

RWANDA / JUDGMENT

VICTORIA PLAZA Ltd v. BANQUE POPULAIRE DU RWANDA

RCOMA 0201/12/SC

COURT

Supreme Court

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VICTORIA PLAZA Ltd v. BANQUE POPULAIRE DU RWANDA [Rwanda SUPREME COURT – RCOMA 0201/12/SC (Nyirinkwaya, P.J., Mukandamage and Kanyange, J.) March 13, 2014] Law relating to the contracts or contractual obligations –To be charged the interests – The fact that the seller of the plot has not performed his obligations which includes to deliver a vacant occupancy of the land, and to help and facilitate the process of property transfer, is one of the grounds which made it not to be paid on time – No interests for delay have to be paid to it in case the one who bought it is the one who made all the processes relating to the transfer, and that in the contract both parties have agreed up on that that transfer will be completed in a period less than 2 months, failure of which an interest of 7% will be chargeable on the advance paid, the law of 30/07/1888 relating to the contract and contractual obligations, article 33. Facts: Banque Populaire du Rwanda sold to Sté Victoria Plaza Ltd the plot on the money amounting to 365,000,000 Frw, 300,000,000 Frw were paid, and the balance of 65,000,000 Frw would be paid after the transfer, after getting the original title deeds which have been registered in the names of Victoria Plaza.

Banque Populaire sued Victoria plaza Ltd before the Commercial High Court requesting to be paid that balance on cost of the plot together with the interests for delay resulting from them. The court decided that the claim of BPR has basis and condemned Victoria Plaza to pay to it 65,000,000 Frw of the balance. Victoria Plaza appealed before the Supreme Court arguing that BPR Ltd did not perform its obligations as they are in the contract. Victoria Plaza argues that the ground which made it not to pay the balance it owed to BPR is that the latter has not performed its obligations, that's to say to deliver a vacant occupancy of the land and making with it the final contract. It goes on saying that there has been injustice in deciding the case since BPR has failed to perform its obligations, and the judge was mistaken and thus «vacant occupancy» means that «none has right there on», this is in contradiction with what is provided for by the law. And he concludes saying that BPR deserves no interests for delaying to pay the second installment of the debt that Victoria Plaza owed to it, he says again that the provided interests were calculated on 18% while it is 7% agreed up on in the contract as the rate of the interests of the responsibility. Banque Populaire du Rwanda says that Victoria plaza ignored that it admitted to pay after it was condemned to do it with the court and does not prove what prevented it from paying beforehand. It says that after the plot has been registered in the names of Victoria plaza, BPR Ltd has no other rights thereon it. He goes on saying Victoria Plaza failed to prove that BPR Ltd sold to it the plot which was occupied by other people since it does not reveal no other person who ever had the rights over it selling it to it. He concludes saying that Victoria Plaza denied to pay the

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interests and opted to suspend them, those interests have to be paid from the day the plot has been registered in its names until it finishes to pay. Held: 1. Though the seller has delivered the title deeds of the plot to the buyer, but it did not resolve the problem of the person who lived in the house, until when the buyer did it itself and thereafter paid the balance of the money, the buyer had the grounds of not paying in case the seller did not perform its obligations including deliver an vacant occupancy of the land, thus the interests relating to not paying the buyer has been charged with the Commercial High Court on the amount of 65,000,000 Frw together with penalty forcing to pay have to be dismissed. Appeal has merit. Cross appeal has merit on some grounds. Judgement RCOM 0148/12/HCC changed in all its grounds. Court fees to the respondent. Statutes and statutory instruments referred to: Law of 30/07/ 1888 relating to contract or the contractual obligations, article 33. No case referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Banque Populaire du Rwanda (BPR) Ltd sold to VICTORIA PLAZA Ltd the plot n° 07 which is located in Kiyovu Cell, Kiyovu Sector, Nyarugenge District, the City of Kigali on 365,000,000 Frw, 300,000,000 Frw were paid, there was the balance of 65,000,000 Frw, BPR Ltd says that that money would be paid after the transfer, after getting the original title deeds which are registered in the names of Victoria Plaza, and the latter says that BPR would have vacated the person who lived in that plot, and another final contract would have been made. [2] BPR Ltd sued Victoria Plaza Ltd before the Commercial High Court requesting to

be paid that balance of the sale of the plot together with the interests for delay resulting from them, the penalty forcing the payment, the provision execution of the judgment and the procedural fees and the lawyer's fees. [3] The Commercial High Court decided that the claim of BPR has basis because it has realised that the article 1 and 4 of the contract made by both parties if analysed together demonstrates that VICTORIA PLAZA Ltd has to pay to BPR Ltd the balance on the cost of the plot after getting the original title deeds in its names, even if in the article 1 it was provided that the plot which has to be transferred has to be occupied by no other person, but it was not replied in the article 4.

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[4] The court has condemned Victoria Plaza to pay to BPR Ltd 65,000,000 Frw of the balance because it has already got the original title deeds which were registered in its names, and the interests of 18% for the period of 22 months calculated from 19/01/2011 on which it has got the title deeds of the plot until it is decided, amounting to 21,450,000 Frw, adding 400,000 Frw for the procedural fees. It has ordered that the judgment be provisionally executed because the sale contract of the plot is an evidence of the subject matter is an authentic document drafted before the State Notary, VICTORIA PLAZA pays 20,000 Frw for each month in case it will not execute the judgment after the judgment becomes executable. [5] Victoria Plaza appealed before the Supreme Court arguing that the court charged the interests ignoring that the failure to pay the remaining instalment on the cost of the plot was caused by the fact that BPR Ltd did not perform its obligations as it was in the contract, it has calculated those interests on 18% ignoring the rate of 7% agreed up on in the contract. It said again that due to this reason, it could not be charged with the penalty forcing it to pay and the procedural fees and the lawyer's fees since no evidence was revealed. [6] The case was publically heard on 03/02/2015, Banque Populaire du Rwanda (BPR) Ltd represented by Me MHAYIMANA Isaïe, VICTORIA PLAZA Ltd assisted by Me BUGINGO John Bosco. II. ANALYSIS OF LEGAL ISSUES OF THE CASE Knowing whether VICTORIA PLAZA Ltd was charged the interests on 65,000,000 Frw of the balance on the cost of the plot of BPR Ltd, and the other fees, while it had the ground for not paying them. [7] BUGINGO the counsel of VICTORIA PLAZA Ltd says that the court has ignored its arguments where it has explained the reason it did not pay the balance to be paid to BPR Ltd, is that also it has not performed the obligations in order to be paid as it provide in the article 1 in the last paragraph of the contract of 09/11/2010 this is to mean transferring the vacancy occupancy of the land and making the final contract ((the balance of sixty five million Rwandan Francs shall be payable after delivery of the original documents in the buyer's names and the vacant occupancy of the land). [8] He said again that the court ignored the provisions of the article 4 c) of the contract also obliges to BPR to deliver the vacant occupancy of the land since when they sold BANDAG occupied it and a person who has been living there for 15 years, that therefore 65,000,000 Frw were paid on 17/09/2012 after Nyarugenge District has finished to vacate him there and went to live in Byumba. [9] He says again that BPR Ltd does not deny that it committed itself to deliver a vacant plot, that instead it got tired of processing, and opted to

sue VICTORIA PLAZA Ltd ignoring the obligations it committed itself in the contract, he bases on the ground that on 26/08/2011 it wrote

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to VICTORIA PLAZA Ltd requesting it the title deed of the plot saying that it has spent some months following up the problem of vacating the person in the plot in vain, on 31/08/2011 VICTORIA PLAZA Ltd reminded it again its obligations, and it responded that it has given it a great concerned that it will be done as soon as possible. [10] He realises therefore the court would not have ignored the validity of the article 1 of the contract and follow its article 4 since BPR Ltd failed to perform its obligations, that therefore there has been injustice. And again, in analyzing those articles, the judge was mistaken on what “vacant occupancy” mean, and said that “none has right over it” he did this in contradiction of the article 69 paragraph 1-4 of the law n° 45/2011 of 25/11/2011 regulating the contract. [11] He concluded saying that BPR Ltd deserves no interests for delay since it is the root cause of not being paid the second instalment of the debt that VICTORIA PLAZA Ltd owed to it, and that those provided were calculated on the rate of 18% ignoring 7% agreed up on in the contract as the rate of the interests for delay. [12] MUHAYIMANA the counsel of BPR Ltd says that VICTORIA PLAZA Ltd ignores that in the last paragraph of the article one and the paragraph b) of the article 4 of the contract clearly explain that “the second instalment of the cost of the plot of 65,000,000 Frw has to be paid immediately after the buyer (VICTORIA PLAZA Ltd) gets the documents registered in its names” which is what the judge of the Commercial High Court has clearly explained in the paragraph 7 of the judgment appealed against. [13] He says again that VICTORIA PLAZA Ltd ignored that it agreed to pay that money after that it has been condemned to do it by the court, and it does not prove what has prevented it from paying beforehand, that no any hindrance that BPR Ltd has removed as to allow to it to accept to pay 65,000,000 Frw it has denied to pay. [14] He realises therefore that since the plot has already been registered in the names of VICTORIA PLAZA Ltd, no other power and competence that BPR Ltd had thereon it, more importantly that they have agreed up on that “the seller agrees that, after selling, no interests or any right he has over the plot, that all are controlled by the buyer”. [15] MUHAYIMANA the counsel adds thereon that VICTORIA PLAZA failed to prove that BPR Ltd sold the plot which was occupied other people since it reveal none who had had the right over it from the time when it has sold it on 09/11/2010, since even if there could be any person who fraudulently to it to live in it, VICTORIA PLAZA Ltd is the only one, as the owner of the plot which has all rights it is endowed with the law of stopping that fraudulent way, more importantly that it needed no judgment, and it did not need any one until now, until it accepts to pay the balance it owed.

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[16] On the argument of VICTORIA PLAZA Ltd stating that the interests of delaying to pay would be on 7% instead of being 18%, Me MHAYIMANA argues that it ignores that BPR Ltd is the business dealer, that if it had been paid on time, it would have transacted it on the rate of 18% it requests to who it gives the lent, that 7% provided for in the article 4 b) of the contract

of 09/11/2010, is the penalty that BPR Ltd would be charged in case it fails to perform the obligation registering the plot in the names of VICTORIA PLAZA Ltd. [17] He adds on that since VICTORIA PLAZA Ltd refused to pay the interests amounting to 21,450,000 Frw provided by the court, instead it opted to suspend them, those interests also have to be calculated from the time when they would be paid, from 19/01/2011 the date on which the plot has been registered in its names until when the decision will be rendered that is to mean $21,450,000 \text{ Frw} \times 18 \% \times 4 \text{ years} = 15,444,000 \text{ Frw}$, these interests have to be calculated until it finishes to pay. APPRECIATION OF THE COURT [18] With regard to the obligation resulting from the contract, the article 33 of the civil code, relating to the contractual obligations or the contract, which was in force when VICTORIA PLAZA Ltd and BPR Ltd made an contract provides for that “the 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”. [19] Within the article one, the last paragraph of the contract made between VICTORIA PLAZA Ltd and BPR Ltd between the notary on 10/11/2010, they agreed that The Balance of Sixty Five Million Rwandan Francs (65.000.000) shall be payable after delivery of the original documents in the buyer’s names and vacant occupancy of the land. [20] Within the article 4 b) of the contract they have agreed that Buyer is obliged to pay the second installment on reception of all original documents in his names, the seller commits that all the transfer process will be completed in a period less than 2 months failure of which an interest of 7% will be chargeable on the advance paid. [21] While in the article 4 c) of the contract the contractants agree that the seller agrees to help and facilitate the process of property transfer, and the seller agrees to meet the costs connected to any transfer costs chargeable. It is hereby agreed that the seller is to be given vacant occupancy of the property and any liabilities, tenants and occupants vacate the property at the time of signing of this agreement except for a mutually agreed occupancy between buyer and third party [22] All these article explain that BPR Ltd as the seller has committed itself to do much as possible in order to register the plot in the name of VICTORIA PLAZA Ltd which bought it in the period not less than two months, failure of which an interest of 7% will be chargeable on the

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advance paid and that at the time of signing of this agreement it was obliged to vacate the occupants for the buyer to get full ownership. [23] It is demonstrated in the documents that both parties have been writing with BPR Ltd that it considered it like that, since on 26/08/2011 after delivering the title deeds of the plot, it wrote to the advocate of VICTORIA PLAZA Ltd responding his letter of 18/08/2011 informing him that it has tried to vacate the person who occupied the plot which has been bought but it has not been resolved yet, and it requested him to give to it the scanned copy of the title deed to use in writing to the administration. [24] The court realises BPR Ltd that it has delivered the title deed of the plot, but it did not resolve the problem of the person who lived in the house until when VICTORIA PLAZA Ltd did it itself and thereafter paid the balance of the cost, this is therefore the ground of not paying on time in case BPR Ltd did not

perform its obligations contained in the contract. [25] The court realises therefore, the appeal of VICTORIA PLAZA Ltd has basis, thus the interests amounting to 21,450,000 Frw it has been charged with the Commercial High Court on the amount of 65,000,000 Frw, 400.000 Frw for the procedural fees it has been condemned to pay to BPR Ltd, and the penalty forcing to pay of 20,000 Frw per month have to be dismissed. III. THE DECISION OF THE COURT [26] Decides that the appeal of VICTORIA PLAZA Ltd has basis; [27] Decides that the cross appeal of BPR Ltd is baseless; [28] Orders that the judgment RCOM 0148/12/HCC rendered on 19/11/2012 by the Commercial High Court changes in all its grounds; [29] Orders BPR Ltd to pay 100,000 Frw for the court fees.

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