it signed with STEDCON and the regulations of the Central Bank which provided that the bank would fore-call the owner of the account before paying the payee. In defence, ACCESS Bank argued that they respected laws governing negotiable instruments in that it paid a cheque that was signed by people who had the mandate to sign on it and that money was transferred from the account holder to the account of the payee.

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ACCESS Bank filed a cross appeal requesting: Damages to be increased with advocate fees for continuing to be dragged into cases without lawful cause. STECON responded that Damages shall not be granted since its claim has merit. Held: 1.Signatories on an account has the same right on signing on the cheque to confirm payment to the payee. When both fail to do so, the bank is not under obligation to receive order for only one signatory while the other did not say anything.

2. There is no breach of duty when the bank pays a cheque to the payee, if The cheque issued is not as a result of bad faith/fraud, duress or breach of trust, was signed on by lawful signatories and paid to a lawful payee and at a lawful date.
3. Damages are paid when there are evidences proving why they should be granted thereof failing to do so they shall not be granted. Appeal has no merit; Cross appeal has merit in part; the appealed case remains; Orders Appellant to pay Damages,Procedural fees and advocate fee to the defendant ; Court's fees to the appellant . Statutes and statutory instruments referred to: Access Bank's policy preventing " fraudulents practices" signed on18/08/2009 by STEDCON RWANDA Ltd; Law n°32/2009 of 18/11/2009 governing negotiable instruments, Article 34 and 111; No Cases referred to:

Judgment

I. BACKGROUND OF THE CASE [1] STEDCON RWANDA Ltd submitted a claim against ACCESS BANK RWANDA Ltd in the Commercial High Court claiming that the bank committed an act of embezzlement of its funds totaling to 69.176.349 Frw. STEDCON alleges that it communicated to ACCESS BANK with a letter dated 9/2/2010 that whenever payment to a payee is made from its

account N0 100 210 0101219701, the latter should request authorisation from the former to confirm payment, however, on the 24/02/2010 after being paid by its client PLESSAY RWANDA, ACCESS BANK paid DAHABSHILL MTS Ltd a total of 65.193.791 Frw without STEDCON's authorization and that this action tantamount to embezzlement of funds hence failure to pay taxes out of PLESSAY RWANDA's payments. [2] The Commercial High Court dismissed case N0 RCOM 0153/11/HCC on 13/12/2011 and affirmed that STEDCON LTD's case is legally baseless because of the following reasons;

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Signatures affixed on the cheque are similar to the signatures submitted while opening the account ON 18/08/2009. The signature on the paid Cheque belonged to Edward Ngeera Kibute, the Managing Director of STEDCON and that the bank would not request his authorization when his signature was affixed on the cheque. There is no breach of duty when a bank does not request authorization from account holder while paying the payee even if other banks make it a custom to seek for authorization from account holder. Implementing the rule of seeking authorization from the account holder before making payments to payee is hard because it may be difficult to prove especially in cases where the account holder denies that he/she was never called to confirm payments or when the account holder is not available on the phone network thus undermining the proper functioning of banks. [3] The Commercial High Court ordered STEDCON RWANDA Ltd to pay ACCESS BANK RWANDA Ltd damages of 1.000.000 Frw determined by the Court discretion , Procedural fees of 500.000 Rfw and advocate fee , totaling 2.000.000 Rfw. [4] STEDCON RWANDA Ltd appealed in the Supreme Court on 12/01/2012 and hearings in public took place on 16/09/2014 with STEDCON RWANDA Ltd being represented by Counsel Herbert Rubasha and ACCESS BANK being represented by Counsels Nkurunziza F- Xavier and Rukangira Emmanuel II. ISSUES TO BE EXAMINED IN THE CASE AND ITS

ANALYSIS

- a) Whether there is ACCESS Bank breached a duty when it paid DAHABSHILL by a cheque worthy 65.193.791 Fwfrs without authorisation from account Holder. [5] Counsel for STEDCON Rwanda Ltd argues that the Commercial High Court confirmed that there was no breach of duty when ACCESS BANK RWANDA LTD paid DAHABSHILL MTS a cheque worthy 65.193.791 Frw, however, during the opening of the Bank account; a policy was signed that requires the bank to seek confirmation from account holder before paying a cheque exceeding 1.500.000 Fw ,the bank failed to do so because it did not ask confirmation from the managing Director of STEDCON RWANDA Ltd despite its letter requesting that proecess. [6] Counsel continues to argue that Court reasoned that it was unnecessary to confirm cheque payments from account Holder since there is presence of lawful signatures yet while signing the policy or agreement with the managing Director, both parties knew that cheques had to be signed on by all signatories. Counsel finds that the bank expressed negligent behavior in paying the payee the contested cheque. [7] He adds that it not difficult to implement the policy of confirming payments as commercial court said because the

“policy” of ACCESS BANK RWANDA LTD provides that

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written confirmation is one way and even when telephone call method is used, call logs can be located whenever they are needed thus the bank never tried those methods. [8] Counsel says that court did not explain the law it based on while taking the decision as provided by article 147 of law N0 21/2012 of 14/06/2012 relating to the code of civil, commercial, labor and administrative procedure. [9] Counsels of ACCESS BANK RWANDA Ltd reiterate that the bank fulfilled all the laws in the country regulating Cheque payments since the cheque was signed by the lawful signatories and that there was no element of embezzlement as the amount was transferred from the account holders account to the account of payee. [10] The defense counsels argue that when STEDCON RWANDA Ltd's account was opened, two persons were signatories and they never decided on how cheque payments should be signed on. it is therefore not realistic how a signatory signs a policy with the bank without even a board meeting authorizing him/her to sign such policy with the bank. [11] Counsels say that STEDCON RWANDA Ltd never incurred a loss as the cheque paid to the payee belongs to account holder and it was signed by lawful signatories. THE VIEW OF THE COURT [12] Its true ACCESS BANK RWANDA Ltd policy of a written confirmation of payment of a cheque was provided in the contract signed between STEDCON RWANDA Ltd and ACCESS BANK on 18/8/2009 at the time of opening the account and that the aim of the policy was to avoid fraudulent practices. It was a client's right to choose whether to write a written confirmation that followed the cheque payments or through confirmation by “reverse side” [13] Another fact is that in the contract of opening up an account, Julius Chacha Mabanga and Edward Ngeera had same rights as signatories of the account and nothing like a clause of signatories to cheques was ever provided. The Supreme Court finds that it is unfair for one signatory to authorise a confirmation before cheque payments are made when the two signatories have same rights on the account. [14] Court finds that ACCESS BANK Ltd did not breach a duty to fulfil “confirmation before payments” as it was impossible to refuse an order to pay from a lawful signatory of the account (Julius Chacha Mabanga) yet he had same rights to those of Edward Ngeera. Had the bank received notification that Julius is no longer a signatory, then it would have breached a professional duty. [15] Regarding the 65.193.791 Frw paid to DAHABSHILL MTS, court finds that in its pleadings; STEDCON RWANDA Ltd does not deny the fact that the cheque in question belongs to it or the signatories are not the ones who made a contract to open a bank account. [16] The Court finds that the allegations STEDCON RWANDA Ltd of embezzlement of its funds by ACCESS BANK are baseless because it does not deny the fact that the cheque belongs to them (STEDCON RWANDA Ltd) and the signatories to the cheque were the lawful

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signatories since it does not even prove bad faith/fraud, duress or breach of trust when it was issued as provided by article 34 of law N0 32/2009 of 18/11/2009 relating to negotiable instruments and article 111 which bars a payer to pay payee an amount on a cheque before payment date, the payment took place on 24/02/2010 the day that is written upon it.

- b) Concerning the Cross appeal of ACCESS BANK RWANDA Ltd. [17] Counsels for ACCESS BANK RWANDA Ltd submitted a cross appeal requesting court to order STEDCON RWANDA Ltd pay their clients' damages and increasing them as those awarded in the first degree were different from those awarded in the second degree pleadings. They claim that damages should be increased to 5.000.000Rwfrs, Procedural fees being 2.000.000Rwfrs and advocate to 1.000.000 Rwfrs. [18] . Counsel for STEDCON RWANDA Ltd claims that damages should not be awarded because their claims have grounds in law. THE VIEW OF THE COURT [19] The Court finds that indeed STEDCON RWANDA Ltd appealed without lawful grounds and ordered to pay damages of 1.000.000 RFW to ACCESS BANK RWANDA Ltd as procedural fees and advocate fees at the appellate level added to what the Court had determined at the first instance amounted to 2.000.000 RFW, all totalling 3.000.000 Rfw [20] Regarding other damages that ACCESS BANK RWANDA LTD requests, court finds that they are not proven with evidence thus court refutes them and then remained what is stipulated in paragraph 19 of this case. III. DECISION OF THE COURT [21] Confirms that STEDCON RWANDA Ltd appeal has no basis; [22] Confirms that the cross appeal of ACCESS BANK RWANDA Ltd has merit in part; [23] Confirms that the case decided by the Commercial High Court does not changes; [24] Orders STEDCON RWANDA Ltd pay ACCESS BANK RWANDA Ltd damages of 2.000.000 Rfw as ordered by the Commercial High Court plus 1.000.000 Rfw for procedural fees and advocate fee at the level of appeal, all amounting to 3.000.000 Rwfrs. [25] Orders STEDCON RWANDA Ltd pays court fees.

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